

RESPONDING TO A PETITION FOR SEPARATION **WITH CHILDREN**



Important Contact Information

Oregon Judicial Department – www.courts.oregon.gov

Oregon State Bar Lawyer Referral Service – www.oregonstatebar.org

Phone: 503.684.3763 or toll-free in Oregon at 800.452.7636



If you are deployed or about to be deployed, contact the Oregon State Bar Military Assistance Panel (www.osbar.org/docs/ris/militaryflier.pdf) for information about special rights and rules that may apply to you.

Symbols used in this form:



Important Note



STOP! You may not be able to use this form



Caution! You may need a lawyer



Concerns children



Concerns money



Timing requirement



Notice about these instructions and forms

These instructions are not a complete statement of the law. They cover basic procedures for simple separation cases involving custody, parenting time, and child support. If you have complicated issues or questions about the law, talk to a lawyer.

All of the necessary forms should be online. If you cannot find a form, ask your local court.

Each court has local rules, programs, and procedures that may not be explained in these instructions. Refer to the Supplementary Local Rules for your county. These rules are available online or at your local court or law library. Forms and information about your local court are on the Oregon Judicial Department website.



INFORMATION ABOUT SEPARATION

- ❖ **Duration** - Legal separation can be for a specific period of time (**limited**), or it can have no set end time (**unlimited**). A limited separation will end when the judgment says so, and your marriage or Registered Domestic Partnership (RDP) will be fully intact. Even in a separation of unlimited duration, you may still get divorced or get back together, but you will need to have the court legally change your relationship.
- ❖ **Petition and Judgment** - A separation case starts with a “petition.” The *Petition* tells the court what the petitioner wants. It ends with a “judgment,” which is the court’s final decision. The *General Judgment* is the document that finalizes your case and contains your rights and responsibilities. Your separation is effective once the judge signs the judgment. (*See “The Judgment” section for more details about the terms of your judgment*)
-  ❖ **Divorce** - You can convert a separation into a dissolution (divorce) now or within 2 years of the judgment of separation. After the judgment, conversion requires an additional legal procedure, filings, fees, and appearances. Talk to a lawyer if you have concerns or need advice about the best course to take.
-  ❖ **Contact Information** - Keep the court and all other parties informed of your current address. **You don’t have to use your home address.** You may use any contact address where you regularly check in, as long as it is in the same state as your home. The court will assume that you receive all notices and documents sent to that address. **It is YOUR responsibility to let the court and other parties know if you move or want to get mail at a different address.**
- ❖ **Statutory Restraining Order** – Both you and Petitioner must obey a restraining order preventing *either* of you from:
 - Dissipating (transferring, selling, destroying, removing, disposing of) real or personal property
 - Making changes to insurance policies without the agreement of the other party
 - Making extraordinary expenditures (unusual or high-dollar payments or purchases). Expenditures that are necessary for the safety or welfare of the parties, ordinary business activities, or related to the court case are allowed.

If you violate the order, you may be held in contempt of court and subject to penalties. You may request a hearing if you object to any of the terms in the Statutory Restraining Order. You must fill out and file a ***Request for Hearing re: Statutory Restraining Order*** form. You should have received a copy of the restraining order and a blank *Request for Hearing* form with the *Petition*. A copy of the restraining order is at the end of this document. If you did not receive the *Request for Hearing* form and want to do that, contact the court.

STEP 1: FILING YOUR RESPONSE



You have **30 days** from the date you were served with the *Petition* to file a written *Response* with the court clerk and pay the filing fee.



Keep In Mind:

- Issues involving the debts of separated couples are complicated. Talk to a lawyer if either of you might declare bankruptcy, especially for Registered Domestic Partnerships (RDPs). Your judgment of separation affects you and the petitioner, but does NOT bind your creditors. Either party may still be responsible for the debts in spite of this judgment.
 - ✓ Talk to a lawyer if either party is already in bankruptcy. The court may not be able to proceed with your separation until the bankruptcy is resolved.
- **Registered Domestic Partners (RDPs)** should see a lawyer if partner support is requested and either party might move out of state. If the new state does not recognize RDPs, you may have trouble collecting partner support.
 - ✓ Note: Only same-sex couples can have Registered Domestic Partnerships.
- If Petitioner provides health or other insurance for you, check with each carrier to find out if coverage can be continued during your separation. If so, you must include this in the *Judgment*. If insurance coverage is not included in the *Petition*, you must include it in your *Response* as a counterclaim. Talk to a lawyer if you have any concerns about continuing coverage.
- **NOTE:** If the petitioner has asked that spousal/partner support be payable as of the date of service, you are not required to begin making payments until ordered by the court.

