

MOTION AND AFFIDAVIT FOR DEFAULT DECREE WITHOUT A HEARING



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
REBECCA PADILLA
Clerk of the Superior Court**

**MOTION AND AFFIDAVIT FOR DEFAULT
DECREE WITHOUT A HEARING**

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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.

Decree of Dissolution (Divorce) For a Non-Covenant Marriage

What the Decree Means to You. The Decree is the Court Order that legally ends your marriage. The Decree, once the judge or commissioner has signed it, is important because it determines the rights and responsibilities of both you and your ex-spouse. It tells the parties what they can and cannot do. If either party does not do what the Decree tells him/her to do, then the other party may ask the court for help. **This is a very important document.** Once it has been signed by the judge, your rights and responsibilities are affected forever.

Failure to do what the Decree tells you to do could get you into trouble with the court. This does not mean that the court will police whether you are following the Decree. It does mean you or your ex-spouse can request a Contempt Order or an Order to enforce parts of the Decree if you or your ex-spouse fails to do what the Decree tells you to do.

Getting Your Divorce Finalized. Before your divorce can become final, a judicial officer must sign what we call a Decree of Dissolution of Marriage. The Decree tells you who will get the property, who pays the debts, who gets Legal Decision-Making, who pays support and so forth.

Divorce by Default. If you are getting a divorce by default and meet the criteria to proceed without a hearing, you must repeat as closely as possible what you requested in your Petition for Dissolution of Marriage. You cannot mark something different in the Decree from what you asked for in the Petition for Dissolution of Marriage, unless your spouse has provided written consent. If you request something different from what you asked for in the Petition, the judicial officer will not sign the Decree. If you want to change your requests to the court, you must file an amended Petition for Dissolution. It is a good idea to have your Petition handy when you fill out your Decree.

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

CRITERIA FOR DEFAULT DECREE WITHOUT HEARING

CHECK LIST:

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

- You have filed **one** of the following:
 - ✓ Petition for Dissolution of Marriage
 - ✓ Petition for Legal Separation
 - ✓ Petition for Annulment

AND

- The following elements must apply in your case to use this form:
 - ✓ The Respondent was not served by Publication
 - ✓ 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 of the age of majority
 - ✓ You have properly completed and filed the “Application and Affidavit for Entry of Default” (see “Procedures: When and how to file an Application and Affidavit for Default”) If you have not filed the Application and Affidavit for Entry of Default, the Motion for Default without a Hearing may not be filed.
- Before you use this form, be sure that you have:
 - ✓ Properly served the other party and the proof of service has been filed with the Court (service cannot be done by publication) AND
 - ✓ Completed and filed the “Application and Affidavit for Entry of Default” and mailed a copy to the other party; AND
 - ✓ Waited at least 61 days after the completion of service
- If the statements above apply to your case proceed to STEP 1

PROCEDURES:

STEP 1: COMPLETE REQUIRED COURT PAPERS.

- Fill out all forms in **BLACK INK** only.
- Complete/fill out the ***Motion and Affidavit for Default without a Hearing.***

- The Petitioner must also complete/fill out **one** of the following with the Motion and Affidavit for Default Judgment Without a Hearing:
 - ✓ Decree of Dissolution of Marriage
 - ✓ Decree of Legal Separation
 - ✓ Decree of Annulment (The Clerk of the Court does not carry this form, you must speak to an attorney or paralegal to draft this document for you)
- The Decree of Dissolution of Marriage and the Decree of Legal Separation are available on our website in the “**Family Law**” section under “**Individual Forms**”.
- All forms must be completed in black ink only.

STEP 2: SIGN, NOTARIZE & COPY DOCUMENTS

SIGNATURE: The Motion and Affidavit for Default without a Hearing must be signed and dated in front of any Notary Public. Make sure you have a US issued photo ID with you.

