

## Can you be separated and live under the same roof?

Before a person can apply for a divorce they have to be able to establish to the Family Court that their marriage has irretrievably broken down. This can be established if the Court is satisfied that the parties to the marriage have separated and have lived separately and apart for a continuous period of not less than twelve months prior to the filing of the Divorce application.

The twelve month period commences from the date of communication of an intention to separate.

### **Separated but living under the one roof explained**

Being separated and living under the one roof is when a husband and wife separate but continue to live in the same home. It may be for any length of time - a few days, weeks, months or years following separation.

If the husband and wife lived in the same home during part or all of the required 12 months separation period, they need to provide additional details to the Court before they can apply for a divorce.

### **Two practical examples of how it works:**

1. The parties have been separated for 18 months. They have lived in the same home for the first 8 months after separation. They need to provide additional details about living under the one roof for two of the last months to the Court.
2. Husband and wife have been separated for 4 years. They lived in the same home for 2.5 years after separation but for the past 1.5 years have lived in different homes. Here they do *not* need to provide extra information to the Court

### **Additional proof required**

The additional details are provided through an affidavit (which is a document sworn or affirmed by the party). The affidavit needs to establish evidence before the Court that there has been a change in the marriage, gradual or sudden, showing that the parties have separated. If the parties are making a joint application each must file a separate Affidavit.

If the Application for Divorce, relying on separation under one roof, is made by one party alone then there must be an additional Affidavit from someone else corroborating the evidence – and this could be a relative, close friend, or family member over the age of 18 years.

The Affidavit should contain the details that show the ending of the marital relationship and this usually includes the following:

- Not sleeping in the same bed
- Separation of financial affairs such as separate bank accounts
- Separating household tasks
- Reduction in or cessation of shared activities
- Not representing that you are still in a relationship, such as no longer socialising together
- Communicating to family and friends that you have separated
- Notifying Government Departments that you have separated if you receive Centrelink benefits or Child Support and attach any correspondence showing this

It is easier to prove separation under one roof if you can show there were good reasons why you had to continue or resume sharing the same accommodation (such as for the sake of the children or one party could not find or afford separate accommodation) and that husband and wife intend to live apart in the near future.

### **Household services still being done can be explained**

The Court understands that sometimes following a separation, husband and wife may still have to share the same accommodation and one party may still perform some household services for the other, such as washing or ironing, for example, where it is necessary for the running of the home and the convenience of others who live there. This does not adversely affect the application.

### **Attendance at Court**

If it is a sole application and there are children under 18 years (whether relying on separation under one roof or not) the Applicant and/or their legal representative must also attend Court for the Divorce hearing.

In cases where there is a joint application and both parties are relying on separation under one roof and there is Affidavit material from both, then there is no need to attend.

In all other cases the Applicant and/or their legal representative need not attend so long as the Court has sufficient detail about the circumstances of your separation in your Application and Affidavit.

### **Conclusion**

If you know someone who may need family law assistance, particularly if they are thinking of divorcing and continue to live under the one roof they should seek legal help from a lawyer experienced in family law. As you can see more details need to be placed before the Court to explain the circumstances.

For any help call us on (03) 9459 5764 or email [admin@rtlegal.com.au](mailto:admin@rtlegal.com.au).