

## Packet 3 General Instructions Filing For Dissolution (Divorce), Cases with No Children

### **Notice about these instructions and forms.**

These instructions are not a complete statement of the law. They cover basic procedure for uncomplicated divorce cases. Neither the Court nor Court Staff are 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 by clicking on the form name if you are using the Internet at: [www.courts.oregon.gov/linn](http://www.courts.oregon.gov/linn) go into **FORMS**. Linn County Court also has the forms available in Room 107.

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

If you have a question about a form you cannot locate, you should consult your local court which may have the form available.

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

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

<b>Steps and Forms</b>
<b>1. Starting your Divorce</b>
Petition for Dissolution of Marriage (attached Required Notices- Statutory Restraining Order, ORS 107.089 and Health Insurance) Acknowledgment about Dissolution (Divorce/Separation) Automatic Mutual Restraining Order Preventing Dissipation of Assets and Request for Hearing) Certificate of Residency UTCR 2.130 Confidential Information Form Notice of UTCR 2.130 Confidential Information Form (CIF) Filing Record of Dissolution of Marriage ( <i>NCR Vital Statistics Form; Available from your local court</i> ) Summons
<b>2. Serving your Spouse</b>
Affidavit of Service Acceptance of Service
<b>3. Waiting for a Response; Taking a Default</b>
Petitioner’s Ex Parte Motion for Order of Default; and Order Petitioner’s Affidavit in Support of Motion for Order of Default
<b>4. Finalizing Your Divorce</b>
Petitioner’s Motion for Order Allowing Entry of Judgment on Affidavit in Lieu of Hearing; and Order Affidavit Supporting General Judgment of Dissolution of Marriage General Judgment of Dissolution of Marriage Attachment: Uniform Support Affidavit ( <b><i>Available from your local court</i></b> )

### **When filling out the forms, follow these directions:**

- Please make certain that all sections are complete. The document must be readable. Use black or dark blue print only. If the document is handwritten, please print. If the answer to a question is none, then write “none”. Do not use “N/A” for the word none.
- You are the named “petitioner” on all court forms and your spouse is the “respondent.” Use full names (first, middle or middle initial, last) and print the names the same on all forms.
- The clerk will give you a case number when you file your papers. Make sure to put this on all copies and originals.
- Some forms have to be notarized or signed in the presence of a court clerk. You will need your picture ID for this. Many banks provide notary services.
- Many forms say on the bottom, “I certify that this is a true copy,” and provide a place to sign. Don’t sign this line on the original form or on your own copy. You need to sign this line only on the copies that are served on your spouse.
- Make yourself a copy of any document you are filing with the court. File the original with the court clerk.

- Keep the court informed of your current address so you get notice of all court dates. **You are not required to use your residential address on any court form.** You may use a contact address where you regularly check in. **Your contact address will become public information.** Please make sure that you use an address that is ok for other people, including the respondent, to know. It must be an address where you can receive mail. If you use a contact address, the court will assume that you will receive all notices sent to that address. **Note: If you fear for your safety, you may be able to obtain a non-disclosure order.** You may check with the Family Court Specialist for instructions and appropriate forms.

## **STEP 1: STARTING YOUR CASE**

### **Legal Issues to Consider**

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

You may not know what real or personal property to ask for in the beginning because you are not sure what property you own either alone or together with the other party. Or you may not know how much spousal support to ask for in the beginning because you do not know how much the other party earns. The Petition provides options for either indicating a specific amount or distribution of property or, where you do not know, you may ask that these be made “equitably” (i.e., fairly) or list a minimum amount which may be increased based upon more complete information or “prior to judgment” so that you have time after filing the petition to find out what property you own or how much the other party earns. **HOWEVER:**

•if you do NOT ask for a specific amount of spousal support or distribution in the Petition, or what you ask for in the General Judgment of Dissolution of Marriage is different from what you asked for in the Petition, **the court may require you to re-serve amended documents, which include the changes requested, on the other party** before it will enter a General Judgment of Dissolution of Marriage. This is so that the other party knows what is being asked for in the General Judgment of Dissolution of Marriage if a default order is allowed.

