

Family Law in Oregon

Marriage

Registered Domestic Partnerships

Protection from Abuse

**Includes Financial, Housing, Employment and
Immigration Information**

Legal Separation and Informal Separation

Annulment and Divorce

Paternity

Custody and Parenting Time

Child Support and Insurance

Spousal Support

Name Changes

**The Child Welfare Program of the
Department of Human Services**

Adoption

Guardianships for Children

Visit our website:

www.oregonlawhelp.org



Legal Aid Services of Oregon and Oregon Law Center
Community Education Series 2010



IMPORTANT! This booklet is for general educational use only. It is not a substitute for the advice of an attorney. If you have a specific legal question, you should contact an attorney. The information in this booklet is accurate as of May, 2010. Please remember that the law is always changing through the actions of the courts, the legislature, and agencies.

More information: www.oregonlawhelp.org

Oregon Judicial Department (OJD) Family Law website:

<http://courts.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/pages/index.aspx>

(For Family Law and Restraining Order Court Forms and Information)

Oregon Department of Justice Division of Child Support website:

www.oregonchildsupport.gov

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Marriage

1. How do I get married in Oregon?

To get married you need a marriage license from the County Clerk. The fee is approximately \$60. The license becomes effective three days after it is issued. A person authorized by the state must perform the marriage and two people must witness it. You do not need a blood test to get married. You do not need to live in Oregon to get married here.

2. How old do I have to be to get married?

You must be 18 years old to get married in Oregon without a parent's permission. You can get married at age 17 if: 1) you have written permission from a parent or guardian, or 2)

neither parent lives in Oregon and you have lived here for six months in the county where you are applying for the marriage license. You cannot get married in Oregon if you are under 17, even if you have a child or have a court order emancipating you (declaring you an adult for certain purposes).

3. Can I get married by common law in Oregon?

No. Common law marriages (marriages created by a couple living together and acting like husband and wife) cannot be created in Oregon. But Oregon does recognize common law marriages that are established in a state that allows them.

Registered Domestic Partnerships

In this pamphlet, use of the term spouse includes a domestic partner. In the following sections of this pamphlet, the use of the term marriage includes registered domestic partnerships.

4. What is a domestic partnership?

A domestic partnership is a civil contract between a same-sex couple that gives them the same **state** rights as those received by a married couple.

5. Who is allowed to enter into a domestic partnership?

Both parties must be of the same sex, at least 18 years of age, and capable of entering into a contract. At least one partner must be a resident of Oregon.

6. How is a domestic partnership created?

The same sex couple must complete a form called a "Declaration of Domestic Partnership." Both partners must sign the form, and **their signatures must be notarized**. The couple must then give the form to a County Clerk who will sign and register it. Once the declaration is registered, the County Clerk will provide the couple with a copy of the declaration and a "Certificate of Registered Domestic Partnership." More information about domestic partnerships, along with the declaration form, can be found at: www.oregon.gov/DHS/ph/chs/order/dp.shtml.

7. Is there a fee to register a domestic partnership?

Yes. You should contact your County Clerk for fee information.

8. How can a domestic partnership be ended?

A domestic partnership can be ended by going through the courts to get a judgment of

dissolution or annulment or by the death of one of the partners. See sections on Annulment, Legal Separation, Informal Separation, and Divorce.

Protection from Abuse

9. What can I do if my spouse or someone I live with is abusing me?

You can get a Family Abuse Prevention Act (FAPA) restraining order. This is an order from the court that tells your abuser to stop the abuse and to leave you alone. A restraining order can require your abuser not to do anything to harass you or your children, to move from your home, and to stay away from your job or school. The police must arrest your abuser if the restraining order is not followed.

Restraining orders also can include temporary custody and parenting time orders. See Question 78 for more information.

10. Who can get a restraining order? Against whom?

You can get a restraining order if you are in imminent danger of further abuse because your abuser has physically abused you or attempted to physically abuse you; put you in fear of bodily injury; or made you have sexual relations against your wishes by using force or threats of force.

You can get a restraining order against someone you are or were married to; adult relatives; a lover you live with or used to live with (of the same or opposite sex); a person who was your lover (of the same or opposite sex) during the last 24 months; and the other parent of your minor child. If you are under 18, you can get a restraining order against a person who is 18 or older if the person is someone you are or were married to, or if you have ever had a sexual relationship with the person.

11. What if I am an elderly person or a person with a disability?

If you are 65 years old or older, or a person with a disability who has been the victim of physical abuse, sexual abuse, neglect, ridicule, harassment, coercion, wrongful taking of money or property, intimidation, or exploitation by sweepstakes promotion, you can get a special Elderly Persons and Persons With Disabilities Abuse Prevention Act (EPPWDAPA) restraining order if you are in immediate danger of further abuse. No special relationship is required between you and your abuser.

12. How can I get a restraining order?

Forms and instructions for both types of restraining orders are available at all courthouses and at the OJD Family Law website (see inside front cover). Domestic violence shelters and crisis lines and legal aid offices also have information about getting restraining orders. Go to page 43 for information about domestic and sexual violence resources. There is no filing or service fee for these restraining orders.

13. What can I do if someone is stalking me?

If someone has made you afraid for your physical safety by injuring you, physically or sexually abusing you, committing a crime against you (or your pets or property), threatening you (either by phone, in writing, or in person), following you, watching you, or otherwise stalking you, you may qualify for the protection of a stalking order.

The court has the power to order someone not to contact you when that person has repeatedly (*two times or more*) stalked you and made you reasonably afraid for your physical safety. The contact must be unwanted.

You can get a stalking order against *anyone* who has “stalked” you. You do not need to be related to the stalker in order to get protection. You can get a stalking order for your protection or for the protection of a member of your immediate family or household.

Depending on what county you live in, you may get a stalking order through the police or the courts. There are no filing or service fees for stalking protective orders. Forms and instructions for civil stalking protective orders can be found at the OJD Family Law website (see inside front cover).

14. What protection is available to me if I have been sexually assaulted?

You may be able to get a restraining order against the abuser, if the abuser is someone you are or were married to; an adult relative; a lover you used to live with (of the same or opposite sex); a person who was your lover (of the same or opposite sex) during the last two years; or the other parent of your minor child.

If you do not qualify for a restraining order because you are not related to the abuser or have never had a sexual relationship with him or her, you may be able to get a stalking order. You can only get a stalking order if there have been *two or more* unwanted contacts by the abuser.

If you do not qualify for a restraining order or for a stalking order, there may be some protection available to you through the criminal justice system if a police report has been made and if the case is being prosecuted.

15. What other types of help are available to me if I have been physically or sexually abused or stalked?

Financial Help:

If I am a victim, what kind of financial help is available?

If you are a victim of domestic violence and you are pregnant or have minor children who live with you, you may qualify for special financial assistance from the Department of Human Services (DHS). If you are currently a victim of domestic violence, or are at risk of domestic violence, and you need financial help to be safe, you should contact your local DHS office and ask about Temporary Assistance for Domestic Violence Survivors (TA-DVS). A limited amount of money may be available to help you. You also may ask that the court order your abuser to give you one-time, emergency financial help as part of a restraining order. See Questions 9 through 11.

Housing Help:

What if my landlord treats me differently because I have been a victim of domestic violence, sexual assault or stalking?

A landlord may not deny you admission, fail to renew your lease, or evict you because you are or have been a victim. Also, a landlord may not have different rules or standards for you because you are or have been a victim. If you think your landlord has treated you differently because you are or have been a victim, you may want to speak with an attorney.

What safety protections are available to keep me safe in my housing?

You have the right to have your locks changed quickly if you (or a child living with you) have been the victim of domestic violence, sexual assault or stalking. You must give the landlord notice that you (or a child living with you) are a victim and want your locks changed (written notice is best). You do not need to provide proof that the violence happened. If your landlord does not change the locks promptly, you can change the locks yourself. You must give the

landlord a copy of the new key if you change the locks yourself. If the person who has abused you is on the lease with you, you cannot have the locks changed unless you have a restraining order which orders the abuser to move out of your home. The abuser's lease is ended once the court order is final. You are responsible for the cost of changing your locks, but your landlord should not insist you pay for the lock change before changing the locks.

What if I need to move quickly because of the abuse?

You have the right to break your lease or rental agreement with at least 14-days' notice, so you can move quickly if you (or a child living with you) have been the victim of domestic violence, sexual assault or stalking with the last 90 days (any time the abuser is in jail or lives more than 100 miles away from you does not count against the 90-day time limit), or if you have a current protection order. You must provide your landlord one of the following: a copy of a court protective order; a police report; a copy of a conviction for an act of domestic violence, sexual assault or stalking; or a statement from a law enforcement officer or other qualified third party (attorney, licensed health professional or victim advocate) stating that you have reported an act of domestic violence, sexual assault or stalking. If you are mailing this notice to your landlord, you must add three days to your move out date (17-day notice) to allow for the mail to reach your landlord.

Can the landlord evict the abuser if I want to stay in my housing?

If you and your abuser are on the same rental agreement (both tenants) and your abuser commits an act of physical violence related to domestic violence, sexual assault, or stalking, your landlord can give the abuser a 24-hour notice to terminate the abuser's lease. The landlord may not evict you or other tenants.

Employment-Related Help:

If I need to leave my job to stay safe, can I get unemployment benefits?

You may be eligible for unemployment benefits if:

- 1) You had to quit an Oregon job because you or an immediate family member is or could be a victim of domestic violence, stalking, or sexual assault, and
- 2) You left work to protect yourself or an immediate family member from domestic violence, stalking, or sexual assault that you reasonably believed would take place if you stayed in your job.

What if I need to take time off because I am a victim of abuse?

If you or your child has been a victim of domestic violence, sexual assault, or stalking, you may be eligible for reasonable time off from work 1) to get law enforcement or legal help, 2) to get medical treatment, counseling, or services from a victim services program, or 3) to move or make your house safer. You must have worked for more than 25-hours per week at your job for at least the last 6 months, and your employer must have 6 or more employees. You must give your employer notice, unless it is not possible to do so. If your employer asks, you must provide proof that you or your child is a victim and that you are taking time off for one of the allowed reasons. Your employer must keep this information private. Leave is unpaid, although you can use vacation leave if you have it available. If your employer will not let you take time off or discriminates against you for taking time off, you may have a legal claim that you should discuss with an attorney, or you may want to file a complaint with the Bureau of Labor and Industries (BOLI) at (971) 673-0761.

What if my employer discriminates against me or will not take steps to help me stay safe at work?

An employer may not discriminate against (treat differently from other employees) victims of domestic violence, sexual assault, or stalking. If a victim asks, an employer must make “reasonable safety accommodations.” Examples of reasonable safety accommodations are a changed work telephone number or work station, a transfer to another work site, or a changed schedule. Before making a reasonable accommodation, an employer may ask for proof that the employee is a victim. Employers must keep this information private. If your employer discriminates against you or refuses to make a reasonable safety accommodation, you may want to talk to an attorney or file a complaint with the Bureau of Labor and Industries (BOLI) at (971) 673-0761.

Immigration Help:

Are there any immigration laws that can help victims of abuse?

If you are not a U.S. citizen or lawful permanent resident and you have been abused in the U.S. by a U.S. citizen or lawful permanent resident who is your current or former (within the last 2 years) spouse, you may qualify for special immigration assistance. You may also qualify for this assistance 1) if you are the child

of an abusive parent citizen or lawful permanent resident, 2) if you are the other parent of a child abused by a U.S. citizen or lawful permanent resident, or 3) if you are the parent of an abusive U.S. citizen child. If you have been substantially abused as a result of a crime and you have or are helping with the investigation or prosecution of that crime, you may be eligible for a U-Visa. These laws are very complicated and you should seek help from an attorney for more information.

Protecting Your Location:

Is there a program that will help me keep my residential address private?

