

# **SELF- SERVICE GUIDE FOR DIVORCE CASES**



## **SUPERIOR COURT OF ARIZONA**

This booklet is designed to give you in depth information about getting a divorce in Arizona and to let you know the usual steps which are involved in obtaining a divorce.

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# **SELF-SERVICE GUIDE FOR DIVORCE CASES SUPERIOR COURT OF ARIZONA**

## **INTRODUCTION**

This guide has been prepared as a resource for use in the self-service centers of the Superior Court to provide general information, not advice, about obtaining a divorce in Arizona. It is intended to assist people not represented by attorneys in understanding the *basic* laws and procedures which must be followed in court. It is not a complete nor authoritative review of all issues that may arise in a divorce case and reflects the laws of the state of Arizona only as of the date of its publication. Divorce is governed by state laws and rules and local rules and procedures may also apply. Because this guide is intended for statewide use, its contents may not reflect particular rules or procedures used in some counties. If you have any questions or concerns about the divorce process or about your legal rights, you should consult an attorney. Court personnel cannot answer legal questions for you.

The first section of this guide applies generally to all cases for dissolution of marriage. The second section includes additional information for cases where the spouses have minor children in common.

## **REPRESENTING YOURSELF IN COURT**

People who represent themselves in court are often referred to as “pro se” or “pro pers” (shortened terms for the Latin phrase “in propria persona” translated to mean “in one’s own proper person.”)

A “do it yourself” divorce in Arizona is called a “pro se” or “pro per” divorce. Although it is possible for people to represent themselves in court, they must follow the same rules and procedures as attorneys. Any papers required to be filed with the Clerk of the Superior Court must be in the proper form and filed on time. The judges, clerks and staff of the court are not permitted to give legal advice. Divorce cases often involve important issues about child custody and parenting time (formerly called “visitation” in Arizona), property and debt division, or child and spousal support. If you have legal questions about your specific situation, please see an attorney.

## **ABOUT THE COURT PROCESS**

A court case to end a marriage is in some ways treated by the court like other kinds of lawsuits (for example, a lawsuit between drivers after an automobile accident). Many of the same rules and procedures apply to both kinds of court cases. Once the court case is started, it is important to be aware of deadlines and other requirements of applicable laws, rules and procedures to be sure your case is processed correctly and efficiently. There are many stages to a divorce and the number of stages is determined by whether you and your spouse are able to reach agreement on issues. Although the court on its own may set hearings or require other actions, the spouse that starts the case is primarily responsible to be sure the case moves through the process to conclusion. Failure to act within certain time limits could result in the removal of your case from the court system.

## **COURT FEES**

To provide adequate services to the public, certain fees are charged to the people using the court system. These fees are set by state law

and apply in every county. To ensure that everyone has access to the court, persons unable to pay the fees may ask the court to postpone (defer) payment or to excuse (waive) payment altogether. If you have limited financial means, ask the Clerk of the Superior Court for an application for deferral or waiver of court fees and costs form.

## **COURT FORMS**

Court forms you and your spouse need to start a divorce or respond to divorce papers are provided on our website at <http://www.supreme.state.az.us/selfserv/forms.htm>. The Superior Court in most Arizona counties also provides comprehensive form packets and instructions for your use, both in printed and website form. Check with the Self-Service Center in your county.

## **COMMON WORDS USED IN DIVORCE - DEFINITIONS**

**A.R.C.P.** - Arizona Rules of Civil Procedure. Family law cases are generally governed by these Rules, the Arizona Revised Statutes and the local rules of practice for Superior Court in your county. These rules may be found in the courthouse library or your local public library.

**A.R.S.** - Arizona Revised Statutes; most family statutes are found in Title 25. These laws may be found in the courthouse library or your local public library.

**Acceptance of Service** - A form signed by a non-filing spouse (Respondent) indicating that the Respondent agrees to receive the initial papers in the case without the papers being formally delivered by a sheriff or private process server.

**Affidavit** - A written statement made under oath to show that certain facts are true or that certain events have happened.

**Affidavit of Service** - A paper filed with the Clerk of the Superior Court to show that legal papers in a court case have been delivered to one of the persons involved in the case.

**Alimony** - A term no longer used in Arizona; see “Spousal Maintenance;” also called “spousal support.

**Application for Default** - A form filed with the Clerk of the Superior Court indicating that the spouse not seeking the divorce (Respondent) has been served with the initial court papers and has not replied in the time allowed by law.

**CPTC** - In Maricopa County, a term for the Comprehensive Pretrial Conference. All contested cases are assigned to a judge of the Superior Court. If the case does not settle, a pretrial conference is usually set. The purpose of the pretrial conference is to further narrow the issues, encourage preparation and set the case for trial.

**Child Support** - Money paid by a parent to meet the financial needs of a child.

**Child Support Order** - A written order from the court which states which parent must pay child support, the amount of the child support payment, how often the child support payment is made and who receives the child support payment.

**Community Property** - A term generally meaning that a wife and husband share equally anything acquired, purchased or paid for during the marriage as a result of the efforts of either or both spouses, no matter who uses the property, who paid the money or in whose name title is taken.

**Commissioner or Hearing Officer** - A person appointed to perform the duties of a judge but with limited authority. A judge is elected or appointed by the Governor. A Commissioner or hearing officer is appointed by the Presiding Superior Court Judge in a particular county to perform some of the tasks that a judge otherwise would do.

**Consent Decree** - An order of the court legally ending a marriage that is based on an agreement of the spouses regarding any issues that originally were disputed.



**Consent Divorce Process** - The process of divorce where both spouses agree to all of the terms of the divorce or legal separation (including, but not limited to division of property and debt, spousal maintenance, child custody, parenting time, and child support of children), both spouses sign all necessary documents for a consent Decree and the parents have attended the Parent Education Class if children are involved.

**Conciliation Court** - A branch of the Superior Court to which a spouse may apply in an effort to preserve a marriage or receive counseling services for marital matters. Conciliation Court may not be available in all Arizona counties.

**Conciliation Services** - A term for the branch of the Superior Court which provides mediation and counseling services to assist couples in dealing with marital disputes. Conciliation Court and Conciliation Services are usually part of the same branch of Superior Court.

**Covenant Marriage** - An optional type of marriage created by the state legislature that requires partners to complete marital counseling prior to marrying and to sign a special declaration to obtain a marriage license. A legal separation or divorce in a covenant marriage may be granted only for certain reasons listed in state law.

**Custodial Parent** - The parent who has been awarded the authority from the court to make major parental decisions regarding a child's welfare and care. This includes disciplinary, educational, medical, dental and other decisions and may include the authority to determine the child's primary residence.

**Custody** - The right of a person to make parental decisions about the care and welfare of a child.

**DCM** - In Maricopa County, a required conference with the case manager in cases where attorneys are not representing the parties. This conference is held after the Respondent files his or her Response with the Clerk of the Superior Court. It is also referred to as the Differentiated Case Management Conference; it is designed for early court involvement and case screening. The case manager helps the parties narrow the issues in the case and facilitates agreements by the parties. The parties are required to prepare a statement of their agreements and disagreements during this process.

**Decree** - The final order of the court that legally ends the marriage, often containing other orders regarding division of property and debt, spousal support and, when children are involved, custody, parenting time and child support orders.

**Default** - When a non-filing spouse (Respondent) in a divorce lawsuit declines or neglects to participate in the divorce process. If the Respondent fails to file necessary court papers or make an appearance in court (respond), the court may take action and enter orders against that person without the person being involved.

**Deferral** - When speaking of court fees, a term meaning that payment of fees may be postponed.

**Dismissal** - An action taken by the court that has the effect of ending a case or a request in a case.

**Dissolution of Marriage** - The term used in Arizona law for “divorce,” the legal end of a marriage.

**Enter (or Entry)** - A term used to indicate that a document is accepted by the Clerk of the Superior Court and made a part of the official court record in a case.

**Filing (or File)** -The act of giving the Clerk of the Superior Court your legal papers.

**Guardian Ad Litem** - A person appointed by the court to protect the interest of a minor or an incompetent in a particular case before the court.

**Hearing** - A court proceeding which provides the opportunity for persons involved in a legal case to tell the court their side of the dispute. Hearings are scheduled by the court for a particular date and time.

**Injunction** - An order of the court directing the spouses not to do certain things while the divorce case is pending, like selling property, transferring property, removing the children from the state or harming or annoying the other party.

**Inventory** - A sworn statement of assets and liabilities, including values; sometimes includes income information.

**Irretrievably Broken** - The standard used by the court to decide if a dissolution of marriage should be granted. It means that there is no reasonable chance that the spouses will agree to stay married and is the most common reason for granting a divorce in Arizona. (Does not apply to covenant marriage)

**Joint Custody** - Means joint legal custody or joint physical custody, or both.

**Joint Legal Custody** - Means generally that each of the parents has the same right to make decisions about the child's care and welfare; also refers to the conditions under which both parents share legal custody and neither parent's rights are superior, except with respect to specified decisions set forth by the court or the parents in the final judgment or order. Joint legal custody is not the same as joint physical custody.

