

# 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  
AMANDA STANFORD  
Clerk of the Superior Court**

# HOW TO GET A DEFAULT COURT ORDER

## CHECKLIST

### Which Default Works Best for You?

#### 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.)
- ✓ You have properly completed and filed the **“Application and Affidavit for Default”** (see **“Procedures: How to Apply for Default”**).

**OR**

#### 2. **DECREE BY DEFAULT WITHOUT A HEARING** (See Procedures: How to Get a Decree without a Hearing)

(Your case is eligible for Decree by Default without a Hearing if ALL the following elements apply)

- ✓ You have filed a summons and petition for one of the following:
  - Divorce
  - Legal Separation
  - Annulment
- ✓ 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.)
- ✓ There are no minor children of the relationship, either natural or adopted.
- ✓ The Wife is not pregnant.
- ✓ Neither party is requesting spousal maintenance.
- ✓ The respondent is competent and is of the age of majority.
- ✓ You have properly completed and filed the **“Application and Affidavit for Default”** (see **“Procedures: How to Apply for Default”**) and the **“Motion and Affidavit for Default without a Hearing.”**

**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.

# 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:

Order	Title	# of Pages
1	Checklist: How to Get a Default Court Order	1
2	Table of Contents (this page)	1
3	Information: What is a Default Hearing • What Happens after Service	2
4	Procedures: How to Get a Default Hearing	2
5	Procedures: How to Get a Decree by Default without a Hearing	2
6	“Application and Affidavit for Default”	2
7	“Motion and Affidavit for Default without Hearing”	3

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.

## INFORMATION

### **What is a Default Hearing? What Happens After Service of Process?**

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

Default means that the party served with the court papers did **not** disagree with the information in the court papers and did not file a written timely **“Response”** or **“Answer.”** The party who filed the Petition/Complaint is the party who comes to the default hearing.

#### **General Information**

After the other party has been served with the court papers, one or more documents must be filed with the court to show service. For example: an **“Acceptance of Service”** signed by the other party and notarized, a **“Waiver of Service”** signed by the other party and notarized, or an **“Affidavit of Service”** signed by a private process server or deputy sheriff. After the other party has been served with the court papers, you are a step closer to completing your case. The next steps depend upon whether the other party files a written **“Response”** or **“Answer”** with the court.

#### **Default Time Table**

The papers the private process server or sheriff served on the other party explain that the other party has **20** days to file a written **“Response”** or **“Answer”** to the court if the papers were served in Arizona. If a private process server or sheriff served the other party outside Arizona, the other party has **30** days to file a written **“Response”** or **“Answer.”**

If the other party signed an **“Acceptance of Service,”** the other party has **20** days to file a written **“Response”** or **“Answer”** to the court if the other party lives in Arizona. If the other party does not live in Arizona and signs an **“Acceptance of Service,”** the other party has 30 days to file a written **“Response”** or **“Answer.”**

If the other party lives outside Arizona, you mailed the documents to the other party, and the other party signed a “Green Card” saying he/she received the court papers, then the other party has **30** days to file a written **“Response”** or **“Answer.”**

If you need additional information about service by publication, refer to the Service of Court Papers packet.

#### **Requirement for Default**

If the other party has filed a written **“Response”** or **“Answer”** with the court within the time allowed by law, you **cannot** proceed by default. Both parties will be scheduled for Early Resolution Conference with Family Services of the Conciliation Court.

If you want to get a default hearing, you must complete the **“Application and Affidavit for Default”** and file it with the Clerk of the Court. You must be sure service of process was complete, and that the other party **did not** file a written **“Response”** or **“Answer”** with the court.

After the Clerk of the Court enters the default, be sure you have two (2) copies of the **“Application and Affidavit for Default”** conformed stamped by the Clerk. You must mail or hand-deliver one copy to the other party **the day** that you filed the **“Application and Affidavit for Default”** with the Clerk of the Court.

At the time of filing the **“Application and Affidavit for Default”** with the Clerk of the Court, the Deputy Clerk will provide the Petitioner with a pamphlet regarding Decree Assistance Project.

The Decree Assistance Project is designed to assist the Petitioner complete the final stage of the Dissolution process and schedule a Default Hearing.