### **Spousal Support**

Oregon law provides for three different categories of spousal support: transitional, compensatory and spousal maintenance. Transitional support may be ordered for a spouse to get work related education and training. Compensatory spousal support may be ordered if one party has significantly contributed to the education, training, vocational skills, career or earning capacity of the other spouse. Spousal maintenance may be ordered for the support of one spouse. The judge will consider a number of factors when making the award, and may order more than one type of support. For more information on what the judge will consider, please refer to ORS 107.105 (to view, visit your local law library or [www.leg.state.or.us/ors](http://www.leg.state.or.us/ors)). **You may pick up a check list handout which includes information regarding social security at the Linn County Courthouse, Room 108.**

### **Property and Debts - Statutory Restraining Order**

Oregon law requires both Petitioner and Respondent to obey a restraining order preventing *either party* from dissipating (destroying, removing, disposing of) real or personal property assets, making unilateral (without the agreement of the other party) changes to insurance policies, and making extraordinary expenditures. **By filing your petition, you agree to be bound by the terms of this automatic order.** If you violate the order, you may be subject to sanctions. You must serve a copy of the Notice of Statutory Restraining Order , included in this packet, on the Respondent with the Summons.

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

### **Confidential Personal Information.**

Please read the Confidential Information Form (CIF) information sheet. There is certain personal information required by your paperwork that will be protected from public disclosure.

## **If Both Spouses Already Agree**

There are two ways to handle your case if both spouses agree on all issues and the documents meet all the legal requirements: (1) one spouse can file as petitioner, the other spouse can accept service of the petition and not file a response (if there is no disagreement with what the petitioner requested in the petition) and judgment will be entered based on what was stated in the petition, or (2) the parties may choose to file as co-petitioners by marking the “Co-Petitioner” box on the forms. If you file as co-petitioners, both of you must sign all the documents.

If your spouse (the respondent) does not agree with you at first and files a response, then later decides that what you requested in the petition is okay, he or she can file a Waiver of Further Appearance and Consent to Entry of Judgment form to avoid having to go through the court process further.

To get the divorce case started, fill out the first set of forms, file them with the clerk and have your spouse “served” (have the papers delivered to your spouse).

Fill out the following forms.

- *Petition for Dissolution of Marriage and required notices*
- *Acknowledgment about Dissolution*
- *Certificate of Residency*
- *Summons*
- *Record of Dissolution of Marriage (NCR Vital Statistics Form; **Available from your local court**)*
- *UTCRC 2.130 Confidential Information Form (CIF)*
- *Notice of Filing UTCRC 2.130 Confidential Information Form (CIF)*

## **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.

## **Have your documents reviewed**

You may have your documents reviewed by a lawyer or the Linn County Family Court Specialist before you file. For information about how to find a lawyer, call the Oregon State Bar Lawyer Referral Service. If you are low income, you may get your documents reviewed for a smaller fee through the Oregon State Bar’s Modest Means program, or you may call your local Legal Aid office. Contact numbers are listed in the additional resources section at the end of these instructions.

## **File the forms**

File all of the original forms that are listed above with the court clerk, except the summons. The court clerk will ask you for a filing fee when you file your papers. Filing fees lists are available by contacting the court clerk. If you feel you can’t afford to pay the fee, you may ask the clerk for a form to ask the court to waive or defer your filing fee called 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 don’t have to pay the fee. If the fee is deferred, you will be required to pay the fee pursuant 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), family law guidelines and services and a family law resource list. The clerk will give you two copies of each handout: one for you and one to be served on your spouse. You aren’t required to serve the copy of ORS 107.089 on your spouse, but if you do, both spouses must follow what it says.

## **STEP 2: SERVING YOUR SPOUSE**

### **Have your spouse served**

You are required to have your spouse served (have papers delivered) with (a) copies of the documents you filed. You may purchase the service copies from the court for a small fee or copy them yourself before you file with the court. You may certify the copies by signing your name where it says “I certify this is a true copy”.

If your spouse is willing to accept service, s/he must fill out the Acceptance of Service form, sign it in front of a notary or court clerk, then file it with the court. It is not necessary that your spouse agree with what is in the papers, just that he/she is willing to acknowledge receipt of them.

If the other party will not complete the Acceptance of Service form, **YOU CANNOT SERVE THE PAPERS**

**YOURSELF.** You may have service completed by the Sheriff in the county where your spouse lives, by a private process server, or by another individual who is a competent person 18 years or older, an Oregon resident (or of the state where service is made) and not a party nor an attorney for a party. Caution should be used before asking a friend or relative to serve the papers if your spouse might react angrily or violently. An Affidavit of Service along with the original summons must be filed with the court after service has been made. Make certain that all of the documents given to your spouse are listed in the Affidavit of Service.