COPIES: **After** the Motion and Affidavit for Default without a Hearing has been notarized and the Decree you are submitting has been completed, make two copies of the following documents:

- ✓ Motion and Affidavit for Default without a Hearing
- ✓ Decree of Dissolution of Marriage without Children (or)
- ✓ Decree of Legal Separation without Children (or)
- ✓ Decree of Annulment

ENVELOPES: (2) 9 x 12 self-addressed stamped envelopes are required. One envelope will be addressed to the Petitioner and the other envelope will be addressed to the Respondent. Please add the appropriate postage to each envelope. The return address of the Petitioner will be on both envelopes. After the Decree is approved and signed, the final Decree will be mailed to both parties in the envelopes provided.

STEP 3: FILING/SUBMITTING YOUR DOCUMENTS TO THE CLERK

FILING IN PERSON

You may file your documents at any of the Clerk of the Superior Court Offices:

Florence 971 Jason Lopez Circle Bldg. A Florence, AZ 85132
Open Mon-Fri 8:00 to 5:00

Casa Grande

820 E. Cottonwood Ln Bldg. B Casa Grande, AZ 85122
Open Mon-Fri 8:00 to 5:00 closing 12:00 to 1:00 for lunch

Apache Junction

575 N. Idaho Rd Ste. 109 Apache Junction, AZ 85119
Open Mon-Fri 8:00 to 5:00 closing 12:00 to 1:00 for lunch

IF FILING IN PERSON TAKE THE FOLLOWING DOCUMENTS TO THE CLERK/FILING COUNTER

To submit the Motion and Affidavit for Default without a Hearing the following must be handed to the Clerk:

- ✓ Original plus (2) copies of the Motion and Affidavit for Default without Hearing
- ✓ Original plus (2) copies of the Decree of Dissolution of Marriage without Children (or) Decree of Legal Separation without Children (or) Decree of Annulment
- ✓ (2) 9 x 12 self-addressed stamped envelopes

FILING BY MAIL

Mail documents to: Clerk of the Superior Court, P.O. Box 2730 Florence, AZ 85132

IF FILING BY MAIL THE FOLLOWING DOCUMENTS MUST BE SENT TO THE CLERK

Mail in the following:

- ✓ Original plus (2) copies of the Motion and Affidavit for Default without Hearing
- ✓ Original plus (2) copies of the Decree of Dissolution of Marriage without Children (or) Decree of Legal Separation without Children (or) Decree of Annulment
- ✓ (2) 9 x 12 self-addressed stamped envelopes

STEP 4: REVIEW PROCESS/WHEN WILL I RECEIVE MY FINAL DECREE IN THE MAIL

When a Petitioner submits the Motion and Affidavit for Default without a Hearing (60) days must have passed since the service of process. If the Motion and Affidavit for Default without a Hearing is submitted prior to the (60) days from the date of service, the Clerk will not forward the motion and final Decree to the Judge until the (60) days has passed from the date of service upon the Respondent.

Once the Motion and Affidavit for Default without a Hearing and final Decree are sent to the

Judge there will be a review process. The Judge will review your file and all documents you have submitted. If the Judge determines that all documents are in order they will sign the final decree. The final decree will then be filed and processed by the Clerk's office and copies will be mailed to each party in the envelopes that were previously provided by the Petitioner.

In the event the Judge finds any deficiencies in your file or paperwork, your documents will be returned to you with a Minute Entry describing the deficiency and how it may be corrected.

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: S1100DO2** _____
Name of Petitioner

**MOTION AND AFFIDAVIT FOR
DEFAULT WITHOUT HEARING OF:**
 DISSOLUTION LEGAL
 SEPARATION

_____ **HONORABLE:** _____
Name of Respondent

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.

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. The total fair market value of community personal property assets, subtracting all debts, is less than \$15,000.
5. 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)
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)

13. All the requested relief in the petition is equitable; it is not unfair as to the disposition of property, or allocation of debts.