The Address Confidentiality Program (ACP) is a government program that lets eligible victims of domestic violence, sexual assault, stalking, and human trafficking keep their residential address confidential by providing them with a substitute address. First-class, certified and registered mail sent to the substitute address is forwarded by the ACP to participants. In general, the substitute address can be used whenever state and local government agencies require an address. This means your residential address should not appear in public records that can be searched by your batterer. For more information about the ACP or how to apply to the program, go to: www.doj.state.or.us/victims/confidentiality.shtml.

Annulment

16. What is annulment?

Annulment is a way of legally ending, or canceling, a marriage. You can get an annulment only in unusual cases. For example, you can annul your marriage if one of the spouses is already married or not old enough to legally marry. You cannot get an annulment just because your marriage is only a few days old or because you have not had sex with your spouse.

A lawyer can help you find out if you can get an annulment. Court costs for an annulment are about the same as for a divorce.

17. If my spouse was already married to someone else when we got married, do I need a court order to end my marriage?

In most cases, if you were married in Oregon to someone who was already married,

then your marriage is void (does not exist). You do not need an annulment unless there are children to support, property to be divided, or you want a court document for your records. If you were married outside Oregon to someone who was already legally married, it will take a court order to end the marriage.

If you were married in Oregon before July 31, 1981, to someone who was already married, you may need a divorce to end the marriage. Contact a lawyer.

18. Can I get an annulment in Oregon if I was married in a state other than Oregon?

You can get an annulment for a non-Oregon marriage if your situation fits the rules for annulment and you or your spouse have been living in Oregon for at least six months.

Legal Separation

19. What is a legal separation? Why do people file for legal separation?

A “legal separation” is a court order setting out enforceable terms for a couple who remains married but agrees not to live together as husband and wife. The separation judgment can include orders about the custody and parenting time arrangements for children, child support and spousal support, and who gets which property and pays which debts. Legal separation is sometimes used when religious beliefs prohibit divorce or when you or your spouse have not yet lived in Oregon long enough to file for divorce. See Question 29. A legal separation

costs about the same as a divorce. During the first two years it can be changed to a divorce by either person. After two years, you can still get a divorce, but it will be a separate case.

20. What is the difference between divorce and legal separation?

The main difference is that you are still married after a legal separation, so you cannot marry someone else. Also, you still have the right to inherit property “automatically” from your spouse if you are legally separated. If you are divorced you lose that right.

Informal Separation

You and your spouse or registered domestic partner are living apart, but you haven't filed for legal separation or divorce.

21. My spouse and I have been separated for several years but we have never filed for divorce. Are we still married? Can I marry someone else?

Until you end your marriage through divorce (or annulment in very rare cases -- see Question 16) you and your spouse are married. Neither of you can remarry until you end your marriage.

22. My spouse and I have separated but we haven't filed for divorce. I have our children. Do I have more custody rights than my spouse?

No. Unless you have a custody order (a court order signed by a judge that says that you have custody), you and your spouse have equal rights to have the children. You and your spouse can agree on where the children should live. Without a court custody order, you usually won't be able to have the police get your children back if your spouse breaks the agreement.

23. How can I get a court order that gives me custody?

If you are filing for divorce, you can ask in your petition that permanent custody be awarded to you in the divorce judgment. See Question 25. Once you have filed for divorce, you can ask for a temporary order that gives you custody until the divorce is final. See Question 47.

If you are afraid of your spouse because of physical abuse or threats of physical abuse

against you within the last six months, you should be able to get temporary custody as part of a Family Abuse Prevention Act restraining order. See Questions 9, 10, 12 and 78.

In a divorce or restraining order case, the court can make custody decisions only if your children have lived in Oregon for 6 months, need emergency protection, or in some special situations when they have ties to the state.

24. If my spouse and I are separated, can I get child support? How?

Your spouse can agree to pay you child support, but you can't enforce this arrangement unless you have a court or agency order.

You can get a child support order without filing for a divorce. If you are getting Temporary Assistance for Needy Families (TANF) or are on Oregon Health Plan (OHP), the Oregon Department of Justice, Division of Child Support (DCS) will try to get a support order against your spouse. If you are not getting public assistance, you can contact the District Attorney (DA) in your county for free help in getting a child support order. In some counties, DCS handles all child support cases.

You can also ask for child support as a part of your divorce. A judge can require your spouse to pay child support payments in a temporary order and in the final divorce judgment.

See Questions 100 through 135 for more information about child support.

Divorce

25. What is a divorce? What gets decided in a divorce?

A divorce is a way of legally ending (dissolving) a marriage. After you have gone through all the steps in a divorce, you will get a “General Judgment of Dissolution of Marriage,” which is a court order that ends your marriage. The divorce judgment will usually state:

- The date your marriage ends (this is the date the judge signs the judgment);
- Who gets custody of the children and when the other parent sees them;
- Who pays child support and how much;
- If health insurance for the children will be provided and who will pay for it;
- Who should pay past bills;
- How property (including retirement benefits) will be divided;
- If one spouse must pay spousal support to the other.

26. Do I need a legal reason to get a divorce?

Oregon has “no fault” divorce. The only reason you need is that you and your spouse cannot get along, and you see no way of settling your problems. The law calls this “irreconcilable differences.”

27. Can my spouse keep me from getting a divorce?

No. Your spouse cannot stop you from getting a divorce. But your spouse can contest issues in the divorce, such as child custody and support, spousal support, and property division. This can delay the divorce because the court will set a trial date to decide the contested issues in the case. In some counties, your spouse can ask the judge to postpone your divorce and order both of you to see a mediator to try and come to an agreement.

28. Will I be able to get a divorce if I don’t know where my spouse is?

Yes, but you will have to prove to a judge that you have tried in many ways to find your spouse before a judge will let you go ahead with the divorce. See Question 35. If your spouse can’t be found for personal delivery of the divorce papers, you will be able to end your marriage and (usually) get custody decided, but you will probably not get child support or any divorce terms which require your spouse to pay money or do something (such as transferring title to property).

29. Can I get a divorce in Oregon now if I just moved here?

Probably not, unless your spouse is living here. In almost all cases, either you or your spouse must have lived in Oregon for six months before filing for divorce.

30. Will it take me long to get a divorce?

An uncontested divorce (where you and your spouse agree about the terms of the divorce) can be final about three months after the divorce petition is filed and delivered to your spouse. You may be able to reduce this time if the judge thinks you have a very good reason. If you and your spouse have agreed on the divorce terms and both of you sign the proposed final judgment, the judge can waive the waiting period.

A contested divorce (where you and your spouse are arguing about the terms of the divorce), could take much longer than three months because court hearings may be needed.

31. Will I have to go through a trial to get a divorce?

If the divorce is uncontested (if you and your spouse agree about all the terms of the divorce),

you can probably get divorced without a trial. But if the divorce is contested, you will probably need a trial.

32. Will I need a lawyer to get a divorce?

If you and your spouse agree about all the terms of the divorce, or if neither you nor your spouse wants to disagree about what the other is asking for, you won't need a trial, and you may be able to do the divorce paperwork yourself. You still may want a lawyer to look it over.

Divorce paperwork is available online at the OJD Family Law website (see inside front cover). Once at this website, look for "Family Law Forms." Print the appropriate forms and instructions for your circumstances.

Your courthouse may also have printed versions of these forms for a modest copying fee.

If you meet all the rules for a Summary Dissolution (see Question 36), you can get the forms at the county courthouse. Also, the legal aid office serving your county may give classes and materials so that you can handle your own divorce. Court facilitators are available in many county courthouses to help with divorce paperwork. You may want to have a lawyer look over the divorce papers you prepare. This will cost less than having a lawyer do the whole divorce.

If you and your spouse cannot agree and one of you contests issues in the divorce in court, a

judge will have to make a decision about the issues. This will probably require court hearings, and it may be best to have a lawyer. If one spouse gets a lawyer, the other spouse often needs one too.

33. What if I cannot afford a lawyer?

If your spouse has an income that is much higher than yours, the judge may order your spouse to pay your lawyer. If you have an income that would allow you to make monthly payments to a lawyer, talk to different lawyers to see if they will help you. Some legal aid offices do not handle divorces directly, but they may offer classes and materials to help you do your own divorce. See the Resource Section of this booklet for the legal aid office nearest you.

34. Will there be problems getting a divorce if the wife is pregnant?

No, but your divorce petition (request) should say that the wife is pregnant and whether or not the husband is the father. The judge will want to know if the husband is the father, so that issues such as child custody and support can be handled as part of the divorce.

If the husband is *not* the father, the divorce petition and the final divorce judgment should state that he is not the father. Otherwise, the law will assume that he is and will treat him as the father.

How do I File for a Divorce?

35. What do I need to do to start a divorce?

In almost all cases either you or your spouse must have lived in Oregon for at least six months before you file the divorce papers. If one of you has lived here that long, you need to do three things to start your divorce:

1) You must pay or be excused from paying the

fees that are charged for filing a divorce petition. There might also be costs for having your spouse served. See Questions 40 and 41 for information about these costs.

2) You must fill out and file (turn in) a Petition for Dissolution of Marriage with the Circuit Court Clerk's office in the court of the county where either you or your spouse live.

The petition tells the court and your spouse what you are asking for in the divorce.

- 3) You must have the petition *served* on (officially delivered to) your spouse. This lets your spouse know that a divorce action has been started and what you are asking for. See Questions 38 and 39 for information about serving the petition. Other paperwork is also required.

36. Can I use Summary Dissolution forms to file for divorce?

A *summary dissolution* is a simple divorce. The forms and instructions are free and are available at county courthouses. To use the *summary dissolution* forms, you must meet *all* of the following requirements:

- 1) **Residency** – You or your spouse are a resident of Oregon and one of you has been living here for the last six months;
- 2) **Length of Marriage** – You have not been married for more than ten years;
- 3) **Children** – You have no minor children (or children 18-20 years old attending school), born to or adopted by you and your spouse, either before or during the marriage. The wife is not pregnant now;
- 4) **Real Property** – Neither you nor your spouse owns any real property (land, houses, or buildings) anywhere;
- 5) **Personal Property** – The combined net value of the personal property owned by you and your spouse is not more than \$30,000;
- 6) **Debts** – The combined unpaid debts of you and your spouse during your marriage are not more than \$15,000;
- 7) **Spousal Support** (Alimony) – Neither spouse is asking for spousal support;
- 8) **Temporary Orders** – Neither spouse is asking for any temporary orders (except a restraining order in a separate Family Abuse Prevention Act case); and

- 9) **Other Divorce Actions** – You are not aware of any other divorce or annulment proceedings involving this marriage filed in any court and not yet decided.

If you don't meet all of the requirements for *summary dissolution*, you will have to use other forms available through the court or the website noted above, or contact an attorney.

The *summary dissolution* forms and other self-help forms are intended to help get you a divorce *without* an attorney. But you have the right to be represented or helped by an attorney if you can obtain one. It may be helpful to see an attorney before you file the forms, to make sure you have filled them out correctly. You may have questions about the procedure or want advice about your individual rights and responsibilities. ***If your spouse contests the divorce by filing papers with the court, you should try to get legal advice.***

37. How do I fill out the divorce petition?

The petition tells the judge and your spouse what you are asking for in the divorce. If a lawyer is representing you, he or she will write the petition after talking to you about what you want. If you are using “do-it-yourself” forms, the class you go to or the instructions you receive will give you information about the kinds of things you can ask for in a divorce.

After the petition is written, it is filed (turned in) at the courthouse. Other legal paperwork is required, too. A few courthouses have a staff person (a “court facilitator”) to help with family law paperwork and procedures.

38. How do I serve the divorce papers?

If a lawyer is handling your divorce, he or she will have the divorce papers served on (officially given to) your spouse. If you are using “do-it-yourself” forms, the instructions should tell you what you need to do. Your spouse can agree to sign papers that say he or she has been

served. Otherwise, your spouse must be served by either the sheriff or another adult (not you).

If you are getting cash assistance or certain other public benefits, the Division of Child Support (DCS) will also have to be served with the divorce petition. If you do not have a lawyer or if the divorce forms you are using do not have instructions about this, you can call DCS to find out how to serve them with the papers.

