

Filing For Dissolution (Divorce), Co-Petitioners, Cases with Children

Instructions for Packet 9A

Notice about these instructions and forms.

These instructions are not a complete statement of the law. They cover basic procedure for uncomplicated divorce cases. For legal information, please talk to a lawyer, visit your local law library and/or refer to the “Additional Resources” section on the last page of these instructions.

The instructions may refer to some forms not included in this packet. If you have a question about a form you cannot locate, you should consult your local court which may have the form available.

*Each court has local rules, programs and procedures that may not be explained in these instructions. Please refer to the “Local Family Law Practices and Programs” form for your court, attached to these instructions. If it is not attached, consult your local court directly. **Information about how to contact your local court may be found at the Oregon Judicial Department website: <http://www.courts.oregon.gov>.***

This set of forms and instructions will allow you to file for and obtain a divorce where both parties are in agreement on all issues.

The instructions are broken down into three basic steps. The forms that go with each step are listed below.

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When filling out the forms, follow these directions:

- You and your spouse are the named “Co-Petitioner” on all court forms. Use full names (first, middle or middle initial, last) and print the names the same on all forms.
 - The clerk will give you a case number when you file your papers. Make sure to put this on all copies and originals.
 - Some forms must be notarized or signed in the presence of a court clerk. You will need your picture ID for this. Many banks provide notary services.
 - Many forms say on the bottom, “I certify that this is a true copy,” and provide a place to sign.
- Don’t sign this line on the original form or on your own copy. You need to sign this line only on copies that are given to

your spouse or sent with the Certificate of Mailing described below.

- Make yourself and your spouse a copy of any document you are filing with the court. File the original with the court clerk.
- Keep the court informed of your current address so you get notice of all court dates. **You are not required to use your residential address on any court form.** You may use a contact address where you regularly check in. If you use a contact address, the court will assume that you will receive all notices sent to that address. **Note: If you fear for your safety, you may be able to obtain a non-disclosure order.** Consult with your local court for instructions as well as the appropriate forms.

STEP 1: STARTING YOUR DIVORCE

Legal Issues to Consider.

A divorce case starts with a “petition” which lists the items you are asking the court to order in the “judgment”. The judgment is the document that finalizes your divorce and contains your rights and responsibilities. Oregon law provides that a number of issues must be addressed in the judgment. Before you fill out the petition, you should think about how you want to handle these issues.

Parenting Plan. A parenting plan is required for cases involving a minor child. The plan sets out the schedule and rules for each parent’s time with the child. The parenting plan may include safety provisions for the child if domestic violence, substance abuse, child abuse or other circumstances are involved in your case.

A mediator can help parents create a parenting plan. Information about parenting plans may also be available through your court’s parent education program, the courthouse facilitator, or your local law library. **The Oregon Judicial Department and the State Family Law Advisory Committee have created a “Basic Parenting Plan Guide for Parents” with information about how to develop a plan, information about alternative schedules, and ages and stages of your child[ren] which should be considered in creating a plan. A sample parenting plan form is included in the Guide. The Guide may be downloaded from the OJD Family Law Website at <http://www.courts.oregon.gov/familylaw>. There is also a “Safety Focused Parenting Plan Guide” on this website to help you develop a parenting plan where there are safety concerns for your children.**

Oregon law (ORS 107.159) prevents either parent from moving more than 60 additional miles away from the other parent without giving him or her and the court notice of the move. You may ask the judge to waive this requirement by checking the last box in the parenting plan section of the petition.

For information about child custody, you may call Tel-Law (1-800-452-4776) tape 902, or visit www.osbar.org.

Child Support. IMPORTANT! Oregon law requires that the petitioning party submit a CERTIFICATE stating whether there are any pending child support proceedings or existing child support orders involving the parties’ child[ren]. To comply with this requirement, fill out and submit the form called “CERTIFICATE re: PENDING CHILD SUPPORT PROCEEDINGS and/or EXISTING CHILD SUPPORT ORDERS/JUDGMENTS” in this packet. You will be required to attach certified copies of any pre-existing child support orders (certified copies may be obtained from the clerk of the issuing court).

In most cases, the court will order child support if the parties have a child and no child support order already exists. The amount of support, if ordered, will be determined by the Child Support Guidelines. The Guidelines have worksheets to help you figure out who should pay support and how much it should be. Support is typically withheld from wages unless an exception is allowed for direct deposit to the other parent’s checking or savings account, or, if support enforcement services are being provided to either parent, as an “electronic payment withdrawal (EPW) or electronic funds transfer (EFT)” to a Department of Justice account. (EPW and EFT are procedures whereby funds are automatically withdrawn from a checking/savings account as authorized by the account holder.) Information about child support, including the Guidelines and Worksheets, is on the Internet at:

http://www.dcs.state.or.us/oregon_admin_rules/guidelines.htm.

This website also has a Child Support Calculator which may help you to calculate the amount of child support which should be paid: <http://www.dcs.state.or.us/calculator>. Your local court facilitator, legal aid office or child support program **may** also be able to help you calculate the amount of support.

