

# OBTAINING A DEFAULT



## Packet #11



These forms must not be used to engage in the unauthorized practice of law.  
The court is not responsible for (1) actions taken by the users of these forms or  
(2) their reliance upon the instructions or information provided.



## ***What is a Default?***

A default means that your spouse did not disagree with or file a “Response” to the divorce papers that you “served.” At the very least they did not file the “Response” within the legal time limit. Therefore, you can ask for a default decision.

## ***Exactly when can you file?***

Your spouse has 20 days to file a “Response” if the papers were served in Arizona. They have 30 days to respond if they were served outside of Arizona. When counting, include weekends and holidays.

But if the last day falls on a Saturday, Sunday, or a legal holidays then DO NOT count that day, count the next workday. Check with the Court Clerk to find out if a response was filed.

If you attended the Conciliation Court for counseling then you **cannot count** the time that your divorce was on hold.

## ***What are some other responses you need to look for?***

Instead of filing a “Response,” your spouse may file other court documents, for example a Motion to Dismiss, or a Motion to Change Venue. If your spouse files either of these court documents, then you must file a Response to that document.

If a Response is filed, you are strongly urged to seek the advice of a lawyer. You may not be able to get a Default Decree.

## ***Important Reminders***



The symbol (Triangle with an exclamation inside) is a warning.

It could be a warning for you to make sure that something is done.

It could also be a warning that the topic can be confusing and you may need to talk to an attorney if you need help.

There are lawyers who will help you help yourself. This means that they will only charge you for giving you the help you need, and you can complete the court papers on your own or ask the lawyer for help with your papers.

For more information, call the Self-Service Center at (520) 724-8456 and ask how to find an attorney.

### ***PLEASE READ THE FOLLOWING***

If you have already had a hearing (for example for temporary orders) and your spouse appeared in Superior Court, then you have to “serve” your spouse written notice of your application for default decree. Your spouse has to have at least (3) days prior notice before your default hearing.

Your spouse must know the exact day that you are scheduled to ask for a default judgment or decree. This notice has to be filed with the Clerk of the Court.



# ***What are the basic steps for getting a default decree?***

## **Step 1.**

### **The Countdown**

Begin counting the day after your spouse is served the divorce papers. You cannot begin step two until after your last counted day.

## **Step 2.**

### **Complete the Request for Default Form**

The request for default is called the Application and Affidavit for Default. The form and instructions are in this packet.



## **Step 3.**

### **Copy, sign, and notarize Application for Default Form**

Make two copies of your Application and Affidavit for Default. Do not sign original or the two copies. The Clerk of Court will notarize your original and two copies of Application and Affidavit of default when you file it.

## **Step 4.**

### **File & Mail**

Go to the Clerk of the Superior Court at: **Pima County Arizona Superior Court**  
110 West Congress  
Tucson, Arizona 85701

Give the Clerk at the filing counter the original and both copies of the Application and Affidavit for Default. Make sure you get both copies back from the Clerk.

Mail or hand-deliver a copy of the Application and Affidavit for Default to your spouse. If you don't know where your spouse lives then send a copy to his/her last known address. You can use the ENTRY OF DEFAULT form in this packet.

As mentioned earlier **you may have to "serve"** this notice to your spouse.

You must wait 10 working days after ~~you~~ ~~file~~ ~~the~~ ~~Application~~ ~~and~~ ~~the~~ ~~Application~~ ~~and~~ ~~the~~ ~~Application~~ before you can call for your hearing ~~at~~ ~~the~~ ~~court~~ ~~house~~ ~~in~~ ~~Tucson~~ ~~at~~ ~~the~~ ~~address~~ ~~above~~.

Step 5.



## ***Volunteer Lawyers Program Domestic Relations Clinic***

Arizona Superior Court in Pima County has a program through which free assistance is given to anyone representing themselves in a family court, including anyone seeking a default judgment in a divorce or special paternity case.

At the clinic, someone will review your decrees, child support orders, and income-withholding orders to help ensure these documents are complete and legally correct.

***Making use of the Clinic is in your best interest.*** The judge will not sign any documents that are incorrect or incomplete. In such cases, you will have to leave, correct your documents and then schedule another hearing.

To schedule an appointment you can call the Superior Court Law Library at 724-8456, or go to the law library on the second floor of the Superior Court.

