

# Obtaining an Order of Protection Without Filing for Divorce

A wooden gavel lies diagonally across the upper left portion of the frame. A silver fountain pen with a black barrel is positioned horizontally across the middle right. In the foreground, two gold wedding bands are placed side-by-side on a white document. The document itself is out of focus, but the word "DIVORCE" is clearly visible in large, bold, capital letters on the left side. The background is a soft, out-of-focus light blue and white.

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Written by [Marlene Pontrelli](#) – 8/30/19

As part of any divorce proceeding, it is possible to obtain exclusive possession of the former marital residence if circumstances indicate that there are safety concerns. However, if you are not ready to file for divorce, talk to your attorney about obtaining an order of protection if you are concerned about your safety, your children's safety, or if there has been a history of domestic abuse. If your spouse has attempted to cause, has caused you bodily injury, or has threatened to cause you bodily injury, you may qualify for an order of protection.

An order of protection may be granted to prevent a person from engaging in certain conduct. This may include giving you exclusive possession of the family residence, restraining your spouse from contacting you, or coming near the residence, your place of employment or school. The order of protection may also prohibit your spouse from possessing or purchasing a firearm or ammunition.

Orders of protection may be obtained from judicial, municipal and superior courts. The self service centers at the court will have the forms to file a petition for an order of protection. Although court personnel may not give legal advice, they are available to assist in answering questions on how to fill out the

forms and to provide information on the procedure. You may also seek the advice of an attorney who has experience in domestic violence. Your attorney can help guide you through the process.

There are two primary conditions that must be met to obtain an order of protection. First, there must be a special relationship between the parties. This relationship includes (1) individuals who are married now or in the past, (2) individuals who live together now or in the past; (3) individuals who have a child in common; (4) one party is pregnant by the other party; (5) an individual is a relative to the other party (i.e., brother, sister, grandparent); or (6) individuals who have a current or past sexual relationship.

The second condition is there must be an act of domestic violence or reasonable cause to believe an act of domestic violence will occur. Domestic violence includes many behaviors that do not involved physical abuse, and may include actions such as criminal damage to property, custodial interference, disorderly conduct, reckless display of dangerous instruments, threats, and acts of intimidation.

Orders of protection are sometimes confused with injunctions against harassment. An order of protection requires that there be a special relationship between the parties. An injunction against harassment does not require a special relationship.

To obtain an injunction against harassment, a party must show that the defendant committed an act of harassment during the

year prior to filing a request for an injunction or that great or irreparable harm to the person may happen in the future.

Similar to the order of protection, if an injunction against harassment is issued the court may prohibit certain activity by the defendant. This activity included prohibiting the defendant from contacting the plaintiff or going near the plaintiff's residence, place of employment or school.

#### **About the Author:**

[Marlene Pontrelli](#) is a Member in our Phoenix office. Marlene is a certified specialist in family law. Her practice focuses on all aspects of family law including dissolution, post-dissolution, paternity, child custody and child support matters. She is admitted to practice in California and Arizona. She is a member of the State Bar's Family Law Practice and Procedure Committee and is a judge pro tem for the Superior Court of Maricopa County in family law. She has extensive trial and appellate experience including appearing before the Arizona Court of Appeals, Arizona Supreme Court and Ninth Circuit Court of Appeals.

Ms. Pontrelli has written several books, including as a co-author of the Divorce in Arizona book. She is a frequent lecturer in the area of family law and has conducted workshops throughout the country. Ms. Pontrelli is also an adjunct professor at The Sandra Day O'Connor School of Law at Arizona State University, where she teaches the family law class. Marlene may be reached in our Phoenix office at 602-285-5081.

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