

DEFAULT

In Civil Cases

3

**How to Apply for Entry of Default
When the Other Party Has Not Filed
an Answer (Response)**

FORMS AND INSTRUCTIONS

CIVIL DEFAULT

CHECKLIST

You may use these forms if . . .

- ✓ You filed a Summons and Complaint in the Yuma County Superior Court, **and**
- ✓ You served Defendant with the court papers, **and**
- ✓ Proof of service on Defendant has been filed with the Clerk of Superior Court, **and**
- ✓ The Defendant failed to file an answer, response, pleading, or otherwise defend within the time allowed by the Arizona Rules of Civil Procedure, **and**
- ✓ You want to get a Default Judgment against the Defendant.

READ ME: Consulting a lawyer before filing documents with the court may help prevent unexpected results. A list of lawyers you may hire to advise you on handling your own case or to perform specific tasks is presented on the Law Library Resource Center website.

How to Apply for Entry of Default in Civil Cases

Part 3: Default

This packet contains court forms and instructions listed below. Items in **BOLD** are **forms** you will need to file with the Court. Non-bold items are instructions or procedures. Do not copy or file those pages! Always use **BLACK INK**.

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Procedures: When and how to file an Application and Affidavit for Entry of Default in civil cases

When to file the Application and Affidavit for Entry of Default:

- After the defendant was served with the Summons and Complaint papers, and
- Time: The appropriate response time period has passed (see Default Timetable below), and
- No Response: The defendant has failed to defend or file an Answer or response with the court.

Note: If more than one Defendant in your case has not filed an Answer after being served with the Summons and Complaint, you will need to file an Application and Affidavit for entry of default for each Defendant.

- Step 1: Count. Look at the Default Timetable below to see the method of service you used and the number of calendar days to count before you can apply for entry of default.
- Begin counting on a calendar starting from the day after the other party was served the Complaint.
 - Include weekends and holidays when counting, until you reach the number of days listed.
 - If the last day for the other party to respond falls on a Saturday, Sunday, or legal holiday, do not count that day.
 - Ex. Plaintiff served Defendant by Process Server in the State of Arizona on October 1. Defendant has until October 22 to file an Answer, since October 21 is a Sunday. If Defendant hasn't filed an Answer by end of the day on October 22, Plaintiff can file an Application and Affidavit for Default on October 23.

Default Timetable

<u>Service Made in Arizona</u>	<u>Count</u>	<u>Event</u>
Acceptance of Service	20 Days	after the other party signs the Acceptance of Service
Process Server	20 Days	after the other party receives papers from process server
Service by Sheriff	20 Days	after the other party receives papers from Sheriff
Waiver of Service	60 Days	after the date request for waiver was sent to Defendant
Publication	50 Days	after the date of the 1st publication
<u>Service Made Out of State</u>		
Acceptance of Service	30 Days	after the other party signs the Acceptance of Service
Process Server	30 Days	after the other party receives papers from process server
Delivery with Signature Confirmation	30 Days	after the other party signs delivery confirmation*
Service by Sheriff	30 Days	after the other party receives papers from Sheriff
Certified Mail	30 Days	after the other party signs a green return receipt card
Waiver of Service	60 Days	after the date request for waiver was sent to Defendant
Publication	60 Days	after the date of the 1st publication

Step 2: Wait. Wait until the day after the number of days shown in the Default Timetable above. If the other party did not file an Answer/Response or did not appear in Court to defend this case, you may complete the Application and Affidavit for Entry of Default and follow the Steps below. Do not sign and date the Application and Affidavit for Entry of Default before the amount of time shown in the Default Timetable has passed.

Step 3: Complete the Application and Affidavit for Entry of Default. Mark the boxes and write in the spaces to provide the required information.

Note: the Affidavit is on the last page of the Application. Wait to sign it until you are in front of the clerk or a notary.

