



Family law and separation: when are we considered separated?

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In the traumatic time of a relationship breakdown, it's not always front of mind as to whether you are legally defined as "separated"... "or not"... In fact, there is no legal definition of "separation" in a family law environment. However, there will be times you need to provide relevant evidence of the date you separated from your former partner.

As family lawyers, we receive enquiries from people who are unsure – "I am not sure if we are", "I want to but he/she doesn't seem to agree".

Separating and the events leading into (and after) it is a major step. It is also not always a clearly defined moment. It can be a grey area as to "when is the separation date?" – particularly if there is no one partner who moves out of the residence.

The defining date of separation can be important with respect to a family law process.

Why does the date of separation matter?

For those who are married, for an order for a [divorce to be granted](#), the two main criteria are:

No likelihood of reconciliation; and

The parties have been separated for at least 12 months.

For couples who are de facto, any application for [a property settlement](#) must be made within 2 years from the date of separation.

Troubles arise when parties do not have a definitive date of separation.

What if there is a defining moment, such as one party leaving the residence?

Did one party “storm out” on a particular date?

Was there a defined ending of joint finances?

What does the Court consider?

For many couples who have been together for some time, the parties will live separately but under the same roof for some time whilst finances are organised, alternative accommodation is sought and/or [children and parenting issues](#) are attended to.

To determine whether parties are still living together “as a couple”, the Court would consider several factors:

Are you still intimate together?

Do you share a bedroom?

Do you present in public as a couple (for example, entertaining together, going to birthday parties together, eating meals together);

Are you still holidaying together?

Is there a reliance on the other party for finances (which continues)?

Has any government agency (such as Centrelink) been notified of a change in circumstances?

Are third parties, such as friends and family, aware there has been a separation? For example, a text message to Mum and Dad saying the relationship has ended.

If you think you have separated, ultimately, it is your burden to prove the date.

What should I do once I consider we have separated?

To lock in your separation date, you should do the following:

Tell your family and friends – particularly if you are still [living under the one roof](#). Don't be afraid to tell your closest supports if you have moved out of the bedroom or alternatively, how you have separated.

Notify government agencies (Centrelink and Medicare);

If you have children together, one party can apply for [child support](#);

Show a definitive financial separation (for example, divide monies in joint accounts or separate access to joint credit cards).

This all assists if there is ever a dispute to the date of separation.

When do I need a family lawyer?

Separating is traumatic for most people. Generally, we do not enter into marriages or de facto relationships anticipating separation. As such, it is an emotionally charged time filled with trauma and loss.

During this vulnerable stage, it is often the most important time to [reach out to a lawyer for knowledge](#) to assist you in making informed decisions.

The involvement of a lawyer does not need to be hostile or cause more animosity. It can be a crucial step in facilitating an agreement between you and your former partner.

Even if just a first appointment, we encourage you to seek advice early so you may make informed decisions on the basis of what the future may look like – whether considering separation or you have actually separated.

Get help from a family lawyer

If you require assistance at this time, please make an appointment with one of our lawyers today. The better prepared you are, the more likely you will achieve a successful outcome during the most difficult stages.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.