**Joint Physical Custody** - Means the condition under which the physical residence of the child is shared by the parents in a manner that assures that the child has substantially equal time and contact with both parents.

**Judicial Officer** - A term referring to either a judge, commissioner or hearing officer of the court who has the authority to decide legal issues and issue court orders.

**Legal Separation** - A court order (which can be an agreed order) describing the conditions under which two married people will live separately.

**Mediation** - A process by which persons attempt to reach mutually acceptable agreements regarding the issues in divorce, usually with the assistance of a trained professional (mediator) who guides the discussion process.

**Motion** - A written request filed with the Clerk of the Superior Court asking a judge to issue an order or rule on a particular matter.

**Noncustodial Parent** - The parent who does not have custody of a child. This parent often has rights to spend time with the child on a regular schedule.

**Parent Education Class** - Every parent of a natural or adopted minor dependant child involved in a divorce, legal separation, annulment or parenting time/custody proceeding is required to take this class. The class is designed to share information with parents about the impact that divorce, restructuring of families and the effects of the court's involvement have on a child. This class must be taken even in a default divorce case. In some counties, this class is referred to as the Parent Information Program, or PIP.

**Parenting Plan** - A written document containing an agreement between parents indicating how a child will be raised and cared for after the parents separate or divorce. A written parenting plan is required whenever parents ask the court to order joint custody.

**Parenting Time** - Means the condition under which a parent has the right to periodically have a child physically placed with the parent and the right and responsibility to make, during those placement periods, routine daily decisions regarding the child's care, consistent with the major decisions made by the person having legal custody; also called parent-child access. "Parenting time" replaces the term "visitation" in all Arizona family statutes except for grandparent visitation.

**Parenting Time Plan** - Means a written document containing an agreement between parents showing the schedule each parent will have for access and time with the children.

**Parties** - The people who are named the "Petitioner" and "Respondent" on divorce papers.

**Petition** - The paper filed with the Clerk of the Superior Court by the requesting party (Petitioner) to start a case for dissolution of marriage. It tells the court what you want.

**Petitioner** - The term used to refer to the spouse who files a request (Petition) with the court asking for a dissolution of marriage. This can be either the husband or wife.

**Preliminary Injunction** - A court order which takes effect when you start a divorce (Petitioner) or when you are served with the initial divorce papers (Respondent). It says what you CAN and CANNOT do with property and other issues while the divorce is pending.

**Pro Se or Pro Per Divorce** - A term for a “do it yourself” divorce in Arizona.

**Process Server** - A person who is authorized to deliver to or serve court papers on one of the parties to the court case.

**Proof of Service** - A paper filed with the Clerk of the Superior Court and signed by the process server or law enforcement officer to show that legal papers in a court case have been delivered to one of the persons involved in the case.

**Respondent** - The term used to refer to the spouse who did not file the petition for a dissolution of marriage (the party who receives the initial papers).

**Response** - The written legal paper filed in court by the person from whom a case to dissolve a marriage has been sought (Respondent) and by which the Respondent tells the court whether he or she agrees or disagrees with the claims made by the person who started the case (Petitioner).

**Response Date** - The initial papers the sheriff or private process server serves on the other party explains that the other party (Respondent) has 20 days in which to file a written Response to the court if the papers were served in Arizona. If the papers were served out of state, the other party has 30 days in which to file a written Response. If the Respondent signed an acceptance of service, Respondent has 20 days in which to file a Response if Respondent lives in Arizona; he or she has 30 days if Respondent lives out of Arizona and signs an acceptance of service form.

**Separate Property** - A term referring to any property owned by a married person before the marriage date (plus gains and increases) that remains the property of that spouse during the marriage and does not become community property. In addition, gifts and inheritance received during the marriage are the receiving spouse's separate property, as are any increases in those items received such as interest, profits of sale or capital gain. However, if the increase in value of separate property is the result of the efforts of either spouse, the increase in value could be deemed community property (and, as a result, divisible by the court).

**Separation Agreement** - A written contract between spouses who have separated and are considering divorce. The document should reflect the parties' agreements on how property, debt, financial support, child custody and parenting time issues are to be handled.

**Service of Process** - A phrase referring to the procedure by which a Summons and the Petition and other papers originally filed with the Clerk of the Superior Court are delivered to the non-filing party (Respondent) to advise that person that a case has been filed and a response must be made within a given period of time to avoid a default. This term is sometimes just called “service.”

**Sole Custody** - Means the condition under which one person has legal custody of a child or children.

**Spousal Maintenance** - Also called spousal support (formerly known as “alimony”). The court may order either a husband or wife to pay money for support to the other spouse during and/or after a divorce case. The court decides whether financial support is necessary, in what amount and for how long the support should be paid. The party needing support must ask for it in the Petition or a subsequent motion. Spousal maintenance usually ends at the remarriage of the receiving spouse or the death of the paying spouse.

**Summons** - A legal paper that is stamped by the Clerk of the Superior Court which must be delivered in the manner required by court rules on the party that did not file the request for a dissolution of marriage (Respondent). The Summons notifies the non-filing spouse (Respondent) that a request for a dissolution of marriage has been filed; advises that spouse what action must be taken and sets certain deadlines for responding.

**Visitation** - A term no longer used in Arizona; see “parenting time.”

**Waiver** - A term meaning that payment of court fees is excused.



**Waiver of Service** - A form signed by a non-filing spouse indicating that the spouse does not wish to formally receive the initial papers in the case by delivery from a sheriff or process server.

# **GENERAL PROCEDURES FOR DIVORCE CASES WITHOUT CHILDREN**

## **DIVORCE AND THE COURT**

Divorce is a court procedure to legally end a marriage. In Arizona, divorce is called “dissolution of marriage” and court papers use the term “dissolution of marriage” instead of divorce. In this manual, however, both terms are used interchangeably. In addition to ending the marriage, the court also has the authority to divide certain property and debts of the spouses and in some cases to order one spouse to pay spousal support (formerly called alimony) to the other. If children are involved, the court can decide most custody, parenting time and child support issues.

Arizona is known as a “no-fault divorce” state. That means that the spouses do not have to prove blame or responsibility to end the marriage. Under Arizona law, the only question for the court is whether the marriage is “irretrievably broken,” meaning that there is no reasonable chance that the spouses want to keep the marriage together. (Arizona also has a type of marriage known as “covenant marriage” that has different, particular requirements for getting a divorce. Covenant divorce is explained later in this guide.) The court does not grant a divorce to one spouse or the other. Instead, the court’s order (called a decree) changes the status of the marital relationship. Divorce in Arizona is governed by Arizona Revised Statutes Sections 25-301-381.24. The statutes are available in the Superior Court law libraries and self-service centers located throughout the state.

In Arizona, only the Superior Court can grant a dissolution of marriage. To obtain a dissolution of marriage, one spouse must start a court case in the Superior Court. Although the Superior Court has a facility in each Arizona county, a court case to end a marriage must be started in the county where the person requesting the dissolution lives. At the time the court case is started, either the husband or wife must either have lived in Arizona for 90 days or have been a member of the armed forces stationed in Arizona for 90 days.

Although only the court can legally end a marriage, spouses are free to agree to as many terms of the divorce as possible. Court services are available to assist in reaching agreements about such matters as parenting time and custody of children. Because agreements between spouses leave fewer issues for the court to decide, the result is often more satisfying to the people involved, with less bad feeling after divorce and may speed the process of concluding the court case.

## **CONCILIATION COURT**

Sometimes a troubled marriage can be saved before a dissolution becomes necessary. Often couples can learn methods which assist in lessening the trauma of divorce. In some counties, the Superior Court has a separate “conciliation court” that offers various counseling services to the spouses. Either before or within 60 days after a court case for dissolution of marriage is started, one of the spouses may ask that the conciliation court become involved.

To involve the conciliation court, one of the spouses must file with the Clerk of the Superior Court a paper called a “Petition.” No filing fee is charged. The Clerk of the Superior Court can provide blank

Petition forms at no cost and staff is available on request to help prepare the form. If a court case for dissolution of the marriage already had been started, the dissolution case will be delayed for 60 days until the conciliation court process is concluded. The court will notify the other spouse and arrange for an informal hearing, usually held within 30 (but no later than 45) days after the Petition is filed. The hearing usually is with a trained professional counselor and all matters discussed are confidential. If the spouses cannot agree to keep the marriage together, either party may then file papers for dissolution of the marriage. If a case for dissolution of the marriage was already started prior to the conciliation process, the dissolution case may then go on.

## **CONCILIATION SERVICES**

Some counties also offer the services of trained professionals to help spouses resolve marriage problems and disputes involving children, like custody and parenting time. Whether or not a married couple has separated, these conciliation services are available on request and at no charge. Contact the conciliation services center (sometimes a branch of conciliation court) in your county to find out more and to set up an appointment. (Conciliation services are also used in other ways in a court case for dissolution of marriage if minor children are involved. This is discussed in a later section.)