39. How do I serve the divorce papers if I cannot find my spouse?

If you cannot find your spouse, you will need to serve your spouse by either publishing or posting a notice that you have filed for divorce. *You MUST have an order signed by a judge that gives you permission to serve your spouse by publishing or posting notice.* To get the order, you will have to show the judge that you have tried in many ways to find your spouse. If notice is published in the newspaper, there will be a fee. Posting the notice in the courthouse is free. You can find out more about these kinds of service from a lawyer or the instructions in the self-help forms that you are using. An alternative form of service packet is available on the OJD Family Law website (see inside front cover).

40. What are the costs for filing and serving the petition?

When you file the petition with the court clerk, you will be charged a filing fee of approximately \$400. Each county charges its own fees based on services offered there; call the Circuit Court Clerk's office at your local courthouse to find out the cost and fees in your county.

If you have a county sheriff in Oregon serve the divorce papers on your spouse, you will be charged a service fee of approximately \$25.

41. What if I can't afford the fees for filing and serving the petition?

Before you file the petition, you can ask the

judge to waive or defer these fees. If fees are "waived," they do not ever have to be paid. If fees are "deferred," they must be paid at some later date. To get your fees waived or deferred, you must fill out a form called an "Application for Waiver or Deferral of Fees" that gives the court information about your income. The form and instructions can be found on the OJD Family Law website (see inside front cover).

Also, as part of your divorce paperwork, you can ask your spouse to pay all or part of your deferred court costs. If you do not pay fees that are deferred, they will become a debt you owe to the state and may be taken out of your state tax refund or collected by the state in some other way.

42. What happens after the divorce papers are filed and served?

After you have filed for divorce and served your spouse with the papers, your spouse has thirty days to file papers to contest (disagree with) the divorce. If your spouse does not file papers to contest the divorce by thirty days after service, you will be able to get a final divorce judgment in approximately two months. You might be able to get the judgment sooner if a judge decides that you have a very good reason, such as an emergency or when you and your spouse have both signed the divorce papers and agree to the terms of the divorce. If a lawyer is handling the divorce, the lawyer will file the papers so that you can get the final judgment. If you are handling your own divorce, the instructions will tell you what papers you need to file and when you need to file them.

If you are filing for temporary orders, such as custody and child support, or if your spouse files a response to fight about issues in the divorce, you may need to have court hearings. If this happens, it could take much longer than three months to get the final divorce judgment, and you may need the help of an attorney. If your spouse gets an attorney, you will probably need one, too.

My Spouse is Divorcing Me

43. How will I know if my spouse is starting a divorce?

To start a divorce, your spouse must first file a petition for divorce. You will then be given a copy of the petition by the sheriff, or someone else, at your home, place of work, or somewhere else. If the judge believes you can't be found, your spouse can get a divorce after publishing a legal notice in the newspaper or posting it in a public place, such as the courthouse. For more information about serving divorce papers if you cannot find your spouse, see Question 39.

If you have never received a divorce petition, you can find out if your spouse has started a divorce or already divorced you by contacting the court clerk. It is likely that your spouse would file for divorce in the county in which she or he lives, so you can call or go to the courthouse in that county. If you believe your spouse divorced you in another state, check that state's registry of divorces.

44. What should I do if I am served with an Oregon divorce petition?

If you agree with all of the terms of the divorce as listed in the petition, you do not need to respond. The judge will then approve all the terms in a final divorce judgment. It is a good idea to get a copy of the divorce judgment. You can do this by asking your spouse or his/her attorney for a copy or by going to the courthouse. If the judgment is different from the petition in a way you disagree with, you should contact an attorney right away.

If you want to contest (disagree with) the terms listed in the petition, you must file a written answer (called a Response) with the court within 30 days of when you were handed the papers. Contact a lawyer or, if you are low-income, your local legal aid office right away to learn about what you can do. If you are not an Oregon resident and are served outside the state of Oregon, you should speak with an attorney before responding.

There is a court fee of approximately \$250 to file a Response in a divorce case. If you can't afford this fee, you can ask the judge to excuse you from paying it by filling out court papers that show your income is very low. This is called an "Application for Waiver or Deferral of Fees." The judge will decide: whether or not you have to pay at all, if you will have to pay the fees later, or if your spouse will have to pay. Deferred court costs are a debt you owe the state. If you don't pay costs the judge has ordered you to pay, you can lose money that the state owes you, such as your tax refund. Forms for filing a response should be available at your local courthouse and also online at the OJD Family Law website (see inside front cover).

45. What happens if I live in Oregon and my spouse files for divorce in another state where she or he lives?

Your spouse will probably be able to get a judgment ending the marriage. But if you are served with papers that say that your spouse should get child custody, or that you should pay child support or other money, and you don't agree, talk with a lawyer right away.

While the Divorce is Pending

The divorce has been filed but there is no final divorce judgment.

46. Can I move out of state while waiting for my divorce to be finished?

Maybe. You can't take your children out of state if your spouse got a court order to keep you from doing this. If you and your spouse are fighting about custody or parenting time of your children, you may want to get advice from a lawyer before moving. Also, if you have moved out of state, you probably will have to return for any divorce hearings.

47. Will I be able to get a temporary custody order?

Maybe. There could be a court hearing about the custody arrangements while the case is pending. In court, you and your spouse would have a chance to prove which temporary custody arrangement would be best for the children. Many times, the parent who is given a temporary custody order also is given custody in the final judgment.

But temporary custody orders may not be easy to get right away. Judges want to give parents time to try to work out an agreement about the children, and do not want to give one parent the advantage of a temporary custody order while these discussions are taking place. Mediation may be required. See Question 70. Often these judges will issue a "protective" or "status quo" order at the beginning of a divorce case. This protective order keeps the child's situation the same as it was at the time the divorce case started (same home, school, child care schedule, same amount of contact with the other parent, etc.). With a protective order, there often is no need to have a custody hearing until the time of the final divorce judgment. Both parents are usually ordered to keep the child in Oregon unless the other parent agrees in writing to the travel or move.

Sometimes judges grant temporary custody without a hearing, if there is proof that the child is in immediate danger or is likely to be taken from the state. If you get an emergency custody order without a hearing, the other parent will be given a chance to present his or her side soon afterwards.

If you have been physically abused or threatened by your spouse in the last six months, you may be able to obtain a temporary custody order as part of a Family Abuse Prevention Act (FAPA) restraining order, even if a divorce is pending. See Questions 9, 10, and 12 for more information about this type of restraining order.

For more information about how child custody is decided, see Questions 64 through 85.

48. Is there a way to decide child support, spousal support, and who stays in the family home while the divorce is pending?

Yes. You and your spouse can agree on these issues. It may be best to put the agreement into a court order. If you and your spouse do not agree, you will need to file papers asking the court to order your spouse to pay support and move. For more information about child support orders, see Questions 100 through 110, and 115 through 123.

49. Do I have to see or talk with my spouse or his attorney while the divorce is pending?

It is up to you how and whether to have contact with your spouse. If you believe you can settle some or all of your divorce case, it might be a good idea to talk with your spouse. If you are afraid of your spouse or if a restraining order or stalking protective order is in effect, contact

with your spouse may be dangerous (or even unlawful for the spouse restrained by the court order).

If you don't have an attorney but your spouse does, the attorney might contact you to attempt to get information or settle the case. You can, but do

not have to, speak with your spouse's attorney. You might also receive a notice for a deposition (answering questions under oath in the attorney's office) or a request to produce documents (such as tax returns, pay stubs, etc.). You may want to talk with an attorney if you get any legal papers like these.

Paternity

50. Why is it important to establish a child's paternity?

The father of a child must be legally recognized as the parent before you can get a court or agency order that decides issues such as child custody, parenting time, and child support. Also, children whose paternity has been established may be able to get certain benefits, such as Social Security or workers' compensation, if their fathers have died or are disabled.

More information about paternity establishment, including genetic testing, can be found at www.oregonchildsupport.gov.

51. What are a father's responsibilities and rights?

A father who is legally recognized has a right to have either custody of the child or parenting time with the child. If he does not have custody, he is responsible for paying child support. In most cases, a father without custody also has the right to know how the child is doing in school, and information about the child's health.

A father does not have the right to have his child bear his last name. If the parents cannot agree, the judge can decide. For more information about the last name of your child, see Question 151.

52. How can paternity be established?

For *married couples*, the husband is usually considered to be the legal father. See Question 53.

For *unmarried couples*, both parents can sign a voluntary acknowledgment of paternity affidavit, an official form that says that the man is the child's father. See Question 54.

There can be a *court or agency order*, signed by a judge or hearing officer, that says that the man is the child's father. See Question 57.

53. For married couples, how is paternity determined?

The husband is presumed to be the legal father if the child was born during the marriage or if the child was born within 300 days after the marriage ends because of death, annulment or divorce. This assumption can be challenged in some situations. See Question 63.

54. The father who is not legally recognized wants to admit paternity. How can this be done?

Both parents can sign a voluntary acknowledgment of paternity form as long as the mother was not married at any time during the 300 days before the birth of the child. This is an official form that says that the man is the father of the child. One version of the form can be

obtained from the hospital at the time of birth. It must be completed within 5 days of the date of birth, and while the mother is still in the hospital and can be filed free of charge.

You can get the other version of the voluntary acknowledgment of paternity form from the child support agency handling your case, from your welfare worker, from your county health department or by calling the State Center for Health Statistics at (971) 673-1155. The form must be signed, notarized and returned to the State Center for Health Statistics or your county health department. (Most county health departments have notaries available.) If the form is filed more than 14 days after the birth, the process costs approximately \$50, which includes the cost of the amended birth certificate.

These voluntary methods of establishing paternity have the same legal effect as a court order. Paternity can be changed only in limited situations. See Question 55.

55. What if the father or mother changes his or her mind after signing a voluntary acknowledgment of paternity form?

There are three ways to challenge a paternity acknowledgment after it has been filed:

- 1) A paternity acknowledgment usually can be rescinded (taken back) within 60 days of filing it with the State Center for Health Statistics. If a case about the child has been filed in an administrative or court proceeding, however, the paternity acknowledgment must be taken back before an order is entered, even if that date is **less than 60 days** after the paternity acknowledgment was filed. To cancel the paternity acknowledgment, a parent must sign and file a written document with the State Center for Health Statistics stating that he or she is taking back the paternity acknowledgment.
- 2) A paternity acknowledgment can also be challenged after 60 days or the entry of a court order, by filing a court challenge and

proving that the acknowledgment was signed because of fraud, duress, or a material mistake of fact.

- 3) If paternity testing has not been completed, within one year of filing a paternity acknowledgment, a parent can apply to the Division of Child Support for an order for blood tests to help determine paternity.

56. What if I've never admitted paternity but want to see my child now?

You can try to make arrangements with the child's mother. If you want a legal and enforceable right to visit the child, you must first be legally established as the father. If you were married to the child's mother when the child was born or if the child was born within 300 days after the marriage ended, the law considers you to be the father (unless your divorce judgment says otherwise). If you were not married to her when the child was conceived, you will have to establish your paternity of the child and ask for parenting time rights.

57. How can I get a court or agency order establishing paternity?

If a parent and the child are getting public assistance, DCS will usually start a paternity action on behalf of the state unless to do so puts the mother or child in danger. See Question 113. If public assistance benefits are not involved, you can ask your local District Attorney (DA) to file a paternity action. You also can get a lawyer to file a paternity case in court. In most cases, there is no time limit for starting a paternity action.

For more information about paternity establishment services and genetic testing, go to www.oregonchildsupport.gov. Forms for establishing custody and parenting time after paternity has been established are available at your local courthouse and online at the OJD Family Law website (see inside front cover).

58. Who gets custody when paternity is established?

A court deciding the issue of paternity often can decide custody and child support and set up a parenting plan at the same time if one of the parents files the correct legal papers. The final court order will then state the custody, parenting plan, and child support terms.

