

## **DIVORCE IN OREGON**

The content of this document is from the following sources:

- "Divorce in Oregon, An Overview," a pamphlet produced and distributed by the Oregon State Bar courtesy of Oregon's lawyers/Legal Editor: Theresa L. Wright. [www.osb.org](http://www.osb.org)
- "How to Prepare for Your Divorce, Legal Separation, Custody or Support Trial." This brochure was created by the State Family Law Advisory Committee's "Self-Represented Legal Services Subcommittee," based on an original version developed by the Douglas County Local Family Law Advisory Committee and the Douglas County Legal Aid Office in 2001
- "Multnomah County Family Court Services Parenting Education Class Information and Registration Form (Parents helping children cope with family change.)"
- "Kids' Turn-The Family Law Education Program for Washington County" brought to you by: Youth Contact, Inc./Washington County Conciliation Services

Divorce can be an extremely challenging time for all persons involved. Tempers can flare, emotions can run high and often family members begin to blame one another for the downfall of the marriage. Children become victims of divorce as they often begin to feel that they are to blame for the divorce. Children are often caught in the middle as parents often strategize to obtain custody of their children.

Some frequently asked questions regarding divorce are as follows:

### **1. What happens in a divorce proceeding:**

A divorce (called a "dissolution of marriage" by the courts) is a way of legally ending a marriage. A divorce judgment will decide:

- The date your marriage ends;
- Who gets custody of the children and when the other parent has visitation
- Which parent pays child support and how much;
- Which parent will pay health insurance for the children;
- What past bills and debts each parent will pay;
- The division of property (including retirement benefits and a home); and
- Whether one spouse will pay spousal support to the other and for how long

### **2. Do I need a legal reason to get a divorce?**

No because Oregon has "no fault" divorce. Irreconcilable differences are the reason couples get divorced in Oregon. In other words, divorce is granted in Oregon simply because you and your spouse cannot get along and you see no other way of settling your differences. It doesn't matter than one of the parties may not want a divorce.

### **3. What is the residency requirement to get divorced in Oregon?**

In virtually all cases, you or your spouse must have lived in Oregon for at least six months prior to filing for divorce. You must also file your divorce in a county where either you or your spouse resides.

#### 4. **Will I need an attorney to get a divorce?**

If you and your spouse agree about all the issues of the divorce, then you may be able to complete much of the divorce documents yourself, however you will still want to obtain advice from an attorney. If the divorce is contested, you will almost certainly need an attorney. It is much simpler to draft your documents correctly to start with than to attempt to fix the mistakes you made after the divorce is final.

#### 5. **What do I do to start a divorce?**

If you or your spouse has met the residency requirement in Oregon, you need to do three things to start your divorce:

- You must file a Petition for Dissolution of Marriage with the Circuit Court clerk's office at the county courthouse. The petition informs the court and your spouse what you are asking for in the divorce. Petitions are often general as opposed to specific as couples often do not know exactly what they want when a divorce is filed. There are also numerous other documents that must be filed with the court to initiate a divorce.
- You must serve all filed documents on your spouse. This informs your spouse that a divorce action has been started and informs them of what you are asking for. There is generally a service fee to have your spouse served.
- You must pay your filing fee or have your filing fee waived or deferred by the court. A waiver or a deferral is based on financial need.

#### 6. **How do I serve the divorce papers?**

If you retained an attorney to handle your divorce, he or she will have the divorce documents served on your spouse by a sheriff or a process server. Your spouse can also agree to sign a document saying that he or she has been served.

If you are getting state or public benefits, or if child support has already been established, the Division of Child Support (DCS) will also need to be served with a copy of the divorce petition. If you have not retained an attorney, you can contact DCS to find out how to serve your spouse with the legal documents.

#### 7. **What if I am served with divorce documents?**

If you are served with divorce documents, you will have 30 days from the date you are served with the documents to file a formal response with the court. A response basically lets the court and your spouse know which parts of their petition you agree with. You can also file counterclaims in your response. If you agree with all the terms of the divorce as listed in the petition, you do not need to file a response. There is a fee to file a response in a divorce case. If you do not file a response, then your spouse can get a default judgment against you, where he/she can get the court to sign a document granting the things asked for in the petition.

## 8. **How much does a divorce cost?**

Court costs and filing fees generally range from \$200-\$400 depending on the county in which you file. If you cannot afford to pay the fees and costs, you can ask the judge to waive your payments or defer them to a later date. You will need to fill out forms showing your financial need in order to have your fees waived or deferred.

