

Divorce (Dissolution) and Legal Separation Process

Forms for all Steps below are available:

- By downloading the forms for free on the website at: <https://superiorcourt.maricopa.gov/lrc/family-court-forms/> under the heading “Start a New Case.”
- At the Law Library Resource Center for \$5.00 per packet (i.e. Petition, Service, Application for Default, Default Decree / Consent Decree) – you will receive forms and instructions with each packet.
- Printing and copying at one of the Law Library Resource Center locations is twenty cents (.20) per page.

To start a Court case, a person (party) must file a Summons and Petition. Generally, the party filing the Summons and Petition is called the “Petitioner” and the other party is called the “Respondent.” However, if there is already a child support order filed in Maricopa County, the party filing the Petition may be the “Respondent” in the existing case. If that is true, the party filing the Petition remains the “Respondent” in all court filings. In these instructions, the other party will be called the responding-party.

Petition:

(These forms are the website (Step/Packet 1) and at the Law Library Resource Center).

The Petition is the first court paper you will file. You also have to file other papers with the Petition. Court papers are filed with the Clerk of Superior Court (“Clerk”). You file the original and two copies of the papers. The Clerk will give you back the two copies. One is to serve the responding-party. One is for you to keep for your records.

After you file your Petition and other papers with the Clerk, you will need to serve the responding-party. See **Service** below. This step will explain the options you have to serve the responding-party.

Service:

(These forms are on the website (Step/Packet 2) and at the Law Library Resource Center).

Service by Acceptance. This requires you to give, or mail, the court papers to the responding-party. You must include an “**Acceptance of Service**” form. The responding-party must sign the “**Acceptance of Service**” form in front of a Notary Public or Clerk and return it to you. Then you file the “**Acceptance of Service**” form with the Clerk. This type of service is not effective until the “**Acceptance of Service**” is filed with the Clerk. This means the responding party is not “served” until the “**Acceptance**” is filed. (Do not use Service by Acceptance in person if you are a victim of Domestic Violence)

Service by Certified Mail. This requires you to give notice by a special type of mail. You would mail the court papers to be delivered to the responding-party by any form of mail requiring a signed and returned receipt. This is often called “Certified Mail-Restricted Delivery” by the post office. This means

that the responding-party must personally sign for the papers. You must then file with the Clerk proof of delivery along with copies of the mailing receipt and signature. You may use the form called ***“Affidavit of Service with Signature Confirmation.”***

Service by Registered Process Server. This requires you to hire, and pay, a registered process server to serve the responding-party with the court papers. A process server will give the papers to the responding-party at home, work, or other location. This costs more than service by acceptance and requires the process server find the responding-party. It is your responsibility to make sure the process server has filed an affidavit of service with the Clerk or you must file it yourself.

Service by Sheriff. This requires you to contact the Sheriff’s Office in the county where the responding-party lives. You would arrange for a Sheriff’s Deputy to give the responding-party the court papers. You have to pay a fee to the Sheriff’s Office, unless you received a fee waiver or deferral. It is your responsibility to make sure the Sheriff’s office has filed an affidavit of service with the Clerk or you must file it yourself.

Service of an Incarcerated Party. This process allows you to serve an incarcerated party in jail, prison or a correctional facility. You must send copies two different ways with this process. First, using U.S. Postal Service or other mail delivery service, request and pay for return receipt of signature confirmation or proof of delivery with signature. Instead of the party signing for the document, an official of the jail, prison or correctional facility may sign for receipt. You must then file with the Clerk, proof of delivery along with copies of the mailing receipt and signature. You may use the form called ***“Affidavit of Service with Signature Confirmation.”*** You must also mail a copy of the documents to the inmate by first class mail.

Publication. When you have made every effort and have tried everything you can to locate the responding-party and you cannot find them, you may be able to publish notice in a newspaper. Before you can use this process, you must file a motion to ask the Judge for approval.