A special custody law applies to paternity cases when there are no other court orders that establish custody and parenting time. The law says that the parent who had physical custody of a child at the beginning of the paternity case or a child support case automatically has legal custody. Also, if paternity was established by completing a paternity acknowledgment form (see Question 54), the parent who had physical custody when that form was filed with the Center for Health Statistics automatically has legal custody.

This law might help you get your child back if the child is taken by the other parent. Final papers in a paternity or child support case, however, do not always say which parent had custody at the beginning of the case. Also, if paternity was established by completing a paternity acknowledgment form while the parents were **both** living with the child, this law may not be much help. You may need a separate lawsuit to decide custody and parenting time.

59. What should I do if I am served with court or agency papers in a paternity suit?

If you are not the father and do not want to pay child support, you must deny paternity and ask for a hearing. If you were served court papers, you must file a written response in the time stated on the papers. If DCS or a DA's office has filed the paternity suit, agency hearing request forms will be included in the papers you receive. You have 30 days to fill out and return the form to ask for a hearing. No matter who files the lawsuit, you should try to talk to a lawyer. If you cannot afford one, some legal aid offices may have an

informational brochure that will help you through the process.

It is very important not to miss any DNA test appointments or court or other hearing dates listed in the papers you are given. If you do not appear, you might lose your chance to deny paternity and to be heard on the issue of child support.

Even if you admit that you are the father, you can still challenge the amount of child support requested in the papers. You will need to ask for a hearing even if you are only challenging the amount of support.

60. Why is the Division of Child Support (DCS) or the District Attorney's (DA) Office involved in my paternity case?

DCS gets involved when the state is paying Temporary Assistance for Needy Families (TANF), Oregon Health Plan (OHP), or foster care payments to support the child, or when the child is in the custody of the Oregon Youth Authority. In order to receive these state benefits, the custodial parent must sign over his or her support rights to the State of Oregon. The DA's office gets involved when one of the parents requests help to establish paternity.

61. How is paternity determined in a legal proceeding?

Unless the man admits he is the father, paternity will be decided in a court or agency hearing. The best way to prove or disprove paternity is genetic testing of the man, mother, and child. The cost of these tests varies. A judge, DCS, or the DA's office can order these tests. The genetic sample usually is taken by a "buccal swab," a wiping of the saliva (spit) from the inside of the cheek.

62. What if I can't afford to pay for genetic tests?

If the DA or DCS filed a lawsuit and you are low-income, the state will pay for the genetic testing. If you are found to be the father, you may

be ordered to pay the state back for the costs of these tests.

63. If I have already been found to be the father, is there any way I can challenge this later?

Sometimes, but probably only in cases for children born in the last few years.

Acknowledgment of Paternity: If paternity was established by both parents' signatures on a joint acknowledgment of paternity affidavit on the Center for Health Statistics form, see Question 55 for an explanation about what challenges can be made, and when.

Court or Agency Order: If paternity was established by court or agency order and you were found to be the father as a result of mistake, inadvertence, surprise or excusable neglect, or due to fraud, misrepresentation, or other misconduct of an adverse party, you may file a case in circuit court. If the reason you are challenging paternity is because the order was a result of mistake, inadvertence, surprise or excusable neglect, you must file within one year of the entry of the paternity order. If the reason you are challenging paternity is because the order was the result of fraud, misrepresentation, or other misconduct of an adverse party, you must file within one year of learning of the fraud, misrepresentation or other misconduct. This is a complicated area of the law and you likely will need the help of an attorney.

Child Custody

The laws on custody of children apply to both married and unmarried parents. For unmarried parents, paternity must be established before custody can be ordered. (See Questions 50 through 63 of this booklet for information about establishing paternity.)

64. If I am married, how can I get a court order that gives me custody of my children?

See Question 23.

65. If I am not married to the other parent of my children, how can I get a court that gives me custody of my children?

You can file a lawsuit to get a court order that will establish custody as well as parenting time and child support. Forms are available at the OJD Family Law website (see inside front cover).

Once the lawsuit is filed, you can ask for a temporary order that gives you custody until a final order is entered.

If you are afraid of the other parent because of physical abuse or threats of physical abuse

against you within the last six months, you should be able to get temporary custody as part of a Family Abuse Prevention Act Restraining Order. See Questions 9, 10, 12, and 78. Forms are available at the OJD Family Law website (see inside front cover).

In custody or restraining order cases, the court can make custody decisions only if your children have lived in Oregon for 6 months, need emergency protection, or in some special situations when they have ties to the state.

66. How is custody decided?

Legal custody means having the legal responsibility for caring for a child. The divorce judgment or court order will usually say who gets custody. Either parent (or both) can get custody. If the parents agree between themselves on custody, they can avoid a long and expensive

court case. But if they can't agree, the judge will hear both sides and decide what's best for the child, not the parents. The judge will consider many factors such as:

- 1) Which parent has been the children's primary caregiver;
- 2) Emotional ties of the children to parents and other family members;
- 3) Attitude of the parents towards the child;
- 4) Whether one parent has physically or sexually abused the other. The law assumes it is not best for the child to be in the custody of a parent who has abused the other parent;
- 5) Whether one parent is more likely to help the other parent keep a close relationship with the children. The judge won't consider this if one parent shows that the other parent has been abusive and that a continuing relationship with the children would be dangerous for either the parent or the children;
- 6) Any criminal record of the parents;
- 7) The parents' emotional stability;
- 8) Home environment;
- 9) The child's age, sex, and health; and
- 10) Whom the child wishes to be with (if the child is old enough to make a good decision).

If one parent has abused the other, the court must assume that the abusive parent should not have joint or sole custody of the child. That assumption can be challenged with evidence that it is in the best interests of the child that the abusive parent have custody.

Judges will often award permanent legal custody to the parent who has had physical custody of the child. Judges do not like to change the living situation of a child who is doing well.

67. What kinds of custody arrangements are possible?

- One parent gets legal custody of the children. The other gets parenting time (visitation) rights. This is the arrangement in most cases.
- Both parents have joint custody. With joint custody, all or most decision-making about the child is shared. Joint custody does *not* mean that the child must spend equal or substantial time in each parent's home. A joint custody order can say that one parent's home is the child's primary home and that the other parent gets parenting time. Child support can still be awarded if there is joint custody. In Oregon a court cannot order joint custody unless both parents agree to all the terms.
- In families with more than one child, one or more children live with one parent and one or more children live with the other parent. (This is sometimes called "split" custody.) Judges usually don't order this kind of custody arrangement. They are worried that it may be harmful to the children to separate them.
- Rarely, a nonparent can be awarded custody in a divorce, or in a separate lawsuit. See Question 74.

68. What is "parenting time?"

"Parenting time" is a term that courts use in place of "visitation." Parenting time means court-ordered contact between the parent who does not have custody and the child.

69. What is a "parenting plan?"

A parenting plan is the part of a court order that deals with custody and parenting time. All orders about custody must include parenting plans. Parenting plans may have detailed terms or general terms. Parenting plans usually must

establish a minimum amount of parenting time for the parent who does not have custody.

70. What if my spouse and I can't agree about custody of our children?

The judge usually will order both of you to participate in mediation services. In general, mediation means one or more private counseling sessions in which a trained person tries to help you and your spouse reach an agreement about your children. A separate mediation orientation is sometimes required as a first step and is where the mediation process is explained.

When mediation is required, a waiver of the requirement can be requested if there is a good reason such as domestic violence. You also can talk to the mediator about abuse. Mediators should take the family abuse into account when deciding whether and how to mediate a case.

For more information about mediation and any costs involved, contact the family law clerks at the courthouse in your county.

71. What is a custody study?

The judge might also order a custody or parenting time study. This is an evaluation of the parents by a trained counselor or psychologist who will make his or her recommendations available to the judge. Very few counties offer a free evaluation. Usually, a custody or parenting time study is not ordered unless one or both parents can afford the cost. The judge can order either parent or both parents to pay for the cost of the custody study.

Without mediation or a study, it is up to you and your spouse (or your attorneys, if you have them) to settle on custody terms. If you cannot agree, the judge will decide at a trial.

72. My opposite-sex partner and I have a child together. If we split up, what are my rights concerning our child?

With unmarried couples, the answer depends on whether the father is legally recognized as the child's parent. *If paternity has not been established*, the mother has legal custody but she cannot get a child support order. The father has no enforceable custody or parenting time rights. See Questions 50 through 63 for information about paternity. *If paternity has been established*, unmarried parents usually have the same rights and responsibilities toward their child that married parents have — custody, parenting time, and child support. See Questions 64 through 135.

At the time you and your partner separate, you may want to file a court case to determine who has custody, a parenting time schedule, and child support terms. Forms and instructions are available at the OJD Family Law website (see inside front cover).

73. My same-sex partner and I have a child but I am not the biological parent. What are my parental rights?

In same-sex partnerships, the non-biological parent of a child born during the relationship can have parental rights in certain circumstances. To determine whether such rights exist, or how they may be established, you should consult with an attorney.

74. How can a nonparent get legal custody of my child?

Sometimes a judge will grant legal custody to a nonparent, usually a relative, such as a grandparent or stepparent who has been living with your child and providing day-to-day care on a regular basis. Judges tend to award custody to third parties only if the judge finds that there are very good reasons not to give custody to the natural parents.

A nonparent can request custody in your divorce case, any other court case involving the child's custody (such as guardianship, or where juvenile court or the Child Welfare Program of

the Department of Human Services is involved), or in a separate lawsuit. These are sometimes called “psychological parent” cases. Usually, a judge cannot award custody to a nonparent unless that person has filed legal papers that ask for custody. Because the law in this area is complicated, it is a very good idea to talk to an attorney for advice.

75. Can the judge deny a parent custody just because he or she is a homosexual?

No. A judge *cannot* consider a parent’s lifestyle in making a custody determination *unless* the lifestyle causes emotional or physical damage to the child. If you or your partner’s homosexuality will be brought up in a custody case, you should consider hiring a lawyer.

76. Without a custody order, what rights do I have?

Married parents have equal rights to have custody of the child until a court order changes this. If your child lives with you, you may be able to work out many day-to-day issues about your child. You cannot force your spouse to return your child after a visit, or enforce any other agreement, unless you have a court order.

When parents are unmarried and paternity has not been established, the mother has legal custody and the father has no custody or parenting time rights. When parents are unmarried and paternity has been established by signatures on the birth certificate or in a lawsuit (often handled by the Division of Child Support or the District Attorney), custody might have been granted by the law to the parent who is the child’s physical caretaker, even though no court order says so. If paternity has been established and there is no law or court order giving one parent custody, both parents have equal rights to custody. See Question 58.

77. Can I get legal custody before my divorce or other custody case is final?

Maybe. See Question 47.

78. Can I get custody without filing for divorce or bringing a separate custody case?

If you have been a victim of abuse within the last six months, you may be able to get an emergency *restraining order* with custody under the Family Abuse Prevention Act. The court can make a custody decision only if your children have lived in Oregon for 6 months, need emergency protection, or in some special situations when they have ties to the state. See Questions 9, 10, and 12 for more information about *restraining orders*. These orders usually last for one year. But if the other parent requests a hearing, the judge might change custody or parenting time terms, depending on the evidence. You will eventually need a permanent decision about custody in a divorce or other custody lawsuit.

79. Can I get the police to help me get my child back if I had an agreement with the other parent about child custody?

Usually, the police will help you only if you have a court custody order. If you have filed for a divorce and reached even a temporary agreement, it is a good idea to have the judge approve the agreement and make it a court order.

80. Can I represent myself in a custody dispute?

Yes, but it is a good idea to get a lawyer. If the other parent has a lawyer, you probably will need one.

81. If I have legal custody, do I have to tell the other parent that I’m moving?

Not if you’re moving less than 60 miles farther from the other parent (unless a court order says you have to give notice even for this

short move). Usually, custody orders other than restraining orders require a parent moving *more* than 60 miles farther away to tell the other parent and the court. But you don't have to give this notice if you can show the judge that you have a good reason not to.

