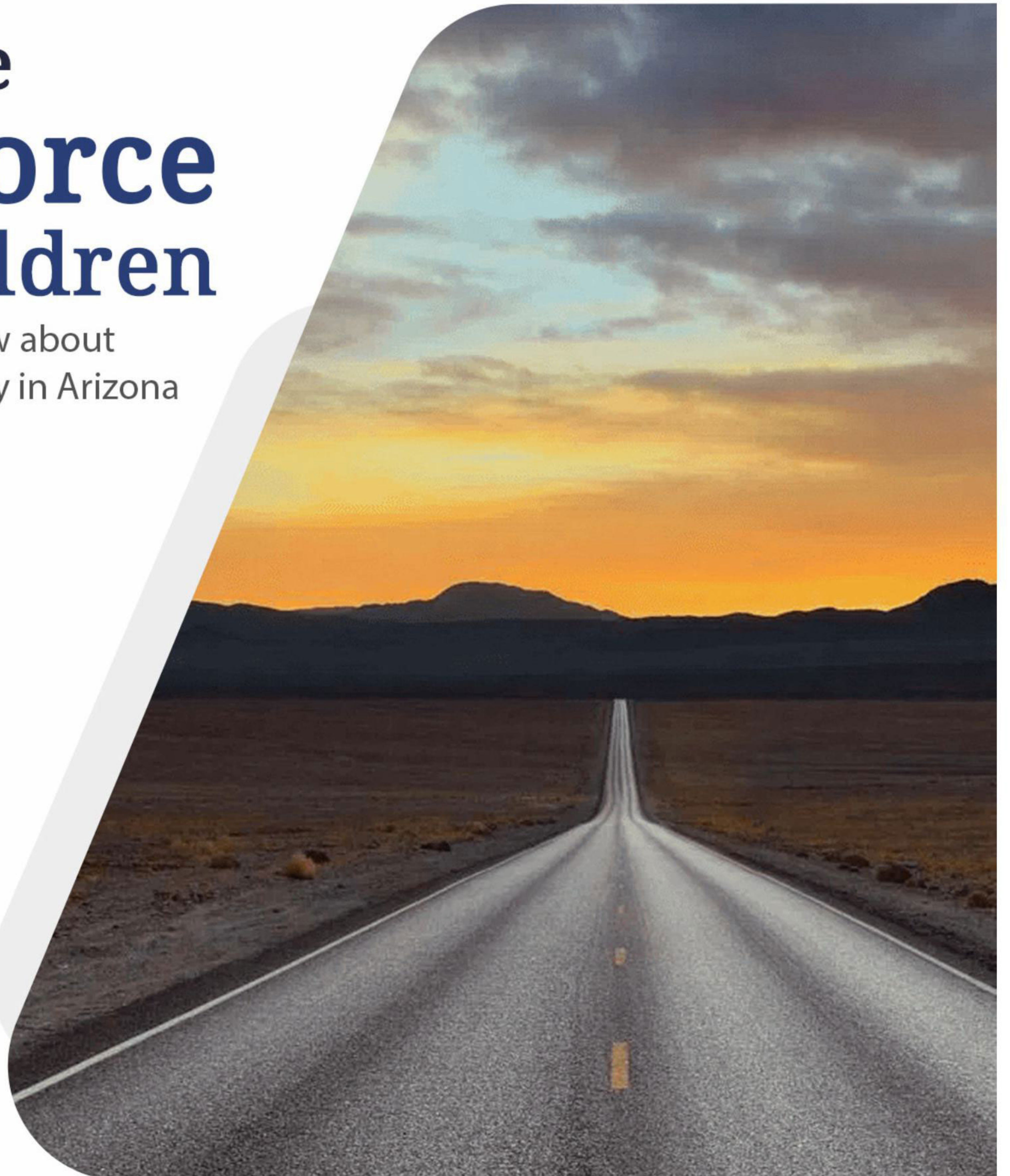


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# Your Guide To Divorce With Children

What You Need to Know about  
Divorce & Child Custody in Arizona



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Your Guide to Divorce

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Quick Facts

# About Divorce with Children

(divorce aka dissolution)

## 1 Getting Started

Once you have made the decision to divorce, you must file a Petition for Dissolution in the Maricopa Courts and then Serve the Petition to the opposing party. The date of service ends the “marital community” and all property or debt accumulated after this date will be deemed separate property or separate debt.