After ten working days from the day **after** filing the **“Application and Affidavit for Default,”** the Petitioner is required to contact Family Services of the Conciliation Court at (520) 866-7349 or 1-800-208-6897 x7349 to schedule a Default Hearing.

If the tenth day falls on a Saturday or Sunday or legal holiday the Respondent has until the end of the following work day to submit a Response.

**If a “Response” or “Answer” is Filed**

If a “**Response**” or “**Answer**” filed by the Respondent, your case cannot process through Default and your case will be scheduled for an **Early Resolution Conference**.

**What is Early Resolution Conference:**

It is an efficient and economical opportunity to resolve outstanding issues between the parties with an impartial third party who can draft your agreements. Family Services of the Conciliation Court will schedule a hearing and both parties will receive an Order to Appear for an Early Resolution Conference in the mail.

**ADDRESS INFORMATION**

It is **very important** for you (Petitioner and Respondent) to keep the court informed of your most current address. This means that if the address information is incorrect or if you change addresses, you must contact the Clerk of the Court and give them your new or current address.

**DO NOT BRING CHILDREN TO COURT.**

## 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.**

<b><u>DEFAULT TIMETABLE</u></b>		
<b><u>SERVICE BY</u></b>	<b><u>COUNT</u></b>	<b><u>EVENT</u></b>
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 <sup>st</sup> 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 three (2) of the **“Application and Affidavit for Default”** the Certificate of Mailing must be completed as follows:
  - ✓ The date entered must be the same date the form is submitted to the Court or any date after the filing of the document. There cannot be a date listed that is prior to filing the form with the Clerk of the Superior Court.
  - ✓ You must indicate that after filing a copy of the **“Application and Affidavit for Default”** it will be either mailed or hand delivered to the Responding party. A box must be marked. If hand delivered is marked, please indicate on the line provided who will be delivering the copy to the Respondent.
  - ✓ The Respondents address must be listed in the address lines provided.
  - ✓ The Petitioner must sign their signature at the bottom of the form on the **“Signed”** line certifying that the actions marked will be completed.

**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 three (3) 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 three (3) 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](http://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.

## HOW TO GET A DECREE BY DEFAULT WITHOUT A HEARING (DISSOLUTION OF MARRIAGE, LEGAL SEPARATION OR ANNULMENT)

### CHECK LIST:

*(Your case is eligible for Decree by Default without a Hearing if ALL the following elements apply)*

- ✓ The Respondent has failed to file a response.
- ✓ There are no minor children of the relationship, either natural or adopted.
- ✓ The Wife is not pregnant.
- ✓ Neither party is requesting spousal maintenance.
- ✓ The respondent is competent and is of the age of majority.
- ✓ You have properly completed and filed the **“Application and Affidavit for Default”** (see **“Procedures: How to Apply for Default”**) and the **“Motion and Affidavit for Default without a Hearing.”**

### PROCEDURES:

#### STEP 1: COUNT DOWN PERIOD

- **BEGIN COUNTING THE DAY AFTER** the other party was served with the PETITION/COMPLAINT. Look at the Default Timetable to find the method of service you used and the number of days you should count.
- **INCLUDE WEEKENDS AND HOLIDAYS** until you reach the number of days listed in the Default Timetable. If the **last** day for the other party to respond falls on a Saturday, Sunday, or legal holiday, **DO NOT COUNT THAT DAY**. The Respondent has until the end of the following business day to submit a Response.

***IF THE OTHER PARTY FILES A RESPONSE/ANSWER WITH THE COURT, YOU CANNOT FILE FOR DEFAULT.***

<u>DEFAULT TIMETABLE</u>		
<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
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 a Green Card
Publication	61 Days	After the 1 <sup>st</sup> date of publication

#### STEP 2: COURT PAPERS.

**COMPLETE:** Complete the **“Application and Affidavit for Default”** and **“Motion and Affidavit for Default without a Hearing”** in this packet.

**STEP 3: SIGN, NOTARIZE & COPY APPLICATION**

**SIGNATURE:** **DO NOT** sign the “***Application and Affidavit for Default***” nor the “***Motion and Affidavit for Default without Hearing***” until the right amount of time has passed.