82. If I have legal custody, can I move out of Oregon with my children?

You should be able to move out of state with your child unless a custody order or protective order (see Question 47) says that you cannot. If a court order gives the other party the right to visit the child and moving means those visits cannot happen, you could be in violation of the court order. But even if there are no restrictions in your orders, the other parent can stop you from moving the child by getting a new court order at the time of the move. A judge will order a parent not to move the child if the judge finds that the move would not be in the best interest of the child. You must still allow court-ordered parenting time to the other parent if you move. Some adjustments may have to be made, and a court will need to decide if the parents can't agree.

83. What rights do I have if I don't have legal custody of my children?

Unless a court orders differently, a parent without legal custody has the right to know about how the child is doing in school and to have information about the child's health. This is in addition to any court-ordered parenting time.

84. Can a custody order be changed?

Yes, if the parent without custody proves something happened to make it necessary to change custody — for example, the child was neglected or abused since the time of the last custody order. If there are no new problems in the child's home, the judge probably will not change a custody order even if the parent without custody can now provide a "better" home.

85. Can I do anything to prevent my child from going to the other parent when I die?

Your child's custody usually goes to the other parent if you die. However, if another person files for guardianship of your child after your death, the judge may consider your wishes. Often this is done in a will. You can speak to a lawyer about the best way state your wishes about custody.

Parenting Time (Visitation)

The laws about child parenting time apply to both married and unmarried parents. For unmarried parents, paternity must be established before parenting time can be ordered.
(See Questions 50 through 63 for information about establishing paternity.)

86. Who gets parenting time rights?

The parent who does not have custody gets some sort of parenting time rights except in unusual situations. See Question 90. Grandparents and other people who have a substantial relationship with the child can also get visitation rights in some situations.

87. How are parenting time rights decided?

Parenting time rights are usually decided as part of a divorce or custody case. Parenting time rights are often part of restraining order cases. See Questions 9, 10, and 12.

If you can come to an agreement with the other parent on your own or through mediation, the judge will probably make your parenting plan part of the final order. See Question 70. If you can't come to an agreement, the judge will decide.

88. Do I need a court order if I have an agreement with the other parent about parenting time?

Usually, a court order is a good idea. If the parent with custody stops the visits, only a court order can be enforced.

89. How much parenting time does the parent without custody get?

Judges in many cases will give two weekends each month, some holidays, and approximately one month in the summer. But the amount of parenting time ordered depends on facts such as the age of the child and the distance between the parents' homes. In restraining order cases, parenting time may be more limited.

For more information about parenting time, including "safety-focused parenting plans," go to the OJD Family Law web address (see inside front cover) and click on "Parenting Plan Information."

90. Can court-ordered parenting time rights be denied or restricted?

You must obey the court order that sets out the other parent's court-ordered parenting rights. If you deny parenting time, a judge might find you in contempt of court, which can have serious results. If you have immediate concerns about the safety of your child should parenting time take place, you can contact a lawyer for advice or make a report to the police or to the Department of Human Services' Child Welfare Program. You also can ask the court to change the terms of the court ordered parenting time by filing court papers. See Question 96. It is helpful to have witnesses to the other parent's behavior that you believe is putting your child in danger.

91. Can I deny parenting time to the other parent if child support is not paid?

No. You must give the other parent the parenting time ordered in the divorce or custody judgment even if child support is not being paid.

92. Do I have to make my children go on visits if they don't want to?

Your children should go on visits that a court has ordered, even if they don't want to go. You should try to find out why your child does not want the visits and you should try to work out the problems by talking to the other parent (if that is safe) or through counseling. In rare cases a judge might change the parenting plan. See Question 96.

93. Do I have to let my child visit the other parent out of state? If so, who pays travel expenses?

In most cases you must let the child visit out of state unless the order limits the visit to within the state. The divorce or custody judgment may state who pays travel expenses. If there is nothing in the court order about who pays travel costs, the person who asks for the visiting time may end up paying. You also may agree to share the costs.

94. What should I do if my child's other parent denies parenting time that the court gave me?

You should first try to talk to the other parent to try to work out the problem if you can do this safely.

If that fails, you can file papers with the court complaining about the denial of parenting time. Every county has a special hearing procedure to handle parenting time problems. Go to the circuit court clerk's office and ask for the parenting time enforcement forms. The court will schedule a hearing within 45 days. Some counties will require you to attend mediation first. (See Question 70 about mediation.) At the hearing, the judge can make an order to try to make sure the parent with custody gives you the parenting time the court ordered; one or more different types of court orders could be issued. You should not need a lawyer to file the papers or to go to the hearing with you.

If nothing else works, you should get a lawyer so you can ask the judge for an order holding the custodial parent in contempt of court. The rules and paperwork in these "contempt" cases are complicated. The judge can order penalties until the other parent allows visits.

You cannot stop making child support payments on your own just because parenting time was denied. But you can ask a judge to free you from paying child support until you get your visits. Judges do not like to stop child support

payments and they will only do so if there is proof that you have had *very* serious problems getting parenting time.

95. Can the parent with custody move out of state with the children? Can that parent then deny the other parent parenting time?

A parent with custody can move out of state with the children unless this is forbidden by a divorce or custody judgment or other court order. Most custody orders contain a provision requiring a parent who moves more than 60 miles away to give the other parent reasonable notice of the move and to send a copy of the notice to the court. A parent who moves has no right to deny parenting time to the other parent. You or the other parent may need to ask the court to change the parenting time order to take the move into account. See Question 96. A parent who is denied parenting time with children who live out of state may need to talk to a lawyer about the best way to enforce parenting time. Except in emergency situations, courts in other states must honor parenting time terms that were ordered by an Oregon court.

96. How do I change the terms of parenting time?

You may be able to reach an agreement in mediation which could then be approved by a judge as a court order. You may need to file court papers asking for a change in the original parenting time order. Self-help forms to modify (change) parenting time are available online at the OJD Family Law website (see inside front cover). To get the parenting time terms changed, you need to prove to the judge that it is best for the children if the parenting time terms are changed. You do not need to show that there has been a change from the way things were at the time of the first order.

If you file papers to enforce the parenting time the court ordered (see Question 94), you can ask the judge at the hearing to change the parenting plan. At that hearing, the judge can change parenting time, but cannot change custody.

Taking Children

97. The other parent has taken our child and there is no court order giving custody to either one of us. Can I go to jail for taking back the child?

Perhaps, but probably not. Usually both parents have equal custody rights if there is no custody order.

But in two situations without custody orders, unmarried parents do *not* have equal custody rights: 1) if paternity has not been established the father has no custody rights; and 2) if paternity has been established by signatures on a paternity acknowledgment or in a child support case (often handled by the Department of Justice or the District Attorney), the child's caretaker might have automatic legal custody even if the court order does not say this. See Question 58. In these cases, the parents do not have equal rights to take the child even though there is no custody order.

But even if you have the right to take the child, you should not do anything that might harm the child. You should also be careful not to do anything illegal, such as trespassing or assaulting someone. Avoid taking the child if you possibly can. Try counseling or mediation, or try to get a temporary custody order from the judge. Most judges disapprove of one parent taking a child who has been living with the other parent for a long time unless there is an emergency situation like abuse or neglect.

98. What if I have legal custody and the child's other parent takes our child without my consent?

- 1) You can try to get the child back yourself if this will not put you or the child in danger.
- 2) You can ask the local police or county sheriff to help you get your child back. In a

few places the police or sheriff will go with you to get your child if you have a certified copy of your custody order. In most places you will have to go to court to get an "Order of Assistance," which tells the county sheriff to return your child to you. Some legal services offices can help you request an Order of Assistance. Forms are available at the OJD Family Law website (see inside front cover).

- 3) You can also ask the judge to find the other parent in contempt of court for violating the custody order. The judge can order fines or jail time until the other parent returns the child. You will need an attorney for this.
- 4) You can file a police report and ask the District Attorney to bring criminal or contempt charges because the other parent has interfered with your custody rights. If the District Attorney's office decides to bring a case (it is up to them) and wins, the other parent could be jailed and required to repay any money you spent to find the child or get legal help.

99. I am unmarried and the person I was living with has taken my child but is not the child's natural parent. What can I do?

You can call the police. You can also try to get the child back by talking to the person. But you should not do anything that will be harmful or dangerous to you or the child.

You can also hire a lawyer to file a lawsuit against the person or ask the District Attorney to bring criminal charges because the person interfered with your parental rights. (It is up to the District Attorney's office to decide whether or not to bring charges.)

Child Support and Insurance

The laws on child support apply to both married and unmarried parents.

For information about child support, see www.oregonchildsupport.gov
(For unmarried parents, paternity must be established before child support can be ordered.
See Questions 50 through 63.)

Child Support

100. What is child support?

Money that is regularly paid by a parent to help pay for food, housing, clothing, medical care, day care, and other costs for a child. Health insurance is also considered a form of child support. See Questions 132 through 135.

101. Is legal action needed to force a parent to pay child support?

Yes. The only way to make a parent pay support is to get a support order, which must be signed by a judge or hearing officer. A promise or agreement to pay is not enough, but a judge or hearing officer can approve an agreement or promise and make it a support order.

102. How is child support ordered?

Child support can be ordered in divorce and custody cases. If you have filed for divorce or custody, your attorney may ask for a support order as part of the case. If you are using “do it yourself” forms, you should get instructions that explain how to ask for support, if you don’t already have a support order.

Child support can also be ordered *without* a divorce or custody case and at no cost to you. The Division of Child Support (DCS) at the Oregon Department of Justice will get a child support order if the parent taking care of the children is now getting Temporary Assistance to Needy Families (TANF) or Oregon Health Plan (OHP) for your children or if that parent received TANF

in the past and there is unpaid support from that time. In some counties, DCS will get a child support order even if the children have never been on TANF or OHP. In other counties, the local District Attorney’s (DA) office will help you get a support order. You also can hire a private lawyer. For more information about how the DCS and the DA get child support orders, see Question 115.

103. How is the amount of child support decided?

Child support is determined through a calculation that follows legal guidelines. The guidelines take into account many factors, such as the incomes of the parents, other children the parents have to support, parenting time schedules, and work-related day care costs for the children.

Under the guidelines, it is assumed that all parents can work 40 hours a week at minimum wage, unless the parent is disabled, is receiving workers’ compensation benefits, or is in jail. If a parent is making more than minimum wage, the guidelines will use that amount. If the parent has the ability to make more than minimum wage, the guidelines will take that parent’s potential income into account. The amount of child support is automatically reduced in some cases if the parent who owes support is very low income. It is sometimes possible to get a child support order that is different from the amount set by the calculation. Currently, an order of \$100 is required unless a parent is disabled, in jail, or receiving public benefits.

104. Can the child support order include health insurance coverage?

The child support guidelines determine how health care coverage will be provided and how responsibility for health care costs will be shared. In some cases, a parent can be ordered to pay some of the cost of OHP. See also Questions 132 through 135.

105. How long does child support have to be paid?

In Oregon, a parent usually must pay child

support until the child is 18 years old. Child support can continue until age 21, if the child 1) is going to school or a job training program at least half time, 2) is making satisfactory progress as defined by the school the child attends, and 3) agrees in writing that the school can provide information, including the child's grades to each parent. Support must be paid directly to the 18–20 year-old child, and the 18–20 year old is a party to the court case having to do with child support. The child support can stop before a child reaches 18 if the child gets married, joins the military, or in some other way becomes legally emancipated (considered an adult).

Getting Child Support

106. How do I get a child support order?

If you have filed a divorce or custody case, child support usually will be ordered as part of the case. The Division of Child Support (DCS) will get a child support order if you are now getting Temporary Assistance for Needy Families (TANF) or Oregon Health Plan (OHP) for your children or if you did in the past and there is unpaid support from that time. In some counties, DCS will get a child support order even if the children have never been on TANF or OHP. In other counties, the local District Attorney (DA) handles these cases. You also can hire a private attorney. DCS and DA services are free. For more information go to www.oregonchildsupport.gov.