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: S1100DO2

**DECREE OF DISSOLUTION OF
MARRIAGE (DIVORCE) WITHOUT
MINOR CHILDREN**

Name of Respondent

HONORABLE: _____

SERVICE BY PUBLICATION:

If Respondent was served by publication and was not personally served this Court may be unable to make a legal order with respect to issues of child support, medical and dental insurance, payments, expenses for the minor child(ren), community property or debt, or spousal maintenance/support. The Court reserves jurisdiction until personal service is made upon Respondent to consider the maintenance/support of either spouse, the disposition of community property or debts, child support, and any other relief requested in the Petition or orders deemed necessary by the court.

THE COURT FINDS:

1. This case has come before this Court for a final **“Decree of Dissolution of Marriage without Minor Children.”** The Court has taken all testimony needed to enter this Decree, or the court has determined testimony is not needed to enter the Decree.
2. This Court has jurisdiction over the parties under the law, and the provisions of this Decree are fair and reasonable under the circumstances.

3. **90 Day Requirement:** At the time this action was filed, Petitioner or Respondent had lived in Arizona for more than 90 days or had been stationed in Arizona while a member of the United States Armed Forces for more than 90 days.
4. **Conciliation Court:** The provisions relating to the Conciliation Court either do not apply or have been met.
5. **Irretrievably Broken:** The marriage is irretrievably broken and there is no hope of reconciliation.
6. **Covenant Marriage:** The marriage is not a covenant marriage.
7. **Domestic Violence:**

INSTRUCTIONS: Check the relevant box below.

- Domestic violence has not occurred during this marriage.
- Significant domestic violence occurred during this marriage.
- Domestic violence has occurred during this marriage. Even though domestic violence has occurred, it was not significant or committed by both parties

8. **Spousal Maintenance:** Money paid from one spouse to the other spouse after the divorce, also known as alimony.

INSTRUCTIONS: Check this box if neither spouse will receive spousal maintenance.

- Neither party is entitled to spousal maintenance

INSTRUCTIONS: Check the box next to the person who will RECEIVE spousal maintenance.

- Petitioner OR** **Respondent** is entitled to spousal maintenance because s/he

INSTRUCTIONS: You must also check at least one of the following four boxes explaining why spousal maintenance is appropriate.

- Lacks sufficient property, including given to him or her as part of this divorce, to provide for his or her reasonable needs.
- Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient.
- Contributed to the educational opportunities of the other spouse.
- Had a marriage of long duration and is of an age that may preclude the possibility of gaining

employment adequate to be self-sufficient.

THE COURT ORDERS:

1. Marriage is Dissolved

The marriage of the parties is dissolved and the parties are restored to the legal status of single persons.

2. Name Change *Optional*

INSTRUCTIONS: Check this box only if you want to use your maiden or former name. If you check the box, also check the box next to whoever is changing his or her name, either Petitioner or Respondent. In the first blank, write out the complete married name, including the middle name. In the second blank, write out the complete maiden name/former name.

The name of the Petitioner **OR** Respondent, whose complete married name is:

is restored to: (List the complete legal name or maiden name as before the marriage)

3. Spousal Maintenance

INSTRUCTIONS: Earlier in the Petition you told the court whether or not one of the parties should receive spousal maintenance from the other party. Here, you tell the court how much per month and for how long that spouse should receive spousal maintenance or if neither party should pay spousal maintenance to the other party.

Neither party to pay spousal maintenance to the other party.

OR

Petitioner shall receive spousal maintenance from Respondent in the amount of \$_____ per month and the payments to continue until the receiving party is remarried or deceased.

OR

Petitioner shall receive spousal maintenance from Respondent in the amount of \$_____ per month and the payments to continue until the receiving party is remarried or deceased or for _____ months, whichever comes first.

OR

Respondent shall receive spousal maintenance from Petitioner in the amount of \$_____

per month and the payments to continue until the receiving party is remarried or deceased.

OR

Respondent shall receive spousal maintenance from Petitioner in the amount of \$_____ per month and the payments to continue until the receiving party is remarried or deceased or for _____ months, whichever comes first.

