

Separation and Dissolution (Divorce)



Information for couples who have
decided to separate or to dissolve their
marriage or civil union



INTRODUCTION

This pamphlet is a guide for couples who have decided to legally separate or dissolve their marriage or civil union. (Dissolution of marriage is commonly called “divorce”.)

The law on separation and dissolution does not apply to people in de facto relationships – it applies only to people who are legally married or in a civil union.

The law on separation and dissolution is contained in the **Family Proceedings Act 1980**.

FREE COUNSELLING THROUGH THE FAMILY COURT

If you are thinking of leaving your spouse or partner, it is a good idea to talk over with them what you plan to do. If you want to, you can ask the Family Court to arrange **free, confidential counselling**.

Counselling can help you and your spouse or partner deal with the issues in your relationship. You may decide to work on your relationship together, or you may choose to separate and live apart.

Whichever option you choose, counselling can make it easier to make decisions. To arrange counselling, contact the Family Court Coordinator or another staff member at your local Court.

SEPARATION

WE HAVE AGREED TO LEGALLY SEPARATE – WHAT DO WE DO NOW?

A separation means that your marriage or civil union still legally exists but that you have agreed to live apart. If this is what you have both agreed to do, you can make a **separation agreement** or apply to the Family Court for a **separation order**.

WHAT IS A SEPARATION AGREEMENT?

This is an agreement that records that you are separating and the date of your separation. It can also deal with issues such as day-to-day care of and contact with children (custody and access) and how your property is to be divided. A separation agreement can help to avoid misunderstandings and disputes later on.

A separation agreement can be written, or it can simply be a spoken agreement. However, if the agreement deals with how to divide your property, it must be in writing and a lawyer must certify that each of you has received independent legal advice.

A separation agreement is **not** necessary to –

- dissolve your marriage or civil union, or
- qualify for the Domestic Purposes Benefit.

WHAT IS A SEPARATION ORDER?

This is a Family Court order that means that you and your spouse or partner do not have to live together. Apart from that, it does not affect anything relating to the marriage or civil union. If you and your spouse or partner have children, you both still have legal responsibilities as parents.

A separation order is **not** necessary to –

- dissolve your marriage or civil union, or
- qualify for the Domestic Purposes Benefit.

DO WE NEED A SEPARATION ORDER TO SEPARATE?

No. However, if you want to separate and your spouse or partner does not, you may wish to apply to the Family Court for a separation order. If you later apply for a dissolution of your marriage or civil union, you will be able to use the separation order to prove that you have been living apart for the required two years.

If you apply for a separation order, the Court will arrange **free counselling** for you and your spouse or partner. At a counselling session, you can discuss matters such as care arrangements for your children and how to divide your property. However, you may not have to go to counselling if your spouse or partner has been violent towards you or a child of the marriage or civil union, or if you have been to counselling in the last 12 months.

IF MY SPOUSE OR PARTNER HAS LEFT ME, HOW LONG CAN I STAY IN THE FAMILY HOME?

You and your spouse or partner will need to discuss this when you separate. If the two of you can't agree, you may be able to apply for a Family Court order that will allow you to stay in the home without your spouse or partner for a certain time. This is called an **occupation order** if you or your spouse or partner own the home, or a **tenancy order** if either of you rents it.

You can apply for an occupation or tenancy order under the Property (Relationships) Act 1976, if your relationship (shared) property is being divided under that Act. You can also apply for one of these orders under the Domestic Violence Act 1995, and the Court can grant the order if it believes the order is necessary to protect you or if it's in your children's best interests – you do not have to prove domestic violence (see the pamphlet **Applying for a Protection Order** (Courts 008)).

GETTING A DISSOLUTION ORDER

ON WHAT GROUNDS CAN I LEGALLY END MY MARRIAGE OR CIVIL UNION?

Irreconcilable breakdown is the only ground for legally dissolving a marriage or civil union. This means that your relationship has broken down and is at an end. Neither of you is blamed for this.

The **only** way of proving that your relationship has broken down irreconcilably is by **living apart for two years**. Only then can the Court dissolve your marriage or civil union.

You must have been living apart for two years even if you both agree to the dissolution.

HOW DO I APPLY TO HAVE MY MARRIAGE OR CIVIL UNION DISSOLVED?

You apply for a dissolution order using forms available from the Family Court website (www.justice.govt.nz/family) or the nearest Family Court office.

The application can be made by you alone, or by your spouse or partner alone, or by both of you together.

If you do not want to appear in Court before a Judge when your marriage or civil union is dissolved, you must include an affidavit (a sworn written statement) with the application, stating that –

- at the time the application is filed, you will have been living apart for at least two years, and
- you have made arrangements for the care of your children (including day-to-day care and maintenance), or there is a good reason why no arrangements have been made.

You must also provide the Court with the original or a certified photocopy of the certificate of your marriage or civil union.

“SERVING” THE APPLICATION ON YOUR SPOUSE OR PARTNER

If you apply **alone** for a dissolution order, you will need to arrange for your spouse or partner to be “served” with a copy of the application (given a copy personally). They will then be given 21 days to defend (oppose) the application.

WHAT HAPPENS AFTER I APPLY FOR THE DISSOLUTION ORDER?

The Court Registrar, rather than a Judge, can deal with your application for a dissolution order if –

- your spouse or partner agrees to a dissolution and does not want to appear in Court, or

- your spouse or partner simply does nothing after being served with your application, or
- both of you (in a joint application) agree to a dissolution and do not want to appear in Court.

If one spouse or partner opposes the application for a dissolution order, the application will have to go to a Court hearing before a Family Court Judge (called “defended proceedings”). At the hearing, the Judge will make the dissolution order if he or she is satisfied that –

- you have been living apart for two or more years, and
- you have made arrangements for the care of your children (including day-to-day care and maintenance), or there is a good reason why no arrangements have been made.