Go to a Notary Public. Make sure you have a US Issued Photo ID with you. Sign both the “***Application and Affidavit for Default***” and the “***Motion and Affidavit for Default without Hearing.***” **Make sure** you date both documents with the date you are signing it.

**COPIES:** Make **two copies** of your “***Application and Affidavit for Default***” and “***Motion and Affidavit for Default without Hearing***” after your signature has been notarized.

**STEP 4: FILE AND MAIL**

*(Bring the original and two copies of your documents to any of the following Clerk of the Superior Court offices)*

**FLORENCE**

971 N. Jason Lopez Circle Bldg. A  
Florence, AZ 85132

**CASA GRANDE**

820 E. Cottonwood Lane Bldg. B  
Casa Grande, AZ 85122

**APACHE JUNCTION**

575 N. Idaho Rd. Suite 109  
Apache Junction, AZ 85119

**MAMMOTH**

(TEMPORARILY CLOSED)  
118 Catalina  
Mammoth, AZ 85618

**CLERK:** Hand the Clerk at the filing counter the original and both copies of the “***Application and Affidavit for Default***” and the “***Motion and Affidavit for Default without Hearing.***” The Clerk will keep the original and will conform stamp both set of copies and return them to you. **Make sure** you have **both** copies stamped.

**MAIL:** **Mail or hand-deliver one of the copies** of the “***Application and Affidavit for Default***” and the “***Motion and Affidavit for Default without Hearing***” to the other party on the **SAME DAY** you file the papers with the Clerk of the Court. Keep the other copy for your records.

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**

\_\_\_\_\_  
 Name of Petitioner

CASE NUMBER: DO2

**APPLICATION AND AFFIDAVIT  
 FOR DEFAULT**

\_\_\_\_\_  
 Name of Respondent

HONORABLE: \_\_\_\_\_

**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)

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**

\_\_\_\_\_  
Name of Petitioner

CASE NUMBER: DO2

**MOTION AND AFFIDAVIT FOR DEFAULT  
WITHOUT HEARING OF:**

DISSOLUTION  
 LEGAL SEPARATION

\_\_\_\_\_  
Name of Respondent

HONORABLE: \_\_\_\_\_

Petitioner requests the Court enter a decree by default without a hearing pursuant to Arizona Rules of Family Law Procedures, Rule 44(B)(1). This motion is based upon the attached affidavit, and seeks entry of an appropriate decree awarding the relief requested in the petition or as agreed to by the parties in writing.

RESPECTFULLY SUBMITTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Signature of Petitioner

AFFIDAVIT OF PETITIONER

I, \_\_\_\_\_, being first duly sworn upon oath, deposes and says:

1. I have read the foregoing motion.
2. Neither party in this matter is either an infant or an incompetent person.
3. a. The respondent has made no appearance in this matter. Petitioner's Application for Default has been filed AND, the Respondent's default has been entered; OR  
b. The parties had agreed by written stipulation, if an appearance has been made by the Respondent, that this matter may proceed as if by default.
4. At least one of the parties has lived in the State of Arizona for at least 90 consecutive days prior to the petition being filed.
5. The availability of the services of the "Conciliation Services" of this Court, as provided by A.R.S. §25-381.09, have been met since the filing of the petition, or do not apply.
6. The marriage is irretrievably broken.
7. There are no minor children of the relationship of the parties born before or during the marriage or adopted by the parties during the marriage, and the wife, to affiant's knowledge, is not pregnant.
8. Neither party has any ownership interest in real property (for example, land or a house) wherever situated.
9. The parties waive any right to spousal maintenance.
10. There are no unpaid debts in excess of \$10,000 incurred by either or both of the parties from the date of the marriage.
11. The total fair market value of community personal property assets, subtracting all debts, is less than \$15,000.
12. All of the statements, including those concerning property and debts listed in the petition were true at the time of its filing and remain true as of this date, except these material changes:(If none, write NONE)

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13. All the requested relief in the petition is equitable; it is not unfair as to the disposition of property, or allocation of debts.
14. The relief to be awarded in the submitted decree is the same as the relief requested in the petition filed in this matter, or if different, the relief to be awarded has been approved by each party, as reflected in the approved decree.

THEREFORE, I respectfully request this Court sign the submitted decree.

\_\_\_\_\_

**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)