Step 4: Make two copies of: (1) Your original signed and dated Application and Affidavit for Entry of Default; and (2) your proof of service establishing the date and the manner in which you served the party claimed to be in default.

Step 5: File with Clerk of Superior Court: Take your originals and 2 copies (3 Total) of both the Application and Affidavit for Entry of Default and your proof of service to the Clerk of Superior Court for filing. The Clerk of Superior Court is located at the following address:

- Clerk of Superior Court, 250 W. Second St., Yuma, AZ 85364 ;

Hand the original & both copies of the Application and Affidavit for Entry of Default to the Clerk at the filing counter. The Clerk will keep the original, date-stamp both sets of copies and return the 2 copies to you. Make sure both copies are stamped.

Step 6: Give Notice: Mail one of the date-stamped copies of the Application and Affidavit for Entry of Default to the Defendant's last-known address on the same day you file the papers with the Clerk of Superior Court. If you reasonably believe the Defendant can be contacted by email, you must also email the documents to the Defendant. If the Defendant has an attorney, you must mail and email the documents to the attorney on the same day you file the papers with the Clerk of Superior Court. Keep a copy for your records.

Step 7: Count 10 court business days. Starting from the day after you filed and mailed your Application and Affidavit for Entry of Default, count 10 court business days (not including weekends or court holidays).

When 10 court business days have passed, you can ask the Court to enter a Default Judgment against the Defendant. Please note, the Law Library Resource Center does not currently have a "Default Judgment" packet. However, there are template forms available at the Law Library Resource Center for you to use to create your own forms.

Note: If, within those 10 days, the party claimed to be in default pleads or otherwise defends as provided in these rules, default does not become effective, and the court may not enter a default judgment against that party. Arizona Rules of Civil Procedure Rule 55(a)(1)

Person Filing: _____

Address (if not protected): _____

City, State, Zip Code: _____

Telephone: _____

Email Address: _____

Lawyer's Bar Number: _____

Representing Self, without a Lawyer or Attorney for Plaintiff OR Defendant

For Clerk's Use Only

SUPERIOR COURT OF ARIZONA
IN YUMA COUNTY

Name of Plaintiff

Case Number: _____

APPLICATION AND AFFIDAVIT FOR
ENTRY OF DEFAULT (Civil Cases Only)

Name of Defendant

NOTICE: This is an important Court Document. Properly complete and file this Application and Affidavit. Filing of this Application constitutes "Entry" of Default. The Default is effective ten (10) working days after you file this completed Application, unless the Defendant files an Answer/Response or otherwise defends before the ten working day period expires.

Under the authority of Arizona Rule of Civil Procedure 55(a)(2), an application has been filed requesting entry of default against _____ (Defendant's Name). If _____ (Defendant's Name) pleads or otherwise defends within 10 days after the application is filed, default does not become effective, and the court may not enter a default judgment against that party. The 10-day period begins the day after the application is filed with the court, it does not include Saturdays, Sundays, or holidays, and no additional time is added for service by mail.

APPLICATION FACTS:

1. Identification of Parties:

I am the Plaintiff in this court case. I understand and make the following statements under oath or by affirmation. I give notice that I am applying for default against the other party, the Defendant, because the Defendant has not filed an Answer/Response.

- I am seeking a default against, Defendant, _____,
in this case. (name of defendant)

(Check all that apply)

- Defendant has not filed an Answer/Response, and has failed to appear, plead, or defend within the time allowed by A.R.C.P Rule 55.

- Defendant is not in the active military service of the United States, or has otherwise waived his/her rights under the Service Members Civil Relief Act (formerly "Soldiers and Sailor's Civil Relief Act").

- Defendant is not a minor and is not incompetent.

- Defendant's last-known mailing address is: _____

- I have reasonable belief that the party claimed to be in default can be contacted by email. In addition to sending by mail, I will transmit (send) the Application for Entry of Default to the other party by email at this email address:

- I do not know Defendant's last-known mailing address, or the Defendant's whereabouts.

