

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

Use these instructions **only** with the “*Decree of Legal Separation With Children.*” (If there are no minor children, by birth or adoption, common to you and your spouse, use the form for a “*Decree of Legal Separation Without Children.*”)

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

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

Getting a Legal Separation Decree. Before you and your spouse can become legally separated, a judicial officer must sign a Decree of Legal Separation. The Decree tells you who gets the property, who pays the debts, who gets legal decision making, who pays support 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 from what you asked for in the Petition, unless your spouse has provided written consent. If you try to do this, the judicial officer 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 when 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 following instructions will help you fill out each section of the Decree.) **TYPE OR WRITE IN BLACK INK ONLY.**

- A.** In the top left corner of the first page, fill out the following: your name (if you are the person filling out the petition and filing the petition with the court); your address (**if not protected**); your city, state and zip code; your telephone number; and your **ATLAS** number, if you are receiving or have received AFDC from the Arizona Department of Economic Security. If you are represented by an attorney write in the lawyer's state bar number, then indicate whether you represent yourself or if you are the lawyer whether you represent Petitioner or Respondent.
- B.** Fill in the names of the Petitioner and Respondent as they appear in the “*Petition for Legal Separation With Minor Children*” and other previously filed court paperwork.
- C.** Fill in your case number. It appears on all your papers previously filed with the court.
- D. THE COURT FINDS:**
 - 1-4d.** This section tells you that before the 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 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 judge or commissioner can dismiss your case or turn it into a divorce case.) Also, this shows that the court only has jurisdiction to order a party to make payments if that party has been personally served. This means that if you served your spouse by publication, you cannot get a child support, spousal maintenance, or similar order until you find and serve your spouse. You will, however, be able to get legal decision making of your minor child(ren) and decree of legal separation.

- 4.e. Community Property and Debt.** Mark the first box **only** if you and your spouse did not acquire 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 describes whether there is or is not an agreement as to the disposition of property and debt.
- 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 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.** Leave this section blank. The judicial officer will fill in this section if there is a deviation from the guidelines for child support.
- 4.j. Ability to Pay Child Support.** Leave this section blank. The judicial officer will fill in this section.
- 4.k. Legal Decision Making of the Minor Child(ren).** Mark this box only if legal decision making is not contested (you and the other party agree about legal decision making) or if you and the other party have agreed to joint legal decision making. You must write the reasons in the space provided. See the Parenting Time (Visitation) Guidelines for help.
- 4.l. 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, or the judge has ordered supervised or no parenting time after a trial. You must have a very good reason for such a request and you must write the reasons in the space provided. See the Parenting Time (Visitation) Guidelines for help.
- 4.m. Domestic Violence.** If the parties are going to have joint legal decision making of the minor child(ren), check the box to say whether there has been no domestic violence or if domestic violence has occurred and it has not been significant. Then explain why joint legal decision making is in the best interest of the minor child(ren) even though domestic violence has occurred.

E. THE COURT ORDERS:

- 1. THE PARTIES ARE LEGALLY SEPARATED.**
- 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. LEGAL DECISION MAKING, PARENTING TIME, AND CHILD SUPPORT. This section deals with legal decision making, parenting time and child support, pregnancy and paternity.

a. PREGNANCY. If the wife is pregnant and the husband is the father, write in the expected date of birth for the unborn child.

1. You must also write the names of the minor child(ren) common to the marriage, either natural or adopted, and the child(ren)'s date(s) of birth in the space provided.

2. Write in the name and date(s) of birth of any minor child(ren) 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 minor child(ren)'s birth certificate(s), and having the minor child(ren)'s last names legally changed (if not already done).

b. CHILD LEGAL DECISION MAKING. The legal decision making 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 Legal Decision Making Agreement and you are attaching it to the Decree OR you and the other party have agreed to file a Consent Decree.

1. For **sole legal decision making** of the minor child(ren), mark who is to have sole legal decision making, Petitioner or Respondent. Then mark **only** one of the three types of parenting time:

- 1) parenting time to the parent not having legal decision making; 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 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 parent time is to be given to the Petitioner or the Respondent, check this box.

2. For **Joint Legal decision making** you should **not** have marked box 1 above. Remember, you must attach a copy of the Joint Legal decision making Agreement and Parenting Plan as Exhibit B signed by both parents, which the judicial officer must approve if you want Joint Legal Decision Making. The Agreement will be included as part of the Court Order for legal separation.

c. CHILD SUPPORT. Mark who is to pay the child support and how much to the other party based on the request in the Petition for Legal Separation, or on the parties' agreement. If the parties agree to how much child support will be paid, write in the amount. Otherwise, leave the space blank and the judicial officer 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.

d. MEDICAL, DENTAL, 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 parties agreed that one party would pay the other party spousal maintenance. If the parties agree, put in the amount and the date the spousal maintenance will end. Otherwise, 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 what amount you are asking for, for what period, and why.

5. PROPERTY, DEBTS and TAX RETURNS.

- a. 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 bills your spouse incurred after you separated. Write the approximate date you separated on the line provided.
- 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.
- 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.
- 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. Write in the date that both parties shall transfer all real and personal property.
- 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 at <http://www.irs.ustreas.gov> 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 CHILD(REN) 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 the minor child(ren). If you mark this box, list the name of any such minor child(ren) with the date(s) of his/her birth(s) 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.

F. SIGNATURE 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.

G. "EXHIBIT A: COMMUNITY PROPERTY AND DEBT"

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, Pension, Deferred Compensation.** Decide what you want to do about these assets. Generally, each spouse is entitled up to a half interest in the pension or retirement or deferred compensation benefits of the other spouse based upon the length of 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 does not have this document. See a lawyer for help. Check the box that describes what you asked for in the Petition or what the parties have agreed to.
- 4. Division of Real Property.** Use this section if you own a home or real estate together. This information, including the address and legal description should also be the same as what you provided in the Petition. 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. Division of Community Debts.** 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 and want 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 the debts incurred by a spouse that are not otherwise listed to be paid by the spouse who incurred the debt. Remember, although the Decree orders either spouse to pay community debts, this 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 and/or your spouse have separate debt, identify the creditor, the amount owed, and who is responsible for paying the separate debt.
- 8. Separate Debt.** If you checked box 5(e) on the Decree and you and/or your spouse have separate property, identify the property and who shall receive the separate property.

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OTHER DOCUMENTS YOU MUST GIVE TO THE JUDGE WITH THE DECREE:

- 1. Child Support Worksheet and Order**
- 2. Judgment Data Sheet**

REMINDER:

- 1. Be sure to attach “Exhibit A” about property and debts to your decree.**
- 2. Be sure to attach the Parenting Plan, if you have marked joint legal decision making 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.**