

## HOW WE WILL HANDLE YOUR DIVORCE

1. **Grounds:** Oregon has adopted the concept of "no-fault" divorce, making it generally unnecessary to prove cruelty, adultery, etc., in order to obtain a divorce. An allegation that you and your spouse have developed "irreconcilable differences" will suffice.
2. **Legal Separation:** Although in some instances a legal separation is possible, it is not generally used. A legal separation involves the same process as a dissolution, i.e. division of property, determination of custody, parenting time and support, etc. However, upon entry of a judgment, you are still legally married. Therefore, you may file joint income tax returns, retain the right to be named as a dependent on each other's medical insurance, and continue to be eligible for each other's retirement benefits. If you are not ready for a divorce but want to talk things over with someone, we recommend counseling but not dissolution. Please ask more about this option if you are interested in a legal separation.
3. **Residence Requirements:** You must have lived in Oregon for six months prior to filing your petition. The petition must be filed in the county in which you reside.
4. **Starting the Proceedings:** The first step is the preparation and filing of a petition for dissolution of marriage. The petition states the names, ages, social security numbers, 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 residence requirement has been satisfied; and that your marriage should be dissolved. It also states whether any other domestic relations suits are pending between you and your spouse in any other county or state. Finally, it may set forth provisions for support, custody, parenting time, property division, attorney fees and court costs. If your spouse has already filed, be sure to bring us a copy of the petition, especially if you have been served by the sheriff or private process server.

5. **Who Should File?** There is no legal significance as to who files the petition.
6. **Waiting Period:** Statutes require a 90-day waiting period from the date of service of a petition upon you or your spouse before setting a hearing or trial on the disputed issues or allowing entry of a final judgment. However, there are rare circumstances in which we can request a waiver of the 90-day waiting period to enter a judgment. However, if we reach a complete settlement, a final judgment can be entered before the 90 days expires. If applicable to your case, we will discuss a waiver in more detail. For cases in which a waiver is not warranted, our experience indicates that the process of normal divorce takes about 100 days for uncontested divorces and a year or more for contested divorces. During the waiting period before a trial setting, we will try to settle your case by working out the details of custody, parenting time, support, and property division. These negotiations may also be subject to mandatory

mediation or arbitration, as referenced herein. If we settle after the 90-day period has passed and before a trial date, we will submit a stipulated judgment of dissolution to the court. If we are unsuccessful, your case will go to trial after the 90 days has lapsed. You can expect your trial to be set between four and six months after a response to the petition has been filed; however, a trial setting is also subject to the mandatory mediation and arbitration programs. Once a judgment of dissolution has been signed, your divorce is final and in effect.

7. **Service or Waiver?** After the Petition is filed, your spouse must receive proper notification. One way to do this is to ask the sheriff or private process server to hand-deliver a copy of the petition to your spouse. This can cause embarrassment and angry feelings. An alternative is to ask your spouse to come in to our office to pick up a copy of the papers and sign a document called an Acceptance of Service, which acknowledges receipt of a copy of the Petition. Unless otherwise requested, we normally use a private process server.
8. **Custody:** Oregon law directs the Court to consider the following factors when deciding which parent shall be given 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, and (c) the desirability of continuing an existing relationship. In practical terms, this means the parent who has accepted the primary responsibility for bringing up the child

in the past will probably be awarded the care and custody of the child in the future. The nonresidential parent will be allowed reasonable rights of parenting time based on the child's needs. Joint custody will only be granted if both parties agree. In general, joint custody will work only if the parents communicate and cooperate with each other. Disagreement over custody and parenting time is guaranteed to put you right in the middle of a contested and expensive divorce. If custody is contested, do not bring the children along on your visits to our office.

9. **Parent Education and Mediation:** Umatilla/Morrow and Union County have established mandatory parent education/mediation programs, pursuant to state law. If you have minor children and are the petitioning party, you are required to attend a one-time, four-hour class regarding parent education. The class discusses the changes that children go through when their parents divorce and their possible reactions based upon their age group. The class also introduces you to the mediation program. **You are required to attend this class, and the court will not allow entry of a judgment of dissolution until you have attended a class.** If your spouse files an appearance with the court, he or she is also required to attend the class. Thereafter, you and your spouse will be required to participate in mediation to negotiate a residential and non-residential parent and a parenting plan. If applicable to your case, we will discuss this mandatory program in further detail. A typical parenting plan for the

nonresidential parent is alternating weekends, four to eight weeks in the summer, some time at birthdays, Christmas and other holidays, plus additional or different times as you may agree upon. The policy of our office is to encourage liberal parenting time except in extraordinary circumstances.

10. **Child Support:** There are support guidelines which the Courts use to determine the amount of child support. The guidelines are used to set support in your case, unless there are exceptional circumstances present. We will be discussing the guidelines with you as your case proceeds. The Court can require support of a child until the age of 18. Support is extended to age 21 if the child is attending school. Please ask about the formula and types of schools that qualify.
11. **Property Division:** Unlike support, there is no fixed formula to determine how you or the court should divide the property. One thing is clear. Liabilities as well as assets must be considered. Other factors 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. If you and your spouse can agree, and if your agreement is reasonable, it will be approved by the court.
12. **Mandatory Arbitration:** Umatilla/Morrow County has also established a mandatory arbitration program, pursuant to state law. If you and your spouse have no minor children but dispute the division or other disposition of property, your case will be assigned to mandatory arbitration. Arbitration has set

deadlines so it is important you cooperate with this process. Please ask more about this program.

