

A DIVORCE PRIMER

A major part of the emotional stress of divorce is being involved in something that you do not understand. A potential divorce unleashes a variety of fears and concerns that may result in an inability to think clearly about financial settlements, personal needs, and the needs of your children. We have prepared this primer as a brief overview on Oregon divorce to help clarify, explain, and interpret the steps you may go through in this process.

1. **Grounds.** Oregon has adopted the concept of "no-fault" divorce. It is not necessary to prove cruelty, adultery, abandonment, or any other fault on the part of your spouse for the court to grant a divorce. A simple statement that you and your spouse have developed "irreconcilable differences" is all that is required. "Irreconcilable differences" is the legal phrase used to say that you and your spouse are no longer getting along. Either party can request a divorce without the other's permission or agreement. You cannot stop the divorce from happening if your spouse wants one.

2. **Legal Separation.** A legal separation is a court process that we do not generally use. Many, but certainly not all, clients physically separate during the pre-divorce period. It is a hassle free, self-help process. One party simply moves out of the family home. It is possible that such a separation can save your marriage. The new perspective gained by the physical separation may help you discover what is wrong in your marriage. Sometimes the party who is pushing for the divorce believes that physical separation will resolve his or her unhappiness. That person often finds that the opposite is true. We find that distance seldom resolves marital problems because you need to be together to work out problems. In addition, it often creates problems later for the party who moved out.

3. **Leaving the Family Home.** Many clients ask if they can or should leave the family home. There is no generally correct answer to this question. The right decision for you is dependent upon your specific circumstances. There are a number of strategic considerations that should be a part of making such a move if you think a trial is likely. The departing spouse takes a real chance that re-entry will not be possible. In addition, moving away from the family home and the children may influence the judge's decision if custody is an issue. Do not move out of the family home without consulting us first.

You can obtain a physical abuse restraining order against your spouse if you believe there is a genuine physical danger to you or to your children. This is something that should not be taken lightly and should be discussed with us in advance. This is typically a do-it-yourself procedure and the forms for it are available at the county courthouse.

4. **Residency Requirement.** You must have lived in Oregon for six months prior to filing for divorce. Your divorce must be filed in the county in which either you or your spouse live.

5. **Filing a Divorce.** The first step is the preparation and filing of a Petition for Dissolution of Marriage. The Petition recites the names, ages, and addresses of the husband, wife, and all children born or adopted during the marriage; when and where you married and when you separated; that the residency requirement has been satisfied; and that your marriage should be dissolved. Most clients expect the Petition to set forth specific provisions for support, custody, a parenting plan (i.e., visitation schedule), property division, etc. While we can create such a detailed Petition, it is almost always more cost-effective to file a more generic document that is drafted with the expectation that the specific details of your divorce will be settled by agreement while your case progresses.

6. **Who Should File?** The person who files first is the Petitioner. The other party is the Respondent. There is no legal significance in who files first, although there may be procedural and tactical advantages for the Petitioner. Pride is another consideration. Talk it over with us and with your spouse so that we can avoid a race to the courthouse and further hurt feelings over this small item. Filing first can be important if child custody will be an issue.

7. **Order Freezing Assets.** The filing of a divorce petition puts in place an immediate court order freezing certain accounts, preventing cancellation of policies of insurance, and prohibiting the changing of beneficiaries named in retirement accounts, life insurance policies, etc. It is possible to obtain an order that prevents other actions during a divorce but that type of order can be taken *only if* your spouse does not have an attorney. Such an order is called an *Ex Parte* Temporary Restraining Order. This is another benefit to being the first to file the divorce.

8. **Service or Acceptance.** Your divorce begins when the Petitioner serves the Respondent with a copy of the Petition. There are two ways to deliver this document to your spouse. The first is to have either the sheriff or a private process server hand-deliver it. This can cause embarrassment and angry feelings. An alternative is to have your spouse come into our office to pick up a copy and sign an Acceptance of Service that acknowledges receipt. If personal service is required, we will use a private process server unless you tell us otherwise.

9. **Temporary Relief.** A spouse cannot be forced to pay money or to take other desired steps unless there is a court case pending. This means that a divorce case must be filed to obtain an order that requires your spouse to take specific action. We can ask the court to order support for you or the children, award you exclusive use of your vehicle and home, or provide various other forms of relief all while the case is pending. The first step is to ask the court to enter an order granting the requests. It will not happen automatically because your spouse has an opportunity to object to your requests. A hearing will be held in the event that your spouse objects to your requests and you cannot reach an agreement about how to handle issues while the divorce is pending. The court will then hear evidence presented by both parties and make a decision on the temporary matters.