## 2 Your Property and Community Property

Community property includes any property or debt either spouse acquired from the date of your marriage until the date the divorce paperwork is served. Community property is divided equitably (generally, it is split in half) in a divorce. Sole property is property that was inherited, given as a gift or owned before marriage. Community property includes real estate, vehicles, retirement accounts, banks accounts and furniture purchased during the marriage. Debts accrued during the marriage are also considered community and split equitably.

## 3 What is Custody?

There is a lot of confusion with the term “custody”. When most people think about divorce and parents fighting over children, the term “custody” naturally comes to mind. The term “custody” describes both parenting time and legal decision making.

## 4 Reaching Agreements

While going through a divorce, parties can reach agreements at any time. These agreements can then be written in the final decree and/or a property settlement agreement that will be filed with the court and signed by the judge. Issues that cannot be resolved by the parties will be decided by the judge after a trial. Trials are time-consuming, stressful, and expensive for everyone involved. It’s not always possible to reach agreements on every issue, but we encourage settlement because it saves money and time and reduces stress.

## 5 Parenting Plan

This is required by the court to outline parenting time.





## What You Need to Know About Filing for Divorce in Arizona

### ✓ Starting the Divorce

In Arizona, a divorce starts when one spouse files the divorce paperwork (called a Petition for Dissolution) with the court. It does not matter who files first. The judge and the courts do not take into consideration who filed the Petition and who filed the Response. There are filing fees you must pay to the county to get divorced. The filing fees for a Petition for Dissolution costs \$349 and filing the Response to the Petition costs \$349 in Maricopa County.

### ✓ Date of Service

The date of service is important in a divorce because it is the date the “marital community” is ended. Once the Petition is filed, a copy of the Petition and the related documents must then be legally served on the other spouse. Service can be accomplished in a few different ways, including by certified mail (return receipt), by having the respondent spouse sign an Acceptance of Service, or by a process server. The date that the paperwork is served is known as the “Date of Service.” When service is complete, an Affidavit of Service must be filed with the court so the court knows the other spouse has notice of the divorce filing.

### ✓ Community Property

From the date of service going forward, the parties will no longer accumulate community property or debt (provided that the divorce goes through). Community property and community debts are generally split equally.

A Preliminary Injunction will be served along with the Petition. Among other things, this prohibits both parties from selling community property or making changes to existing insurance coverage.

### ✓ Cooling-Off Period

Before a divorce can be finalized, parties must wait 60 days from the date of service. Negotiations and agreements can be made during this period to avoid trial. The final paperwork can be filed on the 61st day after service.





## Response to Divorce Petition

### 1 Responding

A Response to the Petition for Dissolution needs to be filed within 20 days of the Date of Service (30 days to respond if served outside of Arizona). If a response is not filed in this timeframe, the Respondent may lose their chance to respond to the Petition. This can be devastating. We've received many panicked calls by spouses who were defaulted and treated unfairly in the Default Decree. A default is difficult and costly to fix. In our experience, a party's interests are best protected by filing a Response. If your case is still pending, we recommend filing a Response even if it is past the deadline. The filing fee for a Response to Petition for Dissolution is \$349.00 in Maricopa County.

### 2 Default: If No Response Is Filed

If the responding spouse fails to file a Response within the allowed time, the petitioning spouse may apply for a default judgment. A spouse applies for a default judgment by filing an Application and Affidavit for Default. This must be filed with the Court and served on the other party. The responding spouse will then have 10 days to respond to the Application and Affidavit for Default.

