

# IS LIVING APART BUT IN THE ONE HOUSE, SEPARATION?

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Many couples feel their relationship has broken down but they continue to live in the same house. The law recognises 'separation under the one roof' as 'separation' – but what is actually required?

Separation under one roof is when a couple have separated, but continue to live in the same house. It may be for a few days, weeks, months or years following separation and it's something that has become more common in 2020 due to the COVID-19 pandemic.

Often people will choose to stay under the one roof for financial reasons, as it's difficult to support two households, particularly if they're waiting for a property settlement to be finalised or for the house to sell. For other separated couples, it's about continuing to be available for their children.

## What is required?

For a 'separation under the one roof' to meet the legal requirement to be a 'separation' there needs to be 'a communicated intention to separate' and a fundamental breakdown of the relationship. This break down is usually constituted by spouses living separate lives, this can be shown by a range of factors, such as – sleeping separately, separate finances, socialising separately and presenting to the world that they have separated. Sometimes this can be difficult to evidence and establish.

## Working through it:

To make the separation under the same roof work, you should discuss and reach an agreement about a number of issues including:

- The purpose of remaining under the one roof and the next steps – ie will it be until the house is sold, the property settlement is finalised, the end of the school year, etc.
- Guidelines for interacting with each other and your responsibilities. Who will cook, clean, pay bills? Will you share groceries? How much will you communicate and by what means?
- Guidelines for interacting with the children. If your relationship is amicable, you may be able to continue co-parenting in the same way. However, if things are acrimonious you may consider dividing time with the children. When you're not with the kids, leave the house if possible, visit family or friends, go to the gym etc. Consider couch surfing with friends or relatives on your "off days" if it is too awkward at home.
- What to say to the children. Even if you think you are shielding them from the dispute, they probably know more than you realise. Parents need to be able to answer questions in terms that kids can understand and do not involve them in the adult disputes.
- What you'll tell your friends and family about your situation.

## Protecting yourself:

There are also a number of things you should do to protect your interests. See a lawyer as soon as possible to get specific advice

about your situation, entitlements, responsibilities and the most appropriate steps in your case.

However, here are some general tips to consider:

- Change your pins and passwords. Use a separate and secure computer if possible.
- Redirect your mail to a PO Box or friend's address.
- Change the access on any joint accounts or redraw facilities to require joint signatures.
- Review your estate planning arrangements – wills, life insurance, superannuation, beneficiaries, properties held as joint tenants.
- Consider storing sentimental or irreplaceable items with friends or family.
- Collate your relevant financial documents – those about your current financial circumstances and significant events during the relationship including property purchase/sales or inheritances, and make copies if necessary.
- Take photos of valuable furniture and contents in case evidence of their existence is required for valuation purposes.
- Contact the Department of Human Services about any government payments you may be entitled to even while still living under the same roof. However make sure you contact them immediately if you reconcile so you do not end up with a debt for payments you should no longer be receiving.
- A new relationship is likely to add significant tension to your living situation and settlement negotiations. Either be incredibly discrete about dating or preferably wait at least until you physically separate from each other.
- Consider seeing a counsellor to help you manage the emotional impact of the separation and the particular difficulties of continuing to live in the same house.

## **A Divorce Application**

Due to the requirement for 12 months separation before a divorce application can be made it is usually hoped that you have obtained legal advice about your situation well prior to that point, but it is important to keep in mind that you will require extra evidence for your divorce application.

If you wish to rely upon any part of the 'separation under the one roof' for your 12 months separation you will need an affidavit (sworn evidence) from a third person confirming the arrangements of that separation. Such person would usually be a friend or family member and they would provide evidence of the couple's separation, despite the fact they continued to live under the same roof.

This evidence would contain reference to the date of separation, information about reduced family outings, why the couple continued to live together after separation, and friends or family members confirming the pair were living separate lives.