AFTER SERVICE IS COMPLETED AND PROOF IS FILED

Whichever option you use to serve the court papers, you **must** give the responding-party a certain amount of time to respond before filing for default. Begin counting the day **after** the responding-party was served. (See Default Timetable)

- If the **last day** to respond falls on a Saturday, Sunday, or legal holiday, **do not** count that day. The last day you count must be a day when this Court is open for business.
- **INCLUDE WEEKENDS AND HOLIDAYS.** In counting the days, include weekends and holidays until you reach the number of days in the timetable below.

DEFAULT TIMETABLE

<u>SERVICE MADE IN ARIZONA</u>	<u>COUNT</u>	<u>EFFECTIVE DATE OF SERVICE</u>
Acceptance	20 Days	after the “Acceptance of Service” is filed with the Clerk
Certified Mail*	20 Days	after responding-party signs delivery confirmation
Process Server	20 Days	after responding-party receives papers from a process server
Sheriff	20 Days	after responding-party receives papers from Sheriff
Service of Incarcerated Party*	20 Days	after jail/prison/correctional facility official signs delivery confirmation
Publication	50 Days	after 1 st publication

<u>SERVICE MADE OUT OF STATE</u>	<u>COUNT</u>	<u>EFFECTIVE DATE OF SERVICE</u>
Acceptance	30 Days	after the “Acceptance of Service” is filed with the Clerk
Certified Mail*	30 Days	after responding-party signs a delivery confirmation
Process Server	30 Days	after responding-party receives papers from a process server
Sheriff	30 Days	after responding-party receives papers from Sheriff
Service of Incarcerated Party*	30 Days	after jail/prison/correctional facility official signs delivery confirmation
Publication	60 Days	after 1 st publication

** available for Family matters only*

- If the responding-party has not responded within the default timeframe, go to the section below called **Default**. If both parties agree with the Petition, you can save the filing fee cost of filing a **“Response”** by proceeding with the **Default** process.
- If the responding-party files a **“Response,”** go to the section below called **Response**. The responding-party must pay a filing fee when filing a **“Response.”**
- If both parties wish to sign an agreement, go to the section below called **Agreement**. If the responding-party did not file a **“Response,”** the responding-party must pay a filing (or appearance) fee.

Default:

(These forms are on the website (Step/Packet 3 and 4) and at the Law Library Resource Center).

Complete the **“Application and Affidavit for Default”** and the **“Default Information for Spousal Maintenance”** form, if applicable (Step/Packet 3). Go to a Clerk or a Notary Public to sign. Bring a picture ID with you. Make sure you date the **“Application and Affidavit for Default”** with the date you are signing it. **Do not go** to the Notary Public or Clerk to sign the **“Application and Affidavit for Default”** before the amount of time shown in the Default Timetable has passed.

You will file the original and two copies of the **“Application and Affidavit for Default”** and the **“Default Information for Spousal Maintenance”** form, if applicable. The Clerk will give you back the two copies. One is for you to keep for your records. Mail the other copy to the responding-party on the same day you file the papers with the Clerk.

HOW TO GET A DEFAULT HEARING

Begin counting the day after the **“Application and Affidavit for Default”** was filed. Count 10 working days (not weekends and court holidays) before proceeding to the next step. Once 10 working days (not weekends and court holidays) have passed, you can schedule a hearing.

If your Petition includes a request to establish legal decision making (custody) and/or parenting time (visitation), you must attend the PARENT INFORMATION PROGRAM before you can get a default hearing. If you have questions concerning the Parent Information Program, call 602-506-1561.

Schedule your default hearing by calling 602-372-3332. The default hearing will be set at least 60 days from the date the responding-party was served the divorce or legal separation papers. (A.R.S. § 25-329)

Under most situations, you may request to proceed without a hearing. You must have a hearing if:

1. The responding-party was served by publication; or
2. The responding-party is a minor or is incompetent; or
3. You are requesting a decree that is different from your petition or for amounts greater than you requested in your petition, unless you have a written separation agreement.

