

Filing For Separation without Children

These instructions are not a complete statement of the law. They cover basic procedure for uncomplicated cases. Neither the Court nor Court Staff is permitted to give legal advice. For legal information, please talk to a lawyer, visit your local law library and/or refer to the “Additional Resources” section on the last page of these instructions.

The instructions may refer to some forms not included in this packet.. You may get the forms at <http://courts.oregon.gov/linn> go into **FORMS**. Linn County Court may also have the form available in Room 107 for a small fee.

Linn County Court has local rules, programs and procedures that may not be explained in these instructions. Please refer to the “Linn County Supplemental Local Court Rules.”

This set of forms and instructions will allow you to file for and obtain a separation. Please read the “Information on Separation Forms” sheet before you go any further to make sure this is the right sets of forms for you.

This is an **abbreviated version of the statewide instructions**. Statewide instructions are available on the Oregon Judicial Department’s Family law website at: <http://courts.oregon.gov/OJD/OSCA/JFCPD/Pages/FLP/Forms-Separation.aspx>

STEPS AND FORMS

Step 1. Starting your Case – Page 3

(additional forms you may need are listed on page 2)

- Petition for Separation of Marriage/RDP
- Notice of ORS 107.089 (documents parties may have to give each other)
- Notice of Statutory Restraining Order Preventing Dissipation of Assets
- Notice Regarding Continuation of Health Coverage
- Confidential Information Form (CIF) (one for each party and each adult child)
- Notice of CIF Filing
- Summons

Step 2. Notifying the Other Party – Page 4

- Certificate of Service

Step 3. Resolving Your Case – Page 7

By Agreement:

- Declaration in Support of Judgment
- General Judgment of Separation of Marriage/RDP

or

By Default:

- Ex Parte Motion for Order of Default and Declaration in Support
- Order on Motion for Default
- Declaration in Support of Judgment
- General Judgment of Separation of Marriage/RDP

or

By Hearing:

- General Judgment of Separation of Marriage/RDP

Additional forms you may need:

- ___ Statement of Assets and Liabilities
- ___ Uniform Support Declaration
- ___ Waiver of Personal Service
- ___ Waiver of Further Appearance and Consent to Entry of Judgment (for adult children)
- ___ Fee Deferral or Waiver Application and Declaration

*More information about these forms may be found in the expanded version of the instructions.

GENERAL INFORMATION

A. Complete all sections- The document must be readable. Print handwritten documents. If the answer to a question is none, then write “none”. Do not use “N/A” for the word none.

B. File the original forms with the clerk- You should always make yourself an extra copy before you file any form with the clerk.

C. Keep the court informed of your current address- It is your responsibility to keep the court informed of your current address. **You are not required to use your residential address on any court form.** You may use a contact address where you regularly check in. **Your contact address will become public information.** Please make sure you use an address that is okay for other people, including the other party, to know. If you use a contact address, the court will assume that you will receive all notices sent to that address.

D. Case Heading- Make sure you fill in your full names in the blanks at the top of the forms (first, middle or middle initial, last). Print the names the same way on all of the forms.

E. Case number- The clerk will give you a case number when you file your papers. After you receive your case number, you will need to print your case number on all your copies and other papers you file with the court.

F. Statutory Restraining Order- By filing your *Petition*, you agree to follow the terms of an automatic restraining order. The order is effective once the papers have been served on the respondent (*see below for service information*). If you don't follow the order, you can be held in contempt of court and subject to penalties. You must attach a copy of the “**Notice of Statutory Restraining Order Preventing the Dissipation of Assets in Domestic Relations Actions**” to the *Summons* and serve it on the respondent. The statutory restraining order prevents *either party* 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 this court case are allowed.

G. Confidential Personal Information- Some personal information should only be listed in a Confidential Information Form (CIF) and not in any of the other papers you file with the court. You must complete a CIF for each party in the case.

Adult Children (18-21)- If you have **any** child 18, 19, or 20 years old who is not married or emancipated, that child is a necessary party to this case. He or she *must* be added as a party in the case caption and has the right to participate. Adult children who are attending school at least half-time may seek child support from either or both parents.

You must properly serve each adult child with all the same papers as Respondent (see section below about serving the other party). After being served, a child **may** sign a ***Waiver of Further Appearance and Consent to Entry of Judgment*** form if the child chooses not to participate in the case.

J. Spousal/Partner Support

There are three different categories of spousal or partner support in Oregon:

- **Transitional** support is to help you get work-related education and training
- **Compensatory** support may be ordered if you significantly contributed to the education, training, job skills, career, or earning capacity of your spouse or partner
- **Maintenance** may be ordered for your general support

Either party may request and be awarded support. More than one type of support may be awarded. Any award may be ongoing or for a particular period of time (such as 3 years, while in school, up to a certain amount, etc.).