2. IDENTIFICATION of PARTIES' ATTORNEYS:

(Check One)

- I have no attorney.

- I am represented by an attorney whose name and address is:

(Check One)

- Defendant is not represented by an attorney that I know of.

- Defendant is represented by an attorney whose name and address is:

- I do not know the identity and address of the attorney known to represent the Defendant in this action or a related action.

3. PROOF OF SERVICE: I served Defendant as follows:

(Check One)

- Defendant signed an Acceptance of Service form, and accepted service of the "Summons," "Complaint," and other papers.

- I attached the Acceptance of Service form to this Application as proof of service.

- Defendant signed a Waiver of Service form, and waived service of the Summons, Complaint, and other papers.
 - I attached the Waiver of Service form to this Application as proof of service.
- I served the Defendant by process server, alternative service, or by publication, with the Summons, Complaint, and other papers.
 - I attached the proof of service to this Application.

4. NOTICE:

(Check all that apply)

- To the Defendant
 - I know the Defendant's address, and mailed a copy of the Application and Affidavit for Entry of Default to his/her last known address giving NOTICE of default; even if the Defendant is represented by an attorney who has entered an appearance in this action.
 - I do not know the Defendant's last-known mailing address and have sent the Application and Affidavit for Entry of Default to his/her email address giving NOTICE of default; even if the Defendant is represented by an attorney who has entered an appearance in this action.
 - I have not mailed a copy of this Application and Affidavit for Entry of Default to the Defendant because I do not know Defendant's address or whereabouts, and I do not believe the Defendant is represented by an attorney. (You can only check this box, if you served the Defendant by publication.)
- To the Attorney of the Defendant: I mailed and emailed a copy of the Application and Affidavit for Entry of Default to Defendant's attorney, giving NOTICE of Default whether or not the attorney has formally appeared in this action.
- To Other Parties (If applicable): I mailed a copy of the Application and Affidavit for Entry of Default to all other parties who have appeared in this action, which gives the parties NOTICE of default.
- Time of Notice: I mailed a copy of this Application and Affidavit for Entry of Default to the Defendant on the date that I filed this Application, or as soon as practicable after its filing, thus giving NOTICE. Please see the Affidavit and Certificate of Mailing or Delivery at the bottom of this form.

APPLICATION REQUEST:

1. I file this Application and Affidavit to give notice to all parties in this action, and the Court, that I am beginning default proceedings against the named Defendant, who has failed to answer, plead, or otherwise defend this action.

2. With this document, I apply for Entry of Default. I understand my filing of this document at the Office of the Clerk of the Superior Court constitutes "Entry of Default."

AFFIDAVIT:

I, _____, the Plaintiff in this action, hereby swear or affirm that:

- _____ is the Defendant in this action.
- I served the Summons, Complaint, and other court documents to the above-named Defendant according to law.
- Defendant is the party against whom I seek a judgment for affirmative relief.
- Defendant has failed to answer, plead or otherwise defend in this action.
- I filed this Application and Affidavit for Default on _____ (date) which constitutes the official Entry of Default.

Under Oath or By Affirmation

I swear or affirm under penalty of perjury that the contents of this document are true and correct to the best of my knowledge and belief.

Date

Petitioner's Signature

Printed Name

STATE OF _____

COUNTY OF _____

Subscribed and sworn to or affirmed before me this: _____ by
(date)
_____.

(notary seal)

Deputy Clerk or Notary Public

CERTIFICATE OF MAILING: On (date) _____ 20____, a copy of this Application and Affidavit for Entry of Default was mailed, postage-prepaid, to the Defendant at:

last-known address (as listed below),

(address, city, state)

OR (*if address is unknown*)

his/her last email address, as listed below:

(email address)

IF I know the Defendant, who I claim to be in default, is represented by an attorney, I have also mailed and emailed a copy of this Application and Affidavit to that attorney.

Name of Attorney

(address, city, state)

(Attorney's email address)