

INSTRUCTIONS FOR AFFIDAVIT OF DEFAULT, APPLICATION FOR JUDGMENT & DECREE OF DIVORCE (DEFAULT), NOTICE OF HEARING AND AFFIDAVIT OF MAILING & FORMS

***Only the Plaintiff fills out these Default forms if the parties have not completed a Stipulation and Settlement Agreement!**

An affidavit of Default is a sworn statement telling the court that you served the Summons (Without Minor Children) and Complaint (Without Minor Children) on the Defendant and that he/she has not responded within thirty days after the completed service.

The Application for Judgment and Decree of Divorce (Default) and Notice of Hearing serve as notice to the Defendant that a date has been set for a hearing in the divorce case and that he/she is in default for not responding to the Summons (Without Minor Children) and Complaint (Without Minor Children) within 30 days after the completed service. Once 60 days have passed after service of the Summons (Without Minor Children) and the Complaint (Without Minor Children) (excluding the date of service), The Affidavit of Default, Application for Judgment and Decree of Divorce (Default), Notice of Hearing and Affidavit of Mailing along with the Affidavit of Military Status (UJS-306) are completed and filed.

Affidavit of Default

- **Complete this form in black ink only!**
- Complete the “Caption.” **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask the clerk of court if you don’t know), name of Plaintiff, name of Defendant and case file number (ask the clerk of court if you don’t know). The caption is the same on every form.
- Complete paragraph 2 by inserting the date that Defendant was served with the Summons and the Complaint (Without Minor Children). This is the date that the Defendant either signed the Admission of Service or the date papers were delivered to the Defendant by the Sheriff or process server.
- Read the other paragraphs carefully as you are signing this document under oath and the statement made in all the paragraphs **MUST BE TRUE.**
- **You must sign and date the Affidavit in the presence of a notary public or clerk of court. Make sure to bring photo identification to show them. A notary public can usually be found at the bank and sometimes at the courthouse.**

Application for Judgment & Decree of Divorce (Default)

- Complete the “Caption” of the Application for Judgment and Decree of Divorce (Default) and Notice of Hearing as it appears on the Summons and Complaint (Without Minor Children).

- As the Plaintiff, fill in your full legal name in the first blank of the body of the Application.
- Date and sign the Application and complete the signature block.
- Obtain a trial date from the Court Administrator's office or Clerk of Court (depending upon which county your action is filed in). You will then use the date given to you to fill in the "Notice of Hearing" section.
- In the Notice of Hearing section, fill in the blanks to indicate day, month, year, and time (including am or pm) of the hearing date you got from the Clerk of Court of Court Administrator. Mark the appropriate box indicating where the hearing will be held and fill in the blanks.
- Date and sign the Notice of Hearing and complete the signature block.
- File the original Affidavit of Default, Application for Judgment & Decree of Divorce (Default) and Notice of Hearing with the clerk of court. Make two copies of each document. One for yourself and one to mail to the Defendant.
- Mail a copy of the Affidavit of Default, Application for Judgment & Decree of Divorce (Default) and Notice of Hearing to Defendant by first class mail, properly addressed, with sufficient postage *at least seven (7) days prior to the hearing.* The Defendant must receive written notice of the Application of Judgment at least three business days prior to the hearing,

Affidavit of Mailing

- The Affidavit of Mailing may only be completed after the Application for Judgment and Decree of Divorce (Default) and Notice of Hearing are placed in the United States Mail.
- Complete "the Caption" of the Affidavit of Mailing, just as they have been completed on the other documents.
- Fill in the blanks as indicated of the Affidavit of Mailing.
- File the original Affidavit of Mailing with the clerk of court. Make a photocopy of it for your file.
- **You must sign and date the Affidavit of Mailing in the presence of a Notary Public or Clerk of Court. Make sure to bring identification to show the Notary Public or Clerk of Court. A Notary Public can usually be found at the bank and sometimes at the courthouse.**

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p>AFFIDAVIT OF DEFAULT</p>
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Plaintiff, being first duly sworn on oath, states:

1. That I am the Plaintiff in the above-captioned action.
2. That the Summons and Complaint (Without Minor Children) were served together on the Defendant on _____, 20____.
3. That the proof of service has been filed (i.e. Admission of Service or Sheriff's Return).
4. That more than 60 days have passed since service of the Summons (Without Minor Children) and Complaint (Without minor Children). Defendant has made no answer, appearance or any other responsive pleading and is in default.
5. It is my belief that the Defendant is not in the military service on active duty.

