

## SELF-SERVICE CENTER

### INSTRUCTIONS: HOW TO FILL OUT YOUR LEGAL SEPARATION -- WITH MINOR CHILDREN-- DECREE

Use these instructions only with the “Decree of Legal Separation - With Minor Children.” If there are no minor children, by birth or adoption, common to you and your spouse, use the forms for a decree without children.

**What the Decree Means to You.** The Decree is the Court Order that legally separates you and your spouse. You are not divorced and cannot marry someone else (until you are divorced). The Decree, once the judge or commissioner has signed it, is important because it determines the rights and responsibilities of both you and your spouse. If either party does not do what the Decree tells him or her to do, then the other party may ask the court for help. Once it has been signed by the judge, your rights and responsibilities are affected forever.

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

**Getting a Legal Separation Decree.** Before you and your spouse become legally separated, a judge or Commissioner must sign a Decree of Legal Separation. The Decree tells you who gets the property, who pays the debts, who gets custody of the minor child(ren), who pays child support, spousal maintenance, if any, and so forth.

**Legal Separation by Default.** If you have a Default Hearing, you must repeat as closely as possible what you requested in your Petition for Legal Separation. You cannot mark something different in the Decree than what you asked for in the Petition. If you try to do this, the judge or commissioner will not sign the Decree. If you want to change your requests to the court, you must file an amended Petition. It is a good idea to have your Petition handy as you follow the instructions to fill out your Decree.

**The Decree.** Fill out the Decree before you go to your hearing or before you give it to the judge to sign. Do not fill in the judge's signature and date. If the judge disagrees with anything you have written, he or she will change it before signing the Decree.

**INSTRUCTIONS FOR FILLING OUT THE DECREE.** (The section number in front of each paragraph below corresponds with the section number on the Decree. For example: Read Section 1-3d below. Turn to Sections 1-3d on the Decree. Each section below will help you fill out each section of the Decree.)

#### TYPE OR PRINT CLEARLY IN BLACK INK ONLY.

(A) Write in the Petitioner's Name, current address, city, state, zip code, and the telephone number. If you have an ATLAS number, write in the number. (The person who filed the Petition for divorce is the Petitioner.) Then check the box to show whether you are representing yourself, or if you are an attorney representing Petitioner or Respondent.

(B) Write in the Name of the Petitioner, the Name of the Respondent, and your case number in the space provided.

#### (C) COURT FINDINGS SECTION:

1-4,a-d This section tells you that before the judicial officer (judge or commissioner) signs the Decree, he/she will have determined that the court has the legal power to make the orders in your case. It also says that either you or your spouse live in Arizona, and that the parties are unable to get back together and save their marriage. The judge or commissioner must also determine that both you and your spouse want a legal separation. If one of you does not want a legal separation,

the judicial officer can dismiss your case or turn it into a divorce case.

Also, if you served the other party *by publication*, the court cannot sign a Decree that divides community property and/or debt, or orders the other party to pay spousal maintenance (alimony) or child support until you find and serve notice on your spouse. You will, however, be able to get a court order for custody of your minor children and a decree of legal separation.