If you and Respondent do not agree on support, you need to submit a ***Uniform Support Declaration form***.

For more information on factors the judge will consider when making the award, see [ORS 107.105](#).

K. Property and Debts

You need to tell the court how you want to divide your property and debts. You should be as specific as possible and include everything you and the respondent own or owe. If any property or debts are not included in your judgment, you cannot return to court to make changes later except in very limited circumstances.

If you don't know what to ask for in your *Petition*, you can request "equitable relief." This means that the judge will decide what is fair if your case goes to trial. You should talk to a lawyer if you intend to do this.

You may be required to serve new documents on the respondent before you can get a final judgment if:

- you are not specific in your *Petition* about how you want the court to divide property and debts (including if you asked for equitable relief)

or

- what you put in the *Judgment* is different from what you asked for in the *Petition*

STEP 1 – STARTING YOUR CASE

Fill out the following forms

- *Petition for Separation of Marriage/RDP*
- *Confidential Information Form (CIF)*
- *Notice of Filing of Confidential Information Form*
- *Summons*

Have your documents reviewed

You may have your documents reviewed by either a lawyer or the Family Court Assistance Office. You should have a lawyer advise you on these forms if either of you have a retirement account or have **other complicated issues**. You may schedule an appointment with the Family Court Assistance Office to review your documents by calling 541-704-3479 or by emailing lin.familycourt.mailbox@ojd.state.or.us.

Make copies

Make one copy of all of the forms for your records, and one copy of the *petition and summons* to serve on (deliver to) your spouse.

File the forms

File all of the **original** forms *except* the *Summons (file at a later time)* with the court clerk. The clerk will give you a **case number** when you file. Put the case number on all copies. See below for a list of the forms you will need to copy to serve on the respondent.

Payment of fees- The cashier will ask you for a filing fee when you file your papers. If you feel you can't afford to pay the fee, you may ask the clerk for an Application for Waiver or Deferral of Fees. This form needs to be filled out and filed with the court. If the fee is waived, you will not have to pay the fee. If the fee is deferred, you will be required to pay the fee according to a payment plan set by the Court.

If you have purchased your packet of documents at the Linn County Courthouse, handouts are included in your packet. If you did not purchase your packet at the Linn County Courthouse, the clerk will give you a number of handouts when you file your papers. The handouts include a notice regarding continuation of health coverage, a copy of ORS 107.089 (documents parties may have to give each other), a notice regarding mediation, family law guidelines and services, and information about local parent education class. These notices are also available at www.courts.oregon.gov/linn. You are not required to serve the copy of ORS 107.089 on your spouse, but if you do, both spouses must follow what it says.

Create your service packet- copy all of the following forms to serve on the respondent.

- *Petition*
- *Notice of Statutory Restraining Order Preventing the Dissipation of Assets in Domestic Relations Actions*
- *Notice Regarding Continuation of Health Coverage*
- *Notice of Filing of Confidential Information Form*
- *Summons*
- *Uniform Support Declaration, Statement of Assets and Liabilities, and Parenting Plan (if you are filing any of these documents with your Petition)*
- Copy of ORS 107.089 (optional)

STEP 2: NOTIFYING THE OTHER PARTY

You must officially notify Respondent that you have filed a case. This is called "service." Follow the same steps to serve any 18, 19, or 20 year old children.

Formal Service. You must officially notify Respondent that you have filed a case. This is called "service." Follow the same steps to serve any 18, 19, or 20 year old children.

There are four ways you can serve. Service must be done **after** your *Petition* is filed.

****3 CRITICAL POINTS****

1. If you have your copies served before you file, you will need to have them served the papers again
2. You **CANNOT** serve the papers yourself
3. If Respondent has a lawyer, you should also mail a courtesy copy of the papers to the lawyer

1. **Personal Service - Delivery of papers directly to the other party by the server:**
 - a. **By Process Server:** Take a copy of your papers to the sheriff's office in the county where Respondent is located and have a sheriff's officer serve the papers. The sheriff's office charges a fee for service. You can also hire a private process server of your choice.
 - b. **By a Non-Party:** Have a competent* person 18 years or older who is a resident of Oregon **and who is not a party** to the case (Petitioner or Respondent), **nor** the lawyer of a party, serve the papers. The server cannot be an employee of any party. If the respondent is outside of Oregon, the server can be a resident of the state where the respondent is. If you have safety concerns, have the sheriff perform service.

*competent means a person who can understand, remember, and tell others about an event.