Dated this ____ day of _____, 20____.

Sworn/affirmed before me this ____ day of _____, 20____.

Notary Public/Clerk of Court

If Notary, my commission expires: _____

(SEAL)

Plaintiff's Signature
(Date and sign in front of Notary Public/Clerk.)

Name (Print): _____

Address: _____

City/State/Zip: _____

Phone Number: (____) _____

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF _____

_____ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p>APPLICATION FOR JUDGMENT & DECREE OF DIVORCE (DEFAULT) & NOTICE OF HEARING</p>
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Comes now, the above-named Plaintiff, _____, and respectfully submits this Application for Judgment & Decree of Divorce by Default pursuant to SDCL 15-6-55(b), hereby requesting the Court to enter Judgment and Decree of Divorce by default against the Defendant in favor of the Plaintiff in the above entitled action. The Plaintiff's Affidavit of Default is by reference incorporated herein as though fully set forth.

Dated this _____ day of _____, 20_____.

Sworn/affirmed before me this
_____ day of _____, 20____.

(Notary Public/Clerk of Court)

If notary, my commission expires
(SEAL)

Plaintiff's Signature
(Date and sign in front of Notary Public/Clerk.)

Name (Print): _____

Address: _____

City/State/Zip: _____

Phone Number: (____) _____

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF _____

_____ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p style="text-align: center;">NOTICE OF HEARING</p>
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TO: THE DEFENDANT IN THE ABOVE CAPTIONED MATTER:

PLEASE TAKE NOTICE that on the ____ day of _____, 20____, at ____ : ____ am/pm (circle one) a hearing on the Application for Judgment & Decree of Divorce (Default) will be held:

In the courtroom of the Honorable _____, Circuit Court Judge of the _____ Judicial Circuit, presiding, located at the _____ County Courthouse, in _____ Count, _____, South Dakota.

OR

At the Court Administrator’s Office, _____ County Courthouse, _____, South Dakota.

The Plaintiff will seek judgment for the relief demanded in the Complaint (Without Minor Children) filed in the above-entitled action.

Plaintiff’s Application for Judgment & Decree of Divorce (Default) and Notice of Hearing and Plaintiff’s Affidavit of Default are by reference incorporated herein as though fully set forth.

Plaintiff’s Signature

Name (Print): _____

Address: _____

City/State/Zip: _____

Phone Number: (____) _____

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF _____

_____ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p style="text-align: center;">AFFIDAVIT OF MAILING</p>
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I, _____, the above-named Plaintiff, being duly sworn, state that on _____, 20____, I served the Affidavit of Default and the Application for Judgment & Decree of Divorce (Default) and Notice of Hearing, by placing true and correct copies of the document in an envelope addresses to:

_____, the above-named Defendant, at _____, in the City of _____, State of _____, Zip Code _____, and depositing the envelope, with sufficient postage, in the United States Mail at _____.

(City & State mailed from)

Dated this _____ day of _____, 20_____.

Sworn/affirmed before me this _____ day of _____, 20_____.

(Notary Public/Clerk of Court)

If notary, my commission expires
(SEAL)

Plaintiff's Signature
(Date and sign in front of Notary Public/Clerk.)

Name (Print): _____

Address: _____

City/State/Zip: _____

Phone Number: (____) _____

***The Affidavit of Mailing may be attached to the Notice of Summons & Complaint or may be filed separately. Ask the clerk of court which method they prefer.**