

# Separation | Empower Family Law & Mediation

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## Details:

Services

## Separation

Separation marks the end of an intimate partner relationship. This page explains what the law says about separation, what evidence can help protect your position, and the key time limits you should know about.

What does “separation” mean?

“Separation” isn’t fully defined in the Family Law Act 1975 however Section 49 of the Act does confirm two important things: you can be separated even while still living under the same roof, and one partner alone can bring the relationship to an end, you don’t both need to agree. Court decisions have added detail to this. Broadly, the Court looks for three things:

One or both partners intend to end the relationship.

The partners act on that intention, or act as though the relationship has ended.

Where only one partner considers the relationship over, they communicate that clearly and unmistakably to the other partner.

Separating under the same roof

You don’t have to move out to be separated. Separated couples can remain living in the same home and still be legally separated, but the less clear-cut the physical separation, the more evidence you may need to show that the relationship has genuinely ended.

This matters because disagreements about the date of separation are common when partners continue to share a home, and that date can affect both your eligibility to apply for divorce and how your property is divided.

Confirming your separation date

We recommend that, as soon as it’s safe to do so, you confirm the end of the relationship to your ex-partner in writing. Email is best, since it records the date and time it was sent. Keep this record- you may need it later for your divorce application or during property settlement negotiations.

If you’re separated under one roof, it’s also worth taking these steps:

Sleep in separate rooms and note the date you started doing so.

Tell family and friends that you’ve separated.

Stop socialising together as a couple.

Reduce the household tasks and services you do for your ex-partner.

Separate your finances where you can.

Keep records of what you contribute, financially and otherwise, after separation.

How separation affects property settlement

The date you separate, and what happens afterwards, matters for property settlement whether you were married or in a de facto relationship. The Court looks closely at what each person contributes after

separation, and assets that come into existence after that date may be treated differently to those built up during the relationship. Where those assets are significant, this can materially affect your settlement. Since 10 June 2025, the Family Law Amendment Act 2024 has also required courts to specifically consider the economic effect of family violence, including financial and economic abuse when weighing contributions and dividing property. If family violence has affected your finances during or after your relationship, the Court must now take that into account.

Having clear, contemporaneous evidence of your separation date reduces the risk of disputes about post-separation contributions.

Time limits you need to know

There are strict time limits for starting property settlement or spousal maintenance proceedings after separation:

Married couples: 12 months from the date your divorce order comes into effect.

De facto couples: 2 years from the date of separation.

Missing these deadlines doesn't necessarily shut the door. The Court can grant leave to apply out of time, but only if you can show that you, or a child of the relationship, would suffer hardship if the application weren't allowed. The Court also weighs the reasons for the delay, the merits of your case, likely legal costs, and any prejudice to the other party. This kind of application is usually avoidable, and almost always more costly and stressful than acting in time.

Before filing with the Court, you'll also need to meet the pre-action procedures in the Federal Circuit and Family Court of Australia (Family Law) Rules 2021 including, taking genuine steps to resolve the dispute, such as exchanging written settlement proposals and, in most cases, attending mediation.

Thinking about divorce?

To apply for divorce, you and your partner need to have been separated for at least 12 months, including any period spent separated under one roof. Short periods of reconciliation (up to three months in total) won't necessarily reset this clock.

A note on safety

If it isn't safe for you to remain in your home, to tell your partner that you've separated, or to take any of the steps above, your safety comes first and the legal and evidentiary steps can wait.

If you are in immediate danger, please contact 000.

Support is available through 1800RESPECT (1800 737 732), who can provide confidential family violence counselling and support. Talk to us about how to protect your position safely.

How we can help

At Empower Family Law & Mediation, we can advise you on every aspect of separation, helping you properly document your separation date, giving you practical steps for the weeks ahead, and working with you to explore mediation and settlement options well before any statutory deadline applies.

Please call us on (03) 7020 6542 to discuss your situation and how we can help your family.

## ***Speak with us***

Your first 30-minute consultation is free. Call (03) 7020 6542 or contact our team to discuss your circumstances and next steps.

Phone : (03) 7020 6542

Email : [info@empowerfamilylaw.com.au](mailto:info@empowerfamilylaw.com.au)

Let us be your voice in troubled times.

Contact Us

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### ***What legally counts as separation, including separation under one roof?***

Separation involves an intention by one or both partners to end the relationship, conduct that reflects that intention and, where only one person regards the relationship as over, clear communication of that decision to the other person. Both partners do not need to agree. A couple can be legally separated while continuing to live in the same home. Separation under one roof may require more evidence because the physical circumstances are less obvious. Relevant changes can include separate sleeping arrangements, changed finances and household services, no longer presenting socially as a couple, and telling family or friends. No single factor decides every case. The date matters for divorce eligibility, de facto time limits and evidence about post-separation contributions, so obtain advice if the date is disputed.

### ***How can I document the date of separation safely?***

Where it is safe, confirm the end of the relationship in writing and keep the dated message. A clear email can record when the communication occurred. Also keep a factual chronology of changes such as separate rooms, finances, household tasks and social presentation, and note when trusted family or friends were told. Preserve records of contributions made after separation. Safety takes priority over creating evidence. If communicating directly, changing accounts or remaining in the home would place anyone at risk, obtain safety and legal advice first. Do not provoke contact solely to obtain a response. The aim is to keep reliable contemporaneous material, not to manufacture a dispute. A lawyer can help assess the available evidence if the other person denies the date or the couple remained under one roof.

### ***How does separation affect divorce, property settlement and spousal-maintenance time limits?***

A divorce application can generally be made after at least 12 months of separation, including a period of valid separation under one roof. Short reconciliations of up to three months in total may not reset the entire period, but the dates should be checked carefully. Divorce ends the marriage; it does not itself divide property or determine parenting arrangements. For married people, property and spousal-maintenance applications generally must be started within 12 months after the divorce becomes final. For de facto partners, the general limit is two years from separation. Permission to apply late is not automatic and requires additional legal work. The separation date can also affect evidence about post-separation contributions and assets. Obtain advice early enough to exchange disclosure and explore settlement before any deadline.

### ***What should I do if separation involves family violence or financial abuse?***

If anyone is in immediate danger, call 000. The page identifies 1800RESPECT on 1800 737 732 for confidential family violence counselling and support. If it is unsafe to remain in the home, tell the other person about separation, change financial access or take record-keeping steps, prioritise safety and seek specialist advice. A lawyer can help plan how to protect the legal position without increasing risk. Family violence can affect parenting arrangements, dispute-resolution requirements and urgent Court

options. Since 10 June 2025, Courts must also consider the economic effect of family violence, including financial and economic abuse, when assessing contributions and property division. Preserve lawful evidence when safe, such as orders, messages and financial records, and tell the lawyer about coercive control or restricted access to money at the outset.