If the spouse fails to respond, a Default Decree of Dissolution of Marriage may be obtained, which grants the divorce on the terms of the spouse who originally filed the Petition. The court will often hold a default hearing before issuing the Default Decree.

### 3 Agreements

If both parties agree to all issues, the divorce can be completed in sixty-one days. A Consent Decree of Dissolution of Marriage, a Property Settlement Agreement, and a Parenting Plan set forth all the agreements and can be submitted to the court 61 days after the date of service. Once these are signed by the judge, the divorce is final.





## After the Divorce is Filed

### ✓ Resolution Conference

The court typically schedules a Resolution Management Conference (RMC) where the parties and their attorneys, if they are represented, go before the court for the first time. The court will attempt to determine if the parties have reached any agreements or need any experts or any other help. If neither party is represented, the court will schedule an Early Resolution Conference which is a mediation with a court employee. They will attempt to reach a settlement with both parties. Your negotiation process can be ongoing during the court process. It can settle at any time.

### ✓ After the RMC

The court will also determine what, if any, experts or evaluators and/or orders the parties need to help settle or litigate the matter. Those services and/or orders could include drug testing, mental health evaluations, vocational evaluations, business evaluations, mediation or a trial date.

### ✓ Temporary Orders

Occasionally, one spouse needs financial assistance from the other party while the divorce is pending. Either party may request temporary orders from the court. Temporary orders are court orders that are in place while the divorce is pending. Common reasons for why a spouse might request temporary orders include temporary spousal maintenance, exclusive use of the marital residence, and an interim award of attorney's fees. A temporary orders trial will usually be held within 30 days of the request for temporary orders.

### ✓ Rule 69 Agreements

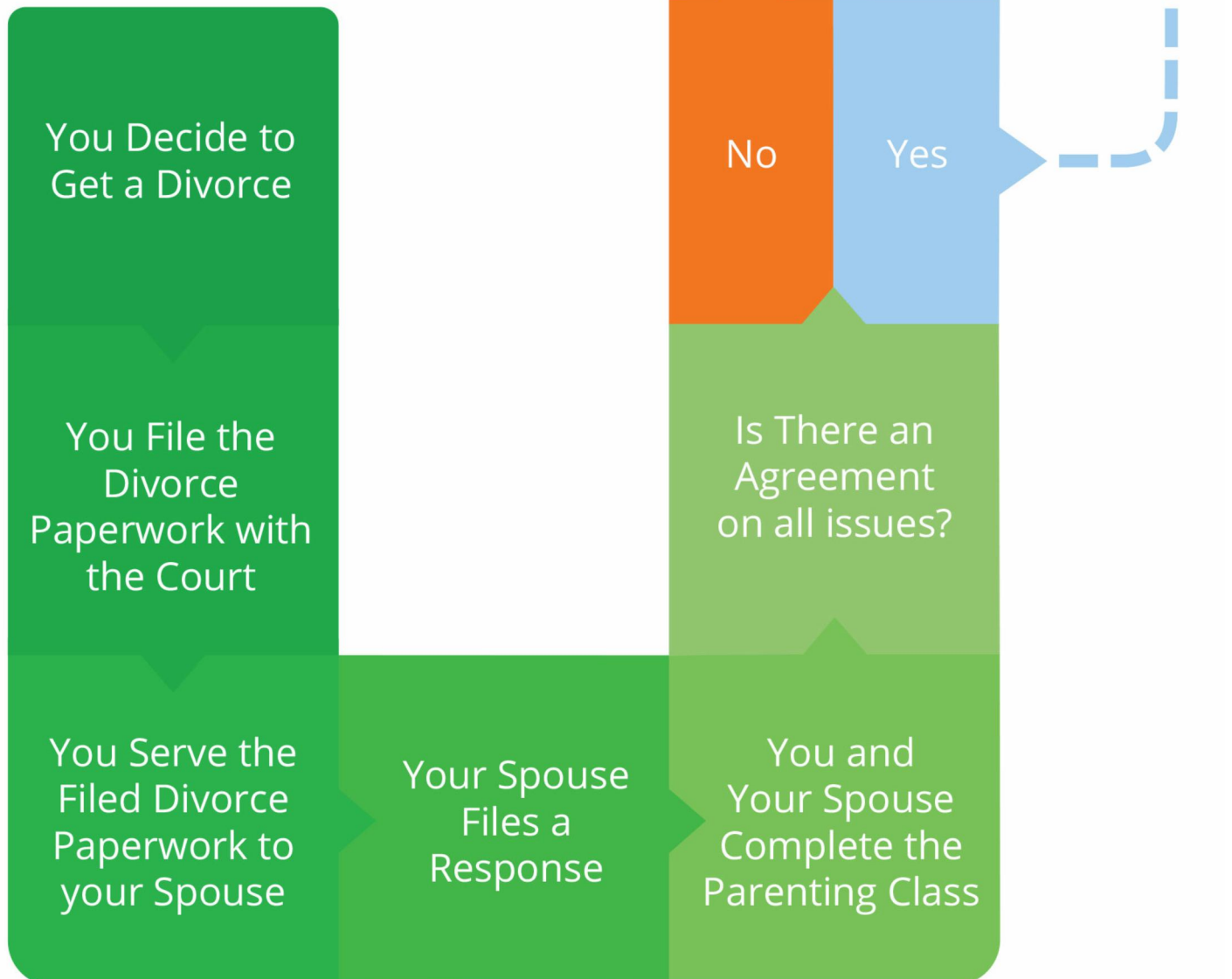
Agreements become binding if they are in writing and signed by both parties or agreements are stated on the Court record. These are later incorporated into the Decree and/or Property Settlement Agreement.