Cash Medical Support. In addition to cash child support, Oregon law may require the payment of cash medical support. If neither party has private health insurance for the child(ren) or if the health insurance is to be provided only by the parent that receives cash child support, the court is required to order cash medical support unless the court finds there are reasons not to order it. The purpose of cash medical support is to help defray the cost of health insurance and the cost of uninsured medical expenses. The judge cannot order you or the other party to pay cash medical support if you or the other party has a dependent child in the household who is eligible to receive public medical assistance or if you or the other party is eligible for public medical assistance yourselves. A party who makes no more than Oregon minimum wage cannot be ordered to pay cash medical support

Oregon law requires the court to make sure that payment for the child(ren)'s uninsured medical expenses are addressed in the judgment. Although you may request that each party share the out-of-pocket medical expenses that exceed \$250.00 per child per year, it may not be appropriate to request both the payment of cash medical support and the sharing of uninsured medical expenses. That is because one of the purposes of cash medical support is to help pay for the cost of uninsured medical expenses.

Unmarried and Unemancipated Children at Least 18 and Under 21 Years of Age. Under Oregon law unmarried unemancipated children who are at least 18 and under 21 years of age are necessary parties to all family law cases involving support. The Petition forms that deal with support will have a line to write in the child's name, including them in the heading. The Judgment forms will have a place indicating how the child has been involved in the case, and if applicable, a place to sign underneath Petitioner and Respondent signatures agreeing to the judgment. As a party to the case, these children must be legally served with all the required documents. After they are served, children **may** sign a Waiver of Further Appearance and Consent to Entry of Judgment form found in Packet 6J if the child does not choose to participate further in the case. Also note that on both the Petition form and the Judgment form you must select whether support stops at age 18 or whether it continues until age 21 if the child continues to attend school.

Insurance. Oregon law requires that the judgment address the issue of health insurance for any minor child involved in your case, and for payment of uninsured medical expenses. It also must provide for security for the payment of support, such as life insurance. In the health care coverage section, you must mark any of the options that apply to your family's situation. There are two major categories involved in determining health care coverage for the children: private, such as insurance available through employment, and public, such as the Oregon Health Plan.

If either you, your spouse/partner, or both of you have private health care coverage available for the children, you must fill out the "PRIVATE HEALTH CARE COVERAGE IS APPROPRIATE AND AVAILABLE" section. If *neither* you nor your spouse/partner have private insurance available for the children, you will fill out the section called: "NO PRIVATE INSURANCE IS APPROPRIATE OR AVAILABLE." Regardless of insurance availability, everyone must complete the section called: "RESPONSIBILITY FOR UNINSURED HEALTH EXPENSES." It may be appropriate to equally divide the expenses if no cash medical support is ordered or for the custodial parent to pay most or all of the uninsured expenses if cash medical support is being paid to that parent.

Spousal Support. Oregon law provides for three different categories of spousal support: transitional, compensatory and spousal maintenance. Transitional support may be ordered for a spouse to get work related education and training. Compensatory spousal support may be ordered if one party has significantly contributed to the education, training, vocational skills, career or earning capacity of the other spouse. Spousal maintenance may be ordered for the support of one spouse. The judge will consider a number of factors when making the award, and may order more than one type of support. For more information on what the judge will consider, please refer to ORS 107.105 (to view, visit your local law library or www.leg.state.or.us/ors).

Property and Debts. – Statutory Restraining Order. Oregon law requires both Co-Petitioners to obey a restraining order preventing *either party* from dissipating (selling, destroying, removing, disposing of) real or personal

property, making unilateral (without the agreement of the other party) changes to insurance policies, and making extraordinary expenditures. Expenditures that are necessary for the safety or welfare of the children or the parties are not prohibited. **By filing your co-petition, you agree to be bound by the terms of this order.** The order is effective immediately upon filing of the co-petition. If either co-petitioner violates the order, s/he may be subject to sanctions. The “*Notice of Statutory Restraining Order Preventing the Dissipation of Assets in Domestic Relations Actions*” may be found in this Packet 9A.

For information about these issues, talk to a lawyer and/or go to the Oregon State Bar’s web site for “Legal Links” (www.osbar.org) and read under “Oregon’s Laws” the sections on “Bankruptcy and Credit,” “Real Estate,” and “Taxes.” If either spouse has a retirement plan, you should talk to an attorney before filling out the petition. The attorney can advise you if this packet will work for your situation. If the parties own real estate located in Oregon, a “lis pendens” notice (notice of pending suit) may be filed with the county clerk as provided in ORS 93.740 (to view, visit your local law library or www.leg.state.or.us/ors/).

Initial Forms to File as Co-Petitioners.

To get the divorce case started, fill out the following forms and file them with the clerk:

- *Co-Petitioners’ Acknowledgment about Dissolution (Divorce)*
- *Co-Petition for Dissolution of Marriage*
- *Certificate Re: Pending Child Support Proceedings and/or Existing Child Support Orders/ Judgments*
- *Confidential Information Form (CIF)*
- *Notice of CIF Filing*
- *Certificate of Mailing (for use if you or your spouse is receiving public assistance)*
- *Record of Dissolution of Marriage (Vital Statistics form; Available from your local court)*

Social Security numbers and other confidential personal information.