## **COMMUNITY PROPERTY**

Arizona is referred to as a community property state because of the way our state laws treat the property and debts of a married couple. Community property means generally that a wife and husband equally share ownership of anything purchased, acquired or paid for

during the marriage no matter who uses the property, who paid the money or in whose name title is taken. Neither spouse has a greater claim to community property than the other. Community property is not just land or buildings. It includes all kinds of things like money (all forms—cash, bank accounts, investment accounts and certificates of deposit), jewelry, home furnishings, automobiles, boats, stock options and the wages or earnings of either spouse during the marriage. Even retirement plans can be part of the community estate. Except for things that one spouse or the other receives by gift or inheritance, all property that either spouse receives during the marriage generally is considered to be community property unless proven otherwise.

It is important to determine and value what community property, including debts, the spouses have acquired during the marriage because in a dissolution case the court is required by law to divide community property in a fair (not necessarily equal) way. If the spouses do not make each other and the court aware of what community property exists, the final court order may not include necessary terms that show exactly what property each spouse should receive when the marriage ends. If a retirement plan or pension is involved, the court may have to sign a special order (a “Qualified Domestic Relations Order”) so the company that keeps the retirement monies or handles the pension knows when and how to divide the account or plan payments.

## **SEPARATE PROPERTY**

Some property of the spouses may not be community property. State law provides that property (of all types) owned by a person before marriage can remain the “separate property” of that spouse. Also

items that a spouse receives by gift or inheritance during the marriage (and any increase in those items, such as through interest, gain or profits) are considered the separate property of that spouse. Separate property stays with the spouse who owns it and is not divided by the court in the dissolution case (although the court order may confirm what property remains the separate property of each spouse). If your separate property becomes co-mingled with community property, you may be required to prove, or “trace” what portion is your separate property.

The court also has authority to divide the community debts of the spouses. Community debts are generally any bills or other financial obligations either spouse has incurred during the marriage, no matter who earned or spent the money.

If you have questions, are unable to support yourself, have considerable community property or debt or have unresolved federal or state income tax issues, you should speak with an attorney before you start your court case. This is particularly important if you do not know the details of your estate or what retirement or pension plan either spouse may have.

## **SEPARATION AGREEMENTS**

Spouses are free to resolve issues of property division and other matters rather than having the court decide them. One way of doing this is to create a “separation agreement.” A separation agreement is a written contract between spouses anticipating separation or dissolution which indicates how matters should be handled if the marriage ends. The separation agreement can contain the terms of your resolution of issues about ownership of real estate, dividing

property and debt, financial support and, if children are involved, even issues of custody, child support and parenting time.

State law (section 25-317, Arizona Revised Statutes) provides that in a divorce case, the terms of a separation agreement, except those providing for the support, custody and parenting time of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence, that the separation agreement is unfair. If the court finds the separation agreement is unfair as to the division of property or spousal maintenance, the court may request the parties to submit a revised separation agreement or may make its own orders about property and financial support. If the court finds that the separation agreement is not unfair as to division of property or spousal maintenance, and that it is reasonable as to support, custody and parenting time of children, the separation agreement can be included or incorporated by reference in the final Decree and the spouses are then ordered to obey the terms of the agreement. (The separation agreement can specifically state that the terms are not to be included in the Decree, but are to be considered as a separate contract between the spouses.)

The terms of a separation agreement regarding the support, custody or parenting time of children can be changed (or “modified”) by the court at a later time. The terms of the separation agreement regarding spousal maintenance also can be modified by the court in the future, unless the agreed terms of the separation agreement are clear that spousal support cannot be changed after the document is executed.

## **SPOUSAL MAINTENANCE**

In a case for dissolution of marriage, the court may order either spouse to help financially support the other, both during the term of the case and after the divorce is granted. The money paid for support is called “spousal maintenance” or “spousal support.” The term “alimony” is no longer used.

Under state law (section 25-319, Arizona Revised Statutes), before ordering that spousal maintenance be paid, the court must decide whether under the circumstances one of the spouses should receive support; in what amount; for how long and a schedule upon which the support should be paid.

The legislature has set standards for deciding whether one of the spouses should receive support. The court may grant a maintenance order for any of the following reasons if the court finds from the facts presented that the spouse who asks for support:

1. Lacks sufficient property to provide for reasonable needs. When considering the property available, the court may consider any community property the spouse will receive when community property is divided by the court.
2. Is unable to get an appropriate job or cares for a child whose age or condition is such that the spouse should not be required to seek employment outside the home, or lacks the skills necessary to find employment in the labor market sufficient for self support.
3. Contributed to the educational opportunities of the other spouse.



4. Had a marriage of long duration and is of an age that may make it impossible to find work that pays enough for self support.

If the court finds that spousal maintenance should be paid, the court then decides how much should be paid and for how long a time. All factors (except claims of fault or misconduct during the marriage) must be considered, including the following eleven factors listed in state law:

1. The standard of living of the spouses during the marriage.
2. The length of the marriage.
3. The age, employment history, earning ability and physical and emotional condition of the spouse seeking maintenance.
4. The ability of the spouse being asked to pay maintenance to remain self sufficient while also paying maintenance to the other spouse.
5. The comparative financial resources of the spouses, including earning abilities in the labor market.
6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse.
7. The extent to which the spouse seeking maintenance has reduced his or her income or career opportunities for the benefit of the other spouse.

8. The ability of both spouses, after the dissolution, to contribute to the future educational costs of their children.
9. The financial resources of the spouse seeking maintenance to be self sufficient without financial help.
10. The time necessary for the spouse seeking maintenance to get enough education or training to find an appropriate job and whether such education or training is readily available.
11. Excessive or unusual expenditures, destruction, hiding or illegal sale of the property that the spouses own together.

A request for spousal maintenance should be included in the legal papers that the spouse requesting a dissolution first files with the Clerk of the Superior Court (the Petition if Petitioner is requesting maintenance; the Response if the Respondent is asking for maintenance). After the legal case is started, a spouse also may ask the court for a temporary order for spousal maintenance during the time the case is pending.

## **CASE TIME LIMIT**

It is important to know that a time limit applies to each dissolution case. Failure to act in the required time may result in the case being ended or “dismissed” before a Decree is granted by the court, even if the spouse(s) still want to end the marriage.

When the clerk receives the initial papers filed by the spouse seeking a dissolution, information about the case is put into a system

(sometimes called a “tracking system”) that keeps track of the progress of the case. As with other kinds of lawsuits, the court tracking system assumes that it may be necessary to have a trial, with evidence and witnesses (but not a jury), to resolve the case. To keep cases moving through the process, from the day that a case is started, the tracking system sets a “time clock” for a period of six months (nine months in some counties). According to court rules, unless the court extends the time period, the dissolution case (like other types of cases) could automatically be dismissed if it is not either finished or ready to go to trial within this time period. Although most dissolution cases do not require a trial, the spouse seeking the dissolution must act before the time limit runs out. Check with the Clerk of the Superior Court in your county to determine your county’s case time limit.

## **STARTING A COURT CASE FOR DISSOLUTION OF MARRIAGE**

To obtain a dissolution of marriage, one spouse must start a court case in the Superior Court. There are particular steps that must be followed. These steps are controlled both by state law and rules and local rules and procedures. Because the rules of local counties may differ, this guide outlines only the steps that generally apply statewide. Before starting the case, check the rules and procedures for your county.

To begin the court case, one of the spouses must file a written request called a “Petition” with the Clerk of the Superior Court in their county. Either spouse can file the Petition, because the court does not grant the dissolution to one spouse or the other. The person who files the Petition is referred to as the “Petitioner.” The other spouse is referred to as the “Respondent.” A filing fee must be paid to the

Clerk of the Superior Court at the time of filing. The filing fee varies from county to county because some counties charge additional fees over and above the statutorily authorized fee. You can learn your county's filing fee by calling the Clerk of the Superior Court in your county. As with other court fees, a person may apply for deferral or waiver of the fee by filing an application with the Clerk of the Superior Court. The court is open Monday through Friday from 8:00 a.m. to 5:00 p.m.

The Petition is an important legal document and should be carefully completed. The Petition asks the court to dissolve the marriage and to decide such things as how property and debts of the spouses should be divided between them, whether support should be paid to one spouse by the other and, if children are involved, what arrangements should be made for custody, parenting time and child support. The Petition should contain all the information about the Petitioner's desired results for all issues in the divorce because the court cannot award something that has not been requested properly.

Under state law (section 25-314, Arizona Revised Statutes), the Petition must be signed and sworn to under oath. The Petition must claim that the marriage is "irretrievably broken" (except if a covenant marriage is involved) and must include the following information:

1. The birth date, occupation and address of both spouses and the length of time each spouse lived in Arizona. The requirement to provide an address does not apply to a spouse who is a victim of domestic violence or is living in a domestic violence shelter. In this situation, the person must list only a place (like a post office box or the address of an attorney) where the person can be reached. If children are involved and one or both spouses may be

responsible to pay child support, the Petition also must include the spouses' social security numbers.

2. The date of the marriage and the place at which it was performed and whether the marriage is a covenant marriage.
3. The names, birth dates, social security numbers and addresses of all living children born to or adopted by the two spouses and whether the wife is pregnant.
4. The details of any agreements already reached between the parties as to support, custody and parenting time of the children and spousal maintenance.
5. A statement of all the things the Petitioner wants the court to decide and grant.

