

Instructions and Procedures for a Default Decree  
by Motion, without a Hearing

REQUIREMENTS

Sometimes a court hearing is not required to get a default decree. If you meet the following requirements, you may use this “no hearing” process to request a default decree:

- ✓ All parties must be legally competent and sane.
- ✓ The “*Summons*” and “*Petition*” were served to the other party, other than by publication
- ✓ The “*Petition*” requests to the Court are the same as the requests proposed in the default order.

*This means, you cannot use this process if . . .*

- the responding party was served by publication,
- if the other party is insane or incompetent, or
- if the other party has filed a response, or made an appearance in the cases, or
- the requests to the Court in the proposed default order are not the same as those requested in the “*Petition*.”

You must have already filed and mailed to the other party an “*Application and Affidavit for Default*.” Also, it must be at least ten (10) court (business) days since you filed and mailed the “*Application*.”

If you filed for divorce, legal separation or annulment, it must also have been at least 60 calendar days since service of the “*Summons*” and “*Petition*” was completed.

INSTRUCTIONS

Complete the “*Motion and Affidavit for Default Decree without a Hearing*”

1. Complete the top part of the page with your personal information, name of parties, and case number.
2. On the upper page right, mark the box that describes the kind of court order you are requesting (i.e. divorce, annulment, etc.)
3. SECTION A:
  - Read the information carefully.
  - Mark the boxes in front of the statements that are true.
4. SECTION B: (To be completed only by parties seeking a decree of dissolution, legal separation, or annulment)
  - Mark the boxes that best apply to your situation.
  - NOTE: ATTACHMENTS. If you marked a box next to a statement that requires an “attachment”, be sure to attach the required document at the end of the original “*Motion and Affidavit for Default Decree without a Hearing*.” If you are missing an attachment or any required document, your case could be rescheduled for a hearing, which extends the process and delays your decree or court order.
5. SECTION C: (To be completed only by parties seeking a judgment of paternity/maternity, and/or legal decision-making, parenting time or child support.)
  - Mark the boxes that best apply to your situation.
  - If the statement next to the box asks for an explanation, write it clearly in black ink.
  - NOTE: ATTACHMENTS. If you marked a box next to a statement that requires an “attachment”, be sure to attach the required document at the end of the original “*Motion and Affidavit for Default Decree without a Hearing*.” If you are missing an attachment or any required document, your case could be rescheduled for a hearing, which extends the process and delays your decree or court order.

6. SECTION D: To be completed if it applies to you.  
NOTE: ATTACHMENTS. If you marked a box next to a statement that requires an “attachment”, be sure to attach the required document at the end of the original “*Motion and Affidavit for Default Decree without a Hearing.*” If you are missing an attachment or any required document, your case could be rescheduled for a hearing, which extends the process and delays your decree or court order.
7. OATH or Affirmation: Sign and date this in front of the Clerk of Superior Court or Notary, with a picture identification.
8. COPY: Make two copies of the original “*Motion and Affidavit for Default Decree **without** a Hearing,*” with ALL the REQUIRED ATTACHMENTS.

Complete the Default Decree / Judge / Order

1. See the instructions in this packet to complete the Default Decree / Judgment / Order.
2. If children are involved, there will be additional forms to complete, such as a Parenting Plan, Child Support Worksheet, and Child Support Order. See additional instructions in this packet.
3. COPY:
  - Make two (2) copies of the original “*Decree / Judge / Order*”, plus attachments and any addition required forms.
  - Note: If you are missing an attachment or any required form, your case could be rescheduled for a hearing, which extends the process and delays your decree or court order.

After completing instructions above, you are ready to complete the Decree/Order, also in this packet. However, BEFORE YOU REQUEST Default Decree by Motion Without A Hearing, CHECK TO BE SURE THAT YOU:

- Properly served the “*Petition*”, Summons and other papers to other party and filed the proof of service. (Service cannot be done by publication if you are using this method (without a hearing)), AND
- Completed and filed the “*Application and Affidavit for Default,*” with ALL the REQUIRED ATTACHMENTS and mailed a copy to the other party; AND
- IF the other party is on active duty in the United State Military, you completed and notarized “*Service Member Civil Relief Act Waiver*”, AND
- Waited at least 61 days after the completion of service, if you filed for divorce, legal separation or annulment.

