

Notice of counterclaim

Notes for defendant

What this form is for

Use this notice of counterclaim form to make your own independent claim against the plaintiff in the District Court. A notice of counterclaim tells the plaintiff and the court what your counterclaim is about.

Who needs to fill in this form

You (or your lawyer) need to fill in this form if you were the defendant in the original claim. You are still called the **defendant**.

The person you are making this counterclaim against is the person who was the plaintiff in the original claim. They are still called the **plaintiff**.

For more information about who can sign this form, see the next page.

How to fill in this form

1. Remove pages 1 and 2 (the notes pages for you, the defendant).
2. Fill in **all** 5 sections of the form, beginning on page 5.

For information about what to do when you have completed this form, see the next page.

address for service

an address of a place in New Zealand where all documents about a claim can be taken or sent to the plaintiff or defendant

counterclaim

an independent claim against the person making the original claim

defendant

the person who the original claim is against. The defendant is the person who makes a counterclaim

file

to take or send documents about a claim to the court Registrar

judgment (for counterclaim)

when the court makes a judgment in favour of the defendant because the plaintiff does not return their documents or information in time

jurisdiction

the court's authority to decide on a claim

plaintiff

the person who made the original claim. A counterclaim is against the plaintiff

serve

to take or send documents about a claim to the plaintiff's or defendant's address for service

working day

any normal weekday from Monday to Friday, unless it is one of the following public holidays: Good Friday, Easter Monday, Anzac Day, Labour Day, Queen's birthday, or Waitangi Day. As well as these public holidays, the days from Christmas Day (25 December) to 15 January do not count as working days

Before you serve this form on the plaintiff, you must remove the front 2 pages. These pages are for your information only.

Keep a copy of this form, and any other forms you receive, for your own records.

Other forms in the counterclaim process

For more information about the counterclaim process, see the last page of this form. Note that you do not need to fill in Form 1 at this stage.

Form 2CC—**Notice of counterclaim**, filled in by the defendant



Form 3CC—**Response by plaintiff (for counterclaim)**, filled in by the plaintiff



Form 4CC—**Defendant's information capsule (for counterclaim)**, filled in by the defendant



Form 5CC—**Plaintiff's information capsule (for counterclaim)**, filled in by the plaintiff



Form 6CC—**Notice of pursuit of counterclaim**, filled in by the defendant

Who to contact if you need help

If you need help filling in this form, please talk to your lawyer, local Citizens Advice Bureau or Community Law Centre, or go to:
www.justice.govt.nz/civil

Notice of counterclaim

Further information for defendant

Who can sign this form

You can sign this form if:

- you are making the counterclaim yourself
- or
- you are authorised to sign on behalf of the defendant—for example, if a registered company, Māori incorporation, partnership, trust, estate, incorporated society or unincorporated body is making the counterclaim.

Or, you can authorise your lawyer to sign this form on your behalf.

What to do when you have completed this form

When you have completed this form, you must file the form at court and serve a copy on the plaintiff.

You must file this notice of counterclaim no more than 30 working days after you receive Form 2—**Notice of claim** from the plaintiff. You must also serve this form and Form 3—**Response by defendant** on the plaintiff within 30 working days.

If you do not file Form 2CC and serve both Form 2CC and Form 3 within 30 working days, your counterclaim will end. You can start a new claim by filling in Form 2—**Notice of claim** and paying another filing fee.

How to file this form at court

You must file this notice of counterclaim form at the same District Court where the plaintiff filed Form 2—**Notice of claim**, and pay a fee.

Give the court the original copy plus a photocopy (for the plaintiff). The court will return the plaintiff's copy of the form to you.

For up-to-date information about the fee for filing a notice of counterclaim, go to www.justice.govt.nz/civil.

How to serve this form on the plaintiff

You must serve this form on the plaintiff at the same time as you serve Form 3—**Response by defendant**. You serve the form on the plaintiff by taking or sending a copy to them at their address for service.