As with all papers filed in court, the form of the Petition must comply with court rules and state laws governing size, spacing and content. Forms available in Self-Service Centers have been developed to comply with these requirements and include the information outlined above.

With the Petition, the Petitioner also must fill out and have available at the time of filing certain additional documents:

1. **Summons.** The Summons is a legal paper that must be delivered in a way required by court rules on the other spouse (Respondent) to notify the other spouse that a request for a dissolution of marriage has been filed with the Clerk of the Superior Court. The Summons advises that action must be taken to respond.

2. **Notice of Right to Convert Health Insurance.** State law requires that the person who requests the dissolution advise the other spouse about rights and responsibilities which exist in an existing health care insurance policy.
3. **Preliminary Injunction.** This is a court order that automatically takes effect when the dissolution case is started and directs the spouses not to do certain things like selling or wasting property that is owned by both spouses, harming one another or taking the couple's children out of the state without both parents agreeing.
4. **Credit Notice and Creditor Notification Forms.** These forms must be provided to Petitioner and Respondent. The Credit Notice form informs the parties that creditors are not bound by the division of debt ordered by the court in the Decree and that both parties may remain liable if the party ordered to pay the debt defaults and does not pay. The Creditor Notification forms are used to obtain current account information from creditors during the dissolution process.
5. **Notice of Dissolution-Conciliation Court.** Certain counties require a Notice of Dissolution for the Conciliation Court in dissolution cases involving children as well as a Notice to Attend Parent Education Class. Call your county's Clerk of the Superior Court or Self-Service Center for these forms.
6. **Child Support Information Form.** Certain counties require a Child Support Information form if the parties have minor children together.

The original of the Petition and the other documents should be brought to the court at the time of filing, together with at least two copies (some counties require three copies). Most counties also require that the Petitioner complete a Cover Sheet. This is a standardized form containing information that will help process the case.

The Clerk of the Superior Court will file and keep the original versions of the required documents and stamp the copies to indicate the time and date that the papers were filed. After the Clerk of the Superior Court receives the original papers filed by the Petitioner, the clerk assigns a “case number” that identifies the particular court case. It is important to remember this number because it must be printed on all subsequent papers filed in the case by either spouse. One copy of all the papers is served on Respondent and Petitioner keeps one.

## **COVENANT MARRIAGE**

A 1998 Arizona state law established an additional type of marriage called “covenant marriage.” The covenant marriage does not replace the type of marriage already recognized in Arizona (“no-fault”). Instead, it offers a different option to persons intending to become married. To enter into a covenant marriage, parties must receive premarital counseling and sign an agreement to make an effort to keep the marriage together in times of difficulty. A husband and wife who originally did not enter into a covenant marriage may convert their marriage to a covenant marriage. You do NOT have a covenant marriage if you were married prior to August 21, 1998.

This type of marriage has additional requirements when the court is asked to grant a dissolution of marriage. A covenant marriage may

be legally ended by the court only for certain reasons listed in state law and proven during the divorce process. If a marriage is not a covenant marriage, the spouses do not have to prove blame or responsibility to end the marriage. Under Arizona law, the only question for the court in non-covenant marriage is whether the marriage is “irretrievably broken.” In a covenant marriage, state law (section 25-903, Arizona Revised Statutes) provides that a dissolution may be granted only for certain reasons (or “grounds”). The spouse asking for a dissolution of a covenant marriage must claim in the Petition and prove to the court one or more of the following grounds:

1. The respondent spouse has committed adultery.
2. The respondent spouse has committed a felony and has been sentenced to death or imprisonment in any federal, state, county or municipal correctional facility.
3. The respondent spouse has abandoned the matrimonial domicile for at least one year before the petitioner filed for dissolution of marriage and refuses to return.
4. The respondent spouse has physically or sexually abused the spouse seeking the dissolution of marriage, a child, a relative of either spouse permanently living in the matrimonial domicile or has committed domestic violence or emotional abuse.
5. The spouses have been living separate and apart continuously without reconciliation for at least two years before the petitioner filed for dissolution of marriage.



6. The spouses have been living separate and apart continuously without reconciliation for at least one year from the date the decree of legal separation was entered.
7. The respondent spouse has habitually abused drugs or alcohol.
8. The husband and wife both agree to a dissolution of marriage.

Other than the special requirements listed above, the procedures to obtain a dissolution for a covenant marriage are the same as the procedures for other marriages.

## **NOTIFYING THE OTHER SPOUSE**

Under the United States' system of constitutional law, the court cannot act in a case unless all interested persons are notified and provided an opportunity to be heard. In a dissolution case, this means that the papers initially filed by the Petitioner must be made available to the other spouse, who then has a chance to reply to the court.

Giving notice to the other spouse that a dissolution case has been started is called "service" or "service of process" and is done by giving ("serving") the Respondent copies of papers filed with the Clerk of the Superior Court by the Petitioner. Legal papers must be served in a particular way according to court rules (Rules 4.1 and 4.2 of the Arizona Rules of Civil Procedure). Different rules apply in different circumstances.

When the dissolution case is started, a copy of the Summons, together with the Petition and the other papers filed with the Clerk of

the Superior Court, must be served on the non-filing spouse (Respondent). Service must be accomplished within 120 days of filing the initial papers (unless before that time ends, the court issues an order for more time). If Service is not accomplished in the 120 day period, the Clerk of the Superior Court will “dismiss” your petition unless an order is obtained from a judge which grants you more time. Service may be accomplished in several ways, but using one of these methods (publication) has serious limitations on what orders the court can make.

1. **Direct service.** Service generally is best made by delivering the copies of the filed papers directly to the spouse or by leaving copies with a person of reasonable age who lives in the spouse’s home (for example, a parent or roommate of the spouse). Not everyone can serve legal papers. If service is made in the State of Arizona, the papers **MUST** be delivered by a deputy sheriff or a person who is registered with the court to serve legal documents (called a “process server”). The sheriff and the process server charge a fee for performing this task. A person may apply to the court for deferral or waiver of the fee charged by the sheriff, but not the fee charged by a private process server. If the non-filing spouse lives outside the state, direct service also may be made in the state where the spouse lives. In this situation, service must be made by a person authorized in the other state to serve legal papers. You must consult the laws of the state
2. where the non-filing spouse lives to see who is authorized to serve legal papers. Usually, a sheriff or other county law enforcement agency is authorized to do so.

3. **Mail.** If the non-filing spouse lives outside the state and the person's address is known, the Summons, Petition and other documents can be mailed by certified mail, return receipt requested. A sheriff or process server is not needed in this situation and the Petitioner can mail the papers. After the return receipt comes back, the Petitioner files a sworn statement with the court that this method was used and that the Respondent received the papers. If the certified mail is refused or not picked up, service must be accomplished by direct service described above.
4. **Publication.** If the whereabouts of the non-filing spouse are unknown but the last known residence was within this state, and under the circumstances this is the best way to notify the other spouse that a dissolution case has been started, service may be made by publishing a copy of the Summons in a newspaper for four consecutive weeks. This method also may be used if the address of the spouse is known but the spouse is avoiding being served. In this situation, on or before the first publication in the newspaper, a copy of the Summons and Petition also must be mailed to the spouse's residence. Consult Rule 4.1 of the Arizona Rules of Civil Procedure for the correct process.

**NOTE:** When service is made by publication, the court is limited in its authority to make orders in the case. For example, the court could not order that spousal maintenance or child support be paid. Use of this process is time consuming, includes publication costs and may delay your case. Publication also may be used where the whereabouts of the non-filing spouse is unknown and the last known address was outside the state. This procedure

is set forth in Rule 4.2 of the Arizona Rules of Civil Procedure and carries the same limitations on the court's authority to make orders in the case.

After the Summons, Petition and other documents are served on the non-filing spouse, evidence of that service (called an Affidavit of Service or a Proof of Service) must be filed with the Clerk of the Superior Court. A sheriff or process server usually files the Affidavit or Proof on behalf of the Petitioner when service is made in the state. If service is made outside the state, the out-of-state law enforcement official or process server may return the Affidavit or Proof to the Petitioner for filing. If the Summons and Complaint are mailed by certified mail, with return receipt to a non-filing spouse living outside the state, the Petitioner must file a sworn statement (Affidavit) with the Clerk of the Superior Court, showing that service was made by mail and that the papers actually were received. (See Rule 4.1 of the Arizona Rules of Civil Procedure for the exact required content of the Affidavit.)

If service is made by publication, an Affidavit must be filed with the clerk showing the manner and dates of the publication and the reasons why publication was used as a method of service (for example, that the residence of the non-filing spouse is unknown). If the residence of the spouse is unknown, the affidavit must state that fact. A printed copy of the actual publication must be included with the affidavit.