INSTRUCTIONS: Do you want either the other party or yourself to be able to modify spousal maintenance in the future? If so, check the first box. If not, check the second box.

- Spousal maintenance shall be modified in accordance with Arizona law.
- Spousal maintenance shall **NOT** be modifiable for any reason.

4. Debt

INSTRUCTIONS: You must identify all of your debt as either community debt or separate debt. **Community debts** are debts that you or the other party incurred during the marriage. **Separate debts** are debts that you or the other party incurred before the marriage.

- a. **Community Debt:** Community debts are debts incurred by either party during the marriage. You should see a lawyer about how to divide secured and unsecured debts. Community debts shall be divided as follows:

INSTRUCTIONS: Check this box if you do not have any community debt.

My spouse and I do not have any community debts.

INSTRUCTIONS: Check this box if you have community debt. List all community debts, the total owed, and the amount OR percentage to be paid by each party. If you need more space attach an additional sheet of paper and check the box “The list continues on attached page.”

My spouse and I have community debts which shall be divided as follows:

| Creditor Name | Amount Owed | Amount or Percent to be paid by Petitioner | Amount or Percent to be paid by Respondent |
|---------------|-------------|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

The list continues on attached page.

- Petitioner is ordered to pay all debts unknown to Respondent.
- Respondent is ordered to pay all debts unknown to Petitioner.
- Each party is ordered to pay his or her debts incurred since (date)_____.
- Any debts or obligations incurred by either party before the date of separation, that are not identified in the list above or attached, shall be paid by the party who incurred the debt or obligation and that party shall indemnify and hold the other party harmless from such debts.

b. Separate Debt: Separate debts are debts incurred before the marriage. Check ONLY one of the three boxes. If you check the last box, list your separate debts, the total owed, and the amount or percentage to be paid by each party. Separate debts shall be divided as follows:

- Neither my spouse nor I have any separate debt.
- My spouse and/or I have separate debts and Husband must pay his separate debt and Wife must pay her separate debt.
- My spouse and/or I have separate debts and they shall be divided as follows:

| Creditor Name | Amount Owed | Amount or Percent to be paid by Petitioner | Amount or Percent to be paid by Respondent |
|---------------|-------------|---|---|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

5. Property

IMPORTANT: If there is a piece of property with a debt attached such as a car with a loan, you must list the property under “Property” and the debt under “Debt”.

INSTRUCTIONS: You must identify all of your property as either community property or separate property. **Community property** is property that you acquired during the marriage, but was not gifted to either you or the other party and that was not inherited. **Separate property** is property that you acquired before the marriage, property that was gifted to either you or the other party, or that was inherited.

a. Community Property: Community Property is property that was acquired during the marriage, which was not gifted to one party or inherited. Community Property shall be

divided as follows:

My spouse and I did not acquire any community property during the marriage.

OR

My spouse and I acquired community property during the marriage and it should be divided as follows: *Include vehicles on this list.*

| Description of Property | Awarded to Petitioner | Awarded to Respondent | Value |
|-------------------------|--------------------------|--------------------------|----------|
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | \$ _____ |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | \$ _____ |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | \$ _____ |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | \$ _____ |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | \$ _____ |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | \$ _____ |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | \$ _____ |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | \$ _____ |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | \$ _____ |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | \$ _____ |

b. Separate Property: Separate property is property acquired before the marriage, property that was gifted to one party, or that was inherited. Separate Property to be divided as follows:

My spouse and I do not have separate property.

My spouse and/or I have separate property and each party shall be awarded his or her own separate property.

My spouse and/or I have separate property, which shall be divided as follows:

| Description of Property | Awarded to Petitioner | Awarded to Respondent | Value |
|-------------------------|--------------------------|--------------------------|----------|
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | \$ _____ |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | \$ _____ |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | \$ _____ |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | \$ _____ |

c. Real Property: Real property is the house and land you own. You can ask the court to give you the home, to give the home to the other party, or to sell the home and divide any loss or

proceeds. Write the complete address of the property under “real property located at”. Most property has a legal description such as “LOT 77, PINE TREE ACRES, according to Book 111 of Maps” which appears on your deed papers. You should use this description. A cemetery plot is considered real property.

