

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 that you must 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 applicable answer to this question. The correct decision 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 reentry will not be possible. In addition, moving away from the family home and the children may influence a judge as they make their custody decision. Do not move out 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.

4. Residency Requirement. You must have lived in Oregon for six months prior to filing for divorce. In addition, 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 both spouses 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 (visitation), 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 the statutory waiting periods are running.

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 is important if child custody will be an issue.

7. Order Freezing Assets. The filing of a divorce Petition puts in place an immediate order freezing certain accounts, preventing cancellation of policies of insurance and prohibiting the changing of beneficiaries named in retirement accounts. 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. We will use a private process server unless you tell us otherwise.

9. Waiting Period. Oregon has a statutory 90 day waiting period that begins to run on the date service of the Petition is made upon you or your spouse. This is a minimum interval, although it can be waived. In fact, it is possible in Oregon to finalize your divorce the same day that it is filed, so long as your spouse agrees. Uncontested divorces (without waiver of the waiting period) take approximately 100 days to process. A contested divorce may take up to 12 months to finish; the likely duration depends largely upon the issues involved. Our goal is to try to help you work out the details of custody, parenting time (visitation), support and property division during the initial 90 day waiting period.

10. Temporary Relief. A spouse cannot be forced to pay money or to take other desired action 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 and/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. Keep in mind that the first step is to ask. Your spouse has an opportunity to object to your requests. A hearing will be held in the event that you and your spouse cannot reach an agreement about how to handle issues while the divorce is pending. The court will then hear your evidence and make its 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.

11. 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.

12. 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 care and custody of the child in the future provided that parent encourages ongoing contact between the children and the other parent. The non-custodial parent will be allowed reasonable rights of visitation based on the child's needs. Oregon law calls this visitation schedule a "parenting plan."

13. Joint Custody. Joint custody is an award of the child's legal custody to both parents with a specific provision made for his or her primary place of residence. It assumes that each parent has 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. This means that the parent who is awarded sole custody (the most common award since it is so easy to opt out of joint custody) has the sole right to make vital decisions regarding a child's education, 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.

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

15. Parenting Class. Oregon requires that both you and your spouse to 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 your divorce to become final until both parents have completed the class and filed the appropriate certificates with the court.

16. Mediation Regarding Children's Issues. You and your spouse will be required to attend mediation once each of you has completed the mandatory parenting class. 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 a parenting schedule. The mediator is not going to discuss financial issues, give 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.

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

18. 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 <https://justice.oregon.gov/guidelines>. Go there and play with the numbers to get an idea of the level of support that 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 (alimony) 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 income and earning capacity of the parties, each spouse's training and employment skills, each spouse's work experience, the financial needs and resources of the parties, the relative earning capacities of the parties, custodial and child support responsibilities, and any other factors that the court deems 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. Equitable does not mean an equal division; rather, it means a fair division in terms of value. As a broad concept, Oregon law treats a marriage as a partnership, and all income earned and property acquired during the marriage is marital and should be fairly divided. Marital property is subject to division between the spouses regardless of which spouse holds title. 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 supporting a mistress) can be considered. The court will approve your division if you and your spouse can 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. Any retirement benefit 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 have a contested divorce, and a trial may be necessary, if your spouse disputes even one of these matters, 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. Other out-of-pocket (non-attorney fee) expenses would be court reporter fees for depositions, appraisals, investigators, computer research, etc.

23. Our Fees. The exact fee will depend on the services that you require. Our general divorce services include: preparing and filing of the Petition for Dissolution and Summons; preparing an Acceptance of Service to be signed by your spouse or arranging for a process server to serve your spouse with a copy of the Petition; obtaining information from you concerning your assets, liabilities, income and expenses; making recommendations concerning property division and support; preparing or reviewing the General Judgment (Dissolution of Marriage); and preparing forms required by the Oregon Bureau of Vital Statistics.

Additional fees are charged for personal or telephone conferences, e-mail, negotiations with your spouse or your spouse's attorney, tax planning and advice (such as spousal support arrangements), organization of financial records, preparation or review of property division and support agreements, temporary orders of all kinds, and 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 fee. You are responsible for paying our 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 discussed our fee with you during our first meeting. 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. We charge no fee for dropping a divorce action. Only fees for services performed prior to your instruction to stop will be charged to you. 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 refileing the divorce in the event that your reconciliation does not work out.

25. Change of Wife's Name. A wife's former name may be returned to her at any time either during or after the divorce without any court action. We generally suggest that this be limited to the restoration of the maiden name when there are no children involved, or to a former married name when the children are 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. A spouse cannot force the other spouse to stop using his 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 an experienced attorney, 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 your 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, as PDF files by email unless you request otherwise. 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 fact 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 retainer fee, any papers with which you may have been served, and (hopefully) 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. We accept cash, checks, Visa or MasterCard.

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 extend four to six months. That 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 (Dissolution of 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 it is signed. Once the divorce is over, we will send you a letter outlining and again explaining all of the terms of your General Judgment (Dissolution of Marriage). 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 General Judgment (Dissolution of Marriage).

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.