107. Can I get child support if the other parent doesn't live in Oregon?

Yes, but it may take longer because DCS or the DA may have to work through the child support agency in the state where the other parent lives.

108. Can I get child support if I don't know where the other parent lives?

In order to get a child support order, the other party must be served or mailed the papers. If you are working with the DCS or the DA to get child support, they may be able to use national databases to get an address for or information about the other party.

109. What can I do if the child support order is not being paid?

DCS or the DA will help you collect your child support order. They represent the State and not you, but their services are free. You can also contact a private lawyer. See Questions 126 through 129 for information about how child support is collected.

110. Can I stop allowing parenting time if the other parent is not paying child support?

No. You must allow the parenting time that is ordered in your divorce or custody order, even if child support is not being paid.

Child Support When Receiving Temporary Assistance for Needy Families (TANF)

111. If I am getting Temporary Assistance for Needy Families (TANF) for my children, do I still get the child support payments?

Most of the child support will go to the state. Child support payments for families on public assistance are used by the state to pay for the TANF benefits you are now getting. The state will also keep any back child support collected from the other parent while you are on assistance. But the state cannot keep more than the total cash amount your family received in public assistance.

112. If I have custody of the children and I am getting TANF or Oregon Health Plan (OHP), do I have any say in how much the child support order will be?

Yes. You have a right to agree or disagree with how much the state is asking for. If you do not agree, you have the right to ask for and participate in a hearing about the amount of child support.

113. Do I have to help the state get child support from the other parent of my child?

If you receive TANF, your support rights are

assigned to the State and you must help the Division of Child Support (DCS) get child support. DCS will not try to get or enforce child support if doing so could cause you or your children harm. This is called “good cause.” If you believe you have good cause, you should speak with your DHS or child support worker and ask for a “safety packet.” This includes the forms you need to fill out to ask for “good cause.”

If you think getting child support might be safe as long as you do not have to give the other parent your address or personal information, you can complete a “Claim of Risk” form. The “safety packet” explains how to do this.

114. If there is back child support owed, who gets paid first, welfare or me?

If you and your children are still getting cash assistance, the back child support will go to the state first. If you and your children are no longer getting cash assistance, you will get paid first until you have been paid back all the child support that was missed after you stopped getting TANF. (Money taken from the other parent’s federal tax refund is an exception — it goes first to pay back the state.)

Paying Child Support

115. How will I know if legal action has been started to order me to pay support?

You might be served with *court papers* that ask for a child support order in a divorce or custody case started by the other parent, or in a paternity or support case that is filed by the District Attorney (DA) or the Division of Child Support (DCS). If you are served with court

papers, you must respond in the time given, or the amount of child support stated in the papers will probably be the amount in the final support order that is signed by the judge.

You might also be sent *agency papers* asking for child support. These might be called a “Notice and Finding of Financial Responsibility” (or NFFR). This paper will be mailed to you by DCS

or the DA and will say how much child support the state thinks you should pay.

If you received a NFFR and are not able to reach an agreement about the amount of support, you have the right to have an agency hearing. You can represent yourself or bring a lawyer to the hearing. You must ask for the hearing within 20 days after you get the NFFR. (If paternity is involved, you have 30 days to ask for a hearing.) If you do not ask for a hearing in those 20 days, you will probably be responsible for the child support asked for in the NFFR unless you reach an agreement with DCS or the DA. If you disagree with the child support order after the hearing, you have the right to have a court hearing. The hearing decision will explain your appeal rights to you.

Once you get the NFFR, you have a right to a conference or a meeting with DCS or the DA to try to reach an agreement about the amount of support you should pay.

The parent who has the children must be told about any agreements you reach with the DCS or the DA and has the right to ask for a hearing on the amount of child support.

You may contact a legal aid program or a private attorney if you need legal help.

116. Do I have to pay child support if I am getting Temporary Assistance to Needy Families (TANF) or SSI?

If you are getting TANF, SSI, or similar benefits from another state or tribe, it is assumed that you are unable to pay child support. If you are getting any of these types of cash assistance, it must be proved that you can still afford to pay child support before you can be ordered to pay. If you already have been ordered to pay child support and you then begin getting any of these types of cash assistance, you can get an order that stops your child support obligation for the time that you get cash assistance or until it is proved that you can pay support. DCS or the DA will do

this for you for free. You also can ask to have your arrears (child support you have not paid) lowered if you received cash assistance in the past and were still billed for child support.

117. I just started getting Social Security and my children get benefits too. Do I still have to pay child support?

It depends. You should immediately ask for a modification of your child support amount, so that your new income and the receipt of benefits by the children can be included in the calculation. In many cases your child support order will be reduced or eliminated. Also, if your children received a retroactive award of Social Security benefits for periods of time when you owed child support, you may be able to lower your child support debt. You must ask for this change within one year of receiving the retroactive benefits. For more information about how to modify your child support order see Question 130.

118. If I leave the state, can Oregon still order me to pay child support?

Child support can be ordered in Oregon if you and your spouse lived in Oregon for six months (not necessarily together) and the legal action begins within one year of the date you left the state. (This rule may be true for unmarried parents, too.) Also, if you had sexual relations in Oregon resulting in the child's birth, Oregon can order you to pay support for that child even if you don't live in Oregon now and were only visiting before.

There are other situations where non-Oregon parents can be ordered by an Oregon court to pay support. A court or agency in the state where you have moved can also order you to pay support for your child in Oregon.

119. If I leave Oregon after support is ordered, do I still have to pay?

Yes. Any state where you live can use the Oregon order to make you pay child support.

120. Can Oregon make me pay child support that was ordered in another state?

Yes. All states enforce child support orders from other states.

121. Do I have to support my stepchildren?

Yes. If you marry someone who has custody of children, you must support them. This responsibility stops when the couple gets divorced or when the child is no longer living with your spouse.

122. Can I stop paying child support if I'm not working?

Until a court order changes your child support amount, you are legally required to make the payment. You should continue to pay whatever amount of child support you can afford.

You also should take steps to modify your child support order to a lower amount as soon as possible. For information on how to do this, see Question 130. Failure to pay child support is a serious matter that can result in contempt of court or even criminal charges, depending on the facts. You also may want to explain your situation to your child support worker, if you are not going to be able to make your full payment.

123. Can I stop paying child support if the other parent won't let me visit my child?

Not on your own. You can ask a judge to end the child support order until you get your parenting time. But judges do not like to stop child support payments. They will allow support to be stopped only if there is proof that you have had very serious problems getting visits.

When Your Children are Receiving Temporary Assistance for Needy Families (TANF)

124. If the other parent is receiving Temporary Assistance to Needy Families (TANF), do I still have to pay support?

Yes. The Division of Child Support (DCS) will begin a child support case against you because the other parent is on TANF. The state now has the right to pursue support from you. DCS will attempt to contact you and establish a support order based on your current income and circumstances. Usually, DCS will ask for past support going back to the time when the other parent applied for TANF.

125. If the parent with custody is no longer getting TANF, do I still have to pay the support that was ordered by DCS?

Yes. The ordered support must be paid even after the parent with custody stops receiving TANF. After TANF stops, all of the monthly child support payment goes to the parent with custody for the support of the children, and not to the state.

Collection of Child Support

126. How is child support collected if I am working?

The most common method of collecting child support is by a wage withholding order sent to your employer by the Division of Child Support (DCS). Sometimes private attorneys prepare income withholding orders. All Oregon employers must report new employees to the State.

If you are current in paying your support, the amount that can be withheld from your wages is the monthly support amount, but only up to a maximum of 50% of your take-home pay (up to 60% in some cases, if a court agrees after a hearing).

If you are behind in making your monthly support payments, the amount that can be withheld is 120% of the monthly support amount, up to a maximum of 50% of your take-home pay (up to 65% in some cases, if a court agrees after a hearing).

If you do not owe current support, only arrearages (unpaid back support), the amount that can be withheld is the amount of the last monthly order, if there was one, or an amount based on your income and calculated under the child support guidelines. In either case, you must be left with an income equal to a full time federal minimum wage. If these arrearages are owed only to the state (not to the custodial parent), you may be able to have the monthly withholding reduced if you have another child to support.

127. Can my employer fire me if my wages are being withheld?

No. It is not legal for an employer to fire, discipline, or refuse to hire you just because there is a wage withholding order. If you think you were fired because your wages are being

withheld, you should talk to DCS, the District Attorney (DA), or a private attorney.

128. Can income other than wages be withheld to pay child support?

Other types of income such as Unemployment Compensation and Worker's Compensation can be withheld for child support. Usually, no more than 25% of these payments can be taken each month, and only 15% (or the amount of the last monthly order) can be taken if there is no current order. In some cases, a collection agency can assist in collecting child support.

DCS and the DA can also take state and federal tax refunds for back child support as well as veterans benefits, personal injury awards, inheritances, lottery winnings, Social Security (but not SSI), pensions, insurance proceeds, and money in bank accounts. If your unpaid back support exceeds \$2,500 and you do not have a payment plan, DCS and the DA can suspend your driver's license, occupational or professional license, passport, as well as your recreational, hunting or fishing license. In addition, DCS is required to report delinquent cases to credit agencies. If DCS or the DA feels you **could** work or pay child support some other way and you are not paying, they can ask the judge to hold you in contempt of court. In contempt cases, fines and jail sentences are possibilities. You may have the right to a court-appointed attorney. You will usually be given a chance to start making child support payments to avoid going to jail.

129. How long can back child support be collected?

Unpaid child support from an Oregon child support order can generally be collected for 35 years after it was ordered.

Changing the Support Order

130. How can I get my current child support order changed?

If your support case is handled by the District Attorney (DA) or the Division of Child Support (DCS), and your child support order is at least three years old, you can ask the enforcing agency to “review” your child support order to see if it meets the current guidelines. In most situations, the agency must do this review at your request. If this review shows that your current support order is more than 15% or \$50 different from what the guidelines call for, the agency will file the modification paperwork.

If it has been *less* than three years since the most recent child support order or modification, you may still be able to get a “change of circumstances modification.” The change may be in your income, the other parent’s income, or the child’s needs. This service, or the paperwork to do it on your own, is also available from DCS and the DA. If you are the parent who owes support and you are now receiving public assistance, you can also get your child support order changed. See Question 116.

131. If I am behind in paying child support, can the amount of back child support I owe be changed?

Once you are behind in paying child support that you have been ordered to pay, you cannot go back and cancel the amount of support you owe — even if you didn’t pay because you didn’t have a job or were disabled. Child support can be modified only back to the time legal papers requesting the modification are served on the other parent. But you may be able to get credit on your child support account if the children lived with you for a long time when it wasn’t your usual parenting time and the other parent had agreed to you having the children. Contact the child support agency (DCS or DA) handling your case to ask about the credit.

You may also qualify for a credit in some cases in which retroactive (back) Social Security benefits were awarded to your child. See Question 117. Also, if you were receiving SSI or Temporary Assistance for Needy Families (TANF) and were still billed for child support, you can get a credit against the child support you owe.

Health and Life Insurance

132. Does the parent who is ordered to pay child support also have to provide health insurance for the child?

When ordering child support, the court must order one or both of the parents to provide healthcare or coverage if it is available and reasonable in cost. If private health insurance is not available, the court could order a parent to apply for public health insurance, such as the Oregon Health Plan (OHP) or to provide private health insurance when it becomes available. The

court also can order the parent paying child support to pay something towards the cost of OHP as part of the child support order. The amount of child support to be paid may be reduced or increased, depending on which parent provides insurance and how much insurance costs.

