

Love Lockdown? Separation in the time of Covid-19

Unfortunately not every relationship will survive the Covid-19 Alert Level 4 lockdown period. Some people may have been preparing to separate from their partner prior to the country going into a Level 4 lockdown, whereas for others, the lockdown period will provide the catalyst for the decision to part.

This begs the question: can you separate from your partner during the lockdown period?

Separated but not apart?

The Level 4 rules require us to remain in the household we were in when the lockdown commenced on 25 March 2020. If you separate from your partner while these rules are in place, you will need to remain in the same property unless there are domestic violence issues.

If safety is an issue for you, please reach out to an appropriate agency, such as the Police or Women's Refuge, to secure your immediate safety. You can still apply for an urgent protection order during level 4.

Separating and remaining in the same home can be difficult, especially if the decision to separate was not mutual. It is often helpful for one of you to move into a separate room, however you can still separate even if you have no choice but to stay in the same room.

A key date for both division of property and dissolution of marriage is the date on which you separated. Generally, the property available for division is that which exists on the separation date. If you are married, the separation date is used to calculate the two year period you must wait before applying to dissolve your marriage.

Date of separation is often marked by one party moving out of the house. Given that this is not an option for most separating couples right now, it is useful to identify the date by clearly communicating your decision to separate to your partner. It can be helpful to record this in a diary or follow up with a written communication such as email or text message that the date can be clearly identified later.

Won't somebody think of the children?

If you have children, your key consideration is likely to be care arrangements for them. If you are still in the same home during lockdown, things can continue as they did during the relationship. However you should use this time to plan your arrangements for once you are living in separate homes. If you agree on the arrangements you do not need to formally record them, but many people find that recording them in a Parenting Agreement helps ensure that everyone is on the same page about how the arrangements will work.

If you cannot agree, you can still contact a Family Dispute Resolution (FDR) services provider for assistance to reach agreement. FDR services are running during level 4, but mediations will take place remotely.

The Court will not accept routine applications for a parenting order during Level 4, but it will accept urgent applications, particularly where there are care and protection concerns for children.



WebbFarry Lawyers

Is what's mine yours?

In these uncertain economic times, you may be concerned about how to divide your property. Most lawyers are set up to work from home remotely, so can advise you on your likely entitlements via phone, Zoom, or email. This is useful because when parties negotiate without an idea of their legal entitlements, then they risk the deal falling over when it comes time to formalise it (which necessarily involves legal advice on the effect and implications of the agreement reached). It is possible to formalise agreements on property division by executing an Agreement remotely through Skype or Zoom with your lawyer.

If you prefer to seek the Court's assistance to divide your property, you are out of luck during the Level 4 lockdown period, as the Courts will not accept Applications in relation to division of Relationship Property during this time. However, Court should be seen as a last resort option, so if you have separated since the Level 4 restrictions commenced, then you should be focussing your efforts on genuine attempts to reach agreement first.

A very interesting and likely contentious issue regarding property division will be the value of property to be divided. Property is generally valued on the date it is divided. As we do not yet know the extent to which house prices will be affected, or the longer term impact on investments such as Kiwisaver, it makes for an exercise in crystal-ball gazing as to whether you are better to divide your assets at their current value or wait to see how things go.



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