

If you and your spouse are considering divorce, you are probably already aware of Virginia's requirement that you separate for 6 or 12 months, depending on your circumstances. Maintaining separate households during this mandatory separation period can be a serious strain on your budget. In my practice, I am seeing a significant rise in "in-house separations" – living together during separation.

Some time ago, the Commonwealth recognized the economic difficulties inherent in maintaining two separate households on an income previously budgeted for one. For couples contemplating divorce, making an additional rent or mortgage payment for the required six or twelve months of separation was all but impossible; couples, who wanted and needed to live separately, simply could not afford to do so.

Enter "In-House Separation."

"In-house separations" have become more prevalent, in my practice, as couples attempt to tightly manage their out flow of divorce-related expenses. Such separations, however, require more than one spouse merely moving into the spare bedroom.

How to Establish In-House Separation?

Couples considering an in-house separation must strive to establish a second household under a single roof. Below is a checklist of factors a court might consider when determining whether a separate household has been established. Though no single factor is determinative (save perhaps sexual intimacy), couples should strive to meet as many as possible.

Checklist to Establish In-House Separation:

- Establish, maintain and demonstrate intent to permanently separate. (In other words, you must be committed to the divorce. "Intent" is key.)
- Establish separate bedrooms.
- Cease romantic or sexual intimacy.
- Stop wearing wedding rings.
- Shop for your own food and prepare your own meals.
- Do not shop for any other categories of items (clothing, other necessities, etc.) on behalf of your spouse.
- Do not use your spouse's food or other purchases.
- Do not eat meals together (except holidays or children's birthdays).
- Care for and clean your own space within the home, such as your bedroom.
- Do your own laundry.
- Establish separate checking accounts.
- Cease socializing (e.g. do not attend parties, movies, theater together).
- Do not attend church together.
- If you have young children, interact as parents only where strictly necessary from the children's perspective and their well-being (e.g., it is appropriate to attend a meeting with a school official relative to problems confronting a particular child, but less appropriate for the parents to ride together and sit together at a child's school play or soccer game).
- Cease gift-giving between spouses for such occasions as birthdays, Christmas, anniversary, Valentine's Day, etc.

- Make it known to close associates and relatives that you and your spouse are separated within the residence, though continuing to reside under the same roof.
- Have a third party come to the home from time to time to personally observe the your separate and distinct living quarters (bedrooms, bathrooms, etc.).
- Use separate entrances to residence, if feasible.

It is important to note that like traditional physical separations, in-house separations require corroboration (you need a third-party witness to verify the separation). In many jurisdictions the success of an in-house separation depends entirely upon the level of corroboration presented to the court. A relative, nanny, friend or domestic helper who is present in the home several times a week for several hours at a time may prove necessary to confirm that a second household has in fact been established.

If you have questions about Virginia in-house separations, feel free to drop me a line or check out my blog: www.familylawva.com.