Voluntary support payments can set a precedent with both your spouse and the court. Talk to us about what is reasonable in your situation. Do not pay too much or accept too little and by your actions tell the Judge that these temporary amounts are fair.

10. **Dating.** Casual dating will not legally affect support, the division of property, or the granting of the divorce. However, it may have an impact on other, more psychological, aspects of your case such as custody decisions. Keep our office informed of all developments that may affect your case.

11. **Custody.** Oregon law directs that the court consider the following factors when deciding which parent will be awarded custody of minor children: (a) the emotional ties between the child and other family members, (b) the interest of the parent in the child and the parent's attitude toward the child, (c) the desirability of continuing an existing relationship, (d) the abuse of one parent by another, (e) the preference for the primary caregiver of the child, if the caregiver is deemed fit by the court; and (f) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. However, the court may not consider such willingness and ability if one parent shows that the other parent has sexually assaulted or engaged in a pattern of behavior of abuse against the parent or a child and that a continuing relationship with the other parent will endanger the health or safety of either parent or the child. In practical terms, this means that the parent who has accepted primary responsibility for bringing up the child in the past will probably be awarded the sole care and custody of the child. Oregon law encourages ongoing contact between the children and the non-custodial parent, which means both parents will be allowed spend time with the children on a schedule developed by the parties called a "parenting plan." We can provide you with sample parenting plans that may work well for you.

12. **Joint Custody.** Joint custody is an award of the child's legal custody to both parents, often with a specific provision made for where the child's primary place of residence will be. An award of joint custody provides that each parent will have an equal say in making major decisions that impact the child's life. The court is only allowed to order joint legal custody if both parties agree to the award. In general, joint custody will work only if both parents communicate and cooperate with each other. If the parents do not agree to an award of joint custody, one parent will be designated as having sole custody. This is the most common scenario in contested cases because it is so easy for one parent to opt out of joint custody. A sole custodial parent has the sole right to make vital decisions regarding a child's education, primary place of residence, religious training, health care, and the like. Disagreement over custody and time-sharing is guaranteed to put you right in the middle of a contested and expensive divorce.

13. **Parenting Time (Visitation).** The court will usually approve any parenting plan (i.e., visitation schedule) that is agreed to by you and your spouse. A typical schedule is to alternate weekends and specify additional parenting time during the summer and holidays. We encourage liberal time-sharing except in extraordinary circumstances. Every county has a model parenting plan that can be used by families that do not want to create their own customized version. Contrary to popular belief, the model plan is not a statement of the law or a minimum or maximum time allotment allowed between the child and the non-custodial parent. It is exactly what it says it is, a model plan.

14. **Parenting Class.** Oregon requires that both you and your spouse complete a parenting class early in the divorce process. The typical class lasts four hours and covers topics including ways that parents can help their children adjust to divorce and how to make shared parenting time better for the children. The court will not allow you to finalize your divorce until both parents have completed the class and filed the appropriate certificates of completion with the court.

15. **Mediation Regarding Children's Issues.** You and your spouse will be required to attend mediation once both of you have completed the mandatory parenting class unless you have already agreed to a parenting plan. Mediation is a procedure in which both parents speak with a neutral third-party hired by the court to help you reach an agreement on custody and to set an appropriate parenting schedule. The mediator is not going to discuss financial issues, give legal advice, or provide therapy. Approximately 80% of our clients that enter mediation leave the process with an agreement regarding the children. Our success rate is high because our clients spend time with us talking about what should and should not be asked for in mediation before entering the process.

16. **Children and Our Office.** *Never bring your children with you on your visits to our office.*

17. **Child Support.** The court uses a formula to set the amount of child support paid from one parent to the other. The formula must be used unless your case presents exceptional circumstances. The formula is located on the state's website at <http://www.oregonchildsupport.gov/calculator/pages/index.aspx>. Go there and play with the numbers so you will have an idea of the level of support you will either pay or receive. The court usually orders that child support be paid until a child's 18th birthday. Support may be extended to age 21 if the child is attending school. Support for a child attending school is usually paid directly to the child.