13. **Temporary Relief:** If your spouse is being physically abusive to you or the children, refuses to provide reasonable support or give you information concerning property, or refuses to permit reasonable parenting time, the Court will hear your evidence and determine if you will receive this relief while the case is pending. The Court can restrain you both from physical abuse to each other or to the children. This restraining order can be filed with the local police to guarantee an arrest will occur if trouble develops. The court can also order support for you and/or the children. If you feel you will need this sort of temporary relief, be sure to let us know during your first appointment.
14. **"Uncontested Divorce":** Your divorce will be contested unless you and your spouse agree to the divorce and to all aspects of custody, parenting time, support, property division, and the payment of liabilities, attorney's fees and court costs. If your spouse disputes any of these matters, you have a contested divorce, and a trial may be necessary.
15. **Spousal Support:** Oregon Courts can provide for spousal support (alimony) following a divorce. In addition, it is possible for a spouse to obtain income tax advantages depending on how the marital property is divided.
16. **Court Costs:** In Umatilla, Union and Morrow Counties, court costs are approximately \$300 if the case is uncontested. There are also charges by the

court each time we appear in court.

17. **Our Fees:** The exact fee will vary with the services you require. Uncontested divorce services include the preparation and filing of the petition, preparation of an acceptance of service to be filed by your spouse or arranging for a process server to serve your spouse with a copy of the Petition, preparation of summons and an affidavit of nonmilitary service; obtaining information from you concerning your assets, liabilities, income and expenses and making recommendations concerning property division and support, preparation or review of the judgment of dissolution, preparation of forms required by the Oregon Bureau of Vital Statistics. Additional retainers and fees are charged for contested dissolutions. This varies greatly depending upon the complexity of your case. If a trial is necessary, the court may order one spouse to pay some of the other spouse's attorney fees. However, in my experience, the court usually requires each party to pay his or her own attorney's fees and costs. If one spouse is particularly disadvantaged economically, the court may order the other spouse to pay fees. The court rarely orders payment of the full amount of the fee. You are responsible for paying our agreed fees. Any sums recovered from your spouse will be either credited to your account or reimbursed to you. You will be required to sign a fee agreement and deposit a retainer in our trust account when you hire us. Your fees and costs will be paid in full from this retainer each month as long as there are sufficient funds to cover the amount of

your monthly bill. If your trust account is not replenished to cover your monthly charges, you will be billed for the remainder due. You will then be responsible for paying both the remainder due and for replenishing your trust account to the amount specified in your fee agreement. Full payment is due every month. I will discuss my fees with you at this first meeting.

18. **Reconciliation:** Sometimes divorce appears to be the only solution. Often it is not. After a divorce action is commenced, you may change your mind and try to work things out. We encourage efforts at reconciliation. If you decide to drop the divorce action, you will owe us only for those services actually performed up to the time you instruct us to stop.
19. **Change of Wife's Name:** A wife's former name may be returned to her at any time either during or after the marriage without any court action. We generally suggest 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. If you want a name change incorporated into a court order, let us know before we prepare the petition.
20. **Final Divorce:** If there is no appeal, your divorce will be final after the judge signs the judgment of dissolution.
21. **Remarriage:** You may not marry anyone until after entry of the judgment of dissolution.
22. **Confidentiality:** We must have all the facts to represent you properly. We ask



basic information we need to know. Anything you tell anyone in this office is strictly confidential and will not be disclosed without your permission.

23. **Keeping You Informed:** We will make every effort to keep you informed. You will receive copies of all documents prepared or received by us, as well as copies of all important memos. If at any time you have any questions or problems, please call. We often send you copies of intraoffice memos. We pride ourselves in keeping you informed about your case. Sometimes there are codes on the office memos that you receive. The codes will be followed by a summary of the conversation. The abbreviations and their explanations are as follows:

TA: Telephone conference with adverse attorney.

TC: Telephone conference with client.

TE: Telephone conference with someone other than the client or adverse attorney.

CA: Conference with adverse attorney.

CC: Conference with client.

CE: Conference with someone other than the client or adverse attorney.

24. **Your Responsibilities:** We expect you to be cooperative and truthful. If you are not, we will not continue to represent you. We also expect you to handle your financial commitments to our office in a prompt and businesslike manner. Please notify us of any change of address or telephone number or if you learn

anything that may affect your case.

25. **General Suggestion:** Your well-meaning friends and associates may offer you advice about your case. Frequently, such advice is not accurate. You should be cautious in following it and I urge you to consult me before taking any major steps. The facts surrounding your marriage, divorce, children, and property are unique and they differ from every other case.
26. **New Wills:** The Oregon Probate Code invalidates certain provisions of wills which were made prior to a divorce. Following the divorce, you and your spouse will probably need new wills. If you wish to pursue this, please let us know.