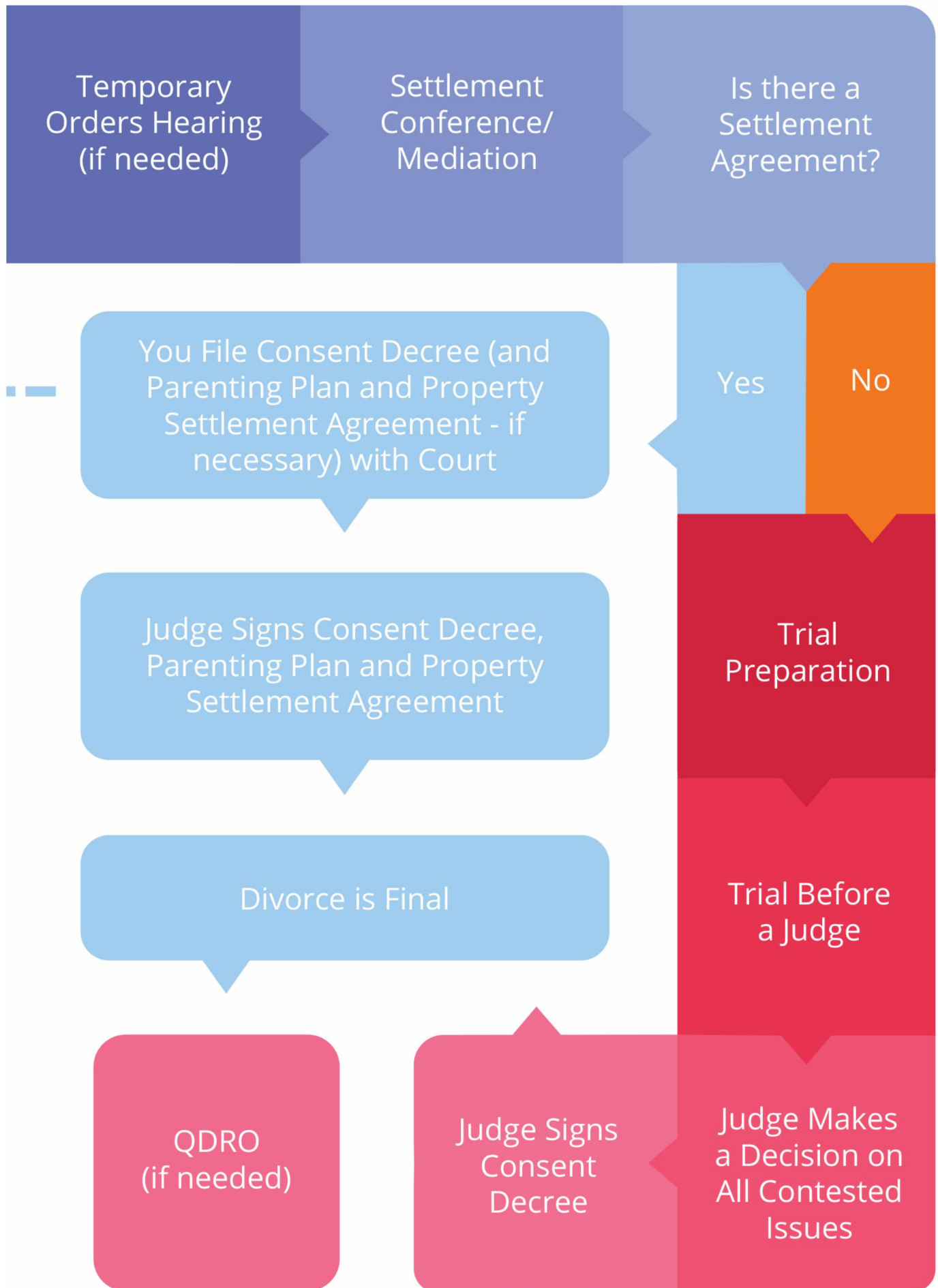
### ✓ Disclosure and Discovery

Parties should be exchanging all financial documents so there a complete transparency of all assets and debts.



# Divorce Process with Children









## After the Divorce is Filed

### ✓ Settlement Conference/Mediation

The Court may schedule a mediation with the court's alternative dispute resolution (ADR) services. A mediation can be scheduled to meet with a mediator who attempts to help the parties resolve all issues without going to trial. The parties can also hire a private mediator to try and resolve all issues.

### ✓ Trial

The court will set a trial date to hear any disputed issues. If the parties settle all issues before the trial date, they will not need a trial. Regardless of whether or not your spouse is represented, we recommend you retain an experienced family law attorney if you are ordered to go to trial.





## Divorce FAQs

### **? How long will it take to get a divorce?**

According to Arizona Revised Statute, section 25-329, you must wait at least 60 days from the date your spouse was served before going to Court and filing the Decree of Dissolution of Marriage. When the spouses cannot agree on how to settle issues such as assets and debts, the length of time to get divorced will be longer. If you litigate (go to trial) the issues, it may take a year or longer.

### **? Where do I file for my divorce?**

There are currently four courthouse locations in Maricopa County, which are located Downtown Phoenix, North Phoenix (Union Hills and the 51), Surprise, and Mesa.

### **? What if my spouse filed and I do not want to get divorced?**

You cannot stop your spouse from divorcing you, but you can file a request with the court to order a one-hour conciliation meeting to try and reconcile. There may be a fee associated with reconciliation. During this "time out" for 60 days, the court proceedings are paused.

### **? What is a divorce "Decree?"**

A Decree of Dissolution of Marriage is the final order of the Court which officially ends the marriage, divides the property and debts, and issues any other appropriate orders. A Decree takes effect once it is signed by the judge. It becomes a valid court order and can be enforced by law.

### **? How much does it cost to file for divorce in Maricopa County?**

The Petitioner (initiator of the divorce) must pay Maricopa County \$349.00 (2019) and the Respondent pays \$274.00 for filing an answer.

### **? Can my spouse and I file for divorce together?**

No, Arizona does not have a provision for any type of joint filing.