There is an exception to the procedures for service described above. The non-filing spouse (Respondent) may sign a paper accepting service of copies of the Summons and Petition rather than having a sheriff or process server deliver them. The non-filing spouse may also sign a written agreement to forego receipt of the Summons, Petition and other documents. In either case, the existence of an

agreement or written acceptance does not mean that the non-filing spouse agrees with the court papers which he or she received. It means only that the receiving spouse admits receiving them or does not care to have them formally served. Use of these procedures eliminates the cost of having the sheriff or a process server serve the papers on the non-filing spouse. This procedure is **only** useful when the non-filing spouse agrees to cooperate with the Petitioner and sign the document acknowledging receipt of the papers or waiving delivery of the papers. This sometimes happens when both parties desire to be divorced and wish to make the court process as efficient and inexpensive as possible. However, the procedures should not be used if domestic violence or the personal safety of either party is a concern.

The signed acceptance form or the signed, written agreement to forego service must be filed with the Clerk of the Superior Court after it is signed and notarized. If such an agreement cannot be reached, the other methods of service described above must be used.

## **THE PRELIMINARY INJUNCTION**

When the Petition is filed with the Clerk of the Superior Court, the clerk automatically issues a “Preliminary Injunction.” As the name suggests, this document is the court’s first (“preliminary”) temporary order in the case and it prevents (“enjoins”) each spouse from doing certain things that might damage the person, property or legal rights of the other spouse. The purpose of the Preliminary Injunction is to keep the spouses from making decisions or taking actions about money, accounts, property and other items belonging to both spouses and about the legal interests of any children involved until the court has had the opportunity to make fair decisions about these matters. In effect, the Preliminary Injunction, as much as possible, keeps

everything as it was during the marriage while the dissolution case is in progress.

The Preliminary Injunction contains the following orders:

1. Without the written permission of the court, neither spouse can give away, take loans against or otherwise tie up the title to, hide, sell or in any other way dispose of or transfer any of the joint, common or community property of the spouses. An exception is made if the action is related to the usual course of a business operated by one or both of the spouses, is needed for food, clothing, shelter, medical care or transportation, or must be used for court fees and reasonable attorney fees in the dissolution proceeding.
2. Neither spouse may: (a) Molest, harass, disturb the peace of or assault or batter the other spouse or any natural or adopted child of the spouses; (b) Remove any natural or adopted child of the parties then living in Arizona from the state without the prior written consent of the other spouse or the permission of the court; (c) Remove the other spouse or the children from any existing insurance coverage, including medical, hospital, dental, automobile and disability insurance.
3. Both parties must maintain all insurance coverage in full force and effect.

The Preliminary Injunction is immediately effective on the Petitioner as soon as the Petitioner files the Petition and other papers with the Clerk of the Superior Court and receives a copy of the Preliminary Injunction back from the Clerk of the Superior Court. The

Preliminary Injunction is effective on the Respondent as soon as it is served on the Respondent along with the Summons, Petition and other papers in the case.

The Preliminary Injunction is an official court order. The order is effective until a final decree of dissolution is granted by the court (or the dissolution case is dismissed, if that happens). In addition to preventing acts involving money or property, the order also prohibits family violence and moving children from the state. A spouse who disobeys the court order may be arrested and prosecuted for the crime of interfering with judicial proceedings (and any other crime that may have been committed). The spouse also may be held in contempt of court (punishable by fine or jail for violation of a court order).

## **FILING AND SERVICE OF OTHER PAPERS**

Once the Summons and Petition have been served on the Respondent, any further papers in the case filed with the Clerk of the Superior Court by either spouse should be served on the other spouse by first-class mail. If a spouse is represented by an attorney, the papers must be mailed to that spouse's attorney (unless the court orders otherwise). Some papers do not get filed (see Rule 5(g) of the Arizona Rules of Civil Procedure for details).

## **RESPONDING TO THE PETITION**

The Petition initially filed and served requests the court to grant a dissolution of the marriage and for any other orders applicable to the spouses' situation (for example, dividing the property of the spouses or spousal maintenance). After the non-filing spouse is served with

the initial papers in the case, that spouse has the right to reply to the requests made in the Petition.

The reply to the Petition is made in a written document called the “Response” and the spouse making the reply is referred to as the “Respondent.” The Response gives the Respondent the opportunity to agree with the requests that the Petitioner has made or to ask for different orders from the court. The Response must be filed with the Clerk of the Superior Court and a copy must be mailed to the Petitioner. A filing fee is charged by the clerk. The filing fee varies from county to county due to additional fees charged by certain counties over and above the base statutory fee. You can learn the current Response filing fee by calling your county’s Clerk of the Superior Court. The Respondent may apply for deferral or waiver of the fee by filing an application with the Clerk of the Superior Court. As with all papers filed in Superior Court, the form of the Response must comply with court rules and state laws governing size, spacing and content. Forms available in Self-Service Centers have been developed to comply with these requirements.

The Respondent should have an original Response and at least two copies (some counties require three copies) of the Response ready when filing with the Clerk of the Superior Court. The clerk keeps the original in the court file and stamps the date and evidence of filing on the copies. One copy must be served by mailing to the Petitioner. The Respondent keeps the other copy.

**There is a time limit for filing the Response.** Court rules provide that the Response must be filed within 20 days of the date that the Summons and Petition are served on the Respondent in Arizona, or within 30 days if service is made on the Respondent outside the state. In addition, the Respondent could file other requests with the court instead of or in addition to the Response. For example, the



Respondent could ask the court to dismiss the case if the Arizona court does not have authority to grant a dissolution because the Petitioner has not lived in the state long enough to file here or because a divorce case has been started somewhere else. The Respondent could also ask for temporary orders.

### **IF NO RESPONSE IS FILED - ENDING THE CASE BY DEFAULT**

If a Response is not filed within the time allowed, the court may grant the requests made in the Petition without an opportunity for the Respondent to participate. This situation is known as obtaining a dissolution by “default.”

Once the twenty (or thirty) day time frame for the Respondent to file the Response with the Clerk of the Superior Court has expired and no Response has been filed, the Petitioner may begin to take steps to have the court grant a dissolution by default. (Remember, the party who starts the court case is responsible to move the case forward in order to obtain the divorce.)

First, the Petitioner must file with the Clerk of the Superior Court an application form. The form may be called different things in different counties (usually either an Application for Default or Notice of Default). This form tells the court that the Summons and Petition were served on the Respondent and that the Respondent has not acted within the appropriate time. A copy of the application must be served on the Respondent if the whereabouts of the Respondent are known (the Respondent’s whereabouts probably will be known unless the Summons and Petition were originally served by publication).

Service of the application may be made by mailing a copy to the Respondent. If the Petitioner knows that the Respondent is

represented by an attorney, a copy must also be mailed to the attorney.

The Petitioner should have an original and at least two copies of the application for default ready for filing. The original stays with the Clerk of the Superior Court and the copies are stamped by the clerk and returned to the Petitioner, one for service on the Respondent and one for the Petitioner.

When the application is filed, the Clerk of the Superior Court will “enter” the default by noting in the court record that the Respondent has not responded to the Petition. This is done on a form usually called an Entry of Default that is most often printed on the same application form that the Petitioner files. For that reason the application is usually called an “Application for Default and Entry of Default” or a “Notice of Default and Entry of Default.”

Although the Respondent has failed to act in time and the default has been entered in the court record, the default does not become effective for ten days after the application/entry is filed with the Clerk of the Superior Court. Within that time, the Respondent is given another opportunity to file a Response. If the Respondent acts within this ten-day period, the case will proceed as if there were no default.

If the Respondent continues to be in default after the ten-day period has expired, the court may dissolve the marriage and issue other orders without the Respondent participating. Before the court may do this, the court must hear evidence from the Petitioner to be sure there is reason to dissolve the marriage and to be sure all issues of property and support are addressed properly. The court receives this evidence at a “hearing” which is scheduled before a judge, commissioner or hearing officer of the court at a particular time at the courthouse. This

means that the Petitioner must appear before the court to give information or answer questions. Usually the hearing is informal, and if a person does not have an attorney, the judge, commissioner or hearing officer asks questions about the Petitioner's residence, the breakdown of the marriage, property and other financial support issues that are necessary under state law before a dissolution of the marriage can be granted.

By state law (section 25-329, Arizona Revised Statutes), the court may not hold a default hearing for at least sixty days after the date that the Summons and Petition are served on the Respondent (or the Respondent accepts or waives service). After expiration of the sixty-day period is the earliest time a hearing may be held in a "default" dissolution. There is also a case time limit that sets the latest time to act in a case (see the Case Time Limit section Page 23).

The manner in which default hearings are scheduled is not the same in all counties. For example, in Maricopa County, the Petitioner must prepare a form called a "Request for a Default Hearing" and mail it to the court with a large self-addressed envelope. The court file is reviewed and if all papers are in order, the Petitioner will be mailed a notice that a default hearing has been scheduled for a certain date and time. (Maricopa County has a local rule that a hearing cannot be held until at least five days after the default is entered.) In Pima County, time is set aside each afternoon for hearing default cases and a Petitioner may choose the most convenient day. Check with the Clerk of the Superior Court in your county for the method your court uses.

