

Separation Under the One Roof

This information is based on the law as at February 2011. It is written for the use and benefit of women who contact the Women's Legal Centre (ACT) and is to be read in conjunction with the specific advice given to those women when they contact the Centre.

What is separation?

Separation happens when you and your partner stop living together in a domestic or marriage-like relationship. At least one person in the relationship makes a decision to separate and communicates that decision to the other person. The other person does not have to agree. There are no legal requirements to register your separation.

What is separation under the one roof?

Separation under the one roof is a situation in which you and your ex-partner have separated and lead separate lives, but you still live together in the same house, or possibly in another building such as a granny flat on the same property. Typically, separation under the one roof involves eating and sleeping separately from your ex-partner, and not performing any domestic duties, such as washing and cleaning, for him/her. Just sleeping in a different room is not enough on its own to prove that you are separated.

Can I still get a divorce if we are separated under the one roof?

If you have lived in the same household for all or part of the 12 months separation period required before you can apply for a divorce, the Court will require some extra information from you to support the fact that separation occurred on a given date.

What extra information do I need to provide?

When you lodge an Application for Divorce, you will need to provide an Affidavit (a statement which is sworn or affirmed to be true), telling the Court the circumstances of your separation. If you are applying for the divorce on your own, you will also need to provide the Court with an Affidavit from another person (preferably not a relative) who knows about your separation. These documents must be sworn or affirmed before a person authorised to witness Affidavits, such as a lawyer or a Justice of the Peace. If you are making a joint Application for Divorce, both you and your ex-partner must provide an Affidavit, but you do not need one from anyone else.

There is no absolute rule about how to prove a separation. The Court is aware that in some cases, particularly where there are children of the relationship living in the house, it is not feasible for you and your ex-partner to lead completely separate existences.

However, to ensure that your Application for Divorce is successful, you should include the following types of information in your Affidavit:

1. The date and circumstances of your separation.
2. Whether you told anyone at the time that you were separating.
3. How your relationship has changed.
4. A description of your separate social lives. For example, you might visit any adult children, other relatives or friends separately, and not entertain as a couple any more.
5. A description of your separate sleeping arrangements, and a statement that your sexual relationship has ceased.
6. How your financial arrangements have changed. Do you have separate bank accounts, and how do you now split payment of household expenses?
7. Arrangements for doing the grocery shopping.
8. Arrangements for doing the washing and cleaning individual and common areas of your house.
9. When you notified Centrelink, the Child Support Agency, or any other relevant authority of your separation (if appropriate). Attach any documentation to support your claim.
10. The reason you have continued to live in the same house. For example, because you can not afford private rental on your income, or you run a business from home.

If you will also be filing an Affidavit from an independent person, it should include that person's observations of the living arrangements in your house, your social activities, and when that person was advised that you were separating from your partner.

No single factor is conclusive, and the Court will look at the situation as a whole in order to determine if separation has occurred.

How do I prove to Centrelink that I have separated so that I can obtain social security benefits, if we are still living in the same house?

The *Social Security Act 1991* states that people who are living separately and apart should not be treated as being in a marriage-like relationship. You will be required to provide Centrelink with proof that you have separated "permanently or indefinitely" from your ex-partner. In addition to interviewing you and your ex-partner, they will expect you to provide statements (statutory declarations are best) from one or more independent third parties who are familiar with your family circumstances. These could be from people such as your lawyer, minister of religion, doctor, counsellor or social worker. Your solicitor can provide a statement if you have sought assistance from him or her for, for example, a property settlement, children's orders, or a divorce. If you only provide statements from family or friends, they will not be given much weight.

The proof Centrelink requires before you can obtain benefits as a single person is more stringent than that required by the Family Law Courts, so if Centrelink is satisfied with the

proof you have provided, you can usually be confident that you will meet the family law requirements for proving the statutory 12-month separation period before a divorce.

Section 4(3) of the *Social Security Act 1991* sets out 5 factors which must be considered in determining whether or not a person is in a “marriage-like relationship” or separated under the one roof. They are:

- Financial aspects of the relationship – whether you have closed joint accounts, applied for child support, re-negotiated loans in your sole name, etc.
- The nature of the household – the efforts you have made to physically separate yourselves from each other within the household and to live independently of each other
- The social aspects of your relationship – how you have demonstrated that you are no longer a couple and are living separate social lives, such as by informing others, establishing new relationships, going out separately, etc.
- The presence or absence of a sexual relationship
- The nature of your commitment to each other – whether you have any joint plans for the future, or would help the other if there was a personal or family crisis other than in the short-term.

The fact that particular criteria have not been met does not necessarily mean that you will be found to be in a marriage-like relationship. However, each of you will be required to explain why you are continuing to live in the same residence, and prove that there has been a genuine separation.

If you want further information about Centrelink, telephone the Welfare Rights and Legal Centre (6247 2177).

I find living separated under the one roof intolerable. How can I make my ex-partner leave the property?

If you cannot agree, it is sometimes possible to apply to Court for an exclusive occupation order which forces the other person to leave. Just stating that living with the other party is intolerable is not a good enough reason. An acceptable reason could be if you or one of your children has a disability, and the house has been especially modified to accommodate that disability. You should get legal advice about this, because the order is difficult to obtain.

If you have been subject to domestic violence, it is possible to ask the Court for a domestic violence order which requires the other person to leave the home.

Without an exclusive occupation order or a domestic violence order, you cannot force the other party to leave a house which is owned in joint names.

About the Women's Legal Centre

The Women's Legal Centre (ACT & Region) Inc. is a community legal centre for women in Canberra and the surrounding area. The Centre is run by women and aims to improve women's access to justice. The Centre offers free, confidential telephone advice Monday to Friday from 9.30am to 12.00 noon, and face to face appointments, when appropriate.

The numbers for legal advice (weekdays 9.30am to 12 noon) are:

Local	6257 4499
Outside Canberra	1800 634 669

The Women's Legal Centre is funded by the Social Inclusion Division
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