

# Separation orders and agreements

## Formalise a separation or respond to an application

### Separation agreement

A separation agreement is a private agreement between you and your spouse or civil union partner about how to manage the practical aspects of splitting up. It's not enforceable in the courts but it can help avoid misunderstandings about what you and your former partner have agreed.

It can also help you be clear about when your relationship ended (this can help prove you've been separated for two years or more if you want a divorce). And it can help you sort out what you're both still responsible for even though you've separated, like:

- caring for any children
- paying a mortgage
- looking after pets
- dividing property.

If your separation agreement covers how you'll divide property, a lawyer must sign a document to say that each of you has received independent legal advice.

### Separation Order

If you want to be clear about when you separated, or one of you wants to separate and the other doesn't, you can ask the Family Court to make a Separation Order.

A Separation Order is a legal declaration that you separated at a particular date and don't have to live together. A Separation Order doesn't cover care of children or relationship property.

If there's a Separation Order in place and one person dies without leaving a will, the surviving partner loses the right to inherit under the rules that apply when there's no will.

### Apply for a Separation Order when you both agree

#### FILL IN THE FORMS

You'll need to fill in some forms. You can download them from [justice.govt.nz/family/separation-divorce/](https://justice.govt.nz/family/separation-divorce/). Or call us on 0800 268 787 and ask us to send the forms to you. Or visit your local court and ask for the forms.

#### WHAT HAPPENS AFTER YOU FILE YOUR APPLICATION

A judge will look at your application and decide whether to grant the application without a hearing, or if you both need to go to court before making the Separation Order.

A Separation Order is usually valid from the day the judge makes the order. The court will send copies of the Order to both of you.

### Apply for a Separation Order when you don't agree

#### FILL IN THE FORMS

You'll need to fill in some forms. You can download them from [justice.govt.nz/family/separation-divorce/](https://justice.govt.nz/family/separation-divorce/). Or call us on 0800 268 787 and ask us to send the forms to you. Or visit your local court and ask for the forms.

#### WHAT HAPPENS AFTER YOU FILE YOUR APPLICATION

The court will process your application and give a copy to your former partner. This is called 'serving the documents'.

Your former partner then has a set time to decide if they want to ask the Family Court not to make the Separation Order (called defending the application). This is usually:

- 21 days after the documents are served in New Zealand
- 30 days if they are served in Australia
- 50 days for anywhere else in the world.

#### IF YOUR FORMER PARTNER ASKS THE COURT NOT TO MAKE THE SEPARATION ORDER

If your former partner asks the court not to make the Separation Order, there will be a defended hearing in front of a Family Court judge. The judge will hear from both of you and decide whether to make the Separation Order.

A Separation Order is usually valid from the day the judge makes the order. The court will send copies of the Order to both of you.

#### IF YOUR FORMER PARTNER DOESN'T DO ANYTHING IN THE SET TIME

If your former partner doesn't do anything in the set time, a judge will decide if they should make the Separation Order. If the Order is made, the court will send copies of the Order to both of you.

## Respond to a Separation Order

If your former partner asks the Family Court for a Separation Order without you, you'll be given the documents they filed with the court.

You can decide to let the Separation Order go through or you can ask the court not to grant the Order. This is called defending the application.

### TIMEFRAMES FOR RESPONDING

You have a set time to ask the Family Court to not make the Separation Order. This is usually:

- 21 days if the documents are served in New Zealand
- 30 days if they are served in Australia
- 50 days for anywhere else in the world.

### LEGAL HELP

You may want to get legal advice to help you. You may be able to get legal aid or free community legal help. Go online to [justice.govt.nz/family/separation-divorce/](https://justice.govt.nz/family/separation-divorce/) for more information.

### OPTION 1: LET THE SEPARATION ORDER GO THROUGH

If you don't respond once you've been served the documents, the judge can make a Separation Order without hearing what you think. If the Order is made, the court will send you a copy of it.

### OPTION 2: ASK THE COURT NOT TO MAKE THE SEPARATION ORDER

You can ask the court not to make the Separation Order. There's no fee for this.

### FILL IN THE FORMS

You'll need to fill in some forms. You can download them from [justice.govt.nz/family/separation-divorce/](https://justice.govt.nz/family/separation-divorce/). Or call us on 0800 268 787 and ask us to send the forms to you. Or visit your local court and ask for the forms.

### WHAT HAPPENS NEXT

If you ask the court not to make the Separation Order, there will be a defended hearing with a Family Court judge. The judge will hear what both of you think and decide whether to make the Separation Order.