Before the default hearing is held, the Petitioner must prepare a form for the court to sign called the "Decree of Dissolution of Marriage" or, simply, the "Decree." The Decree is the official court paper that legally ends (or "dissolves") the marriage and makes orders about

property, debts, spousal support and any other important issues involved. When preparing the Decree, it is important to address as closely as possible what was requested in the Petition. When a case ends by default, the court generally cannot issue orders that differ from what the Petition originally requested. (For example, if the petition does not indicate that spousal maintenance is requested, the Decree cannot order that the Respondent pay maintenance.) It is likely that the judge, commissioner or hearing officer will not sign the Decree if different or additional things are included in the Decree which were not requested formally in earlier pleadings.

Several copies of the Decree should be prepared. The original is signed by the judge, commissioner or hearing officer and is kept in the court file. At least one copy is for the Petitioner. If desired, the court clerk can stamp a copy to show that it is identical to the one filed. This is called a “certified copy” and there is a charge for this service. A copy of the Decree also should be mailed to the Respondent. In some counties (like Maricopa and Pima), local rules require that a copy be mailed to the Respondent within twenty-four hours after the original Decree is filed with the Clerk of the Superior Court.

There is a way to end a case by default without having a court hearing. However, it does not apply to all cases (for example, it cannot be used if the spouses have children or own a home) and is most often used when attorneys are involved because more papers must be prepared and filed. This method can *only* be used when all of the following apply:

1. no minor children were born of the spouses before or during the marriage or adopted by the spouses during the marriage, and the wife (so far as known) is not pregnant;

2. neither spouse has any interest in real estate, no matter where located;
3. neither spouse is seeking spousal maintenance;
4. there are no debts greater than \$10,000 by either or both of the spouses from any time beginning with the date of the marriage; and
5. the total value of personal property owned together by both spouses together is less than \$15,000.

If these facts apply, a request (called a “motion”) must be filed with the Clerk of the Superior Court, together with a sworn statement (called an “affidavit”) signed by either or both spouses. The affidavit must set forth certain things, such as facts showing that the court’s jurisdictional requirements have been met and whether the conciliation court procedures have been met or do not apply. The affidavit must also include facts that show the claims made by the Petitioner are true. See Rule 55 of the Arizona Rules of Civil Procedure for further details.

## **ENDING THE CASE BY CONSENT DECREE**

If you and your spouse have exchanged all necessary financial information, accounting for all property and debts, income, taxes owed, insurance and any other financial disclosure and have reached agreement on all dissolution issues, including all children’s issues, you may finalize your divorce by a process called the “Consent Decree” process (a term generally used by Maricopa County). Other counties may use terms such as “Uncontested “ or have a process called an “Uncontested Docket.” The Consent Decree process is not

available in covenant marriages, however. The consent decree process is a method by which you can finalize your dissolution by mutual agreement. Call your county's Clerk of the Superior Court to determine if this process is available in your county. Usually the filing of a Stipulation (agreement) and Consent Decree are required. If all of your final documents are prepared and submitted properly, you will not have to appear personally in court in Maricopa County.

The Respondent still must be served with the initial court papers filed by Petitioner (or the Respondent must sign an Acceptance of Service or Waiver of Service form). The signed Stipulation and Consent Decree may not be submitted to the Clerk of the Superior Court until at least 64 days have passed after the date the Respondent was served with the divorce papers (see the section on Service of Process) or signed an Acceptance of Service or Waiver of Service form. If you and your spouse have children, you must also complete the Parent Education Class prior to filing your agreed documents. It usually takes 4 to 6 weeks to receive a copy of the final, signed Decree in the mail from the Clerk of the Superior Court after submission of your documents. If your documents are not correct, the process will take longer as the documents must be corrected and re-submitted if incorrect.

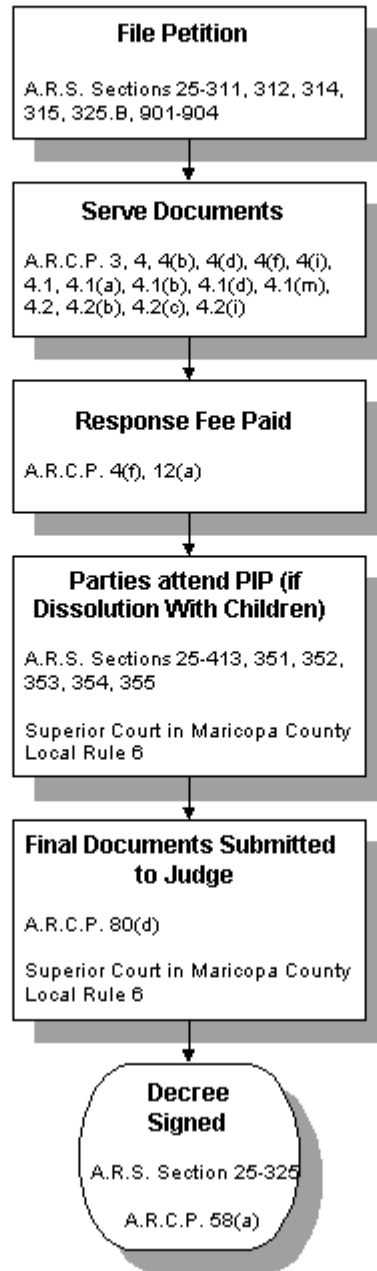
*NOTE:* If you have not reached COMPLETE agreement on all issues, this process is not available to you.

## **FLOW CHART FOR UNCONTESTED, CONSENT DECREE DIVORCE**

This flow chart generally shows the usual stages and time frames involved in a dissolution procedure in which the Respondent files a Response and then the parties go directly to the preparation and

presentation of their agreed terms in their Decree. The events, stages and time frames may vary some from county to county. If the agreed terms are not reached early in the process, the parties are likely to be involved in the Superior Court's procedures for pretrial settlement conferences and outside mediation services as shown in the Dissolution with Children flow chart.

**CONSENT DECREE WITH AND WITHOUT CHILDREN**  
(Maricopa County Example)





## **RETURNING TO THE USE OF A FORMER NAME**

State law (section 25-325, Arizona Revised Statutes entitled “restoration of maiden name”) allows a party to go back to (or, in the language of the law, be “restored” to) a former name after a marriage is ended. The request to be restored to the use of a former name may be made at any time *before* the Decree is signed. If use of a former name is desired, the request should be included as one of the terms of the Petition originally filed. In any event, the last opportunity to make this request is at the default hearing (or any final hearing before the Decree is submitted to the court for signature). The Decree prepared for the default hearing, consent proceeding or a contested trial should include a provision that grants restoration of a former name.

## **TEMPORARY ORDERS**

Temporary orders are short-term decisions made by a judge, commissioner or hearing officer which exist and give direction to the parties until a final court order is entered in the case. The Preliminary Injunction is the first temporary order issued in a suit for dissolution. In addition, either party may file a petition for temporary orders for spousal maintenance, child custody, child support, parenting time, or for the use of property, funds and allocation of debt payments during the course of the dissolution action. Also, as part of the original Petition or by a subsequent Petition supported by affidavit, either party may request the court issue a temporary restraining order or additional preliminary injunction for the purpose of removal of one party from the family home. Once temporary orders or an additional injunction is issued, the court may modify them upon a showing of sufficient circumstances prior to entry of the

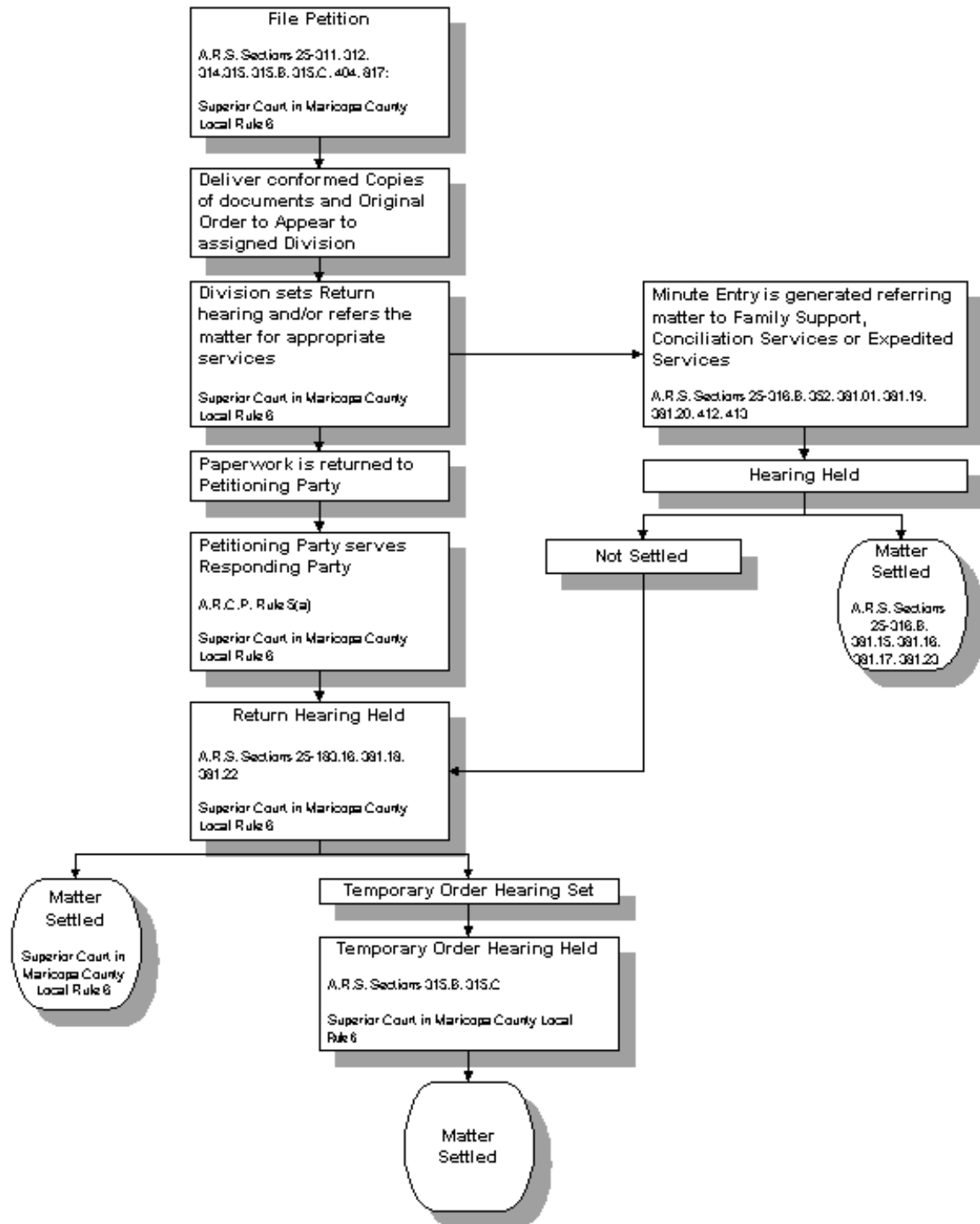
final decree. Temporary orders are terminated upon entry of the final decree or when the suit is dismissed. A person who disobeys a temporary order, injunction or restraining order is subject to arrest and prosecution for interference with judicial proceedings.

