

UNDERSTANDING THE DIVORCE PROCESS IN OREGON

At Navigate Legal Services LLC, our goal is to help you navigate your divorce in the most successful manner. Divorce is very emotionally stressful and the problem is compounded because it involves many court rules and procedures you are not familiar with. We will work with you to help alleviate fears and concerns that may prevent you from making clear informed choices regarding the financial, custodial, and parental aspects of your case. This document is a brief overview on the Oregon divorce laws and procedures to help you understand the process better.

- 1. Residency Requirement.** You must have lived in Oregon for six months prior to filing for divorce. The divorce must be filed in the county where either you or your spouse lives.
- 2. Advantage Filing First?** The spouse who files first is the petitioner and the other spouse is the respondent. There may be some advantages with regard to convenience to who files first if the spouses live in different counties. However, it is possible for one spouse to “change venue” meaning that the case is moved to their county. Who files first may also affect custody and parenting time issues.
- 3. No Fault Required.** Oregon is a “no-fault” state meaning that it is not necessary to prove cruelty, adultery, abandonment or any other fault on the part of the other spouse in order to get divorced. All that is required are “irreconcilable differences” meaning that you and the other spouse do not get along anymore.
- 4. Neither Spouse Can Prevent a Divorce.** Once a divorce petition is filed, the divorce will eventually conclude. Neither spouse can stop the divorce from happening if one wants it.
- 5. Restraining Orders.** Family Abuse Prevention Act (FAPA) restraining orders are civil orders that prevent one person from being within a certain distance (usually 500ft) of another person (usually a spouse, unmarried parents of a child, roommates, or persons cohabiting together) for one year and can be renewed indefinitely before the order expires. These orders greatly affect divorce cases because they award temporary custody to the victim of abuse, mandate supervised parenting time plans for the abuser, remove the abuser from the family residence, and create a presumption in the divorce case that the abuser should not be awarded custody in the divorce case.

6. Leaving the Family Home. Whether you should or should not leave the family home is fact dependent. It can have negative affects for purposes of custody and parenting time if those aspects are at issue because absent other facts, stability is usually preferred if it can be shown that it is in the children's best interest. As mentioned above, a FAPA order can remove one spouse from the family home if a spouse believes there is a genuine physical danger of abuse to him or her or the children.

7. Filing the Divorce Petition. If you are the spouse who files first, you are the petitioner and the petition is the document you declare certain factual information (such as when the parties married, who are the children, and where the family has lived in the past 5 years). It is also the document you tell the court what you want (custody, spousal support, property division, etc.), also known as "requests for relief."

8. Responding to the Divorce Petition. Once a petition is filed by the petitioner, the other spouse must be legally served the divorce papers. Once the spouse is served, he or she has 30 days to file a response or else the petitioning spouse can file documents to "default" the spouse, i.e., ask the court to grant their divorce without the spouse's participation. In the proceedings, the spouse who was served the divorce papers is called the "respondent." The respondent's response papers allow the respondent to agree or disagree with what the petitioner declared in their petitioner and also gives the respondent an opportunity to tell the court what they want from the divorce.

9. Order of Restraint on Assets. Once the divorce is filed, a restraining order on the diminishing of assets is immediately put into place against both parties. The order does not prevent the usual spending of the spouses for groceries, business expenses, or education, for example.

10. Serving the Divorce Petition. The respondent can be served in a variety of ways including sheriff service, personal service, substituted service, or acceptance of service. The divorce papers cannot, however, be served by one of the spouses on the other. There are various issues to take into consideration with each method including feelings, embarrassment, and safety.

11. Temporary Relief. Divorce cases can take anywhere from just over one month from when the petition is filed and served on the respondent or take up to a year to conclude. Before there is a final judgment that sets forth the terms of custody, parenting time, child support, and spousal support, either party can request the court for temporary relief of the terms above but also exclusive use of the home or vehicle during the pendency of the case. The other spouse can object to those requests and ask the court to grant their own requests for temporary relief. A hearing will be scheduled if the parties cannot agree and the judge will determine what is

appropriate. Either giving too much or accepting too little support payments can be detrimental to your case.

12. Dating. Seeing other people may impact your case significantly with regard to custody and parenting time. For instance, if your new relationship spends a lot of time with the children, that person's character may be under scrutiny. Casual dating will not, however, legally affect support or property division.