133. How can I make sure the noncustodial parent obeys the court order to get health insurance for my child?

If the District Attorney (DA) or the Division

of Child Support (DCS) is handling your support case, they will handle health insurance issues for you, too, at no cost. If the parent who owes support is ordered to provide health insurance, the enforcing agency will require that parent's employer to put the child on the health plan and deduct the insurance cost from the parent's wages. If the DA or DCS is not handling your case, you will need an attorney.

If a parent was ordered to provide medical or dental insurance and did not do so, that parent is responsible for paying for all of the child's medical or dental costs after the date of the order. The doctor or dentist still may ask you to make the payments, if the other parent does not make them. You would then have to get the other parent to reimburse you.

134. Who must pay for my child's health care costs that are not covered by insurance?

If there was insurance but if it didn't cover all costs, the parent with custody must pay unless

the divorce or support order states that these costs are to be shared or paid totally by the other parent.

If you are going through a divorce, make sure that you think about health costs that are not covered by insurance and that you ask in your court papers for what you want. If the DA or DCS is getting your support order, talk with them about health costs and make sure that the judge or hearing officer is told what you want to do about costs that are not covered by insurance.

135. Can the child support order require buying a life insurance policy?

In a divorce case, the court can order the parent paying child support to buy a life insurance policy that gives the children a one-time cash settlement if that parent dies.

Spousal Support (Alimony)

Spousal support applies only to married couples.

136. What is spousal support?

Spousal support, also known as alimony, is money paid by one spouse to support the other. Usually, the money is paid in monthly installments. A judge can also order the money to be paid all at once in a “lump sum.” Either the husband or the wife can be ordered to pay spousal support. Spousal support is *not* available to unmarried partners (except in rare cases where they have agreed to this).

137. How do I get a spousal support order?

Most spousal support orders are part of divorce or legal separation cases. But even if a divorce case has not been filed, a judge can order spousal support when a married person files a lawsuit that asks for support. If you are married and want a spousal support order without filing for divorce, you will need an attorney.

The District Attorney (DA) and the Division of Child Support (DCS) usually will not get a spousal support order for you, but may help you collect support if you already have an order and child support is being collected.

138. How does the judge decide whether and how much spousal support should be paid?

There are three different types of spousal support, and each has a different purpose. A dissolution judgment must label the award (more than one type can be ordered in the same case) and include facts that show why the award is appropriate.

For *transitional support*, the judge looks at what support is necessary to help the spouse get an education or training to re-enter or get ahead in the job market.

For *compensatory support*, the judge decides what will repay a spouse for a major financial or other contribution to the education, career, or earning ability of the other spouse.

For *spousal maintenance*, the judge considers what support is appropriate to keep a standard of living similar to what was enjoyed in the marriage. This support could be ordered for a specific time, or permanently. Many factors affect this decision.

139. If spousal support is ordered, does it continue forever?

Your divorce judgment or spousal support judgment will say when spousal support ends. Depending on its purpose, support is sometimes ordered for a few years, sometimes for an indefinite period, and sometimes just until the spouse who gets support finds a job. Spousal support does not always end when the spouse who is getting support remarries.

If spousal support is ordered for more than ten years, the paying spouse can ask the judge to end it if there is proof that the spouse who gets support has not made reasonable efforts to become self-supporting.

140. Once spousal support is ordered, can it be changed?

Either ex-spouse can ask the court to modify the order if there is an unexpected change in either spouse’s situation. This is called a “change in circumstances.” The spousal support order can be increased, lowered, extended, or ended. Legal papers should be filed before the original spousal support order ends.

If the change is to “compensatory support,” (see Question 138), the ex-spouse wanting the change must also show that there is an

“involuntary, extraordinary, and unanticipated” change reducing the ability of the paying spouse to earn income.

If a support order has ended, it is sometimes possible to get spousal support reinstated. If you were originally awarded support for a specific time period (for example, five years), but the support was modified in court and ended early because there was a change in circumstances, you can sometimes ask the judge to reinstate it. You must make the request during the original time that the support was supposed to be paid (in the

example, within the five years). You should see a lawyer about any reinstatement of spousal support.

141. If I didn't get spousal support in my divorce judgment, can I go back to court later and get it?

No. Spousal support must be ordered in your original divorce judgment. You cannot go back to court after your divorce to get it for the first time.

Property, Debts, and Taxes

142. How is property divided in a divorce?

You and your spouse can agree on the division of property and debts. The judge will probably make your agreement part of the divorce judgment. If you do not agree, the judge will divide property and consider many factors such as:

- Where the property came from (gift, inheritance, purchase);
- If one spouse owned it before the marriage;
- If the spouses kept their money in joint bank accounts;
- How much money each spouse is making now and is expected to make in the future;
- Whether it would make sense for a specific item to go to the parent with custody.

The law assumes that a spouse who cared for the couple's home and children has an equal right to have the property that the couple bought or was given during the marriage. This "equal right" rule also applies to the increased value of assets that were owned before the marriage. But one spouse can try to convince the judge that there are good reasons not to follow this rule in your case.

143. What kind of property is divided in a divorce?

Unless the spouses agree on what property is to be divided, the judge will divide all of the property that the couple owns -- any land or houses, motor vehicles, home furnishings, money in bank accounts, stocks and bonds, pensions and retirement benefits, lawsuit settlements, etc. The judge can even divide property owned by a spouse before the marriage, but usually it is given

to that spouse. The judge also decides which spouse should pay which debts. You should get a lawyer if retirement benefits, pensions, or real property (land or a house) will be issues in your divorce case.

144. How is property divided if the couple is not married?

If you and your former partner do not agree on how to divide your property, you will almost certainly need an attorney, and a lawsuit could be needed. It is a good idea for unmarried couples to have a written agreement about property at the time they begin living together.

145. After the divorce, who is responsible for debts both spouses took on during the marriage?

The divorce judgment will probably state which spouse should pay the debt. But you *both* are responsible for making sure that the creditor gets paid. When you made the purchase you both agreed to pay, and a divorce judgment does not change the creditor's right to expect payment from both of you.

If the bill is not paid, a creditor can ask for payment from both spouses. The creditor can also file a lawsuit against either one or both of you for the unpaid bill.

See Question 147 for information about the right to get reimbursement by the spouse who was ordered to pay.

146. After the divorce, who is responsible for the debts that my spouse signed for alone while we were married?

The divorce judgment will probably state which spouse should pay the debt. But if the spouses were *living together* when one spouse

made the purchase for family expenses, the other spouse is usually also responsible to the creditor and could be sued, too.

If the spouses were *separated* when one spouse signed for the debt, the other spouse is not responsible to the creditor unless the debt is for the children's education, health, or support needs.

See Question 147 for information about the right to get reimbursement by the spouse who was ordered to pay.

147. What can I do if my ex-spouse does not pay the bills as ordered in the divorce judgment?

You can tell the creditor that your ex-spouse was ordered to pay in the divorce judgment. You can also give the creditor information about how to find your ex-spouse. In many cases, especially if your ex-spouse has more money than you do, the creditor will first try to get payment from the spouse who was ordered to pay the bill in the divorce. (But see Questions 145 and 146 for information about your responsibility to pay the creditor.) If you pay the bill or if the creditor brings a lawsuit against you, you have the right to take your ex-spouse to court so you can get

reimbursed (paid back) for the money you paid.

148. How will divorce affect my taxes?

Child Support: You do not have to pay taxes on child support payments you get and you cannot deduct child support payments you make.

Exemptions: Usually, the parent who has legal custody has the right to claim the child as a dependent for tax purposes, but can sign a form to give the other parent this right. For older cases, the rules are different. For information about exemptions you should talk to a lawyer or call the IRS.

Spousal Support: You have to pay taxes on spousal support payments you get, and you can deduct spousal support payments you make. The Internal Revenue Service has special rules about what payments qualify as spousal support for tax purposes.

Property Transfers: There are special tax rules about property transfers. For information about taxes, you can talk to a lawyer, accountant, tax preparer, or contact the IRS.

Name Changes

149. Can I take back my former name when I get divorced?

Yes. The judge must give you back a former name if you ask for it in a divorce.

150. Can I change my child's last name in a divorce?

Even if the mother gets custody and changes back her name in the divorce, the child most often keeps the name that is on the birth certificate. Many divorce judges will not change a child's name in a divorce case, especially when the other parent disagrees.

If you want to change your child's name, you can file a separate legal case. The other parent

of the child must be told about this lawsuit by receiving legal notice. The judge will allow the name change only if it is in the child's best interest.

151. Does my child have to have the father's last name?

Parents often agree that their child will have the father's last name, but they can give their child any last name they want. If the parents can't agree, a judge can decide, but this usually happens only when the parents are unmarried. A father establishing paternity of the child does *not* have an automatic right to have the child bear his name. The judge can decide based on what is best for the child.

The Child Welfare Program of the Department of Human Services (DHS)

152. What should I do if my child is taken from me and placed in foster care?

Try to get an attorney right away to represent you. If you cannot afford a lawyer, ask the judge to appoint one for you. In some counties, almost all low-income parents get attorneys. If you are low-income and the Child Welfare Program of the Department of Human Services (DHS) has filed to *permanently* end your parental rights, you definitely have the right to have a court-appointed attorney.

153. Will there be court hearings if DHS takes my child?

Yes. The first hearing will take place within 24 hours, not counting weekends. The judge will decide if it is safe for your child to return home, or if you need any emergency services to make it safe to bring your child home. You have the right to be at this hearing and to tell the judge, by yourself or through your lawyer, why your child should or should not come home.

There will be another hearing approximately two months after the case starts, unless you tell the judge that you agree that DHS should have custody or that the court should have legal control (“wardship”) of your child. The judge will also decide about plans and services for your child. You and your attorney have the right to participate at any hearings about custody and services. Later on, there will be reviews of your child’s situation. You and your lawyer can ask for a hearing at any time to try to end the court’s wardship or DHS’s custody.

154. When do I get my child back?

When DHS or the judge believes that you can take care of the child. State and federal laws require DHS and the judge to act quickly, either to return your child or to make an alternative

plan. You will need to act quickly, too, to get your child back.

155. If DHS has custody of my child, should I cooperate with them?

Yes. DHS has two duties when it takes custody of your child: (1) to look after your child’s best interests, and (2) to help you as a parent solve the problems that led to DHS taking custody. If DHS believes you have solved your problems and can take care of the child, DHS will return your child to you. Sometimes the judge can order that your child be returned to you even if DHS disagrees. You should work closely with your lawyer to increase your chances of getting your child back quickly.

156. Can I visit my child who is in DHS’s custody?

You will probably be allowed to have visits, but DHS will decide the kind of visitation that is allowed. Sometimes it is very limited. DHS may require the visits to be supervised.

157. If my child has been taken from me and placed in foster care or a state training school, do I have to pay for the child’s support?

If you have enough money, you may be required to help support the child. You have the right to have a court or agency hearing if you disagree with the amount you are asked to pay.

158. Can DHS take away my child permanently?

Only a judge can take away your child permanently, but DHS can file legal papers to ask a judge to terminate (take away) your parental rights. If “termination of rights” papers are filed, you have a right to a court-appointed attorney if you cannot afford to hire one.

Adoption

159. What is an adoption?

Adoption is a court order by which an adult who is not a child's natural parent becomes the legal parent of the child.

160. Can I have contact with a child after I give the child up for adoption?

It depends on the case. After an adoption, a natural parent usually does not have any rights concerning the child. But if the adoptive parents agreed in the court papers to allow the natural parent to have parenting time or other contact, the natural parent can go to court to seek a court order requiring the contact. But first, all the parents must try mediation. See Question 70. If mediation doesn't work, a judge will decide whether to enforce the contact that had been agreed to, or to change the agreement because of exceptional circumstances. The natural parent can't stop or set aside the adoption if the adoptive parents do not allow the contact they agreed to give.

161. How can I adopt a child?

You will probably need a lawyer's help. For more information, contact the Child Welfare Program of the Department of Human Services (DHS) or an adoption agency.