To proceed without a hearing, you must complete and file a **“Motion and Affidavit for Default Decree without Hearing”** form. First, you need to complete and file with the Clerk one original and two copies of the **“Motion and Affidavit for Default Decree without Hearing.”** One copy is for you. The other copy is for the Judge/Commissioner. After filing the **“Motion,”** hand-deliver or mail the following to the Judge/Commissioner for review: 1) one file-stamped copy of the filed **“Motion,”** 2) the original and two copies of the completed default **“Decree”** for the Judge/Commissioner’s signature; and 3) two 9”x12” envelopes, with sufficient stamps and one preaddressed to you and one preaddressed to the responding-party. The Court cannot sign your default **“Decree”** until at least 60 days has passed since the date the responding-party was served the divorce or legal separation papers. (A.R.S. § 25-329)

DEFAULT DECREE

Fill out the default **“Decree”** (Step/Packet 4) before you go to your hearing and before you give it to the Judge/Commissioner to sign. If you have minor children with the responding-party, fill out the **“Parenting Plan.”** If you have requested a child support order, you must also complete the **“Parent’s Worksheet for Child Support”** (**“Child Support Worksheet”**). Use the free worksheet in the ezCourtForms program at: <http://www.superiorcourt.maricopa.gov/ezcourtforms2/>. It will complete all the calculations for you. If you are asking that child support be paid with an **“Income Withholding Order,”** you also need to complete a **“Current Employer Information”** sheet.

You must repeat as closely as possible what you requested in your petition. If you mark something different in the default **“Decree”** from what you asked for in your petition, you must have a written consent from the responding-party. If you don’t have this, the Judge/Commissioner will not sign the default **“Decree.”** If you don’t have a written consent and want to change your requests to the Court, you must file an **“Amended Petition.”** It is a good idea to have your petition handy when you follow the instructions to fill out your **“Decree.”** Do not fill in the Judge/Commissioner signature and date. If the Judge/Commissioner disagrees with anything you have written, he or she will change it before signing the **“Decree.”**

PREPARE FOR THE COURT HEARING

Prepare the following in advance of the hearing:

- One original and two copies of the completed **“Decree of Dissolution”** or **“Decree of Legal Separation;”**
- One original and two copies of the completed **“Exhibit A,”** if applicable (this is an attachment to the Decree and is the terms for division of property);
NOTE: If the Decree includes division of retirement funds, pensions, annuities, etc., you may also need a document called a **“Qualified Domestic Relation’s Order”** (QDRO). You may wish to speak to an attorney to prepare this document. The Law Library may have a sample you can review.
- One 9”x12” envelope with sufficient stamps and preaddressed to the responding-party.

If the parties have minor child together, you must also prepare the following:

- Be sure your certification of attendance at a Parent Information Program class has been filed;
- One original and two copies of the completed and signed **“Parenting Plan;”**
 - One original and two copies of the completed and signed **“Joint Legal Decision Making Agreement,”** i.e. Part 4 of **“Parenting Plan,”** if applicable;
- One original and two copies of the completed **“Parent’s Worksheet for Child Support”** (**“Child Support Worksheet”**).
 - One original and two copies of the completed **“Current Employer Information”** sheet (of party to pay child support), if you are asking child support be paid with an **“Income Withholding Order;”**
- If your Petition included a request to establish child support and/or spousal maintenance, and you do not already have a temporary order for child support and/or spousal maintenance, you must bring the following:
 - Income information or wage paystubs for both parties.
 - Information about costs for children’s day care, medical insurance, special needs, etc.

Your paperwork will be checked and if applicable, Child Support calculated before you enter the courtroom.

Do not bring children. Expect to be in the courthouse up to 4 hours or more.

Do not be late. If you are late or if you bring your children, your hearing will be rescheduled to a different day.

Bring all your papers. If you do not bring all required documents, your hearing will be rescheduled.

Response:

(These forms are on the website (Step/Packet 3) and at the Law Library Resource Center).

If the responding-party files a Response, you will receive notice from the Court to attend either a hearing or a conference. The notice from the Court will likely include additional instructions. These may include information on required disclosures, resolution statements, pre-trial statements, or other documents or processes. This can be a long process. You may need to get additional information on the trial process. You can get more information about the trial process from the Law Library Resource Center, Law Library or an attorney.

Agreement:

(These forms are on the website (Step/Packet 4) and at the Law Library Resource Center).