What if the plaintiff sends you their response late

When you serve this form, the plaintiff has 30 working days to respond by sending you Form 3CC—**Response by plaintiff (for counterclaim)** (the next form in the process). If the plaintiff is late sending you their response, you can apply for the court to judge the counterclaim in your favour by filling in Form 6CCA—**Application for judgment (for counterclaim)**.

You can get a copy of Form 6CCA from www.justice.govt.nz/civil, your local court, or your lawyer.

Definitions of words used in this form

Notice of counterclaim

Notes for plaintiff

Why you have received this form

You have received this completed notice of counterclaim form because the defendant in your claim wants to make a counterclaim against you in the District Court. This notice of counterclaim tells you and the court what the defendant's counterclaim is about.

The person making the counterclaim against you is the **defendant**.

You are the **plaintiff**.

What to do next if you are the plaintiff

You must respond to this notice of counterclaim within 30 working days. To respond to the defendant, fill in Form 3CC—**Response by plaintiff (for counterclaim)**. You can get a copy of Form 3CC from www.justice.govt.nz/civil, your local District Court, or your lawyer.



What happens if you do not respond to the defendant

If you do not respond to this notice of counterclaim **within 30 working days**, the court may decide you have to pay or give the defendant what they are claiming in this form (this is called 'judgment').

address for service
an address of a place in New Zealand where all documents about a claim can be taken or sent to the plaintiff or defendant

counterclaim
an independent claim against the person making the original claim

defendant
the person who the original claim is against. The defendant is the person who makes a counterclaim

file
to take or send documents about a claim to the court Registrar

judgment (for counterclaim)
when the court makes a judgment in favour of the defendant because the plaintiff does not return their documents or information in time

jurisdiction
the court's authority to decide on a claim

plaintiff
the person who made the original claim. A counterclaim is against the plaintiff

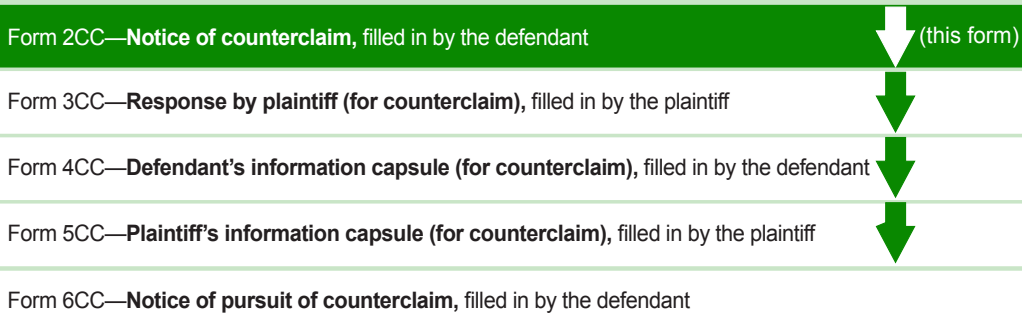
serve
to take or send documents about a claim to the plaintiff's or defendant's address for service

working day
any normal weekday from Monday to Friday, unless it is one of the following public holidays: Good Friday, Easter Monday, Anzac Day, Labour Day, Queen's birthday, or Waitangi Day. As well as these public holidays, the days from Christmas Day (25 December) to 15 January do not count as working days

Keep a copy of this form, and any other forms you receive, for your own records.

Other forms in the counterclaim process

For more information about the counterclaim process, see the last page of this form. Note that you do not need to fill in Form 1 at this stage.



Who to contact if you need help

If you need help with this form, please talk to your lawyer, local Citizens Advice Bureau or Community Law Centre, or go to: www.justice.govt.nz/civil

Notice of counterclaim

Further information for **plaintiff**

What if you think the District Court is not the proper place to decide on this counterclaim

You may think the District Court is not the proper court or place to decide on the defendant's counterclaim (this is called 'protest to jurisdiction'). For example, you may think the case should be heard by:

- another court (such as the High Court, Family Court, Employment Court, or Environment Court)
- a court in another country
- a tribunal (such as the Tenancy Tribunal)
- an arbitrator.