13. Custody. Custody is the right to make major decisions concerning the children including but not limited to, the children's residence, education, health care, and religious training. Before a case is initiated, both parents have "custody" of their children regardless of whether they live together. There are many factors that determine who is awarded custody of minor children. These factors are listed in Oregon Revised Statutes (ORS) 107.137. As mentioned above, a spouse that has a restraining order against them creates a presumption that they should not be the spouse awarded custody of the children. This presumption can be overcome if the factors in ORS 107.137 significantly favor that parent. Generally speaking, the factors try to determine which parent has been most involved with the children on a day-to-day basis and who has accepted primary responsibility for caring and bringing up the children in the past. That parent will likely be awarded custody of the children.

14. Joint Custody. Joint custody is an arrangement by which parents share rights and responsibilities for major decisions concerning the child, including, but not limited to, the child's residence, education, health care and religious training. An order providing for joint custody may specify one home as the primary residence of the child and designate one parent to have sole power to make decisions about specific matters while both parents retain equal rights and responsibilities for other decisions. The court shall not order joint custody, unless both parents agree to the terms and conditions of the order. In most circumstances, for joint custody to work well, both parents must communicate and cooperate with each other.

15. Parenting Time. Parenting time is the time that typically is for the nonprimary, or noncustodial parent to care for the children. This may be before a divorce case is started and therefore with or without a court ordered parenting time plan. In developing a parenting plan the court may consider only the best interest of the child and the safety of the parties. The court will usually approve any parenting plan that is agreed upon by the parties. Most counties have a model parenting plan. It is the policy of the state of Oregon to encourage ongoing contact between the children and the noncustodial parent.

16. Parenting Class. Most counties require that both parents complete a parenting class before the divorce will be granted. The classes are designed to help parents co-parent and help their children adjust to divorce.

17. Mediation. After the respondent files a response with the court, most counties initiate court mandated mediation in which the parties use a third party mediator to help them come to agreements on parenting time issues such as custody, weekly visitation scheduling, holiday scheduling, and exchanges. The process is private, informal, and nonbinding. If there are concerns of domestic violence or a current no-contact order, or restraining order, mediation can be done at separate times. Mediation differs county-to-county in Oregon with regard to cost and whether it is required for the parties to use. The result of mediation may be a complete agreement, partial agreement, or no agreement. We recommend that you do not agree to any parenting time agreement until you speak with an attorney to review the plan.

18. Child Support. Child support is to provide the financial, medical, and emotional support for the children of the parents. The first step is to calculate the support amount using the Oregon Child Support Guidelines calculator which will determine how much money each parent should contribute for the care of their child. A child support order typically requires the noncustodial parent to pay the custodial parent a specific amount each month. These funds should be used to help pay for the child's food, education, clothing, and shelter. While typically only one parent pays child support under a child support order, both parents are financially responsible for their children.

19. Spousal Support. Spousal support is an amount of money for a period of time as may be just and equitable for one spouse to contribute to the other spouse, in gross or in installments or both. The payment of spousal support may terminate on the death of either spouse, unless otherwise provided. The court has the authority to approve the entry of an order for the support of a spouse. Spousal support may be requested in a petition or under a motion for relief. There are three different types of spousal support in Oregon, Transitional, Compensatory, and Spousal Maintenance. The factors for spousal support are found in ORS 107.105.

20. Property Division. All income earned, property, and debts acquired during the marriage are subject to "equitable" marital property distribution. "Equitable" property distribution does not mean equal, rather, it means fair division considering the circumstances. If the parties cannot agree on how property is divided, the judge will divide the property. The judge will take into consideration where the property came from, how the property was acquired (before or during the marriage), how the property was used (separately or jointly), whether it makes more sense for one spouse to keep the property (the family house for the parent who will be the primary parent), and any other factors the court deems to be "just and equitable."

21. Finalizing the Divorce and Remarriage. Whether from a stipulated judgement (agreement), default of the other party, or by a final trial to decide all outstanding issues in your case, your divorce is not final or enforceable until the judge signs the judgment and the court enters the judgement. You may also remarry the day after your judgment is signed.

22. After the Case Concludes. Even after a case has concluded by settlement or trial and a judgment is signed by a judge, there are often final administrative matters and sometimes enforcement issues that need to be followed-up with. Our office can provide guidance and prepare documents, if needed, for these final steps.

23. New Wills. Divorce causes certain provisions in wills prior to the divorce be ineffective with regard to bequeaths to your future former spouse. This is because the legislature does not believe you intended to keep your ex-spouse as a beneficiary. Once the divorce is finalized, it is likely a good idea to draft a new will (or a first will). At Navigate Legal Services LLC, we also specialize in estate planning and can assist you with preparing estate planning documents.