After your appointment at the clinic, you can call the Superior Court and schedule your default hearing.



**Part 7. Fill in your name, street address, city, state, ZIP, telephone number and Superior Court Case Number.**  
**Part 8. Enter your name as the Petitioner.**  
**Part 9. Enter the name of your spouse as the Respondent.**

Part 7. Fill in your name, street address, city, state, ZIP, telephone number and Superior Court Case Number.

Part 8. Clearly print your Superior Court Case Number.

Part 9. Enter your name as the Petitioner.

Part 10. Enter the name of your spouse as the Respondent.

**Part 11. APPLICATION FOR DEFAULT**

**Part 12. Service of court papers**

Only check one of the two boxes.

- If your spouse has signed an "Acceptance of Service" put a check mark in the first box.
- Otherwise put a check mark in the second box.

**Part 15. Compliance with Arizona family law**

Here you show the court that you have delivered a copy of the application for default form to your spouse.

- Put a check mark in all the boxes that are true.



### **PETITIONER'S CERTIFICATE OF MAILING OR DELIVERY**

- Put a check mark in the box that best describes how the form was delivered to your spouse
- If you put a check mark in the second box "delivered", then describe in the space provided how it was delivered.

Make two copies of your Application and Affidavit for Default. Do not sign original or the two copies. The Clerk of Court will notarize your original and two copies of Application and Affidavit of default when you file it.

# What to do when it's time for your default hearing?



While going to court for your default hearing may sound scary, it isn't.

The Default Hearing is one of the simplest types of hearing. You are basically going to meet with the judge, give the judge your paperwork, answer a few questions and then you're done.

The important thing is that you have filled out the paperwork completely and correctly.

If you have taken all the correct steps like "serving" the proper papers to your spouse or other parent, you will usually receive your Judgment or Decree by the end of the hearing.



If you are asking for child support, make sure that you have made use of the Volunteer Lawyers Domestic Relations Clinic or used the on-line child support calculator available through the Superior Court's website or at the Superior Court Library. Volunteers at the clinic will review your documents and make sure they are correct and complete.

If your documents are not correct and complete, you will not get your Judgment or Decree and will have to leave the court, correct your paperwork and schedule another hearing.

It is in your best interest to make sure that your paperwork is correct **before** you go to your hearing,

You can bring the following instructions with you to court to help you



## Check List of things to do for your default hearing

### Make 2 Copies of all the paperwork that applies to your divorce

These would include:

- Divorce Decree or other Order (See Decree packet #4 or #7)
- Parenting Plan signed by both parents (See Legal Decision-Making and Parenting Time packet)
- Agreement regarding division of community property and debt signed by both spouses
- Parent Worksheet for Child Support (See Packet #8 *Child Support*)
- Child Support Order (See Packet #8 *Child Support*)
- Income Withholding Order (See Packet #8 *Child Support*)
- Obligee/Obligor Fact Sheet (See Packet #8 *Child Support*)

### Assemble the documents

Attach one copy of everything to both of your copies of the proposed Judgment or Divorce Decree.  
You will keep one copy for yourself and send the other copy to the other party.



Attach one copy of everything to the ORIGINAL of the proposed Judgment or Divorce Decree.  
This is what you will give the judge at the hearing.

# Review your Order or Divorce Decree



Know what your order or decree says and what you are requesting.

The judge will ask you some questions about your Order or Decree, such as how you divided the property and debts, why you asked for a particular type of legal decision-making or parenting time, and where the children will be living, etc.

In general, everything that you are asking for in the proposed Order or Decree must be the same as the things you asked for in the Petition.

- ✓ The only exception to this is if you and your spouse have on file with the Court a written agreement with both of your notarized signatures.

## Call to schedule your hearing

Call the Hearing Officer's chambers at 724-4370 any weekday. You should call as soon as your default is effective. The Hearing Officer's assistant will assign a date for your hearing.



Default hearings are scheduled at 11:00 a.m. Monday through Friday, with the exception of court holidays.

Your hearing cannot be scheduled sooner than 61 days from when you originally served your spouse. If you served the other party by Publication then your hearing cannot be scheduled before 91 days from the date of publication.



## On the day of your hearing...

You will be asked to wait in the lobby. At 10:30 a.m., the Clerk will call your name, along with others who are going for a Default Hearing. You will be taken to the courtroom.