The best way to serve the other party is to have the person serving the papers hand them directly to the respondent (personal service). If personal service cannot be done, there are other ways to serve the papers including “substitute service,” “office service,” and “service by mail” — see the Table below. You may ask the Sheriff or a private process server about these other options or consult an attorney.

<b>STANDARD METHODS OF SERVICE</b>	
<b>Personal Service</b>	Delivery of papers directly to the other party
<b>Substitute Service</b>	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.
<b>Office Service</b>	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.
<b>Service by Mail (Return Receipt Requested)</b>	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 <b>REQUIRED</b> to sign the “return receipt.”

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 Packet 6A-Alternative Form of Service. This packet is available for a small fee at the Linn County Courthouse, Room 107 or online for no cost at [www.courts.oregon.gov/linn](http://www.courts.oregon.gov/linn)

**Calculation of Time**

Service by mail shall be complete on the day the defendant, 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.

**STEP 3: WAITING FOR A RESPONSE; TAKING A DEFAULT**

Oregon law gives your spouse 30 days to respond to your petition. The time starts running from the date the other party was served. The response must be written and must be filed with the required filing fee. Your spouse may ask the court to waive or defer the fee.

**If your Spouse is in the Military**

If your spouse is in the active military service of the United States and has not responded to the petition, you may have to go through some extra steps. The court will not go any further with your case until one of the following things has happened: (1) your spouse is no longer in the active military, (2) your spouse has waived his or her rights using the Waiver of Right to Stay of Proceedings form, or (3) the judge holds a special hearing in your case. You may get a Waiver of Right to Stay of Proceedings form from the family court specialist or in the response packets.

Response packets are available for a small fee at the Linn County Courthouse, Room 107 or online for no cost at [www.courts.oregon.gov/linn](http://www.courts.oregon.gov/linn) You may need to talk to an attorney if your spouse is not willing to sign the waiver.

### **Check for Response**

Your spouse should mail or deliver a copy of his or her response to you when it is filed with the court. If you haven't received a copy of a response after 30 days from the date of service, you may check with the court clerk to see if one has been filed. If no response has been filed, you may request a "default order." A default means that you may ask the court to enter a judgment giving you the items you asked for in your petition, with no input from your spouse. If a response has been filed, you will not be allowed to take a default and you will skip the next two sections about requesting a default and go straight to step 5.

### **No Response Filed; Requesting a Default**

To ask the court to enter a default, you must fill out the following forms:

- *Ex Parte Motion for Order of Default; and Order*
- *Affidavit in Support of Motion for Order of Default*

After you make yourself a copy of the completed forms, you may file the original with the court anytime after 30 days have expired from the date of service.

### **Check Back**

Check back with the court clerk in a week to 10 days to see if your request was granted. If the request was not granted, ask the court clerk why it was not. Sometimes, the proof that service was made on your spouse isn't complete enough for the judge to be sure that your spouse got notice of the court proceeding.

### **Temporary Orders**

You may ask the court to make temporary orders after the petition is filed. Temporary orders are in effect once signed by the judge and last until changed by the judge or until the General Judgment of Dissolution of Marriage is signed by a judge. For example, either spouse may request an order for spousal support, an order preventing one or both parties from selling property owned by both spouses or an order requiring one spouse to move out of the family home. To make any of these requests, you file a "motion" (request) asking the court to do what you want. You may need the assistance of an attorney to file these requests.

### **Conferences with the Judge**

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.

### **Working Toward Agreement**

The court wants to help you resolve the issues that you and your spouse disagree on. You may discuss these issues with your spouse directly if it is safe for you to do so and if no court order prohibits that contact. If you can't resolve the issues on your own, the court may provide a number of options to help you, including arbitration.

### **Arbitration**

The court may refer spouses who disagree on how to divide their property to an arbitrator. The parties may also ask the arbitrator to resolve spousal support issues. An arbitrator is a lawyer appointed by the court who meets with both spouses and their lawyers, if they are represented, and makes a decision about how the property should be divided. Both spouses are required to pay for this service unless the court has specifically waived or deferred the arbitrator's fee. If either spouse disagrees with the arbitrator's decision, he or she can ask the court for a trial. If a trial is not requested, the arbitrator's decision is final unless both spouses agree on another resolution.