If both parties agree on all terms of the divorce or legal separation, you can submit a **“Consent Decree.”**

Do not sign the **“Consent Decree”** until you are in the presence of the Clerk or a Notary Public. Be prepared to show photo identification. Signing this form tells the Court that you have read, understand, and agree with the contents. Signing this form is a request to the Court to make it the Court order for your divorce or legal separation. Read carefully before you sign. Do not sign if you do not understand or do not agree to all terms of the **“Consent Decree”** and **“Parenting Plan”** (if applicable).

ATTORNEY SIGNATURES: If either party is represented by an attorney, the attorney(s) must also sign.

TIME FRAME: Do not submit the **“Consent Decree”** to the Court until at least 60 days have passed since the date the responding-party was served the divorce or legal separation papers. The Judge/Commissioner cannot sign your Consent Decree until 60 days after service. (A.R.S. § 25-329)

SUBMIT YOUR DECREE TO THE COURT: You can mail or deliver your paperwork to Court or schedule a time to have your **“Consent Decree”** signed. If you want your **“Consent Decree”** signed at a hearing, you can call 602-372-3332 to schedule a hearing.

Prepare the following in advance:

- One original and two copies of the completed **“Consent Decree,”** signed by both parties (and attorneys if either party has one); and
- One original and two copies of the completed and signed **“Exhibit A”** (this is an attachment to the Consent Decree and is the terms for division of property) or other property settlement agreement, if applicable; and

NOTE: If the Decree includes division of retirement funds, pensions, annuities, etc., you may also need a document called a **“Qualified Domestic Relation’s Order”** (QDRO). You may wish to speak to an attorney to prepare this document. The Law Library may have a sample you can review.

- Two copies of the receipts to prove payment of the filing fee by you and the responding-party, or two copies of the **“Order Regarding Deferral or Waiver;”** and
- Two 9”x12” envelopes with sufficient stamps and preaddressed; one to you and one to the responding-party.

If the parties have minor child together, you must also prepare the following:

- Be sure the certification of attendance at a Parent Information Program class has been filed for both parties; and
- One original and two copies of the completed and signed **“Parenting Plan;”** and
 - One original and two copies of the completed and signed **“Joint Legal Decision Making Agreement,”** i.e. Part 4 of Parenting Plan, if applicable; and
- One original and two copies of the completed **“Parent’s Worksheet for Child Support” (“Child Support Worksheet”)**; and
 - One original and two copies of the completed **“Current Employer Information”** sheet (of party to pay child support), if you are asking for child support to be paid with an **“Income Withholding Order.”**

Mail or deliver the papers to the Family Department or bring the papers to your scheduled hearing.

WHAT HAPPENS NEXT? It is within the Judge’s/Commissioner’s discretion whether to accept or reject the **“Decree.”** The Judge/Commissioner can also schedule a Court hearing.

IF YOUR CONSENT DECREE IS ACCEPTED: The Judge/Commissioner will sign the original Decree and have it filed with the Clerk. The Court will send a copy of the signed Decree to each party using the envelopes you provided. This is your notification that your divorce or legal separation is now final. You are not divorced or legally separated until the Judge/Commissioner signs the Decree.

IF YOUR CONSENT DECREE IS REJECTED: The Court will send you a **“Correction Notice”** informing you of the mistakes with the documents. Follow the instructions on the **“Correction Notice.”** If the mistakes cannot be corrected, see an attorney for help.

IF THE JUDGE/COMMISSIONER SCHEDULES A HEARING: The Court will send notice of a scheduled date, time, and location for a hearing. Both parties must attend to answer any questions the Judge/Commissioner may have.

DIVORCE OR LEGAL SEPARATION

Petition
Petition for Divorce (Dissolution) or
Legal Separation

Service
Serve Responding-Party

Default
No Response filed

Apply for Default

Set Default
Hearing

**Submit
Default papers

Default Decree signed

Response*
Response is filed

Notice of Hearing/Conference

Reach full
agreement

Trial held

Decree signed

Agreement*
Parties agree

Consent Decree
by mail

Consent Decree
by hearing

Consent Decree signed

*A response/appearance fee must be paid by the responding party

**Not available in every situation