In the courtroom, stand when your name is called and walk to the "bench" where the Judge is seated. You will be sworn in to tell the truth. Lying in the court is called perjury and can have serious consequences, including criminal charges.



Do dress properly. Wear a suit, dress, or other neat, clean clothing.

Do turn off your cell phones and pagers while you are in the courtroom.

Always refer to the Judge as "Your Honor."

You may ask the Judge questions, but he/she cannot give you legal advice.

Be courteous and quiet while you are in the courtroom waiting for your hearing

DO NOT wear shorts, cut-offs, sleeveless t-shirts, other overly casual or suggestive clothing.

DO NOT bring drinks or food to court and don't chew gum in the Courtroom.

DO NOT bring your children to court. They are not permitted in the Courtroom.

## What the Judge will do...

The Judge will look at the proposed Judgment or Decree and other documents you have prepared and make a final decision regarding your case.

If the documents are correct and complete the Judge will sign the Judgment or Decree and any other documents that are needed. On the next few pages are some questions that the Judge may ask during your hearing.

After your hearing you will need to wait in the Courtroom until all the cases have been heard. Then the Clerk will take you back to the Clerk's office. If the Judge signed your Decree, the Clerk will Stamp all the copies of your Decree and you must mail one copy of the signed Decree to your now former spouse within three days.



## General questions that the Judge may ask

What is your name?

How long have you been domiciled (lived) in Arizona?

Were you and your spouse living in Arizona or were either of you a member of the Armed Forces and stationed in Arizona at least 90 days before the Divorce Petition was filed?

Are you or the other party pregnant?

What was your date of marriage and where were you married?

Have you been made aware of the Conciliation Services marriage counseling?

Is your marriage irretrievably broken with no reasonable prospect of reconciliation?

This means that there is no reasonable chance that you and your spouse can continue with your marriage.

Do you want your name restored?

You should answer, "yes," only if you want to return to your maiden or former last name.

Is the relief you are asking for today the same as what you asked for in the Petition of Dissolution or Paternity Judgment?

The answer should be "yes."

What property and debts do you have from the marriage?

Have you requested to divide the property and debts?

Do you think the proposed division of property and debts is fair and equitable?

How did you serve the Petition and other papers on your spouse and when was he or she served?

## **The Judge may ask these questions if you served your spouse by publication**

What steps did you use to try to find your spouse?

Who did you talk to about how to find your spouse?

What was the last date you saw your spouse, received a letter or phone call?

## **Additional questions that you might be asked if you have children**



How many children do you have from this marriage and what are their ages?

What type of legal decision-making are you requesting for your minor child(ren)?

What type of parenting time are you requesting for the non-custodial parent?

Are there any expected problems with parenting time?

Do you think the portions of the proposed Decree/Order dealing with legal decision-making and parenting time are in the best interests of the children?

Who will provide medical/dental insurance for the child(ren)?

Are you or the other parent employed? How much do you both earn?

What are day care costs for the child(ren)?

Who should claim the children as tax exemptions for income tax purposes and in which years?

Is the proposed Child Support according to the Guidelines? If not, why should the Court not follow the guidelines?

Were any children born during the marriage, which are not yours and your spouse's?



5. In compliance with Arizona Rules of Family Law Procedure, Rule 44(A), I have: (check all boxes that are true)

Mailed a copy of this Application and Affidavit to the Respondent at his/her last known address;

OR

Mailed a copy of this Application and Affidavit to the attorney I know is representing my spouse, whom I claim to be in default;

OR

Delivered a copy to Respondent, whom I claim to be in default;

Have mailed a copy of this Application and Affidavit to the Respondent's last known address because I do not know my spouse's whereabouts and do not believe my spouse is represented by an attorney.

**Note:** If the Respondent fails to file a responsive pleading or otherwise defend in this action within 10 business days of the filing of this Application, a default judgment/decreed may be entered. The Petitioner must generally still attend a default hearing.

\_\_\_\_\_  
Petitioner

SUBSCRIBED AND SWORN to before me on \_\_\_\_\_ by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public/Deputy Clerk

My Commission Expires: \_\_\_\_\_

**PETITIONER'S CERTIFICATE OF MAILING OR DELIVERY**

A copy of this document was (check one box)  mailed postage pre-paid OR  delivered (DESCRIBE HOW DELIVERED) to the Respondent at the following address:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Petitioner

Date: \_\_\_\_\_