- 4(e) Community Property and Debt.** Mark the first box **only** if you and your spouse did not get any property together while you were married and do not owe money to anyone for property or services you got while you were married. Otherwise, mark the box that tells the court that the parties have not agreed to a division, but the community property is divided pursuant to the Decree.
- 4(f) Pregnancy.** Mark the first box if the wife is not pregnant. Mark the second box if the wife is pregnant and then mark whether the husband is the father. Mark the third box if the parties had any minor children together that were born before the marriage. Then list the name and date of birth for those children.
- 4(g) Spousal Maintenance/Support (Alimony).** Mark this box if you have requested spousal maintenance/support (alimony) in the Petition for Legal Separation or the parties have agreed or the judge has ordered that one party will pay the other party spousal maintenance/support.
- 4(h) Parent Information Program.** Tell the court whether you and your spouse have attended the Parent Information Program Class. (If you have attended the class, make sure your “**Certificate of Completion**” was filed with the court.).
- 4(i) Deviation from Child Support Guidelines.** Leave this section blank. The judicial officer will fill in this section if there is a deviation for child support.
- 4(j) Physical Custody Adjustment.** Mark this box only if custody was contested (you and the other party did not agree about custody), or if you and the other party have agreed to joint custody. You must write the reasons in the space provided. See the “**Joint Custody Information**” document in this packet and the “**Planning for Parenting Time: Arizona’s Guide for Parents Living Apart**” booklet for help. The **Guide** is available for purchase at all Superior Court Self-Service Center locations, **or** may be viewed online and downloaded for **free** from the state courts’ web page.
- 4(k) Ability to Pay Child Support.** Leave this section blank. The judicial officer will complete this.
- 4(l) Custody of the Minor Children.** Mark this box if custody was contested (you and the other party did not agree about custody), or if you and the other party have agreed to joint custody. You must write the reasons in the space provided. See the “**Joint Custody Information**” and the “**Guide for Parents Living Apart**” mentioned above for help.
- 4(m) Supervised or No Parenting Time.** Mark this box only if you asked for supervised or no parenting time by the non-custodial spouse in your Petition or the parties have agreed to this. You must have a very good reason for such a request and you must write the reasons in the space provided. See the “**Joint Custody Information**” and the “**Guide for Parents Living Apart**” mentioned above for help..
- 4(n) Domestic Violence.** If the parties are going to have joint custody of the minor child(ren), check the box to say whether there has been no domestic violence or if domestic violence has occurred it has not been significant. Then explain why joint custody is in the best interest of the minor child(ren) even though domestic violence has occurred.

## **(D) COURT ORDERS SECTION**

- 1. LEGALLY SEPARATED.** This section legally separates you and your spouse.

**2. ENFORCEMENT OF TEMPORARY ORDERS.** If the Court ordered temporary payment of child support, spousal maintenance/support (alimony), debt division, or other temporary orders, fill in the dates of ALL of the temporary orders. This section allows you to enforce nonpayment of those debts.

**3. CHILD CUSTODY, PARENTING TIME AND CHILD SUPPORT.** This section deals with child custody, parenting time and child support, pregnancy and paternity.

**3(a) PREGNANCY AND PATERNITY.** If the wife is pregnant and the husband is the father, write in the expected date of birth for the unborn child.

1. Write in the names of all minor children, either natural or adopted, common to the marriage, and the child(ren)'s date(s) of birth in the space provided. AND
2. Below that, write in the name and date of birth of any minor child born to the Petitioner and Respondent **before** the marriage, as well as any court orders to be entered regarding legally establishing paternity for those minor children, having the father's name entered on the child(ren)'s birth certificate(s), and having the child(ren)'s last names legally changed (if not already done).

**3(b) CHILD CUSTODY.** The custody box you mark should be the same as what you asked for in your Petition for Legal Separation, unless you and the other party have signed a Joint Custody Agreement/Parenting Plan and you are attaching it to the Decree OR you and the other party have agreed to file a Consent Decree.

- 1) For **sole custody** of the minor child(ren), mark who is to have sole custody, Petitioner or Respondent. Then mark **only** one of the three types of parenting time: 1) parenting time to the parent not having custody; or 2) supervised; or 3) no parenting time. If both spouses agree to a Parenting Plan, both must complete the Plan and sign it. If only one spouse agrees to the Parenting Plan and you have a default divorce hearing, you still must complete the Parenting Plan and tell the Court what you think should be the parenting time arrangement. If parenting time is supervised and you have a default hearing or you agree, write in the name of the supervisor and any restrictions. Mark who will be paying for costs of supervision. If no parenting time is to be given to the Petitioner or the Respondent, check this box.
- 2) For **joint custody** you should not have marked box 1 above. Remember, you must attach a copy of the Joint Custody Agreement/Parenting Plan as Exhibit B signed by both parents, which the court at the hearing must approve if you want Joint Custody. The Agreement will be included as part of the Court Order ending your marriage.