Temporary orders may be reached by agreement of the parties. If no agreement is reached after proper request is made, a hearing must be requested and held before the court, including testimony and presentation of evidence and witnesses. If you have questions about temporary orders procedures, please consult an attorney.

## **FLOW CHART FOR TEMPORARY ORDERS**

This flow chart generally shows the sequence of events and time frames for requesting and receiving temporary orders while the dissolution case is pending. The events, sequence and timing may vary from county to county.

**ORDER TO SHOW CAUSE - TEMPORARY ORDERS**  
(MARICOPA COUNTY EXAMPLE)



## **FINALIZING THE DIVORCE PROCESS-NO CHILDREN**

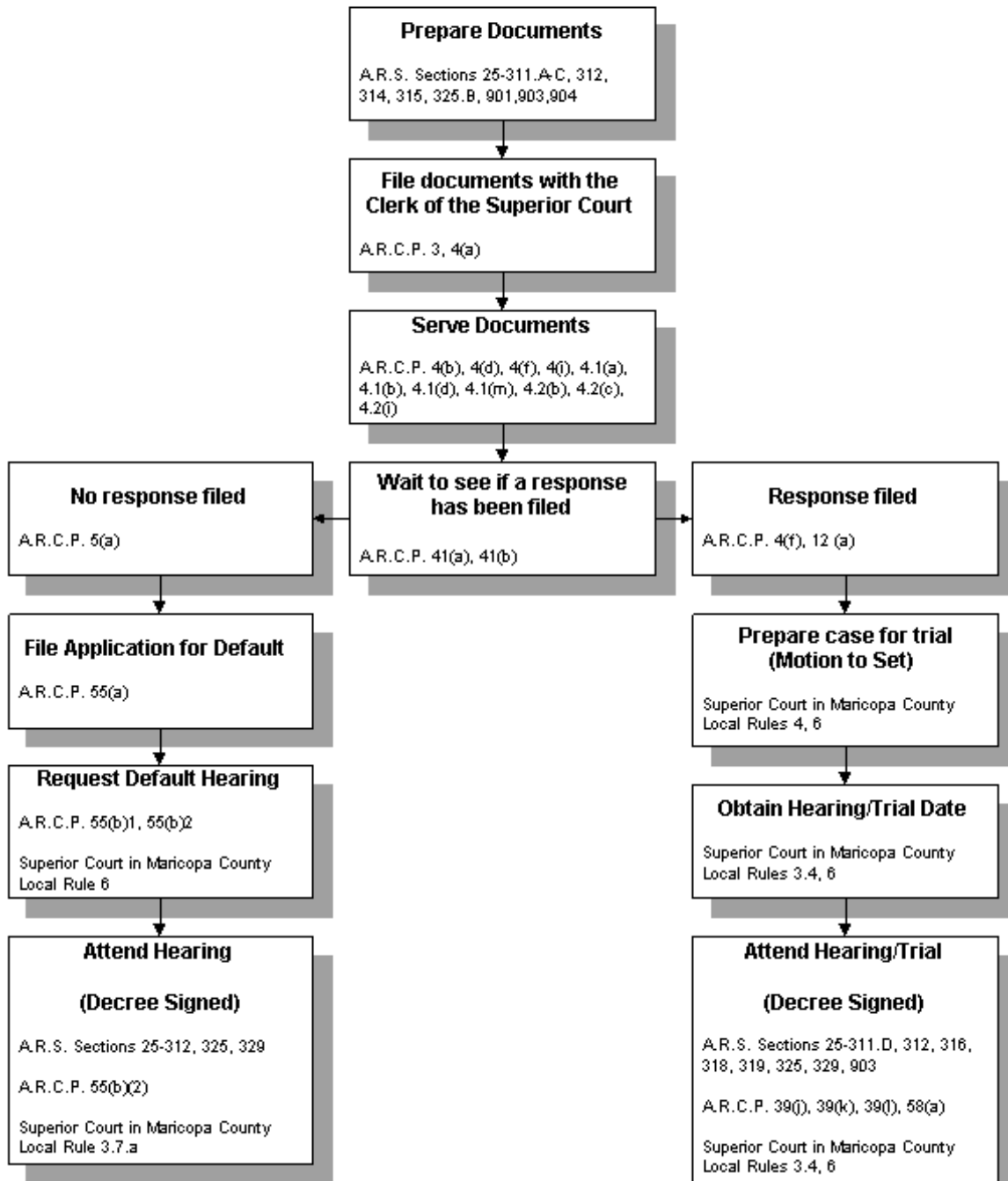
If your dissolution case is not finalized by the default procedures or by a consent decree and no settlement is reached in conciliation services, outside mediation or other required court-ordered settlement procedures (this may vary from county to county), the case is finalized with a court trial over the unsettled issues. The court may not hold a trial or hearing on an application for a decree of dissolution of marriage or legal separation until 60 days after the date of service of process or the date of acceptance of process by Respondent. Contested cases which go to trial are more complicated than default or consent decree procedures. They also involve more preparation and court rules and procedures which are beyond the scope of this manual. If you and your spouse are not able to resolve your divorce issues and require a trial, please seek the assistance of an attorney.

## **FLOW CHART FOR DIVORCE WITH NO CHILDREN - CONTESTED OR DEFAULT**

This flow chart generally shows the procedures and time frames for obtaining a dissolution without children which is either a default divorce or one in which the parties are unable to reach agreement and must go to trial. The stages and terminology may be different from county to county.

## DISSOLUTION WITHOUT CHILDREN

A.R.S. Sections 25-312 et seq.  
(Maricopa County Example)



## **DIVORCE WHEN CHILDREN ARE INVOLVED**

The procedures described in this booklet for obtaining a dissolution in Arizona generally apply to all dissolution cases, including those in which the spouses have minor children together. When parents separate and divorce, care for the children must continue. When a dissolution case involves minor children, the court has a special responsibility to decide matters of custody, parenting time and child support. Health insurance coverage for the children must also be addressed.

If divorcing parents cannot agree on a plan for raising and supporting the children during and after divorce, the court will order a plan and decide additional issues concerning the children's care, health and welfare. The court may also order that an official investigation be done with the assistance of a Guardian Ad Litem. Conciliation services may also be used to promote amicable settlement of child related issues during a dissolution proceeding. Whenever an action for annulment of marriage, dissolution of marriage or a request for a legal separation is filed in Superior Court and there is a minor child of the spouses whose welfare will be adversely affected by the end of the marriage and there appears some reasonable possibility of a reconciliation, the case may be transferred to the conciliation court/conciliation services for an attempt at reconciliation or amicable settlement of issues existing in the dissolution. The conciliation court judge has the power to make, modify and enforce temporary orders, restraining orders and preliminary injunctions but the orders are not effective for more than sixty days from the filing of the petition for conciliation unless the parties mutually agree. If the parties have not reconciled during the sixty-day period and file a

suit for divorce or continue the one already filed, the conciliation court may hear the case and all child-related issues.

