

## 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. "Irreconcilable differences" is an advanced case of not getting along with each other.

**2. LEGAL SEPARATION:** Although in some instances a legal separation is possible, it is not generally used. A legal separation is useful if you wish to remain married, but you are concerned with how your spouse is handling the marital assets. If you are not ready for a divorce but want to talk things over with someone, we recommend counseling services and not legal services.

**3. RESIDENCE REQUIREMENTS:** You must have lived in Oregon for six months prior to filing your Petition. The Petition is usually filed in the county in which you reside, but it can be filed in any county as long as your spouse consents.

**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 will 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 who files the Petition, although there may be procedural and tactical advantages for the Petitioner. Pride is another matter. Talk it over with your spouse so we can avoid a race to the courthouse and further hurt feelings over this small item. If child custody is going to be an issue, you want to file first.

**6. WAITING PERIOD:** In a majority of circumstances, no divorce can be granted until at least 90 days after the date of service of the Petition is made on your spouse. This is a minimum interval unless waived by the court. Waiver can be accomplished if you have stipulated or settled all issues, including, if children are involved, a parenting agreement. Depending on the county and your circumstances, you may be required to complete parenting classes.

How long your case will take depends on the circumstances of the case and the county in which the case was filed. I would be happy to discuss this directly with you. During the waiting period, I will be trying to work out the details of custody, parenting time, support and property division and make sure that you have completed the necessary parenting classes, if appropriate in your case.

After the 90-day waiting period has expired or upon waiver of the 90-day period, the judge will sign a Judgment of Dissolution of Marriage. Your divorce will be final on the date the Judgment is signed. You will be considered a single person on that day in all respects and will receive any property or money awarded to you by the court consistent with the Judgment.

**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 have your spouse 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. Or, the papers, including the Acceptance of Service, can be mailed to your spouse. This requires your spouse to complete the papers and return them to our office. 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, (c) the desirability of continuing an existing relationship, and (d) whether one spouse has committed domestic violence on the other spouse. In practical terms, this means the parent who has accepted the primary responsibility for bringing up the child in the past may be awarded the care and custody of the child in the future. The noncustodial parent will be allowed 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. PARENTING TIME:** If you and your spouse can agree to details of parenting time, the Court will usually approve the plan which you have worked out. Mediation is available as a way to work through parenting time issues. A typical schedule is to visit on alternating weekends, several weeks in the summer, some time at birthdays, Christmas and other holidays, plus additional or different times as you may agree upon. In many jurisdictions, the court may require a mandatory parenting class prior to the judge signing the Judgment of Dissolution of Marriage.

**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. If the child is 18 and attending school, support is paid to the child directly. There are certain requirements that the child must first meet. Please ask for more information on these issues.

**11. PROPERTY DIVISION:** There is no fixed way 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. If you cannot agree, the Court will divide the property. A wife with custody of minor children will generally be awarded more property than the husband.

**12. TEMPORARY RELIEF:** If your spouse is being physically abusive to you or the children, relief is available through the Family Abuse Prevention Act (FAPA). If you or your children are suffering from abuse, you need immediate assistance. Be sure to let me know. The court can restrain you and your spouse from physical abuse to each other and to the other children and order emergency monetary assistance in the form of a lump-sum payment if the battered spouse needs such things as moving expenses, a deposit for a new apartment, etc. The court cannot issue spousal support or child support in the FAPA proceeding. This is available as discussed below. This restraining order can be filed with the local police. If your spouse 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 get this relief while the case is pending. The Court can also order support for the children, or prohibit your spouse from using marital assets or increasing marital debt. If you feel you will need any of the help mentioned here, let us know during your first appointment and we can discuss getting an order immediately.

**13. "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.

**14. SPOUSAL SUPPORT:** Oregon courts can provide for spousal support (also known as alimony following a divorce.) I would be happy to discuss these issues with you in greater detail. Spousal support is ordered under three different circumstances. Those circumstances are set forth below.

**(1) Transitional Spousal Support.** Support for education and training of a spouse to allow HER/HIM to prepare for reentry into the job market/advancement in the job market. The factors the court examines in support of transitional spousal support as set forth in ORS 107.105(1)(d) are as follows:

- a) The duration of the marriage;
- b) The party's training and employment skills;
- c) The party's work experience;
- d) The financial needs and resources of each party;
- e) The tax consequence to each party;
- f) The party's custodial and child support responsibilities; and
- g) Any other factors the court deems just and equitable.