WHEN DOES THE DISSOLUTION ORDER TAKE EFFECT?

If the Registrar makes the order, it takes effect **one month** after it is made (unless circumstances change before the month is up and one spouse or partner asks for a Court hearing).

If a Family Court Judge makes the order after a Court hearing where one spouse or partner opposes the dissolution, the order takes effect **one month** after it is made. But special rules apply if one spouse or partner appeals the order or either person dies – for advice about those situations, speak to a lawyer.

Even when neither of you opposes the dissolution, you can ask a Judge to make the order if you need it immediately (for instance, if one of you is due to remarry), or if for some other reason you want a Judge to make it. Both of you will need to appear in front of the Judge, but this is a formality, not a full hearing. When the Judge makes the order, the order takes effect **immediately**.

DO WE HAVE TO HAVE BEEN LIVING APART TO LEGALLY END OUR MARRIAGE OR CIVIL UNION?

Yes. You must satisfy the Court that you have been living apart for the two years immediately before you applied for a dissolution order.

But even if you lived together for a short period within the two years, you may still satisfy the two-year requirement. You can live together for a total of three months if you can satisfy the Court that the main reason for this was to get back together (“reconciliation”). You can get back together more than once, as long as the total time together is not more than three months.

HOW DO I PROVE WE HAVE LIVED APART FOR TWO YEARS?

If the Court Registrar is dealing with your application for a dissolution order, he or she will make the order on the basis of the affidavit (sworn written statement) you included with your application. The affidavit must say that you have lived apart for the two-year period; it should also say, if possible, when you began living apart.

If a Judge is hearing your application, you must give evidence on oath at the hearing that you have lived apart for the two-year period. Again, you will need to state, if possible, the date on which you began living apart.

In each case, you can use a separation order or separation agreement to support your evidence.

DO WE HAVE TO GO TO COURT TO END OUR MARRIAGE OR CIVIL UNION?

Not necessarily. Neither of you needs to appear in Court if –

- both you and your spouse or partner agree to legally end the marriage or civil union and agree not to appear in Court, or

- you apply alone for a dissolution order and agree not to appear in Court, and your spouse or partner does not defend (oppose) the application.

If you do not appear in Court, you must file an affidavit stating that, at the time your application is filed, you will have been living apart for two years, and that you have made arrangements for the care of your children (including day-to-day care and maintenance) or there is a good reason why no arrangements have been made.

DO WE HAVE TO SORT OUT RELATIONSHIP (SHARED) PROPERTY BEFORE WE CAN GET A DISSOLUTION?

No, this is not a requirement for getting a dissolution order.

The Court will not deal with issues of relationship property when granting a dissolution order. In many cases relationship property has already been dealt with before a dissolution order is made.

If you have not sorted out relationship property issues and need the Court's help to do this, you must apply under the Property (Relationships) Act 1976 within 12 months after your dissolution.

HOW MUCH DOES IT COST TO SEPARATE OR TO DISSOLVE OUR MARRIAGE OR CIVIL UNION?

You will have to pay a filing fee when you apply for a dissolution order. The Family Court staff can tell you the current fee. The cost of hiring a lawyer varies from case to case.

WHAT IF ONE OR BOTH OF US IS LIVING OVERSEAS OR TEMPORARILY OUT OF NZ?

If at least one of you is domiciled in New Zealand, a single or joint application can be made to a New Zealand Family Court for a dissolution order. (You're "domiciled" in New Zealand if you were born here and have not made a home in another country

with the intention of living there indefinitely, or if you were born overseas and have made a home in New Zealand with the intention of living here indefinitely.)

You can apply for a dissolution order from overseas by sending the application form, the other necessary documents and the filing fee to a New Zealand Family Court.

If both of you are now domiciled overseas you will need to apply for a dissolution order from an overseas Court.

WHEN CAN I MARRY OR ENTER INTO A CIVIL UNION AGAIN?

You are free to marry or enter into a civil union as soon as the dissolution order has taken effect. You can apply for a marriage licence or civil union licence on the day the dissolution order is granted, but the licence will not be available for three days.

NEED MORE INFORMATION OR ADVICE?

INFORMATION FROM THE FAMILY COURT

For more information about dissolution of marriages and civil unions and about other Family Court matters, look on the Family Court website (www.justice.govt.nz/family) or contact the nearest Family Court office.

Application forms are available from the Family Court website or Family Court offices.

GETTING LEGAL ADVICE FROM A LAWYER

If you want to find out how the law on separation and dissolution applies in your situation, you should get legal advice from a family lawyer (www.familylaw.org.nz) or from your local community law centre. Family Court staff cannot give you legal advice.

INFORMATION PROGRAMMES FOR PARENTS

The Ministry of Justice offers a free information programme to help you understand the impact of separation on your children and help you make arrangements for the care of your children following separation. To find out more about how this programme can help you and your children, visit www.justice.govt.nz/family or call 0800 211 211. The helpline can put you through to a programme provider in your area.

LEGAL AID

Legal aid is **not** available for dissolution of marriage and civil unions. However, legal aid is available for other Family Court matters, such as disputes about relationship property and care arrangements for children.

Legal aid is where the Government pays some or all of your lawyer's bills (sometimes you may have to pay some or all of it back). You can get information on legal aid by –

- contacting the local Legal Services Agency office (see the blue Government pages at the front of the phonebook)
- visiting the Legal Services Agency website at www.lsa.govt.nz, or
- seeing a lawyer and discussing legal aid with them.





www.justice.govt.nz/family