FILE THE FORMS AND PAY FEES



If you eFiled your forms in Guide & File, skip to “Service” below

File the original forms listed below with the court clerk. You will have to pay the filing fees when you file your papers. Go to www.courts.oregon.gov for the filing fee.

- ❖ **Response**
 - ❖ **Confidential Information Form**
 - ❖ **Notice of Filing of Confidential Information Form**
- If you are low income, you may ask the court to defer or waive your filing fee. You must complete an **Application and Declaration for Deferral or Waiver of Fees** and an **Order Regarding Deferral or Waiver of Fees** and file them with your papers. If the fee is waived, you don't have to pay it now. However, the judge may reconsider waived and deferred fees at the end of the case.



Service

Make two copies of all of your forms. One for your records and one for Petitioner.

- ❖ If Petitioner **does not** have a lawyer, mail a copy to Petitioner's address.
- ❖ If Petitioner **is represented** by a lawyer, you must **instead** mail the copy to the lawyer.

MAIL the Petitioner's copy to the Petitioner's lawyer or the Petitioner by US mail. **THEN** fill out the **Certificate of Mailing**. File the *Certificate of Mailing* with the court. You must complete service to the Petitioner within 30 days of the day you received the *Petition* and file the *Certificate* with the court as soon as possible.

STEP 2: TEMPORARY ORDERS



You can ask the court to make temporary orders. Temporary orders are effective as soon as a judge signs the order. They last until a judge changes the terms, signs the *General Judgment*, or dismisses the case. For example, either party may request an order for spousal/partner or child support, or an order about temporary use of property. To make any of these requests, you must file a “motion” (request) asking the court to do what you want. You may need a lawyer to file these requests.

- ❖ **NOTE:** The *General Judgment* may affect earlier temporary orders done by Limited Judgment. Talk to a lawyer if you have questions.

One type of temporary order is called a *Status Quo Order*. This order prevents either parent from changing the children’s normal schedules, interfering with parenting time by the other parent, or changing where the children live. This does *not* decide custody or say who can make major decisions for the children. “Normal schedule” means the children’s schedule for the three months before the request for a *Status Quo Order* is filed.

Go to www.courts.oregon.gov/forms for the forms to request or oppose temporary orders. The forms may not cover all temporary orders you need. Talk to a lawyer for more information. If the petitioner has already filed for or been granted temporary orders, you can request a hearing to challenge or change the orders.

Domestic Violence

All courts have restraining order forms for cases involving domestic violence. A judge will usually hear your request within a day or two of filing. Check with your local court for filing times and procedures.

Refer to www.courts.oregon.gov/fapa for Family Abuse Prevention Act (FAPA) forms and information.

Forms for other types of protective order are available at <http://www.courts.oregon.gov/forms>

STEP 3: RESOLVING YOUR CASE

There are three ways your case can be resolved: by agreement between the parties, by default if you don't respond, or by a judge in a hearing.



By Agreement

It is always better to resolve issues yourselves, since you know what's important to you. Once the case goes to a judge, it is out of your control. If you can't resolve the issues on your own, or if it is not safe for you to talk to Petitioner, the court may provide options to help you, including mediation and arbitration. For information about arbitration, see "By Trial" section below.

Mediation: A mediator is a person trained to help people resolve disagreements. Mediation is confidential. You may ask to meet with the mediator alone if you are uncomfortable meeting with the other party for any reason. Check with your local court clerk to see if there is a fee for this service. Mediators are *not* judges – they cannot impose their decisions on you. Their job is to help *you* reach an agreement. This may be your last chance to retain control over the outcome of the case. Agreements incorporated into a *Judgment* are fully enforceable (*see below*).

Some courts may require that you mediate before you have a hearing. Check your court's Supplemental Local Rules for more information.

If mediation has not yet been ordered in your case and you would like to request it, you may file a **Request for Mediation** form. If your court requires mediation, you may request that the court waive mediation if you have a good reason by filing a **Motion and Declaration for Waiver of Mediation**. Talk to your court if you have safety concerns.

If you and Petitioner have agreed to all of the issues, one of you must fill out and file:

- **Declaration in Support of Judgment**
- **General Judgment of Separation**

Note: The *Judgment* must be signed by both parties before being submitted to the court.