If you hire an attorney, your costs will be much more. The more complex your case is, the more your divorce will cost. The more issues you and your spouse disagree about, the more work your attorney will have and the more expenses you will have. Make sure you speak with your attorney about his or her billing procedures. Almost always, your attorney will give you a written fee agreement that you must sign before your attorney will agree to represent you.

If your spouse's income is much higher than yours and you do not settle out of court, the judge may order your spouse to pay your attorney fees and/or costs.

## 9. **How long does it take to get a divorce?**

The length of time to get a divorce depends on the complexity of your case. Most divorces will take 90 days or so to complete. This is a minimum interval, although there are exceptions that apply. Experience indicates a normal interval of about 100 days for uncontested divorces and up to 18 months for contested divorces. During the waiting period your attorney will be trying to help you work out the details of custody, visitation, support, and property division.

## 10. **Exchange of financial information**

Whenever a divorce or separation case is filed, each spouse will probably provide the other with information about finances and property. The law encourages this exchange so each spouse understands the assets and debts of the other. Fair settlements and court orders are helped when each spouse has the same information, and when financial details are not hidden.

The spouse filing the case (the "petitioner") receives from the court a copy of the law about exchanging financial information. The petitioner may "serve" (deliver) a copy of this law to the other spouse (the "respondent") along with the other court documents that were filed with the court to start the case. If the petitioner does this, each spouse then has 30 days from the date the respondent is served to provide the other with the information. If the spouses have attorneys, the information is usually exchanged through the attorneys. Information that must be exchanged includes tax returns, wage records, credit card balances, automobile titles, pension and retirement plans, and bank accounts.

If a hearing on child or spousal support is scheduled before the 30 days are up, the financial information must be exchanged at least three (3) week days before that hearing.

Spouses who do not obey the laws about exchanging information could be required to pay the other spouse's legal expenses and attorney fees from enforcing this law. Once a final judgment has been issued in the divorce or separation, the court could re-open the

property division terms of the case if the court finds that assets were concealed on purpose or by accident. Fines can be imposed for concealing assets. Deadlines for re-opening the property division terms depend on the facts of the case.

### 11. **What is mediation?**

Mediation is one or more private counseling sessions in which a trained mediator tries to assist you and your spouse reach an agreement on the issues in your case. Many counties offer this as a free service through the courts. The judge might order both of you to go to mediation in an attempt to agree on divorce issues such as child custody, support, parenting time, and property division. In some instances, this requirement can be waived.

Mediation does not require either party to agree to any solutions proposed by the mediator. A written summary of the items you agree on will be sent by the mediator to the attorneys. Any issues that you cannot agree on will go before a judge who will make your decisions for you regarding those issues. It is almost always best to decide your issues between you and your spouse as opposed to having a judge decide them for you.

Often cases will need a temporary order issued while the divorce case is pending. A temporary order simply decides issues that will be in effect while the case is pending. In other words, while the case is pending, who will have custody of the children, what will the parenting time arrangement be for the noncustodial parent, who will pay support and in what amounts, who will live in the marital home while the divorce is pending, etc. Not every case has a need for a temporary order and not all issues discussed above are included in every temporary order.

### 12. **Parenting Classes**

Most counties now require you and your spouse to attend a parenting workshop prior to the judge signing your divorce judgment. A parenting workshop is an educational program for families who are undergoing, or have undergone, reorganization following separation, divorce, or changes in custody or visitation. These workshops are taught by qualified professionals with backgrounds in education and/or mental health. All participants who successfully complete the program will receive a Certificate of Completion; a copy of such will be forwarded to the court. Normally each spouse must enroll in the parenting workshop in their county within 15 days after the petition has been filed.

These parenting time workshops are scheduled at times convenient for families on weeknight evenings and Saturday mornings, depending on the county you are in. Workshops are held at various locations depending on the county you are in. The cost for each spouse to attend the workshop generally ranges from \$60-\$145, again depending on the county you are in.

#### **What will children learn from the parenting time workshops?**

- To identify and communicate feelings experienced when parents separate or divorce
- To talk about changes in the family

- To understand basic concepts about the legal process of separation, divorce, and custody decision-making
- To utilize construction methods for dealing with common situations they may encounter after their family reorganization

### **What will parents learn from the parenting time workshops?**

- To develop an understanding of how family reorganization can affect their children and what they can do to help
- Skills for effective parenting following a reorganization
- To communicate better with their children's other parent
- How other parents experience the reorganization of their families

### **13. Custody Studies/Evaluation Programs**

Evaluations must be ordered by the Court. A written professional opinion concerning custody and parenting time is developed through the completion of an Evaluation. Parents, and sometimes children, are interviewed and other information is collected that is pertinent to making a balanced recommendation to the court. There is a fee associated with this study and the initiation of this study requires that a matter be pending before the court. Additionally, mediation must have been completed or waived by the court.