18. **Spousal Support.** Oregon Courts can provide for spousal support (i.e., alimony) either during or following a divorce. The criteria considered in an award of spousal support include: the duration of the marriage, the age and health of each spouse, the standard of living established during the marriage, the relative incomes and earning capacities of the parties, each spouse's training and employment skills, each spouse's work experience, the financial needs and resources of the parties, custodial and child support responsibilities, and any other factors that the court finds appropriate. Spousal support is tax deductible by the paying spouse and treated as taxable income to the recipient spouse under the Internal Revenue Code. This means there are possible income tax advantages to the individual paying spousal support.

19. **Property Division.** Oregon is an "equitable" property division state. An equitable division does not mean it will be equal; rather, it means a fair division in terms of value. As a broad concept, Oregon law treats a marriage as a financial partnership. All income earned and property acquired during the marriage are marital assets and should be fairly divided. Marital assets are subject to division between the spouses regardless of which spouse holds title to a particular item. Debts as well as assets will be considered. There is no fixed way to determine how either you or the court should divide your property. Factors that the court considers include the nature and extent of the property, the duration of the marriage, and the economic circumstances of each spouse. In some cases, gross misconduct by a spouse (such as excessive and undisclosed gambling) can be considered. The court will approve your proposed division if you and your spouse are able to reach a reasonable agreement. The court will hold a hearing and divide your assets and debts according to its own opinion of "equity" if you and your spouse cannot reach an agreement.

20. **Retirement Benefits.** Retirement benefits earned during the marriage can be divided by the court in a divorce case. This includes pensions, profit sharing, individual retirement accounts, or any work-related benefit payable upon or after retirement.

21. **Uncontested Divorce.** Your divorce will be contested unless you and your spouse agree to *all* aspects of custody, time-sharing, support, property division, payment of liabilities, and attorneys' fees and court costs. You will have a contested divorce, and a trial may be necessary, if your spouse disputes even one of these issues, regardless of whether or not the dispute is eventually settled without having to appear before a judge. Most contested cases are settled by agreement between the parties before either party appears in a courtroom.

22. **Court Costs.** Court costs refer to charges that the court imposes before it will take your papers and before any hearing will be held. For example, Marion County charges \$273 to each party before accepting the party's divorce papers for filing. Other out-of-pocket costs (i.e., not attorney's fees) would be court reporter fees for depositions, appraisals, investigators, computer research, etc.

23. **Our Fees.** The exact fee you incur with our office will depend on the services that you require. We bill hourly for services, including preparing and filing all of the documents required to start and ultimately finalize your divorce, obtaining information from you concerning your assets, liabilities, income, and expenses, making recommendations concerning property division and support, etc. You will be charged for office meetings, telephone conferences, e-mail correspondence, negotiations with your spouse or your spouse's attorney, organization of financial records, preparation or review of property division and support agreements, temporary orders of all kinds, and for all court appearances.

The court may order one spouse to pay some of the other spouse's attorney fees if a trial is necessary. The court rarely orders payment of the full amount of the attorney's fees. You are responsible for paying our fees even though the paperwork filed on your behalf may request that the court order your spouse to pay your fees. Any sums recovered from your spouse will be either credited to your account or reimbursed to you.

We will not act as your attorney until you have signed the fee agreement and deposited the required retainer into our trust account. Full payment of any outstanding balance is due every month once the retainer fee has been exhausted. We do accept credit cards. We discuss our fees during the first meeting with any client. The fee agreement is a binding contract between us. It is very important that you read it carefully before signing.

24. **Reconciliation.** Sometimes a divorce seems like the only solution. Often it is not. You may change your mind and try to work things out with your spouse after a divorce action has been filed with the court. Do not be embarrassed by this; our office encourages reconciliation. Many times it is better to put the case on hold rather than dismiss it while trying to work things out with your spouse. This saves the expense of refiling the divorce in the event that your reconciliation does not work out.

25. **Change of a Spouse's Name.** A spouse's former name may be re-instated at any time either during or after the divorce. We generally suggest that this option be limited to the restoration of the surname given at birth when there are no children involved, or to a former married name when the spouse has children from a prior marriage. Let us know before we prepare the Petition for Dissolution if you want such a change formally incorporated into a court judgment. One party cannot prevent the soon to be former spouse from using that party's last name.

26. **Confidentiality.** It is important that we have all the facts to represent you properly. You will be asked to tell us everything about you and your spouse. This can sometimes be embarrassing. Your spouse's attorney has probably already been told your most intimate secrets. Anything you tell anyone in this office is strictly confidential and will not be disclosed without your permission.