A **Certificate of Service** must be filed with the court by whoever serves the respondent. The certificate must include the date of service and the name of the person served.

2. **Substituted Service:** The process server may leave the papers at the respondent's residence (where he or she normally lives) with someone 14 years or older who lives there. The process server must also mail a copy of the papers (with a statement of the date, time, and place that the papers were served) to the respondent by first class mail. Make sure the process server completes a **Certificate of Service**. The date of service is the day the first class mailing is put in the mail.
3. **Office Service:** The process server may leave the papers with someone *in charge* of the respondent's office or normal workplace. The process server must also mail a copy of the papers (with a statement of the date, time, and place that the papers were served) to the respondent by first class mail. Make sure the process server completes a **Certificate of Service**. The date of service is the day the first class mailing is put in the mail.
4. **By Mail:** First, the server must send the papers to the respondent's home or business address by first class mail. Second, the server must send a copy by certified mail, return receipt requested. The server **must** file proof of the service with the court, including the signed green card, date of receipt, and a **Certificate of Service**. The date of service is the day the respondent signs the returned green postal card.

NOTE: If the green postal card is not returned or if someone other than the respondent signed for it, then service by mail was not effective and you must try another type of service.

Standard Methods of Service for your Server	
Personal Service	Delivery of papers directly to the other party
Substitute Service	Delivery of papers to a person living at the other party's home who is at least 14 years old, AND mailing of the documents to the other party's home address by first class regular mail.
Office Service	Delivery of papers to a person who appears to be in charge at the other party's place of employment (who has a business duty to give the documents to the other party), done during working hours, AND mailing of the document to the home or business address of the other party by first class regular mail.

<p>Service by Mail (Return Receipt Requested)</p> <p>**You cannot complete this type of service.</p>	<p>Deliver by mailing a true copy of the summons and the petition to the respondent by first class mail AND by mailing the documents certified or registered, return-receipt requested, or by Express mail, the <u>other party</u> is MUST to sign the “return receipt.”</p>
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Acceptance of Service. If it is safe for you to give the respondent the papers yourself, you can use an **Acceptance of Service** form (available at the Linn County Courthouse, Room 107 or online for at <http://courts.oregon.gov/linn>) instead of having someone else serve the documents. If the respondent signs an *Acceptance of Service*, no other kind of service is required. Signing the *Acceptance of Service* does *not* mean the respondent agrees with anything in your *Petition*, only that he or she received the papers. **You must file the papers with the court and be given a case number before you give the copies to the respondent.**

Alternative Form of Service- If you are not able to have your spouse served by any of the methods described above, you may ask a judge to allow you to use another service method. The judge might allow you to publish, post or mail the documents. In order to make this request, you may use the Alternative Form of Service packet. This packet is available for a small fee at the Linn County Courthouse, Room 107 or online for no cost at <http://courts.oregon.gov/linn>

Serving Children Who are Necessary Parties.

Because all unmarried, unemancipated children at least 18 and under 21 years of age are necessary parties to the case, they must also be served. Follow the same steps for serving your spouse/partner for serving children who are parties to the case.

Calculation of Time

Service by mail shall be complete on the day the respondent, or other person authorized by appointment or law, signs a receipt for the mailing, or three days after the mailing if mailed to an address within the state, or seven days after the mailing if mailed to an address outside the state, whichever first occurs.

Proof of Service

The Certificates are your proof of service. An original *Certificate of Service* or *Acceptance of Service* must be filed with the court for your case to proceed, regardless of the method of service.



If proof of service is not filed within **63 days** of filing your *Petition*, the court may send you a notice of dismissal. Your case may be dismissed if proof of service is not filed within 28 days of the notice.

STEP 3: RESOLVING YOUR CASE

There are three ways your case can be resolved: by agreement between the parties, by default if the respondent doesn'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 Respondent, the court may provide options to help you, including mediation and arbitration. Some courts may require that you mediate before you have a hearing. Check your court's Supplementary Local Rules for more information.

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. 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 The Judgments-page 11*).

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. You may also request that the court waive mediation requirements 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.

Arbitration- If you disagree only about how to divide your property, the court may send you to an arbitrator. The court may also ask the arbitrator to resolve spousal/partner support issues. An arbitrator is appointed by the court to meet with both parties and their lawyers (if any) and to make a decision about how property should be divided. Both parties are required to pay for this service unless the court orders otherwise. If either of you disagrees with the arbitrator's decision, you can ask the court for a trial, which requires payment of additional fees. If a trial is not requested, the arbitrator's decision is final unless both of you agree on another resolution.