**(2) Compensatory Spousal Support.** This is support where there has been a significant financial or other contribution by a spouse to the education, training, vocational skills, career or earning capacity of the other spouse and compensatory spousal support is just and equitable in all of the circumstances. The factors the court examines in support of awarding compensatory spousal support as set forth in ORS 107.105(1)(d) are as follows:

- a) The amount, duration and nature of the contribution;
- b) The duration of the marriage;
- c) The relative earning capacity of the parties;
- d) The extent to which the marital estate has already benefitted from the contribution;
- e) The tax consequences to each party; and
- f) Any other factors the court deems just and equitable.

**(3) Spousal Maintenance.** Spousal maintenance is support. Spousal maintenance to WIFE/HUSBAND for A SPECIFIED OR AN INDEFINITE PERIOD. The factors the court examines are:

- a) The duration of the marriage;
- b) The age of the parties;
- c) The health of the parties, including their physical, mental and emotional condition;

- d) The standard of living established during the marriage;
- e) The relative income and earning capacity of the parties;
- f) The party's training and employment skills;
- g) The party's work experience;
- h) The financial needs and resources of each party;
- i) The tax consequences to each party;
- j) The party's custodial and child support responsibilities; and
- k) Any other factors the court deems just and equitable.

**15. COURT COSTS:** In *[name of county]* County, court costs are approximately \$*[amount]* if the case is totally uncontested. If there are depositions or investigations, your court costs could be \$*[amount]* or higher. You must pay for these items as we go since it is not our policy to finance a case.

**16. OUR FEES:** The exact fee will vary with the services you require. Our basic divorce services include our initial conference; 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 fees are charged for additional personal or telephone conferences, negotiations with your spouse or your spouse's attorney, reviewing and preparing the case, frequent calls (especially at home), tax planning and advice (such as spousal support arrangements), preparation or review of property division and support agreements, temporary orders of all kinds, and for all other court appearances.

If a trial is necessary, the Court may order one spouse to pay some of the other spouse's attorney 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. Full payment is due every month. Credit terms can be arranged in some cases. We will discuss our fee with you at this first meeting.

**17. RECONCILIATION:** We encourage efforts toward reconciliation. Divorce is not always the right solution. After a divorce action is commenced, you may change your mind and try to work things out. You can dismiss the divorce action so long as you do so before the waiting period is passed (see #20 below). 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.

**18. 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 such a change formally incorporated into a court order, let us know before we prepare the Petition.

**19. FINAL DIVORCE:** Your divorce will be effective on the date the judge signs the Judgment of Dissolution of Marriage. You still have an opportunity to appeal any decision made 30 days

thereafter. However, for all purposes, your divorce is final and you are considered a single person on the date the judge signs the decree.

**20. REMARRIAGE:** You may not marry anyone until after the judge signs the Judgment of Dissolution of Marriage ("Decree"). If you choose to reconcile with your spouse, you must do so prior to the judge signing the final Judgment. After that time, the divorce is final and you would have to remarry your former spouse. In some instances, a pre-nuptial agreement is advisable.

**21. CONFIDENTIALITY:** We must have all the facts to represent you properly. Our questionnaires 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.

**22. KEEPING YOU INFORMED:** We will make every effort to keep you informed. You will receive copies of all documents prepared or received by us. There may be times when we are waiting for documents or updates from your spouse's attorney, and no action is required on our part. If at any time you have any question or problems, please call.

**23. OUR PROFESSIONAL SERVICES:** In performing legal work for you, we provide an experienced attorney, competent support staff, modern equipment and research facilities. 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. We will use our best efforts in representing you; however, we cannot promise or guarantee the specific outcome of your domestic relations matter. We provide only legal services. Although we are interested in helping you resolve your personal problems, we are not trained to provide counseling services. Personal counseling is generally very helpful for individuals, including children, who are involved in a dissolution. We encourage you to seek out and use community resources for this purpose.

**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. The facts surrounding your marriage, divorce, children, and property are unique and they differ from every other case. Divorce proceedings are very emotional, and parties sometimes use them to seek revenge. Sometimes 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. Discuss support and property division with your spouse. Be fair.

**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.

**27. GETTING STARTED:** 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 cannot act as your attorneys until you have retained us for that purpose. If you wish this office to represent you, call our receptionist and tell her you need a "follow-up appointment" to retain us as your attorneys. We keep time open for those appointments every day so you will be able to get in right away. The follow-up appointment will take

about half an hour. You will need to bring to that appointment the signed fee agreement and your check for the retainer.