There is certain personal information that can only be listed in a Confidential Information Form (CIF) and may not be listed in any of the other papers you file with the court. See the CIF information sheet that is part of this packet.

Make copies.

Make one copy of all of the forms for your and your spouse’s records.

If either you or your spouse is receiving certain types of public assistance (Temporary Assistance to Needy Families or the Oregon Health Plan), you are also required to send a copy of the petition to the Division of Child Support branch office in your county. The branch office address may be found at http://dcs.state.or.us/office_info/offices.htm or in the “Local Family Law Practices and Programs” form for your local court. Fill out and file the *Certificate of Mailing* with the court after you have mailed the petition.

Have your documents reviewed.

You may have your documents reviewed by a lawyer or a courthouse facilitator (if your court has one) before you file. For information about how to find a lawyer, call the Oregon State Bar Lawyer Referral Service (1-800-452-7636). If you are low income, you may get your documents reviewed for a smaller fee through the Oregon State Bar’s Modest Means program, or you may call your local Legal Aid office (<http://www.oregonlawhelp.org>). Contact numbers are listed in the additional resources section at the end of these instructions, and in the “Local Family Law Practices and Procedures” for your court attached to these instructions.

File the forms.

File all of the original forms that are listed above with the court clerk. The court clerk will ask you for a filing fee when you file your papers. Check with your local court to learn the amount of the filing fee. If you feel you can’t afford to pay the fee, you may ask the court to waive or defer your filing fee. Use Packet #10 of these forms, or check with your local court to see if they require a different form. This form needs to be filled out and filed with the court. If the fee is waived, you don’t have to pay the fee. If the fee is deferred, most courts will require that you pay the fee at a later date.

The clerk will give you a number of handouts when you file your papers. The handouts usually include a notice regarding continuation of health coverage, a copy of ORS 107.089 (documents parties may have to give each other), notice regarding mediation, family law guidelines and services, family law resource list, and possibly, information about local parent education classes. The clerk will give you two copies of each handout: one for you and one for your spouse. You aren't required to give the copy of ORS 107.089 on your spouse, but if you do, both spouses must follow what it says.

Serving children who are necessary parties. Because all unmarried, unemancipated children at least 18 and under 21 years of age are necessary parties to the case, they must also be served. These children will also need to be served with copies of the forms you have filed with the clerk.

Parenting Classes.

Many courts require that parents of minor children go to a parent education class. If your court has this program, sign up for the class right away. Some courts will not allow you to finalize your divorce until you have completed the class and filed a certificate of completion with the court.

STEP 2: WAITING 90 DAYS

Oregon law requires a 90 day waiting period between the time your petition was filed and the time the court can hold a final hearing on your case or sign the final judgment (ORS 107.065). Parties that have agreed to the terms of your divorce and signed a "stipulated" (agreed to) judgment, may ask the court to waive the 90 day period.

To ask the court to waive the 90 day period, fill out the following forms and file them with the clerk. If you would like additional instructions about this procedure, see the Instructions in Packet #1F - Request for Waiver of 90 Day Period.

- *Co-Petitioners' Motion for Waiver of 90 Day Waiting Period*
- *Co-Petitioners' Affidavit for Waiver of 90 Day Waiting Period*
- *Co-Petitioners' Order for Waiver of 90 Day Waiting Period*

STEP 3: FINALIZING YOUR DIVORCE

A divorce is "final" on the date the judgment of dissolution is signed by a judge.

Forms to Finalize Your Divorce.

The following forms are required to finalize your divorce:

- *Stipulated Judgment of Dissolution (With Children)*
- *Co-Petitioners' Affidavit Supporting Stipulated Judgment of Dissolution (With Children)*
- *Co-Petitioner's Ex Parte Motion for Order Allowing Entry of Judgment on Affidavit in Lieu of Hearing; and Order*

You may also need to file the following additional forms, depending on your circumstances.

- **Parenting Class Certificate of Completion.** If your local court requires parents of minor children to attend a parent education class, a certificate of completion must be filed with the court unless this requirement has been waived by order of the court.

- **Child Support Worksheets.** If child support is ordered in the divorce case, child support worksheets need to be filled out and attached to the final judgment.

- **Parenting Plan.** Your parenting plan may be completely included in the final judgment (see page two of the judgment). If there are additional pages, attach them.

- **Waiver of Personal Service.** After the judgment is signed, if one spouse doesn't do what it says, the other spouse may ask the judge to enforce the judgment. The spouse asking for enforcement is required to personally serve (deliver) the other spouse with notice of this request. If you would like to keep your home address confidential, you may file this form listing another address for service. You are responsible for making sure you get all papers delivered to the address you list.

The Final Judgment.

The judgment finalizes your divorce and contains all of the issues decided through your agreement. If both spouses agree on all issues, it may be prepared by either spouse as long as it is reviewed and signed by both spouses. The information should be the same as your agreement.

If you are responsible for filling out and filing the final judgment, make a copy for yourself and one for your spouse, and file the original with the court. **If your case involves child or spousal support, file an extra copy of the proposed judgment with the court.**