27. **Our Professional Services.** Our firm provides experienced attorneys, competent and experienced support staff, and modern equipment and research facilities in performing legal work for you. Your legal problems are given our continuing personal attention in an effort to obtain the best results possible in the most reasonable time and at a reasonable cost. Although we are interested in helping you resolve your personal problems, we are not trained to provide counseling services.

28. **Other Attorneys.** We always encourage a potential client to shop around and talk with other attorneys. You should interview at least two attorneys and compare them in terms of experience, competence, personality, and price. The personality factor is important because you will have to deal closely with your attorney on potentially volatile problems. While you need not be totally enchanted, a clash of personalities may make the relationship uncomfortable or even contentious. The key test in judging your attorney's personality is simply compatibility with your own -- or at least an absence of incompatibility.

29. **Your Relationship With Our Office.** It is important that you be an active participant in your divorce case. After all, this is your case, not ours. You will be expected to provide us with the records and information we request in a timely manner. We expect you to be cooperative and truthful at all times. Make it a rule from the outset to present us with all of the facts, then let us worry about protecting your best interests in connection with those facts. We cannot anticipate and plan around pitfalls of which we are not aware. Also, we can make reasonably accurate predictions about the outcome of your case only if you give us accurate information to work with. Other important considerations include timely payment of any outstanding bill and notifying us of any change in your address or your telephone number.

30. **Keeping You Informed.** Our office will make every effort to keep you informed regarding your case. We will immediately send you copies of *all* documents that our office receives or prepares on your behalf. Please call if at any time you have any questions, problems, or concerns about the way that we are handling your case.

31. **General Suggestions.** Your well-meaning friends and relatives may offer you advice about your case. Listen to advice from all sources and gather as much information about the process as you can. However, recognize that such advice is often inaccurate, so be cautious in following it. The facts surrounding your marriage, divorce, children, and property are unique and different from every other case. Be careful about which advice you apply to your own factual situation.

32. **Starting the Case: The Next Step.** Our initial consultation is structured to answer some of your immediate questions and give you a general idea of your rights and responsibilities in a divorce action. However, we have not accepted your case and will not act as your attorney until you have retained us for that purpose. It is not necessary to schedule a follow-up appointment to retain us as your attorney unless you wish to do so. Most clients simply drop off the signed fee agreement and your retainer fee, any papers with which you may have been served, and (ideally) the financial documents we discussed in our first meeting, together

with a letter explaining what has happened since we met with you and what it is that you want us to do on your behalf. We will take it from there.

33. **Negotiating the Case.** Our firm will attempt to negotiate with your spouse's attorney to reach an agreement as to how to resolve your case. This includes talking about custody issues, parenting time, support, and the division of your assets and debts. Frequently the best result for you will be one in which you and your spouse talk with each other about how to resolve these issues. Sometimes such a relationship does not exist and the only way to resolve it is through the attorneys or with the court's assistance.

It is perfectly acceptable for you to discuss support and property division with your spouse. In fact, we encourage you to do so. *Just do not finalize anything without clearing it with us first.* Remember, always be fair.

Divorce proceedings are very emotional, and parties sometimes use them to seek revenge. Occasionally one parent will use the children in an attempt to punish the other parent. Prepare your children properly without poisoning their minds about your spouse. Obtain professional advice if possible. Attempt to cooperate with your spouse where the children are involved.

34. **Finishing the Case.** It is common for a divorce case to take months to finalize. This does not necessarily mean something is happening each day. Many times it is necessary for us to wait for information from other attorneys, the courts, other professionals, or anyone else that may be involved in your case. The judge will sign a general judgment dissolving your marriage once you have resolved your issues, reached an agreement, or concluded a trial. You will be legally single in almost all respects and will receive any property or money awarded you by the judgment on the day that the judgment is signed. Once the divorce is over, we will send you a letter outlining and again explaining all of the terms of your divorce judgment. There may be some follow-up details that will have to be handled, either by our firm or by you, depending on the circumstances of your case.

35. **Final Divorce.** Your divorce will be final on the day that the judge signs the divorce judgment.

36. **Remarriage.** You may remarry the day after your judgment is signed.

37. **New Wills.** The Oregon Probate Code will make certain provisions of your will ineffective once your divorce is finalized. These automatic changes likely require drafting a new will for both you and your ex-spouse. Please let us know if you wish to pursue this.