

# Protective Orders



## What Is An Order of Protection?

Filing for an **Order of Protection** is based on a two fold test. The first is your relationship with the defendant and the second is whether or not a domestic violence crime has been committed; if both do not apply, then you would file an **Injunction Against Harassment**.

### **Relationship** includes:

- Your current or former spouse,
- Someone with whom you live or have lived,
- One party pregnant by the other party or someone with whom you have a child in common,
- Your immediate relative, or your current spouse's immediate relative,

### **Domestic Violence** includes:

- Assault
- Aggravated Assault
- Child or Vulnerable Adult Abuse
- Criminal Damage
- Criminal Trespass—first, second or third degree
- Crimes Against Children
- Custodial Interference
- Disorderly Conduct
- Endangerment
- Kidnapping
- Threatening or Intimidating
- Unlawful Imprisonment

You must tell the Court if there are any other court proceedings regarding the defendant's conduct toward you or any other court orders in effect. It does not matter if the court proceedings are going on now, or if they happened in the past. Tell **this** Court about all of them.

# What Is An Injunction Against Harassment?

If you are asking the Court to issue the Injunction Against Harassment without giving the defendant a chance to be heard first, **you must show that great or irreparable harm will result** if the Injunction Against Harassment is not issued until after the defendant has been given notice and a chance to be heard. If the Court does not find that great and irreparable harm will result unless the Injunction Against Harassment is issued immediately, a hearing may be set and the defendant will have a chance to be heard before an Injunction Against Harassment may be issued.

**Harassment** is a SERIES of acts which:

- Can be spread over a long or short period of time.
- Must show a continuity of purpose.
- Must be directed at a specific person.
- Must seriously alarm, annoy, or harass the victim without serving a legitimate purpose.
- Must be such as would cause a reasonable person to suffer substantial emotional distress.
- Must actually cause the victim to suffer substantial emotional stress.

**You must be specific about how the defendant has harassed you.** Just because the defendant annoyed or alarmed you does not mean you have been harassed in the legal sense. According to the law, harassment must involve a **series of acts**. A single incident, no matter how much it may bother you, does not constitute legal harassment. People cannot be prevented from taking legal action against you and Injunctions cannot resolve landlord-tenant disputes.

You must tell the Court if there are any other court proceedings regarding the defendant's conduct toward you or any other injunctions in effect. It does not matter if the Court proceedings are going on now, or if they happened in the past. Tell **this** Court about all of them.

## What Effect Does An Order of Protection Or An Injunction Against Harassment Have?

The Judge has the authority to:

- Order the defendant to not commit acts of domestic violence.
- Grant one party exclusive possession of residence (only on an Order of Protection).
- Order the defendant to not go near the residence, place of employment, school, or other specified locations of the other party.
- Prohibit the defendant from possessing a firearm.
- Require the defendant to participate in domestic violence counseling. (only if a hearing is held)
- Order other relief as necessary to protect the alleged victim or other persons. Adults living at separate addresses will not normally be included unless they are present and requesting to be included.

The judge **does not** have the authority to render custody orders, resolve property disputes, or fashion an Order of Protection affecting any visitation rights. **These types of relief are appropriate for review by the Superior Court.**

## ORDER OF PROTECTION

Once an Order of Protection or Harassment Injunction has been served, it will be in effect for one (1) year.

The defendant may request a hearing on the order one time during the one year in which it is in effect. A hearing will be held within 10 days from the date requested unless the Court finds compelling reasons to continue the hearing. If you (the plaintiff) have been granted exclusive use of the residence, the hearing will then be held within 5 days.

If during the period of time your order is in effect your circumstances change, you must appear in person to request a possible modification to the Order of Protection or Harassment Injunction.

If a petition for annulment, dissolution or separation of marriage, or an action for maternity or paternity, is filed, you must notify the Court immediately and the proceedings will be transferred to Superior Court.

### **Violation of the Court Order is a criminal charge.**

If the defendant violates the Order of Protection or Harassment Injunction, you should **call 9-1-1 for all emergencies or if you only want to file a police report, call the Tempe Police Department at 480-350-8311.**

### **Do not call the Court to report violations.**

A decision to file criminal charges is made by the Tempe Prosecutor's Office, **not** by the Court.

## HOW DO I FILE?

You must fill out the paperwork given to you by the Court staff. An Order of Protection/Injunction Against Harassment can only be issued against one person. Each person you want to file against requires a separate petition and service. You **must** provide the Court with:

- A name of the defendant.
- A list of all specific facts of domestic violence or harassment that the defendant has committed within the past year (the 1 year requirement may be waived if defendant is out of state, incarcerated, or good cause is shown).
- Your address and phone number so the Court can contact you if the defendant requests a hearing. Upon your request, this information will be withheld from the defendant.
- An address at which the defendant can be legally served with the Court's order. Remember—you can request an Order or Injunction without the address—**but it is not effective until the defendant is served**

After you complete the paperwork, you will be scheduled before a Judge who will review your petition. This appearance is usually on the same day. The Judge will decide whether to issue the Order of Protection or Injunction Against Harassment.

## HOW IS THE DEFENDANT SERVED

If the Judge issues the Order of Protection or Injunction Against Harassment, you must have the defendant served with the order before it will be effective. Once an order has been served, it will be in effect for one (1) year.

You may use a private process server or you may use the Tempe Police Department for Orders of Protection only. The Tempe Police Department does not serve Injunctions Against Harassment unless the injunction is based on a dating relationship.

If you use a private process server, you are responsible for delivering the defendant's copy of the order to the process server and for paying the service fee and mileage.