**3(c) CHILD SUPPORT:** Mark who is to pay the child support to the other party based on the request in the Petition for Legal Separation or on the party's agreement. If the parties agree to how much child support will be paid, write in the amount. Otherwise, leave the space blank and the Judge will fill in the amount. Remember, if you are the person who filed for legal separation, you are the Petitioner, and your spouse is the Respondent. The Court may also sign a Child Support Order. Be sure you read and understand the Order.

**3(d) MEDICAL, DENTAL, AND VISION CARE INSURANCE, PAYMENTS, AND EXPENSES:** Mark who will be responsible for medical, dental, and vision care insurance, based on the request made in your Petition or agreed to by the parties. Mark what percent each party will pay for uninsured expenses.

**4. SPOUSAL MAINTENANCE (ALIMONY).**

- a. Mark this box if neither party is requesting spousal maintenance.
- b. Mark this box if you requested spousal maintenance (alimony) in the Petition and you have a Default Hearing. (You cannot get spousal maintenance if the other party was served by publication.) **OR**, mark this box if the court ordered that one party would pay the other party spousal maintenance .

Then mark who is to **pay** the spousal maintenance and who will **receive** the spousal maintenance/support. You should leave the amount and number of months of spousal maintenance blank until the judge approves the request. Be prepared to tell the judge the amount you are requesting, for what period of time, and why.

- 5(a) PROPERTY, DEBTS AND TAX RETURNS.** Mark the first two boxes, if each party will pay the debts that are unknown to the other party. By marking the *third* box under 5.a., you are telling the court you do not want to pay for debts made by your spouse after you separated. Write the approximate date you separated on the line provided.
- 5(b)** Mark this box if there is property and debts to be divided, even if you have already divided the property. You can give the Court this information on **EXHIBIT A: COMMUNITY PROPERTY AND DEBTS** that you must attach to the Decree if you mark this box. Instructions for Exhibit A are included at the end of this instruction.
- 5(c)** This states that you and your spouse get to keep property that you owned from the marriage or that was a gift to you during the marriage. You also can keep any personal items, clothing, and any other property you own that is not considered community property.
- 5(d)** This means either spouse can record the Decree if there is a transfer of title to certain property, like a house. This section also requires each spouse to sign documents to transfer other property, like titles to cars, and so forth. If you have a quit claim deed that transfers property from one spouse to the other spouse, attach a copy of the deed to the Decree, and check this box.
- 5(e)** Mark this box and tell the court whether the parties will file joint or separate tax returns for previous years if taxes have not been paid and how the parties will pay taxes for the present year and in future years. According to the IRS, State law governs whether you are married, divorced, or legally separated. See a lawyer or accountant for advice if you are not sure which box to check OR call the IRS at 1-800-829-4477 or visit their INTERNET site for help.
- 6. FINANCIAL INFORMATION EXCHANGES:** This shows that the parties must share/exchange financial information every 24 months. This information is important in determining amounts of child support or other related issues.
- 7. TAX EXEMPTIONS:** Decide which parent will claim the children on income tax forms, for which year. Federal and state laws apply here. If you are not sure what to do, ask a lawyer or an accountant for help.
- 8. MINOR CHILDREN TO WHOM THE DECREE DOES NOT APPLY:** Mark this box **only** if minor child(ren) was/were born during the marriage, but is not common to the marriage. Mark which party should have no legal rights to this minor child. If you mark this box, list the name of any such child(ren) with the date of his or her birth in the space provided. Also, mark if the wife is pregnant with a child not common to the marriage, and include the expected due date of the child.
- 9. OTHER ORDERS.** Do not write in this space. The Judicial Officer will complete if applicable.
- 10. FINAL APPEALABLE ORDER:** This decree/order/judgment is a final order and may be appealed.