If you want to protest the District Court's jurisdiction for this counterclaim, you must file and serve Form G7—**Appearance under protest to jurisdiction**, instead of serving Form 3CC. You can get a copy of Form G7 from www.justice.govt.nz/civil, your local District Court, or your lawyer.

Filed at: _____ File reference number (CIV): _____
Copy this information from Form 2 *Copy this information from Form 2*
(you must file this form at the same District Court
where the plaintiff filed Form 2) Date filed: _____

▶ Section 1: Defendant's details

1A Defendant's name

- Write your full name.
- or
- Write the name of the company, society or incorporation if the defendant is a company, society or incorporation.
- or
- Write the names of the trustees or executors if the defendant is a trust or estate.

Name: _____

1B Defendant's trading name

If the defendant in 1A above has a different trading name, write the trading name here.

Trading name: _____

1C Defendant's address for service

Write down an address of a place in New Zealand where you can receive all documents about this counterclaim.

Street address: _____

1D Defendant's postal address

If your postal address is different from the address for service you have given in 1C above, write your postal address here.

Postal address: _____

1E Defendant's contact details

Write down your phone and fax numbers and an email address if you have one.

Phone number: _____

Other phone number: _____

Fax number: _____

Email address: _____

This page has been left blank deliberately

1F Do you have a lawyer?

If you have a lawyer who is making this counterclaim on your behalf, write their details here, including the name of their firm.

Name of defendant's lawyer

Name: _____

Firm: _____

Contact details of defendant's lawyer for serving forms

Street address: _____

PO Box: _____

Document exchange box: _____

Phone number: _____

Other phone number: _____

Fax number: _____

Email address: _____

Section 2: Plaintiff's details

Copy the information from Form 2—**Notice of claim** (Section 1), which you received from the plaintiff.

2A Plaintiff's name

- Write the plaintiff's full name.
- or
- Write the name of the company, society or incorporation if the plaintiff is a company, society or incorporation.
- or
- Write the names of the trustees or executors if the plaintiff is a trust or estate.

Name: _____

2B Plaintiff's trading name

If the plaintiff in 2A above has a different trading name, write the trading name here.

Trading name: _____

2C Plaintiff's address for service

Write down the address of a place in New Zealand where you intend to serve this notice of counterclaim on the plaintiff.

Street address: _____

2D **Plaintiff's postal address**

If the plaintiff's postal address is different from their address for service in 2C above, write their postal address here.

Postal address: _____

2E **Plaintiff's contact details**

Write down the plaintiff's phone and fax numbers and email address if they have one.

Phone number: _____
Other phone number: _____
Fax number: _____
Email address: _____

2F **Does the plaintiff have a lawyer who is dealing with this counterclaim on their behalf?**

If you know the contact details of the lawyer who is dealing with this counterclaim on the plaintiff's behalf, write them here, including the name of their firm.

Name of plaintiff's lawyer

Name: _____
Firm: _____

Contact details of plaintiff's lawyer for serving forms

Street address: _____
PO Box: _____
Document exchange box: _____
Phone number: _____
Other phone number: _____
Fax number: _____
Email address: _____

▶ **Section 3:** Your description of the facts of the counterclaim, and any supporting legal references

State concisely the facts of your counterclaim underneath each heading below. The question(s) underneath the headings will help you think about your answers for this part of the form.

Underneath each fact, write down any legal references you are relying on to support your counterclaim (give the Act, section, and case).

3A Connection between defendant and plaintiff

What is the connection between you and the plaintiff?
(For example, the plaintiff may have agreed to do something for you, or you and the plaintiff may have had a traffic accident.)