### **PROPERTY AND DEBT ASPECT OF DIVORCE**

As a general rule, both parties have access to 50% of the assets of the marriage. Generally the debts are divided as of the time of the separation whereas the assets are split at the time of the divorce. The parties are encouraged to work out their own division of property and debts. Generally the parties will not split the debts but will assign debts to each other. For example, one party might take the Sears debt, the other the Home Depot debt, etc.

At the trial, the judge will divide the property and debts shared by you and the other party. The judge will divide all property that you and the other party own, including land, houses, motor vehicles, home furnishings, money in bank accounts, stocks and bonds, pensions and retirement benefits, etc. The judge may even divide property owned by one party before the marriage or relationship began, although it is usually given to the party who originally owned it.

The judge will also decide which party pays which debts. Even if only one of you made the purchase during the marriage or relationship, the other party is usually also responsible for the debt and can be sued by the creditor (the person to whom the debt is owed). The exceptions are for business expenses and loans of money. If you and the other party were separated when one of you signed for the debt, the other party is not responsible to the creditor unless the debt is for the children's education, health, or support needs. You should get the advice of an attorney if **retirement benefits, pensions, or real property (land or a house)** will be issues in your case because these involve very complicated legal issues.

You should support your proposal for dividing the property and debts by providing information and evidence to the judge on questions such as the following:

- Where the property came from (gift, inheritance, purchase, etc.)
- If one of the parties owned it before the marriage
- If the parties kept their money in joint bank accounts
- How much money each party makes now and is expected to make in the future
- Whether it would make sense for an item to go to the parent with custody
- How much did the value of the property increase during the time the parties were together

IMPORTANT: Even if the judge says one party should pay a debt incurred by you while you were together, each party remains responsible for making sure the debt gets paid. The creditor can seek payment from either one of you and, if not paid, can file a lawsuit against you, the other party, or both of you, for the unpaid amount. You may be able to get reimbursement from the party who was ordered to pay the debt in the judgment by filing a case against the nonpaying party.

For more information about property and debt issues, talk to an attorney or go to the Oregon State Bar's web site ([www.osbar.org](http://www.osbar.org)) click on "Public Information", go to the "Family Law Index," scroll down to the section called "Oregon Legal Services Booklet: Family Law in Oregon" and read the section on "Property, Debts and Taxes."

### **CHILDREN'S RIGHTS IN DIVORCE\***

\*Materials developed by Kathleen O'Connell Corcoran, MS, NCC, adapted from the Family Center of the Conciliation Court of Pima County, Arizona (1991)

1. Each child has the right to develop and maintain an independent relationship with each parent.
2. Each child has the right to be free of conflict between the parents.
3. Each child has the right to be free from having to take over the parental responsibility for making custody and visitation decisions.
4. Each child has the right to be free from having to take sides with, defend, or downgrade either parent.
5. Each child has the right to be guided, taught, supervised, disciplined, and nurtured by each parent, without interference from the other parent.
6. Each child has the right to be financially supported by both parents, regardless of how much time each parent spends with the child.
7. Each child has the right to know both parents, and to spend time with both parents on a regular basis, for holidays, and for vacation periods, regardless of payment of child support.

8. Each child has the right to a personal sleeping area and space for possessions in each parent's home.
9. Each child has the right to be physically safe and adequately supervised when in the care of each parent.
10. Each child has the right to be protected from people under the influence of alcohol or illegal drugs.
11. Each child has the right to be protected with a car seat or seat belt (as appropriate to the child's age) whenever a passenger in an automobile.
12. Each child has the right to a proper fitting protective helmet whenever bicycling or motorcycling.
13. Each child has the right to be protected from the harmful effects of second-hand smoke.
14. Each child has the right to a stable, consistent, and responsible child care arrangement when not supervised by the parents.
15. Each child has the right to develop and maintain meaningful relationships with other significant adults, (i.e., grandparents, stepparents, and other relatives) as long as these relationships do not interfere with or replace the child's primary relationship with the child's parents.
16. Each child has the right to expect that both parents will follow through with the child's residential plan, honoring specific commitments for scheduled time with the child.
17. Each child has the right to both parents being informed about medical, dental, educational, extracurricular, and legal matters concerning the child, unless such disclosure would prove harmful to the child.
18. Each child with special needs (developmental, mental, emotional, and physical) has the right to appropriate consideration and adaptation in any child care plan.
19. Each child has the right to participate in age-appropriate activities so long as these activities do not significantly impair the relationship between the child and either parent.

If you need assistance regarding a divorce or any divorce issues, please do not hesitate to contact our firm at 503.693.6641.