162. Will I be investigated before I can adopt a child?

If you are adopting a stepchild, DHS can investigate your home, but probably will not choose to do this. If you are adopting a child who is not your stepchild, DHS (or a private agency working with DHS) probably will investigate your home. There is a cost for the investigation. If you cannot pay the fee, DHS will try to work out a payment plan with you and can lower or eliminate the

amount you have to pay for the study. But you may be asked why you are adopting a child when your money is so limited.

163. Can I adopt a child without the natural parents' consent?

You should talk to a lawyer. The consent of the natural parents is usually needed, but in some cases the judge can order an adoption without that consent. The most common case is when the parent has neglected or deserted the child for at least one year. But natural parents always have the right to have notice of the adoption suit, if they can be found, and to challenge whether the adoption should be granted without their consent. If the natural parent is low-income, he or she will have the right to a court-appointed attorney.

164. To adopt a child, is the natural father's consent required if paternity has not been established?

Most of the time, a father whose paternity has not been established does not have the right to be told about an adoption case or to have the chance to contest it. But if he has lived with or supported the child, or started his own paternity suit, a natural father *may* have the right to be given notice of the case and to be given a chance to challenge it. You should talk to an attorney. See Questions 50 through 63 for information about how paternity is established.

165. Can my new spouse adopt my child from an earlier relationship?

Yes, if the child's other parent consents to the adoption.

In step-parent adoption cases, the grandparents (the mother and father of the other parent) must usually be served with (given) a copy of the adoption petition. They may be able

to get a court order that gives them visitation rights after the adoption, if they have a relationship with the child and visitation rights won't interfere with the child and the adoptive family's relationship.

166. Can my child be adopted without my consent if I am the legal father?

No, not unless your rights as a parent were *permanently* ended by a judge before, or the judge now decides that your rights as a parent should be ended. You have a right to be notified

if anyone is trying to adopt your child, if you can be found, and the right to object to someone adopting your child. If you are low-income, you also have the right to a court-appointed attorney.

167. If the child is a Native American, are there any special adoption procedures?

Yes. A law called the Indian Child Welfare Act has special rules about adopting Native American children. You should talk to a lawyer who knows about this law.

Guardianships for Children

168. What is a guardian?

A guardian is an adult who is appointed by a judge to care for an unmarried person under 18 years old. A guardian has the responsibilities of a custodial parent, except that a guardian does not have a legal obligation to support the child from the guardian's own income. A guardian may consent to marriage or adoption of the child. The child is known as a "protected person" or "ward."

169. When is a guardian appointed?

A guardian is appointed by a judge when the parents of a child cannot or will not take care of the child. The Child Welfare Program of the Department of Human Services (DHS) may be appointed as the guardian. Relatives or other adults are often guardians, too.

170. What is the difference between a guardianship and a conservatorship?

In a conservatorship, a conservator is appointed to handle only the financial affairs or property of a person under 18 years old. A guardian can handle business affairs, but a guardian is also responsible for taking care of a child's other needs.

171. How do I get a guardianship for a child?

You will need a lawyer to ask a judge to appoint a guardian. Parents and the people taking care of the child must be told when someone is trying to get a guardian appointed. A judge will order a guardianship without the parents' consent only in limited circumstances. This area of the law is complicated. Consult an attorney for up-to-date advice.

There are special laws about guardianships of Native American children. You should talk to a lawyer who knows about these laws.

172. What can I do to stop a guardianship?

If you are a parent of the child, or have been taking care of the child, you should be given notice that a petition for guardianship has been filed. The notice should tell you that you must give oral (spoken) or written reasons why you think there should not be a guardian appointed. Read the notice carefully. You usually have to go to the courthouse to give your objections in person, or turn in your written answer to the court within 15 days of getting the court papers (20 days if interstate issues are involved).

You have a right to go to the hearing to tell the judge why a guardian should not be appointed. If you are the parent, the person wanting guardianship must prove that there is some very good reason for the guardianship. Because the law in this area is complicated, it is a very good idea to talk to an attorney for advice.

173. Can I give another person temporary parental authority over my child?

Yes. You can give a *power of attorney* to another person so that he or she has the temporary authority to take care of your child, to consent to medical care for the child, to enroll the child in school, and to perform other parental responsibilities. You cannot give temporary authority to consent to marriage or adoption of the child. To give someone a *power of attorney*, you will need a power of attorney form, which you can get from most stationery stores. A sample form is available at www.oregonlawhelp.org. Fill out the form and sign it in front of a notary public. You do not have

to go to court. Give the original form to the person caring for your child and keep a copy for your records.

In most cases, a *power of attorney* lasts no longer than six months, but you can give a school a *power of attorney* that lasts up to 12 months.

If you are in the National Guard or U.S. Armed Forces Reserves and called to active duty, you can give a *power of attorney* that lasts for the time you are on active duty plus 30 days. Some special rules apply to powers of attorney in these situations.

You can end any *power of attorney* at any time by writing, dating, and signing a statement that says you are “revoking the power of attorney given on _____ (date).” It’s a good idea to get this statement notarized. Give the statement to the person you named in the *power of attorney* form.

Resource Section

Legal Aid Offices and Volunteer Lawyer Programs

These offices provide legal assistance to low-income persons who live in the counties that are listed. Information is also available online at the statewide legal aid website: www.oregonlawhelp.org.

Albany Regional Office

(Linn, Benton)
(541) 926-8678
(800) 817-4605

Legal Aid Services of Oregon
433 Fourth Ave. SW
Albany, OR 97321

Center for Non-Profit Legal Services

(Jackson)
(541) 779-7291
225 W Main
P.O. Box 1586
Medford, OR 97501

Central Oregon Regional Office

(Jefferson, Crook,
Deschutes)
(541) 385-6944
(800) 678-6944

Legal Aid Services of Oregon
1029 NW 14th St., Ste. 100
Bend, OR 97701

Columbia County Legal Aid (Columbia)

(503) 397-1628
270 South 1st Street
P.O. Box 1400
St. Helens, OR 97051

Coos Bay Office

(Coos, Curry, Western
Douglas)
(541) 269-1226
(800) 303-3638

Oregon Law Center
455 S. 4th Street, Suite 5
P.O. Box 1098
Coos Bay, OR 97420

Farmworker Program

(All counties in the state)
(503) 981-5291
(800) 662-6096

Legal Aid Services of Oregon
397 N First Street
Woodburn, OR 97071

Grants Pass Office

(Josephine)
(541) 476-1058
Oregon Law Center
424 NW 6th Street, Suite 102
P.O. Box 429
Grants Pass, OR 97528

Hillsboro Regional Office

(Washington, Columbia,
Tillamook, Clatsop,
Yamhill)
(503) 648-7163
(888) 245-4091

Legal Aid Services of Oregon
230 NE Second, Suite A
Hillsboro, OR 97124

Satellite office (Yamhill)

(503) 472-9561
720 East Third
P.O. Box 141
McMinnville, OR 97128

Klamath Falls Regional Office

(Klamath & Lake Counties)
(541) 273-0533
(800) 480-9160

Legal Aid Services of Oregon
403 Pine Street, Suite 250
Klamath Falls, OR 97601

Lane County Legal Aid & Advocacy Center

(541) 485-1017
(800) 422-5247
376 E. 11th Avenue,
Eugene, OR 97401

Lincoln County Office

(Lincoln)
(541) 265-5305
(800) 222-3884

Legal Aid Services of Oregon
304 SW Coast Highway
P.O. Box 1970
Newport, OR 97365

Marion-Polk Legal Aid Service

(Marion, Polk)
(503) 581-5265
(800) 359-1845
1655 State Street
Salem, OR 97301
A regional office of
Legal Aid Services of Oregon

Satellite office
769 North Main, St. #B
Independence, OR 97351
(503) 606-3284

Multnomah County Office

(Multnomah)
(503) 224-4086
(888) 610-8764
Legal Aid Services of Oregon
921 SW Washington,
Suite 500
Portland, OR 97205

The Native American Program

*(Assistance to tribal
governments)*
(503) 223-9483
Legal Aid Services of Oregon
1827 NE 44th Avenue,
Suite 230
Portland, OR 97213

Eastern Oregon Regional Office

(Malheur, Harney, Grant,
Baker)
(541) 889-3121
(888) 250-9877

Oregon Law Center
35 SE 5th Avenue,
Unit 1
Ontario, OR 97914

Oregon City Regional Office

(Clackamas, Hood River,
Sherman, Wasco)
(503) 655-2518
(800) 228-6958
Legal Aid Services of Oregon
421 High Street, Suite 110
Oregon City, OR 97045

Pendleton Regional Office

(Gilliam, Morrow, Umatilla,
Union, Wallowa, Wheeler)
(541) 276-6685
(800) 843-1115

Legal Aid Services of Oregon
365 SE Third Street
P.O. Box 1327
Pendleton, OR 97801

Roseburg Regional Office

(Douglas)
(541) 673-1181
(888) 668-9406

Legal Aid Services of Oregon
700 SE Kane
P.O. Box 219
Roseburg, OR 97470

Other Organizations

1. Oregon State Bar

Lawyer Referral Service

(503) 684-3763 in Portland, or
1-800-452-7636 toll free in Oregon

This service gives you the name of an attorney in your community. There is a fee of \$35 for the first meeting with the lawyer. This referral service also operates the Modest Means Program, which makes referrals to lawyers who provide reduced-fee legal services on some cases to clients that meet eligibility guidelines. Call for information.

Family Law Resource Page

www.osbar.org/public/legalinfo/family.html

Tel-Law Tape Library

(503) 620-3000 in Portland, or
1-800-452-4776 toll free in Oregon

Tel-Law is a collection of tape-recorded messages on topics. You can get a list of all the topics from the Oregon State Bar, P.O. Box 1689, Lake Oswego, OR 97035-0889. The tapes on family law are:

- # 1131 – Marriage in Oregon
- # 1132 – Dissolution of Marriage
- # 1133 – Who Will Get Child Custody in
Dissolution of Marriage
- # 1134 – How Financial Support for a Child or
Spouse is Established in a Marriage
Dissolution
- # 1135 – What to do if Child Support or Spousal
Support (Alimony) is Not Being Paid
- # 1136 – Information about Adoptions
- # 1137 – Change of Name
- # 1138 – Legal Information for Teenagers –
Problems Solvers Program
- # 1139 – Financial and Legal Responsibilities of
Parents for Their Children
- # 1140 – Restraining Orders and Domestic
Violence
- # 1141 – Foster Care and Termination of Parental
Rights
- # 1142 – Paternity
- # 1143 – Juvenile Court System

2. Child Support Programs

Toll-Free Phone Number: 1-800-850-0228

**Child Support Website of the Oregon
Department of Justice:**

<http://www.oregonchildsupport.gov>

3. Domestic Violence and Sexual Assault Resources

National Domestic Violence Hotline:

1-800-799-SAFE (7233); TDD
1-800-787-3224

National Sexual Assault Hotline:

800.656.HOPE (4673)

Portland Women’s Crisis Line

(Statewide):1-888-235-5333

To find a hotline or help in your county:

www.dhs.state.or.us/abuse/domestic/gethelp.htm

**For District Attorney Victim Assistance
Programs in your county:**

[www.doj.state.or.us/victims/pages/
assistance.aspx](http://www.doj.state.or.us/victims/pages/assistance.aspx)

**For a list of legal aid programs, brochures
and other information:**

www.oregonlawhelp.org

**Oregon Judicial Department – Domestic
Violence Resources:**

[http://courts.oregon.gov/OJD/OSCA/cpsd/courtimp
rovement/familylaw/pages/domesticviolence.aspx](http://courts.oregon.gov/OJD/OSCA/cpsd/courtimp
rovement/familylaw/pages/domesticviolence.aspx)

**Oregon Department of Justice, Crime
Victims Services Division:**

www.oregoncrimevictimsrights.org

**Oregon Coalition Against Domestic and
Sexual Violence:** 503-203-1951 or

www.ocadsv.org

**Oregon Attorney General’s Sexual Assault
Task Force:** 503-990-6541 or

www.oregonsatf.org