Legal references, if any (for example, Fair Trading Act 1986, Land Transport Act 1998):

Continue on a separate sheet of paper if you need to. Write the 'file reference number' (from the top of page 5) on any extra sheets you use. Staple the extra sheets to the back of this page.

I have included _____ extra pages for section 3A.
Write the number of extra pages

3B Details of the duty the plaintiff owes the defendant

What duty does the plaintiff owe you? What obligation do they have to you?
(For example, the plaintiff has a duty to properly complete work on time, or the plaintiff has a duty to comply with the road rules.)

Was there a contract (an agreement or understanding) between you and the plaintiff?
What terms from that contract are relevant to your counterclaim?

3D

Facts showing why the plaintiff should pay or give what is being claimed

What facts justify what you are asking the plaintiff to do to settle your counterclaim?

Horizontal lines for writing facts.

Legal references (if any):

Horizontal lines for writing legal references.

Continue on a separate sheet of paper if you need to. Write the 'file reference number' (from the top of page 5) on any extra sheets you use. Staple the extra sheets to the back of this page.

I have included _____ extra sheets of paper for Section 3D.
Write the number of extra sheets

3E

Loss suffered by defendant

What did you lose because of the plaintiff's actions?

Horizontal lines for writing loss suffered.

Legal references (if any):

Horizontal lines for writing legal references.

Continue on a separate sheet of paper if you need to. Write the 'file reference number' (from the top of page 5) on any extra sheets you use. Staple the extra sheets to the back of this page.

I have included _____ extra sheets of paper for Section 3E.
Write the number of extra sheets

Section 4: What you are asking for from the plaintiff

4A What are you asking the plaintiff to give you or to do?

Clearly say what you are asking for from the plaintiff. For example, this could be:

- money, compensation, damages
- or
- things you want the plaintiff to do, or things you want the plaintiff to stop doing.

If you are asking for money, write the amount.

I want the plaintiff to...

I am asking for the following amount of money from the plaintiff: \$ _____

4B Are you also claiming interest?

If you are asking for money from the plaintiff in 4A above, say here whether you are also claiming interest on that money.

Write down the amount of total interest you are claiming.

As well as the money I am asking for in my counterclaim, I am asking the plaintiff for \$ _____ interest.

Show how you have calculated the interest you are claiming—write down:

- the amount of money you are claiming interest for
- the rate of interest each year
- the period you want the plaintiff to pay interest for.

Then write down the legal basis for the interest you are claiming. For example, you may have a contract that says how much interest you can charge if the contract is breached.

I calculated this amount of interest as follows...

The legal basis for the interest I am claiming is...

4C What costs and expenses are you claiming?

Write your costs and expenses below.

I claim \$ _____ for the filing fee on this counterclaim.

I claim \$ _____ for serving this form.

I claim \$ _____ for preparing this form (if prepared by a lawyer).

Total \$ _____

Section 5: Your signature**5A****Sign the form below. Then print or type your name and address underneath your signature, or use an address stamp.**

I believe that the facts I have stated in this notice of counterclaim are true and correct.

Signature: _____

Keep a copy of this form, and any other forms you receive, for your own records.

Full name and address: _____

Position or office held: _____

This only applies if you are signing on behalf of a registered company, trust, society, incorporation, or estate

Date: _____

More information about the counterclaim process

The counterclaim process involves a series of forms requesting information. Some forms are for the plaintiff to fill in and some are for the defendant. All the forms in the process are listed on the first page of this form.

You can find out more about the counterclaim process at www.justice.govt.nz/civil.

Why do you have to go through this process?

By going through the counterclaim process, you might be able to settle the counterclaim without going through the court system.

If you go through the counterclaim process and don't settle the counterclaim, the court will then have an accurate record of all the facts of the counterclaim from both the plaintiff and the defendant.

It is important that you keep your own copies of all the forms you send or receive.