## **Trial Charges**

If your case is not resolved and a trial is needed, **you must pay a trial fee before a trial will be scheduled**, unless waived. Contact Linn County Courts, Civil Records at (541) 967-3845 for the correct fee amount.

## **STEP 4: FINALIZING YOUR DIVORCE**

A divorce is “final” on the date the General Judgment of Dissolution of Marriage (divorce) is signed by a judge. If there are still items that you don’t agree on, the court will probably set a date for a “final hearing” or trial. Some judges may want you to attend a “settlement conference” (a meeting between the parties to discuss settlement, usually led by a different judge than your trial judge) to help you come to agreement.

## **Forms to Finalize Your Divorce**

The following forms are required to finalize your divorce:

- *General Judgment of Dissolution of Marriage (Divorce)*
- *Affidavit Supporting General Judgment of Dissolution of Marriage (Divorce)*

If your spouse did not file a response and the court has entered an Order for Default, or if your spouse responded and then filed a Waiver of Further Appearance and Consent to Entry of Judgment form, or if your spouse has signed the General Judgment of Dissolution of Marriage, you will also need the following:

- *Motion for Order Allowing Entry of Judgment on Affidavit in Lieu of Hearing; and Order*

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

- **Uniform Support Affidavit**  
This form is only required if a response was filed and you and your spouse do not agree on spousal support. You aren’t required to complete the schedules on the form unless one spouse asks for spousal support.
- **Waiver of Personal Service**  
After the General Judgment of Dissolution of Marriage is signed, if one spouse doesn’t do what it says, the other spouse may ask the judge to enforce the judgment. The spouse asking for enforcement is required to personally serve (deliver) the other spouse with notice of this request. If you would like to keep your home address confidential, you may file this form listing another address for service. You are responsible for making sure you get all papers delivered to the address you list. A Waiver of Personal Service form is available from the court clerk.

## **The General Judgment of Dissolution of Marriage**

The General Judgment of Dissolution of Marriage finalizes your divorce and contains all of the issues decided in mediation, arbitration, hearing, or through your agreement. This document is prepared by the petitioner (you) if your spouse didn’t file a response. If both spouses agree on all issues, it may be prepared by either spouse as long as it is reviewed and signed by both spouses. If the spouses don’t agree on all issues, the judge may direct one spouse to fill out the General Judgment of Dissolution of Marriage.

If your spouse didn’t file a response, the information you fill out in the General Judgment of Dissolution of Marriage should be the same as what you requested in the petition. If your spouse filed a response, the information should be the same as was decided in arbitration, at a hearing or through your agreement.

If you are responsible for filling out and filing the General Judgment of Dissolution of Marriage, make a copy for yourself and one for your spouse (unless he or she didn’t file a response), and file the original with the court.

**WARNING: MANY TIME LIMITS APPLY IN LEGAL CASES!**

PURSUANT TO UTCR 7.020:

Within 63 days after filing your Petition, you are required to file proof that the respondent was served with all of the documents. If you have failed to file the required Proof of Service, and the Respondent has not filed a response, unless the Court has allowed additional time, a notice that your case will be dismissed within 28 days may be sent to you.

**ADDITIONAL RESOURCES**

Oregon Judicial Department - Family Law Forms and Resources: [www.ojd.state.or.us/familylaw](http://www.ojd.state.or.us/familylaw)

Oregon State Bar [www.osbar.org](http://www.osbar.org)  
Lawyer Referral 1-800-452-7636  
Modest Means (low income) “ ”  
Tel-law 1-800-452-4776

Child Support Program: 1-800-850-0228;  
[www.oregonchildsupport.gov](http://www.oregonchildsupport.gov)

Division of Child Support: 503-986-6090  
[www.oregonchildsupport.gov](http://www.oregonchildsupport.gov)

Legal Aid Service of Oregon (must have low income)  
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 web site: [www.osbar.org](http://www.osbar.org)

OSU Extension Service Publications:  
1-541-737-2513  
Publications available on marriage, shared custody, financial planning and other topics.

Domestic Violence Help [1-800-799-SAFE](http://1-800-799-SAFE)