

DEFAULT



PINAL COUNTY

**How to Get a Decree by Default With or Without a Hearing
When the Other Party Has Not Filed a Response**

INSTRUCTIONS AND FORMS

**Provided as a Public Service by
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Clerk of the Superior Court**

DEFAULT

HOW TO GET A DEFAULT DECREE IN FAMILY COURT CASES

This packet contains general information and instructions about how to apply for a default decree in family court cases. Be sure this packet contains the following documents:

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You have permission to use these documents for any lawful purpose. These forms shall not be used to engage in the unauthorized practice of law. The Court assumes no responsibility and accepts no liability for actions taken by users of these documents, including reliance on their contents. The documents are under continual revision and are current only for the day they were received. It is strongly recommended that you verify on a regular basis that you have the most current documents.

CHECKLIST

1. **DECREE BY DEFAULT WITH A HEARING** (See Procedures: How to Get a Default Hearing)

(Your case is eligible for Decree by Default with a Hearing if ALL the following elements apply)

- ✓ You have filed a summons and petition for one of the following:
 - Divorce
 - Legal Separation
 - Annulment
 - To establish Paternity
 - To establish a first court order for Legal Decision-Making and/or Parenting Time **OR** Legal Decision-Making, Parenting Time and Support
- ✓ The other party was served with court papers.
- ✓ Proof of service has been filed with the Clerk of the Court.
- ✓ The other party has not filed a written response or answer within the time frame set by law. (Check the court file to be sure this is true.)

READ ME: It is very important for you to know that when you sign a court document, you may be helping or hurting your court case. Before you sign any court document, or get involved with a court case, it is important that you see a lawyer to make sure you are doing the right thing.

WHEN AND HOW TO FILE AN APPLICATION AND AFFIDAVIT FOR DEFAULT IN FAMILY COURT CASES

PROCEDURES:

WHEN TO FILE THE APPLICATION FOR DEFAULT:

- after the other party has been served with the court papers, AND
- the appropriate response period has passed (see Default Timetable below), AND
- the other party has not filed a response or answer with the court.

STEP 1: COUNT. Look at the **Default Timetable** below to find the method of service you used and the number of calendar days to count before you can apply for a default hearing or order.

- **BEGIN COUNTING THE DAY AFTER THE OTHER PARTY WAS SERVED WITH THE PETITION.**
- **INCLUDE WEEKENDS AND HOLIDAYS** until you reach the number of days listed.
- **If the last day for the other party to respond falls on a Saturday, Sunday, or legal holiday, do NOT count that day.**

| <u>SERVICE BY</u> | <u>COUNT</u> | <u>EVENT</u> |
|------------------------------------|--------------|---|
| Acceptance of Service in Arizona | 21 Days | After the other party signs the "Acceptance of Service" |
| Process Server in Arizona | 21 Days | After other party receives papers from a process server |
| Sheriff in Arizona | 21 Days | After other party receives papers from Sheriff |
| Registered Mail in Arizona | 21 Days | After other party signs Green Return Receipt Card |
| Acceptance of Service out of State | 31 Days | After the other party signs the "Acceptance of Service" |
| Process Server out of State | 31 Days | After other party receives papers from a process server |
| Sheriff out of State | 31 Days | After other party receives papers from Sheriff |
| Registered Mail out of State | 31 Days | After other party signs Green Return Receipt Card |
| Publication | 61 Days | After the 1 st date of publication |

STEP 2: WAIT. Wait until the day after the number of days indicated in the Default Timetable above. If the other party did not file an **Answer/Response** with the Court you may file the Application and Affidavit for Default as instructed in Steps 3-6 below. Please read Steps 3-6 prior to completing the form. **YOU MUST TAKE THIS ACTION FOR YOUR CASE TO PROCEED.**

STEP 3: COMPLETING THE FORM:

- **DO NOT SIGN** and date the "**Application and Affidavit for Default**" before the amount of time shown in the Default Timetable has passed.
- On page one (1) of the "**Application and Affidavit for Default**" please make sure the name, address, phone number for the Petitioner are provided in the top left of the form.
- On page one (1) of the "**Application and Affidavit for Default**" list both party names on the document under "**Name of Petitioner**" this is the person who opened case and "**Name of Respondent**" this is the Responding party.
- On page one (1) of the "**Application and Affidavit for Default**" you will list your case number. Your case number was provided and stamped on all documents when the case was initially filed and opened with the Court.

- On page one (1) of the **“Application and Affidavit for Default”** question number two (2) must be answered. One box must be checked. By checking one box you are indicating the method of service you used to serve the initial court papers upon the Responding party.
- On page two (2) of the **“Application and Affidavit for Default”** the Certificate of Mailing must be completed as follows:
 - ✓ The Respondents address must be listed in the address lines provided.
 - ✓ If the Respondent in default is represented by an attorney you must also mail a copy of the Application and Affidavit for Default. Please list the name and address of the attorney in the line provided.

STEP 4: AFTER FORM IS COMPLETE:

- After the form has been completed in full you must have the document signed in front of a notary. DO NOT sign the document prior to signing in front of a notary. You may have any notary notarize the document.
- **AFTER** the document has been completed, signed and notarized, you will make two (2) copies. One copy will be for your records and the additional copy will be for the Respondent.