## **? Do I need an attorney for my divorce?**

Arizona law allows you to do this yourself. You are considered “pro se” or “pro per”; but you must follow all the same rules as parties with attorneys. In a courtroom you are held to the standard of an attorney and must know rules of discovery, evidence, examination of witnesses, and how to disclose and admit exhibits, and write a pre-trial statement.

## **? Is it possible to represent myself in court?**

Yes, but it is not always a good idea. The same rules and procedures apply whether you have an attorney or not, which means all papers must be correctly completed and filed on time. Especially if your spouse has an attorney, we recommend you consider hiring an attorney.

## **? When is my divorce/dissolution final?**

A dissolution of marriage is final after the judge signs the Decree. The court sends you a signed copy.

## **? I cannot afford health insurance. If I file for divorce, can my husband stop paying for it while we are in the divorce proceedings?**

No. After one spouse is served with the dissolution or legal separation documents, no insurance of any kind can be canceled or modified to the detriment of the other spouse until the divorce is finalized. Once finalized, each party will be responsible for their own health insurance.

## **? Am I considered the "bad guy" if I file first?**

Someone has to be the Petitioner, and someone has to be the Respondent. There is no advantage or disadvantage to either (other than perhaps assignment of the courthouse nearest to the Petitioner).

## **? Does it matter if my spouse was having an affair?**

No, Arizona is a “no-fault state,” which means that the court does not require that one spouse prove blame or responsibility in order to end the marriage.

## **? What if I change my mind after starting a divorce?**

If you and your spouse decide to stay married, the divorce case can be canceled or “dismissed” by filing a request with the Clerk of Superior Court and signed by both parties.



### **? My-14-year old does not like her father. Should I make her go visit him?**

Do you know why she does not like to visit him? If he is safe and his house is safe, you should do everything you can to encourage the relationship. She may be taking on your negativity or he may just not be a very attentive parent. Help him be a better parent by role modeling for him and discussing this with him. Maybe they could go to counseling together. Teenagers often do not want to be with either parent. It is important, however, to provide ample time with each parent.

### **? We have not been to court yet and there are no orders. Who gets the kids right now?**

It is basically a free-for-all, unless you all can decide. Just remember, what you do now can be reported to the court later. If you unreasonably keep the children away from one parent, out of vindictiveness, that will be contrary to you obtaining legal decision-making.

### **? Can I get temporary legal decision-making and parenting time?**

You must file a motion asking for it, after the petition for divorce is filed or with the petition as it is being filed. The court will set a hearing date, take evidence and make a decision if you all cannot decide. You really should be able to decide on a written temporary agreement. Sometimes parents try different schedules until they find one that works. Not all the children in a family have to have the same schedule.

### **? Will the court tell me when I can see my kids?**

You must file a motion asking for it, after the petition for divorce is filed or with the petition as it is being filed. The court will set a hearing date, take evidence and make a decision if you all cannot decide. You really should be able to decide on a written temporary agreement. Sometimes parents try different schedules until they find one that works. Not all the children in a family have to have the same schedule.

### **? Do my kids have to go to court?**

No, judges do not care to speak with children. Your children can talk to counselors and they can write reports. Also, the Court's Conciliation Services may choose to interview your children as part of a Parenting Conference. Children over the age of six or seven can usually be interviewed.

### **? What is a parenting conference?**

It is a meeting with a neutral third party who talks with both parties and then drafts a report to give to the court. It can be ordered by the court or requested by either party.



# ABOUT BEST LAW FIRM

Best Law was founded in 2007 by Cindy Best as she was going through her own divorce. Her divorce was very contentious and extremely stressful. At times she felt like her attorneys weren't listening, they didn't care, and they seemed unprepared. They appeared to lose track of facts and failed to communicate a coherent strategy. So, when Cindy founded the firm she focused on exceptional communication. She knew firsthand that good communication and a strategic game plan were the most valuable things she could offer clients. Cindy constructed a team that shares this vision. Cindy, along with Tali Collins have built a reputation in the legal community for their outstanding, client-focused representation. Best Law Firm has helped thousands of clients successfully navigate the divorce process and we know we can help you too.



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