By Default



If you do not respond to the *Petition* in writing within 30 days of receiving it, the petitioner can ask for an *Order of Default*. This means that all of the requests in the *Petition* will be ordered as part of a *Judgment* without input from you.

If you are on active duty in the military, you may be protected from judgments by default by the federal Servicemembers Civil Relief Act (SCRA) (50 U.S.C. § 3901). The rules about whether you can be protected are very technical and complex. DO NOT rely on your enlistment status to protect you. Speak to a legal advisor or call the state bar association ([page 1](#)) if you have concerns or questions.

- If you choose to waive your rights so that Petitioner can get a judgment by default, file a waiver of your right to stay proceedings. The courts do not provide a form for this.



By Trial

If you filed a response and are unable to agree on the terms of a judgment, your case may go to trial

Conferences with the Judge

Many courts will schedule a “status,” “pretrial,” or “settlement” conference before a case goes to trial. These meetings usually take place with a judge with both parties present, along with their lawyers (if any). You must attend any conferences that are scheduled unless you have received permission from the judge not to attend. At the conference, the judge may talk to you about how your case is going to be handled, consider requests for temporary orders, or set future court dates.

Some courts may refer certain cases to arbitration. You will receive information from the court if that happens.

Informal Domestic Relations Trials (IDRTs) are available in all courts if both parties agree. See UTCR 8.120 for more information. Each court handles IDRTs differently. Contact your court for more information.

- ❖ Many courts require that you mediate before you can get a trial. See the BY AGREEMENT section above.



NOTE: You must give the other party an opportunity to review the judgment before you submit it to the court. See [UTCRC 5.100](#) for information.

You can represent yourself at trial. Some courts provide information about representing yourself on their websites. Go to www.courts.oregon.gov to find your court’s website.

The State Family Law Advisory Committee has written a guide that may help you prepare for trial. This guide is NOT a substitute for legal advice! The rules of court can be technical and complex. You may damage your case if you are not properly informed. If your case goes to trial, you are strongly advised to talk to a lawyer. To read the guide, go to:
<http://www.courts.oregon.gov/help/Documents/famlawtrialbrochure.pdf>

THE JUDGMENT



Regardless of how you resolve your case, a ***General Judgment of Separation*** must be signed by a judge. One of you may be ordered to fill out the judgment form and give it to the court to be signed.

Even if you submitted Child Support Worksheets with your *Response*, you MUST attach worksheets to your *Judgment* if you are responsible for submitting the *Judgment* form to the court, regardless of how you resolve your case.

The judgment finalizes your separation and sets out all of the issues decided in mediation, arbitration, trial, or by agreement.

- **NOTE:** The *General Judgment* may affect earlier temporary orders done by Limited Judgment. Talk to a lawyer if you have questions.

If you are responsible for preparing the *Judgment*, the information should be *exactly* the same as what was decided in mediation, arbitration, hearing, trial, or through your agreement. All parties must review the *Judgment* before you submit it to the court. You must send the *Judgment* along with the *Notice of Proposed Judgment or Order* to the petitioner and any adult children who have not filed a waiver of appearance in the case.

Other parties can object to the *Judgment*. If that happens, you need to discuss the objections and attempt to resolve them before you submit the *Judgment* to the court. If you are not able to resolve the objections, the objecting parties can either send you a written statement explaining their objections, or they can submit their objections directly to the court. You must complete the *Certificate of Readiness* section of the *Judgment* to tell the judge whether there are outstanding objections. See [UTCR 5.100\(1\)](#) for more information about notice and objections.¹

If the petitioner is responsible for preparing the judgment, they must send the proposed *Judgment* to you before submitting it to the court. Then you can review it and object to it within 7 days of the date it was sent to you. You need to try to resolve your objections with the petitioner. If you are not able to resolve your objections after reasonable efforts, you can either send a written explanation of your objections to the petitioner or directly to the court. You must notify the petitioner of your intentions so that they can advise the judge that there are outstanding issues. The judge may make a decision after reviewing the documents, or the court may contact you with further information.

Your separation is effective the date the *Judgment* is signed by the judge. NOTE: the terms of your judgment are not enforceable until the court enters the judgment. You will know that the court has entered the judgment when you receive a *Notice of Entry of Judgment*.

¹ <http://courts.oregon.gov/OJD/programs/utcr/pages/utcrrules.aspx>

NOTE: Every document you file must have a mailing address or contact address where you will receive documents related to this case. You do NOT need to use your home address. You are responsible for checking your contact address. Notify the court and the other party in writing if your contact address changes.