Parenting time, or parental contact with the children on a regular schedule, involves the court making decisions about how much time and on what schedule the child will spend with each parent. Custody involves a decision about which parent will be the primary caregiver and establishes the primary residence. Custody also involves decisions regarding which parent has the right to make certain decisions about the care and welfare of the child (for example, decisions about education, health care and religious training). Sole custody, joint legal custody and joint physical custody are the alternatives from which to choose. Child support involves how much money each parent will contribute toward the financial support of the children based on their respective earnings. A child support order in the final Decree indicates which parent must pay child support to the other, the amount of the payment, how often the payment must be made and who receives the child support payments for the children. The child support order also directs which parent is to pay for the health and dental insurance for the children and allocates uninsured medical/dental expenses to the parents. The court will look at income tax records, W-2s, pay stubs, and any other necessary financial documentation in order to determine each parent's earnings and earning history. You must be prepared to provide this type of documentation to the court. A wage assignment (withholding from the paying parent's paycheck) will also be ordered. The Arizona Child Support Guidelines are used to determine the appropriate amount of child support to be paid, based on both of the parties' incomes.

Only the Superior Court in Arizona can decide issues of custody, parenting time and child support in the dissolution process. When

the dissolution proceeding is completed, the court issues a Decree containing orders resolving these issues. Custody, parenting time and child support orders may be modified after the divorce if a substantial change occurs.

Parents are encouraged to reach agreement regarding issues involving their children. However, when joint decision making is not possible and the parents are unable to work together, the court often refers the parents to court mediation services if the conciliation court services have not been used. If an agreement is reached, the court usually accepts the parents' mutual decision unless it finds the agreement not to be in the children's best interests. If agreement is not reached regarding custody, parenting time and child support, a trial must be held by the court in which testimony, evidence and argument are considered by the court before issuing its order. If you are not able to reach agreement regarding these issues, you should consult an attorney in order to properly prepare and present your case.

If a form of joint custody is requested, the parents must submit to the court a written plan called a "parenting plan" which shows how the parents will cooperate to make decisions on how to raise and provide for the children. A schedule for the children's time with each parent (parenting time plan) must be included and a method for resolving disputes. Joint legal custody is not the same as joint physical custody (see definitions).

No matter which county you live in, if you have minor children from your marriage and are involved in a dissolution procedure, you will be required to participate in and complete a parent education program designed to offer education to parents about the impact that divorce, the restructuring of families and judicial involvement have on children. Parents who attend this class are shown to be better able to work cooperatively for the benefit of their children and that having



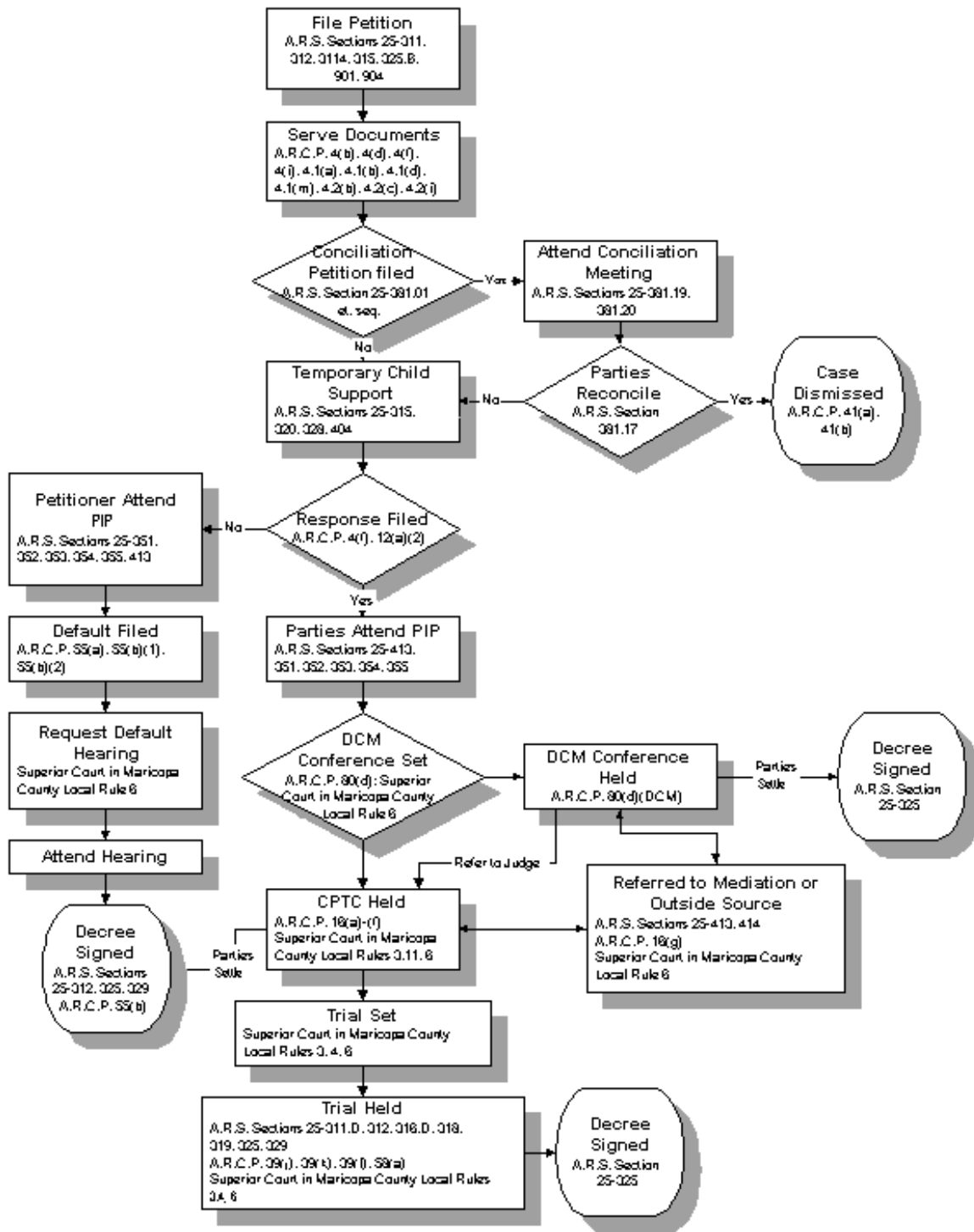
such classes may keep them from having to return to court in the future. The parents to a dissolution case do not attend the class together at the same time. The parent seeking the divorce must take the class. A parent who fails to attend the program may be refused any specific request for court action they have made, may be held in contempt of court or have other penalties imposed. The program lasts up to four hours in length and a fee may be charged to each participant. If the parent not seeking the divorce fails to attend, the divorce may still be granted. Persons of limited financial means may file an application with the Clerk of the Superior Court requesting the fee not be charged or that it be paid in installments. Please call the Clerk of Superior Court in your county for dates, times and location of the classes.

For additional information about child-related topics, please review the Supreme Court’s series of booklets entitled “*Things You Should Know About . . . .*” on topics such as parent education class, child support payments, paternity and custody and parenting time.

## **FLOW CHART FOR DIVORCE WITH CHILDREN - DEFAULT OR CONTESTED**

This flow chart generally shows the stages and time frames involved in a dissolution with children involved which is either a default procedure or a contested proceeding in which the parties go to trial if settlement conferences and mediation do not result in an agreement. The stages, sequence and terminology may vary from county to county.

## DISSOLUTION WITH CHILDREN (Maricopa County Example)



# LOCATIONS OF THE SUPERIOR COURT IN ARIZONA

## **Apache County**

70 West 3<sup>rd</sup> South  
St. Johns, AZ 85936  
(520) 337-4364

## **Cochise County**

County Courthouse  
100 Quality Hill  
Bisbee, AZ 85603  
(520) 432-9364

## **Coconino County**

100 E. Birch  
Flagstaff, AZ 86001  
(520) 779-6535

## **Gila County**

1400 E. Ash  
Globe, AZ 85501  
(520) 425-3231

## **Graham County**

800 Main St.  
Safford, AZ 85546  
(520) 428-3100

## **Greenlee County**

County Courthouse  
5<sup>th</sup> & Webster  
Clifton, AZ 85533  
(520) 865-4242

## **La Paz County**

1316 Kofa Ave., Ste. 607  
Parker, AZ 85344  
(520) 669-6131

## **Maricopa County**

201 W. Jefferson  
Phoenix, AZ 85003  
(602) 506-3676

## **Mohave County**

County Courthouse  
401 E. Spring St.  
Kingman, AZ 86402-7000  
(520) 753-0713

## **Navajo County**

County Courthouse  
100 E. Carter Rd.  
Holbrook, AZ 86025  
(520) 524-4188

## **Pima County**

110 W. Congress  
Tucson, AZ 85701  
(520) 740-3296

## **Pinal County**

County Courthouse  
100 N. Florence  
Florence, AZ 85232-2730  
(520) 868-6309

## **Santa Cruz County**

County Courthouse  
2150 N. Congress Dr.  
Nogales, AZ 85628  
(520) 761-7808

## **Yavapai County**

County Courthouse  
Prescott, AZ 86301  
(520) 771-3312

## **Yuma County**

168 S. 2<sup>nd</sup> Ave.  
Yuma, AZ 85364  
(520) 329-2164



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<http://www.supreme.state.az.us/dr/booklets>

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