

Default Judgment in a Divorce in Utah

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Even in the best-case scenario, going through the divorce process is rough. It's full of unwanted decision-making, compromises, and uncertainties. So, the last thing you need is to find that your soon-to-be ex-spouse has dropped out of the process. Or worse, a default judgment has been entered against you by the court because you were unaware of some action you were required to take. What can you do if you need to file for a default judgment or one has been unfairly filed against you?

First, What Is A Default Judgment?

To be in default in a court process means that the party has failed to do what is legally required by an imposed deadline. For example, if the respondent does not submit an answer to a petition within the set timeframe, the petitioner may file for a default judgment to be entered by the court granting all of his or her requests stated in the petition.

At that point, the judge may determine that entering a default judgment against the respondent is appropriate. The court may even grant the petitioner *everything* in the judgment that was requested in the petition without hearing any additional statements or arguments from the party in default.

How Do I File For A Default Judgment During Divorce?

If you and your attorney determine that your spouse has failed to respond during the divorce, here's the process for requesting a default judgment from the court:

Steps In The Default Judgment Process

Here are the steps that must be taken to be granted a default judgment by the court:

1. Have your spouse served with a divorce petition or complaint and a court summons, per Utah Rule of Civil Procedure 4.
2. The other party has 21 days from the date served to respond. If served out of state, he or she has 30 days. The respondent must deliver a copy to you.
3. If the respondent does not file an answer or responsive pleading in the required timeframe, you can file for a default judgment.
4. Have a copy of the judgment or court order served as well as a Notice of Judgment to the party in default and other parties in the case.

Exceptions For Military Service Members

Members of the military services are protected from default judgments entered in a civil case brought against them. To confirm a person's military status, you can go to the Servicemembers Civil Relief Act (SCRA) website.

Who qualifies as a military service member? To be a member of the U.S. military service, a person must be:

- On active duty in a branch of the military services, or
- A member of the reserves or National Guard who is called into active service.
- A commissioned officer in the NOAA on active service.
- A commissioned officer in the Public Health Service on active service.

How is a default judgment obtained against a military member? Under the Federal Code 50 USC 3911, the legal process is different if one party is a military service member. Divorce and other lawsuits involving military service members require processes and document submissions such as:

- Military Service Order
- Findings of Fact and Conclusions of Law
- Request to Submit for Decision
- Court order, decree, or judgment

Can A Default Judgment Be Reversed?

If a default judgment has been entered against you, you may be able to have it set aside. The Utah Supreme Court favors having a person provide a defense before handing down a judgment. The law also recognizes that circumstances beyond the defendant's control may lead to the default. For example, the respondent may not even know that there was a lawsuit against him/her. Or, at the time the default judgment was entered, he or she may have not been made aware of the requirement to respond, so he/she was not at fault for the non-compliance.

How Do I Ask The Court To Set Aside A Default Judgment?

If you have a good excuse for not providing a required response within the time allowed, you can file a motion to have the case reopened. In many cases, an effective divorce lawyer can submit sufficient legal arguments for *insufficient service of process* or *excusable neglect*. In such situations, the judge may set aside the default judgment. That means you will have another chance to defend yourself in court.

You will need to submit a Motion to Set Aside Default or Judgment asking the judge to undo the default judgment and permit the court case to continue as if that judgment had not been entered.

Obtaining Or Overcoming A Default Judgment in Divorce

Don't worry that you could be left waiting indefinitely for your ex to respond to your divorce petition. And, don't feel defeated by a default judgment that has been unfairly entered against you. These are two areas of the law where having a good divorce attorney on your side makes all the difference. So, if you have had a default judgment entered against you in a divorce, our divorce specialists may be able to have it set aside.

If you need help with your divorce case, call Wall Legal Solutions at (801) 441-2388, or contact us here online to schedule a free consultation.