**(E) SIGNATURES SECTION**

- Do not sign or date the Decree for the Judge or Commissioner, they will do that themselves.
- If there is a Default Hearing, you, the Petitioner, must also promise to mail a copy of the Decree to the Respondent, after the Judge has signed it.

**(F) EXHIBIT A: PROPERTY AND DEBTS.** If you have questions about whether your property is community property or separate property, or whether a debt is community or separate debt, you should see a lawyer for help.

- 1. Division of Community Property.** If you have community property, check this box.
- 2. List of Community Property.** Describe the property. Then mark the box showing which party the property is being given to. Mark the box stating "award each party the personal property in his or her possession."

If you had to use a separate sheet to list more property, mark the box that states "continued on reverse side or see attached list." Be as specific as possible in describing your property. You must describe the property that should go to you, and then check that box. You must describe the property that should go to the other party, and then check that box. Never list an item and then check both the Petitioner box and the Respondent box.

3. **Retirement Benefits.** Decide what you want to do about these assets. Generally, each spouse is entitled to a 1/2 interest in the pension or retirement or deferred compensation benefits of the other spouse for the time the parties were married. This is very complicated, and very important to both spouses. If you are entitled to any interest in your spouse's retirement assets, you may be required to file a Qualified Domestic Relations Order. This is a very important document. The Court and the Self- Service Center do not have this document. See a lawyer for help before you divide any retirement benefits. Check the box that describes what you asked for in the Petition or what the parties have agreed to.
4. **Real Property.** Mark this box if you own a home or real estate together. IT IS VERY IMPORTANT THAT YOU WRITE IN THE CORRECT ADDRESS AND THE LEGAL DESCRIPTION OF EACH PIECE OF PROPERTY. Mark the box showing which spouse gets the property, OR that the property is to be sold and the proceeds divided. If you used your own earnings to pay for property owned by your spouse, see a lawyer for help.
5. **Community Debt.** Mark this box if the parties have community debt. Then describe the debt, including the creditor, the account number, and the amount owed. Then mark the box showing which party is going to pay for the debt. If you had to use a separate sheet to list more debt or if you continued to list debt on the reverse side of the page, check the box. Mark the next box if you agree want that each spouse to pay his or her separate debt. This is money that the party owed before the time the parties got married.
6. Mark this box if you want to divide the debts incurred by a spouse that are not listed to be paid by the spouse who incurred the debt. Remember, although the Decree orders either spouse to pay community debts does not mean that the creditor cannot pursue collection from the other spouse, even after the legal separation and/or divorce is completed.
7. **Separate Property.** If you check boxed 5(e) on the Decree and you and/or your spouse have separate property, describe the separate property, its value, and who it belongs to.
8. **Separate Debt.** If you checked boxed 5(e) on the Decree and you and/or your spouse have separate debt, identify the creditor, the amount owed, and who is responsible for paying the separate debt.

## PARENTING PLAN AND JOINT CUSTODY AGREEMENT

Now you must complete the **Parenting Plan** to decide how custody, parenting time, and all the details will work after the court order. The best thing to do is for both parents to complete this plan together.

Refer to "**Planning for Parenting Time: Arizona's Guide for Parents Living Apart**" to help make your new parenting plan. The **Guide** is available for purchase at all Superior Court Self-Service Center locations, **or** may be viewed online and downloaded for **free** from the state courts' web page.

If you want Joint Custody, **both** parents must complete and sign the Parenting Plan AND the Joint Custody Agreement. All the documents you need for child custody, child parenting time and child support are in the Self-Service Center Packets.

### REMINDER:

1. **Be sure to attach "EXHIBIT A" about property and debts to your decree.**
2. **Be sure to attach the Child Support Worksheet, and the Parenting Plan, if you have marked joint custody or if the parties have signed a Parenting Plan.**
3. **Be sure to include a quit claim deed, if a quit claim deed has been signed.**