Support for a Child Attending School

If an adult child is attending school at least half-time according to the school's standards, that child is considered a "Child Attending School." A Child Attending School may be entitled to child support until he or she turns 21. "Child Attending School" is defined at [ORS 107.108](#) and does not include children who are married.



IMPORTANT! After an order is made for support of a child attending school, the child *must* remain enrolled at least half-time AND make sufficient academic progress according to the school to qualify as a child attending school and continue to receive support.

NOTE: you can ask the court to extend child support for minor children to cover them when they qualify as Children Attending School. If a child does not immediately enter higher education after high school or drops out of high school, child support will end.

If you have an order that says support continues *if* the child becomes a Child Attending School, the child must notify the payor *before* the child turns 18 that he or she will be attending school, which school, and when the child expects to graduate or stop taking classes. Support generally continues during summers if the child has properly notified the other parent that the child intends to return to school.

The child must also provide consent to the school to release certain information to any parent paying child support. The requirements are at [ORS107.108](#).

Paying Support for a Child Attending School

Support for an adult child is normally paid directly to the child, whether by the payor directly or by the Division of Child Support. If you have good cause why the child should *not* receive payment, you must explain that in your *Petition*.

There is NO parenting plan or parenting time credit for a Child Attending School who has graduated from high school.

For more information, go to:

http://oregonchildsupport.gov/services/pages/child_attending_school.aspx

Statutory Restraining Order

[Attach to Summons per ORS 107.093(5)]

NOTICE OF STATUTORY RESTRAINING ORDER PREVENTING THE DISSIPATION OF ASSETS

REVIEW THIS NOTICE CAREFULLY. **BOTH PARTIES MUST OBEY EACH PROVISION OF THIS ORDER TO AVOID VIOLATION OF THE LAW.** SEE INFORMATION ON YOUR RIGHTS TO A HEARING BELOW.

IN DOMESTIC RELATIONS ACTIONS

TO THE PETITIONER AND RESPONDENT:

PURSUANT TO ORS 107.093 and UTCR 8.080, Petitioner and Respondent are restrained from:

1. Canceling, modifying, terminating or allowing to lapse for nonpayment of premiums any policy of health insurance, homeowner or renter insurance, or automobile insurance that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy that names either of the parties or a minor child of the parties as a beneficiary.
2. Changing beneficiaries or covered parties under any policy of health insurance, homeowner or renter insurance, or automobile insurance that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy.
3. Transferring, encumbering, concealing, or disposing of property in which the other party has an interest, in any manner, without written consent of the other party or an order of the court, except in the usual course of business or for necessities of life. This paragraph (3) does not apply to payment by either party of:
 - a. Attorney fees in this action;
 - b. Real estate and income taxes;
 - c. Mental health therapy expenses for either party or a minor child of the parties; or
 - d. Expenses necessary to provide for the safety and welfare of a party or a minor child of the parties.
4. Making extraordinary expenditures without providing written notice and an accounting of the extraordinary expenditures to the other party. The paragraph (4) does not apply to payment by either party of expenses necessary to provide for the safety and welfare of a party or a minor child of the parties.

AFTER FILING OF THE PETITION, THE ABOVE PROVISIONS ARE IN EFFECT IMMEDIATELY UPON SERVICE OF THE SUMMONS AND PETITION UPON THE RESPONDENT. IT REMAINS IN EFFECT UNTIL A JUDGMENT IS ISSUED, UNTIL THE PETITION IS DISMISSED, OR UNTIL FURTHER ORDER OF THE COURT.

PETITIONER'S/RESPONDENT'S RIGHT TO REQUEST A HEARING

Either petitioner or respondent may request a hearing to apply for further temporary orders, or to modify or revoke one or more terms of the automatic mutual restraining order, by filing with the court the Request for Hearing form specified in Form 8.080.2 in the UTCR Appendix of Forms.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

Case No. _____

Petitioner
and

**CERTIFICATE OF SERVICE
BY MAIL**

Respondent

ORCP 9

I am the Respondent in this case

I certify that on *(date)* _____, I served my *Response* as required by Oregon Rules of Civil Procedure - Rule 9 as follows:

to petitioner's lawyer *(name)* _____ at the following address:

(or)

to the petitioner, who is not represented by a lawyer, at the following address:

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for use as evidence in court and I am subject to penalty for perjury.

Submitted by: Respondent

Date

Signature

Print Name

Contact Address

City, State, ZIP

Contact Phone