If you and Respondent have agreed to all of the issues, fill out and file:

- **Declaration in Support of Judgment**
- **General Judgment of Separation of Marriage/RDP**
 - Note: The *Judgment* must be signed by both parties before being submitted to the court.

NOTE: You must file the above Stipulated Judgment (agreement) no later than **91st day** after you filed the Petition. If not, your case may be dismissed.

By Default - Respondent has 30 days to respond to your *Petition*. The time starts running from the day *after* the date of service. The response must be in writing and must be filed with the court and mailed to you. If the respondent does not file a response within 30 days, you may request an *Order of Default*.

Default means that you are asking the judge to award you what you asked for in your *Petition* because the respondent did not file a response. Look at [Oregon Rules of Civil Procedure](#) (ORCP) rule 69 for more detailed information.

- NOTE: If the respondent has given you written notice that he or she intends to appear, you must give written notice that you intend to apply for a default order at least 10 days before you file your motion. See [Uniform Trial Court Rule 2.010](#) for the form your notice must be in. File your notice with the court and mail it to the respondent.

The judge may not grant a default if the respondent is incapacitated, a minor, a financially incapable person, a protected person, or a respondent in a fiduciary protective proceeding, as defined by [ORS 125.005](#).

Requesting a Default - fill out the following forms:

- ***Ex Parte Motion for Order of Default and Declaration in Support***
- ***Order on Motion for Default***
- ***Declaration in Support of Judgment***
- ***General Judgment of Separation of Marriage/RDP***

Read your *Petition* CAREFULLY! The ***Declaration in Support of Judgment*** allows you to note any information that has changed since you filed the *Petition*. Read **each** section of the *Petition* you filed and note any changes in the spaces provided. You must complete the rest of the *Declaration* in all cases.

NOTE: File the originals with the court any time *after* 30 days from the date of service. You must file the *Motion for Order of Default and General Judgment* by the **91st day** after you filed the *Petition*. If not, your case may be dismissed.

By Trial - Linn County court will schedule an early resolution conference if a response has been filed. These meetings usually take place with a judge and with both spouses present, along with their attorneys if they are represented. **You must attend all conferences that are scheduled unless you have received permission from the judge not to attend. If you fail to appear at the conferences or court appearances, your pleadings may be stricken and a judgment entered against you.**

At the conference, the judge will probably talk to you about how the case is going to be resolved, may consider requests for temporary orders and will set future court dates.

Trial Guide - 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, and 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://courts.oregon.gov/OJD/OSCA/JFCPD/Pages/FLP/Family-Law-Self-Help.aspx>

NOTE: After the Trial, the judge will instruct who needs to file the General Judgment. Follow the instructions in *The Judgment* (below).

THE JUDGMENT

A ***General Judgment of Separation of Marriage/RDP*** is completed by one the spouses and 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.

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

If the respondent DID NOT file a response, the information you fill out in the final judgment should be *exactly* the same as what you requested in the *Petition*.

If the respondent DID file a response, the information should be the *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* document along with the *Notice of Proposed Judgment or Order* to the respondent and any adult children who have not filed a *Waiver of Further Appearance* in the case.

Other parties can object to how the *Judgment* is written. If that happens, you have 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.

If the respondent is responsible for preparing the judgment, the respondent 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. If you and the respondent are not able to resolve your objections after reasonable efforts, you can either send a written explanation of your objections to the respondent or directly to the court. You must notify the respondent 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.

If you are responsible for preparing the final judgment, make a copy for yourself and one for Respondent (unless you got an *Order of Default*). File the original with the court.

Your separation is finished and 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. A *Notice of Entry of Judgment* will be sent to you

ADDITIONAL RESOURCES

Oregon Judicial Department - Family Law Forms and Resources: <http://courts.oregon.gov>

Oregon State Bar <http://oregonstatebar.org>
Lawyer Referral 1-800-452-7636
Modest Means (low income)
Tel-law 1-800-452-4776

Child Support Program: 1-800-850-0228;
<http://oregonchildsupport.gov>

Division of Child Support: 503-986-6090
<http://oregonchildsupport.gov> or
<http://justice.oregon.gov/guidelines>

Legal Aid Service of Oregon (must have low income)
(541) 926-8678 or 1-800-383-1222
Child Support Help Line 1-800-383-1222

Local offices: Look on the “Local Family Law Practices and Programs” form for your court, the telephone book, or in the “legal links” section of the Oregon State Bar’s website:
<http://oregonstatebar.org>

Domestic Violence Help 1-800-799-SAFE

NOTE: The complete *Instructions* are available on the Oregon Judicial Department’s Family law website at: <http://courts.oregon.gov/OJD/OSCA/JFCPD/Pages/FLP>