PROCEDURES

1. FILE the original “*Motion and Affidavit for Default Decree without a Hearing,*” with ALL the REQUIRED ATTACHMENTS, and two copies with all the attachments at one of the following Clerk of Superior Court locations.
  - The Clerk of Superior Court will keep the original “*Motion*” and all the attachments, as well as date-stamp the copy, and return both copies to you.

<u>Central Court Building</u> 201 West Jefferson, 1 <sup>st</sup> floor Phoenix, Arizona 85003	<u>Southeast Court Complex</u> 222 East Javelina Avenue, 1st floor Mesa, Arizona 85210
<u>Northwest Court Complex</u> 14264 West Tierra Buena Lane Surprise, Arizona 85374	<u>Northeast Court Complex</u> 18380 North 40 <sup>th</sup> Street Phoenix, Arizona 85032

2. HAND-DELIVER OR MAIL the following documents as indicated below to the Family Department:
- One (1) file-stamped copy of the *“Motion and Affidavit for Default Decree without a Hearing”* with all attachments.
  - The original and two (2) copies of the *“Decree / Judge / Order”* and related forms and attachments for signature by the Judge.
  - Two (2) 9" x 12" envelopes with sufficient postage, one addressed to you, and one addressed to the other party.

<u>Central Court Building</u> 201 West Jefferson, 3 <sup>rd</sup> floor Phoenix, Arizona 85003 (To <i>Family</i> Department)	<u>Southeast Court Complex</u> 222 East Javelina Avenue, 1st floor Mesa, Arizona 85210 (To <i>Family</i> Department)
<u>Northwest Court Complex</u> 14264 West Tierra Buena Lane Surprise, Arizona 85374 (To Family Department)	<u>Northeast Court Complex</u> 18380 North 40 <sup>th</sup> Street Phoenix, Arizona 85032 (To Family Department)

3. WAIT. There is a review process upon receipt of your paperwork. This process can take as long as 4-6 weeks. You can call Family Department: (602) 372-3332 between the hours of 8:00 a.m. and 5:00 p.m. to check on the status of your case. Please wait at least four (4) weeks before checking the status.

The Judge will review your file and the documents you have submitted.

- If the Judge determines that everything is in order they will sign the final decree. The Clerk will file-stamp your copies and they will be mailed to you and the other party in the envelopes you have provided.
- If the Judge finds anything wrong with your court file or paperwork, your documents will be returned to you in the envelope you have provided along with a coversheet describing the deficiency and in most cases how it can be corrected.

Common reasons why your paperwork may be rejected:

- Incomplete: The *“Decree”* was not fully completed.
  - Not all applicable boxes were marked.
  - An explanation(s) was missing
  - An attachment(s) was missing
- Different Requests: Items asked for in the *“Decree”* were not the same as the items asked for in the *“Petition.”*
- Missing Documents: The original *“Decree”* and copies were not submitted with the *“Motion and Affidavit for Default Decree without Hearing”*.
- Overlooked *“True”* Statements: You did not mark all boxes on the *“Motion and Affidavit for Default Decree without Hearing”* as true statements.
- No notarized Waiver: Did not provide a notarized *“Service Members Civil Relief Act Waiver.”*

Arizona Rules of Family Law Procedure (ARFLP), Rule 44.1, allows for application for a default decree *without hearing* in Family cases for divorce, legal separation, annulment, maternity or paternity, money judgments, attorney fees, and spousal maintenance, but be WARNED:

- There are special legal requirements involved in qualifying for an annulment, and a default decree with no hearing.
- If your court papers do not fully explain how you meet those requirements, it could result in your case being delayed or dismissed.
- Consulting an experienced attorney about whether your situation *and your papers* indicate you qualify for an annulment or a default decree, may help you to avoid unnecessary expense, delay, and disappointment.