

# HOW WE WILL HANDLE YOUR DIVORCE

## Sample Client Handout

**1. GROUNDS:** Oregon has adopted the concept of “no-fault” divorce. Generally, wrongdoing by you or your spouse will not make any difference to the final result. Neither of you has to prove the other wrong. 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 (or your spouse) must have lived in Oregon for six months prior to filing your Petition. The Petition can only be filed in the county in which you reside or where your spouse resides.

**4. STARTING THE PROCEEDINGS:** The first step is the preparation and filing of a Petition for Dissolution of Marriage. The Petition states basic factual information about you, your spouse, your marriage, any children; provides the court with the facts necessary for the court to assume jurisdiction; tells the court that your marriage should be dissolved, in most cases because of “irreconcilable differences;” and asks the court for orders regarding property division, support, custody of children, parenting time, attorneys 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. 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.

**7. HOW LONG WILL IT TAKE TO GET DIVORCED?** Oregon no longer requires a 90 day waiting period prior to granting a divorce. 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. 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.

Ultimately, 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 be entitled to receive any property or money awarded to you by the court consistent with the Judgment.

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**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 parents in the child and each parent's attitude toward the child, (c) the desirability of continuing an existing relationship, (d) whether one spouse has been abusive to the other spouse, (e) which parent has been the primary caregiver of the child, 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.

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. In practical terms, the parent who has accepted the primary responsibility for bringing up the child in the past will likely be awarded the care and custody of the child in the future. The non-custodial parent will be allowed parenting time based on the child's needs.

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, time at Christmas and other holidays, plus additional or different times as you may agree upon. The local court rules may require parents to complete a parenting class prior to 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 requires support of a child until the age of 18. Support may be extended to age 21 if the child attends 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 in order to obtain a just and proper result. Some things are clear: liabilities as well as assets are to be considered; liabilities and assets in either name are available to be divided; and retirement benefits accumulated by either spouse are considered a form of property. Some factors include the nature and extent of the property; the duration of the marriage; and the economic circumstances of each spouse. 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.

**12. TEMPORARY RELIEF:** A judge can make various orders, directed to you and your spouse, even before your marriage is finally dissolved. Either party may ask the court to restrain one or both of you from using marital assets or increasing marital debt.

If you have already established an ongoing residence and steady schedule for your children, the court may order both parents to continue to maintain the childrens' routine for the time being.

If we cannot reach an agreement on reasonable support amounts, or if we have difficulty in obtaining information from your spouse concerning property, we may ask the court to make rules for you and your spouse to follow while we work out the dissolution of your marriage. We do this by scheduling a

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hearing, usually several weeks in advance, and at the hearing the court will hear evidence from both of you and then issue orders.

Finally, if physical abuse occurs between family members, the court can restrain the abusive person from contact with others. If there is danger of harm, immediate help is available. Orders can be obtained very quickly.

If you believe you will require any of the help described in this section, let us know immediately. We will discuss the procedures for obtaining the appropriate court orders, and how quickly this can be done.

**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 him or her to prepare for reentry into the job market/advancement in the job market. The factors the court examines when deciding whether to award transitional spousal support include:
  - a) The duration of marriage;
  - b) A party’s training and employment skills;
  - c) A party’s work experience;
  - d) The financial needs and resources of each party;
  - e) The tax consequences to each party;
  - f) A 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 when deciding whether to award compensatory spousal support include:
  - 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 benefited 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 from one ex-spouse to the other for a specified or indefinite period. The factors the court examines when deciding whether to award spousal maintenance include:
  - a) The duration of the marriage;
  - b) The age of the parties;

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- c) The health of the parties;
- d) The standard of living established during the marriage;
- e) The relative income and earning capacity of the parties;
- f) A party's training and employment skills;
- g) A party's work experience;
- h) The financial needs and resources of each party;
- i) The tax consequences to each party;
- j) A 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 summons and 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; 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, communications by mail, e-mail, or other media, 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 court appearances.

Depending on the unique facts of your situation, we may recommend associating other experts to provide further professional guidance on limited aspects of your divorce, such as taxation, bankruptcy, or estate planning.

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 and your spouse can dismiss the divorce action so long as you do so before the Judgment of Dissolution is granted. If you decide to drop the divorce action, you will owe us only for those services actually performed.

**18. CHANGE OF WIFE'S NAME:** A wife's former name may be returned to her. 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.

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**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 within 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. With certain limited exceptions, anything you tell anyone in this office is strictly confidential and will not be disclosed without your permission.

**22. DIVORCE IN THE DIGITAL AGE:** Please review our handout “Divorce in the Digital Age.” Here are some key pointers: do not send inflammatory messages to your spouse; do not forward emails from me or any other person in our office; use social networking sites (Facebook, Twitter, Tumblr) cautiously; secure your mobile devices and accounts; use Internet search programs like Google with care (searches can be retrieved and used later in court); preserve potential evidence; do not install “Spyware” to check up on your spouse’s activities; store your emails and other personal information “in the cloud;” and use your office computer for work only. To learn more, read “Divorce in the Digital Age.”

**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. 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 can not 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

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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.

### NOTE TO PRACTITIONERS:

A variation of “How We Will Handle Your Divorce,” now called “A Divorce Primer” is available from the law office of Paul Saucy as part of the forms in the 2014 OSB CLE “Handling Domestic Relations Cases.”

### IMPORTANT NOTICES

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