- My spouse and I do not have real property.
- My spouse and I have real property located at: _____
valued at approximately \$_____. The legal description of the property is (this information is needed prior to an order being entered regarding real property):

- The real property shall be sold and any loss or proceeds divided with Petitioner being awarded _____% and Respondent being awarded _____%.
- The real property shall be awarded to Petitioner.
- The real property shall be awarded to Respondent.
- The party being awarded the real property will refinance the real property solely in his or her name on or before _____(insert date). If unsuccessful, the real property will be _____.

INSTRUCTIONS: Complete only if there is a second property.

- My spouse and I do not have real property.
- My spouse and I have real property located at: _____
valued at approximately \$_____. The legal description of the property is (this information is needed prior to an order being entered regarding real property):

- The real property shall be sold and any loss or proceeds divided with Petitioner being awarded _____% and Respondent being awarded _____%.
- The real property shall be awarded to Petitioner.
- The real property shall be awarded to Respondent.
- The party being awarded the real property will refinance the real property solely in his or her name on or before _____(insert date). If unsuccessful, the real property will be _____.

6. Retirement:

WARNING: You should see a lawyer about your retirement accounts. If you do not see a lawyer regarding these assets, you risk losing any interest you have in these plans and/or

benefits. There are certain documents the plan administrator must have. It is recommended that you consult with a lawyer to help you prepare these documents.

INSTRUCTIONS: A retirement account is considered property. Any part of the retirement that grew during the marriage is community property. Any part of the retirement that existed before the marriage, is separate property. You do not need to list the retirement under “Property” if you list it here.

IMPORTANT: If you want to divide the retirement account(s) you must see an attorney about a document called a Qualified Domestic Relations Order (QDRO) or a Court Order Acceptable for Processing (COAP). A QDRO or a COAP is a very specialized legal document. It is recommended that you seek professional assistance to prepare the QDRO or COAP. Do not have this done until a judge signs your Decree.

- Neither party has a retirement account.
- Each party **waives and gives** up his/her interest in any and all retirement benefits, pension plans, or other deferred compensation of the other party.
- Divide retirement accounts as follows:

7. Taxes

INSTRUCTIONS: This question is asking how you and the other party have filed taxes during the time you were married.

- a. For **previous** calendar years, pursuant to IRS rules and regulations, the parties have filed or will file:

INSTRUCTIONS: If you and the other party ever filed jointly, check this box and list the tax years you filed jointly.

- Joint federal and state income tax returns for (years)_____ and hold each other harmless from half of all income taxes and costs, if any, and each party will share equally in tax refunds, if any.

INSTRUCTIONS: If you and the other party ever filed separately, check this box and list the tax years you filed separately.

- Separate federal and state income tax returns for (years)_____.
- Other: _____

This calendar year and continuing thereafter, each party will file separate federal and state income tax returns.

Each party shall give the other party all necessary documentation to file all tax returns, unless that information is protected.

Other information and request(s) regarding taxes:

8. Other Requests:

INSTRUCTIONS: Use this space to add any more Orders the court is making.

FINAL APPEALABLE ORDER: Pursuant to Arizona Rules of Family Law Procedure, Rule 81, this final judgment/decree is settled, approved and signed by the court and shall be entered by the clerk.

SIGNATURES

DONE IN OPEN COURT: _____

JUDGE OR COURT COMMISSIONER: _____

If this Decree was issued as a “Default,” *and* the Petitioner served the papers to begin this case by any means other than by publication, a copy of this Decree shall be mailed or delivered to the Respondent within 24 hours of the court hearing as follows:

Respondent’s Name: _____

Mailing Address: _____

City, State, Zip Code: _____

Email Address: _____

By Petitioner: _____

Date: _____

Petitioner’s Signature: _____