STEP 5: FILING THE DOCUMENT WITH THE COURT

- The **“Application and Affidavit for Default”** may be filed at any one of our office locations:
 - Main office in Florence, 971 Jason Lopez Circle Bldg., A, Florence, AZ 85132. Office hours are Monday – Friday open from 8:00 – 5:00 p.m.
 - Apache Junction Satellite Office, 575 N. Idaho Road Suite 109, Apache Junction, AZ 85119. Office hours are Monday – Friday open 8:00 – 5:00 p.m. **closed from 12:00 -1:00 for lunch.**
 - Casa Grande Satellite Office, 820 E. Cottonwood Lane, Bldg. B, Casa Grande, AZ 85122. Office hours are Monday – Friday open from 8:00 – 5:00 p.m. **closed from 12:00 -1:00 for lunch.**
- Hand the original and both copies of the Application and Affidavit for Default to the Clerk at the filing window. The Clerk will file and keep the original, date stamp both copies and return the stamped copies to you.

STEP 6: MAILING A COPY TO THE OTHER PARTY:

- After filing you must mail one of the date-stamped copies of the Application and Affidavit for Default to the Responding party on the same day that you have indicated in the Certificate of Mailing section located on page two (2) of the document.
- You will keep the additional copy for your records. This is your proof that you have filed this document with the Court.

STEP 7: SCHEDULING YOUR FINAL HEARING:

- At the time you submit your Application and Affidavit for Default to the Clerk of the Superior Court, the Clerk

at the filing window will provide to you a Decree Assistance Project Screening Checklist. The checklist will instruct you to contact the Family Services of the Conciliation Court.

- You will contact the Conciliation Court ten (10) Court business days after the mailing of the Application and Affidavit for Default to the Responding party. You will start counting from the day after the date indicated on page two (2) of the Application and Affidavit for Default under the Certificate of Mailing or Delivery section. This is the date you indicated the document would be mailed to the Responding Party. Do not count holidays.
- The Decree Assistance Project Screening Checklist received from the Clerk of the Court's Office must be completed and with you when you contact the Conciliation Court Services.
- After answering the screening questions, if approved, the Conciliation Court will schedule your final hearing date.
- The Decree Assistance Project Screening Checklist will only be provided to customers who have filed an Application and Affidavit for Default in their case.
- **DO NOT** contact the Conciliation Court Services prior to filing the Application and Affidavit for Default.

STEP 8: PREPARE THE PAPERWORK YOU ARE REQUIRED TO BRING TO THE COURT HEARING:

- A complete list of documents you are required to bring to your default hearing is available in the Decree Assistance Project Screening Checklist that was provided to you by the Clerk of the Court under "*Items Needed for Default Hearing*"
- Any additional forms are available at www.coscpinalcountyaz.gov/forms.html. All forms may be downloaded for free from our website. If forms are requested at a Clerk of the Court location there will be a fee per page.

Name of Person Filing: _____
 Street Address: _____
 City, State, Zip Code: _____
 Telephone Number: _____
 Email Address: _____
 ATLAS Number (if applicable) _____
 Representing Self (No Attorney) or Represented by Attorney
 If Attorney, Bar Number: _____

**SUPERIOR COURT OF ARIZONA
 PINAL COUNTY**

_____ CASE NUMBER: DO2
 Name of Petitioner

**APPLICATION AND AFFIDAVIT
 FOR DEFAULT**

_____ HONORABLE: _____
 Name of Respondent

NOTICE: THIS IS AN IMPORTANT COURT DOCUMENT. When this document is properly completed and filed, Default has been applied for and entered. The Default will be effective ten (10) days after the filing of this completed document, unless the Respondent files an Answer/Response or otherwise defends before the ten day period expires.

1. I am the Petitioner in this court case. I understand and make the following statements under oath. I give notice that I am requesting entry of default against the other party, the Respondent because they have **not** filed an Answer/Response.
2. Service of the court papers on Respondent has been accomplished as follows: (check **ONLY** one box)
 - The Respondent has signed an **“Acceptance of Service”** and has accepted service of the **“Summons,”** Complaint or Petition and other papers. The Respondent has **not** filed an **“Answer/Response,”** or otherwise appeared or defended in this court case. Default may be entered.
 - OR**
 - I have served the Respondent according to law with the **“Summons,”** Complaint or Petition and other papers. Respondent has **not** appeared, answered, responded or otherwise defended in the time required by law.
3. The Respondent is either **not** in the active military service of the United States or has otherwise waived his/her rights under the Service Members Civil Relief Act (formerly “Soldier’s and Sailor’s Civil Relief Act”).
4. By completing the Certificate of Mailing at the bottom of this form, I certify to the Court that on the date of filing this document I will mail a copy of this Application and Affidavit to the Respondent at his or her current or last known address as notice that I have applied for default and default has been entered in this court case.

5. I UNDERSTAND THAT I WILL NOT QUALIFY FOR DEFAULT IF:
 I fail to mail this document, and
 I fail to complete the Certificate of Mailing below.

CERTIFICATE OF MAILING
As required by Arizona Rules of Court (A.R.C.P. 55(a) and A.R.F.L. 44(A))

A copy of the **Application and Affidavit for Default** will be mailed **on the day of filing**, postage pre-paid, to the Respondent at his/her current address, OR last known address (if current address is unknown) of:

_____ (street and number, including the apartment number, city and state, and zip code)

I believe the Respondent whom I believe to be in default is represented by an attorney and have **also** mailed a copy of the **Application and Affidavit for Default** to that attorney at the address of:

_____ (Attorney's name, street and number, including the apartment number, city and state, and zip code)

NOTE: If the Respondent fails to file a responsive pleading or otherwise defend in this action within **10 days** of the filing of this Application, a default judgment will be entered. The Petitioner must still attend the default hearing at the court.

_____ **Date**

_____ **Signature**

State of Arizona)

)

County of _____)

Subscribed and sworn (or affirmed) before me this _____ day of _____, 20____
 (Day) (Month) (Year)

by _____
 (Name of Signer)

_____ (Affix notary seal here)

_____ **Notary Public** (Notary's Signature)