

## INSTRUCTIONS FOR PRE-JUDGMENT TEMPORARY ORDERS (Exclusive Use of Property)



You can **ONLY** use these forms if:

- 1) A *Petition* for separation, dissolution, or annulment has already been filed (or will be filed at the same time as this motion)  
**and**
- 2) You have not received a general judgment in this case. If you *have* received a judgment already, go to [www.courts.oregon.gov/forms](http://www.courts.oregon.gov/forms) for information and forms to request post-judgment temporary orders.
- 3) The property addressed in this Motion must be real property that the parties OWN. The Court cannot award exclusive use of rental property to one party or the other. If you have a rental agreement you should consult with your landlord or see legal advice regarding your options.

### **Important Contact Information**

Oregon Judicial Department - [www.courts.oregon.gov](http://www.courts.oregon.gov)

Oregon State Bar Lawyer Referral Service - [www.oregonstatebar.org](http://www.oregonstatebar.org)

**Phone:** 503.684.3763 or toll-free in Oregon at 800.452.7636

### **TABLE OF FORMS**

- Motion and Declaration
- Order to Show Cause
- Certificate of Service



### **Step 1: Filling out the Forms**

- **PARTIES & CASE NUMBER** – the parties and the case number are the same on your *Motion* as they are in the *Petition* that you already have. If you filed the *Petition*, then you are the Petitioner on this motion. If the other party filed the *Petition*, then you are still the Respondent, even if you are the one filing this motion.
  - Make sure you put the case number on each form and on the bottom of each page



### **Have your documents reviewed**

You may have your documents reviewed by a lawyer or a court facilitator (if your court has one) before you file. For information about how to find a lawyer, call the Oregon State Bar at the number on Page 1. 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 call your local Legal Aid office.

Facilitators are available for free at the Lane County Circuit Court but you must make an appointment for document review. Call the Family Court Assistance Office at 541-682-4302 to schedule an appointment.



***Make two copies*** of all forms. You will need copies of the *Motion and Declaration and Order to Show Cause* to serve on the other party. See Step 3 for service information.

## **STEP 2: FILING THE FORMS**



Take the forms to a judge at an “Ex Parte” hearing. “Ex Parte” is a time when you can present papers to a judge in a courtroom. It is between 8:30am and 8:50am Monday through Friday. You will need to check in with Court Information on the second floor of the Lane County Courthouse to attend an Ex Parte hearing. There is no filing fee for this motion.

### **The Order to Appear and Show Cause**

The judge will review your motion and declaration. The judge will sign the *Order to Appear and Show Cause* which either grants or denies your request to have the other party respond to your temporary requests and sets your matter for a hearing before a judge on another day. The order has information for the other party about how the action will proceed.

- If the court grants your request on the *Order to Appear and Show Cause*, you must serve the Order and a copy of the Motion and Declaration, Uniform Support Declaration and the attached documents on the other party. See the next section for detailed service information.



## **STEP 3: NOTIFY THE OTHER PARTY**

You must officially notify the other party. This is called “service.” Serve a copy of the *Motion and Declaration* and any supporting documents that you file. **NOTE:** If the other party has a lawyer, you **MUST** serve the lawyer – NOT the party!

\*\*If you are filing your *Motion* at the same time you file your *Petition*, serve both the *Motion* and the *Petition* together following the service rules for the *Petition*. If you are filing this *Motion* separately, follow the service rules below. Please note: the rules of service are different for Petitions and Orders such as these, so be sure you are serving the paperwork correctly. \*\*

1. **By Mail:** Mail the papers to the other party’s lawyer or to the party’s home address by first class mail. The date of service is the date you mail the papers.
2. **By Delivery:** Hand the papers to the other party’s lawyer or to the party, leave the papers at the lawyer’s or party’s office with a clerk or someone in charge, or leave the papers at the party’s residence with someone 14 or over who lives there.

### **Proof of Service**

Fill out the “Certificate of Service” and file it with the court



### **STEP 4: THE HEARING AND ORDER**

- The court will schedule a hearing, you **must** appear or your motion will be dismissed. When you appear at the hearing set on the Order to Show Cause, the Court will consider whether or not to grant your request.



Attend the hearing and bring any witnesses and evidence with you to the hearing that you would like the court to consider. The judge will make a ruling.

This type of request for temporary relief is considered in an expedited and shortened manner compared to a full trial that will address all issues between you and the other party. It is important to remember that the decision of the court is *temporary* until the full trial takes place. Temporary Relief hearings are generally scheduled on Monday mornings and must take less than an hour for the judge to hear both sides' positions. You must be prepared with organized testimony and evidence not to exceed 20 minutes (because the other side also gets time and the judge needs time to issue a ruling). It is important to carefully stick to the timeline otherwise the judge could set your matter over for another day and you might have to come back to court again.

The decisions made by the judge for this temporary relief will terminate when the final General Judgment is issued in your case. If you have not resolved all issues between you, at the time of trial, the trial judge will rule on the remaining unresolved issues, including the division of property.

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

Case No:

\_\_\_\_\_  
Petitioner

and

\_\_\_\_\_  
Respondent

**MOTION FOR PRE-JUDGMENT  
TEMPORARY EXCLUSIVE USE  
OF PROPERTY**

Petitioner  Respondent

A *Petition* has been filed in this court for dissolution, separation, or annulment but no *Judgment* has been issued. Date *Petition* filed: \_\_\_\_\_  
(Note: do NOT use this form if you filed a request to modify (change) an existing judgment)

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**Motion**

I am the  petitioner  respondent named above

I request the following temporary orders to be effective until a general judgment is issued in this case: (check all that apply and complete all information)

**PROPERTY**

Possession and exclusive use of the family home (address) \_\_\_\_\_

because:

minor children live there and it is in the children's best interest to stay in the home and to have the other parent move out.

the other party assaulted or threatened to assault me

Temporary use, possession, and control of the following real or personal property.  
(Describe the property you want control of the property) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional page attached

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**Statement of Points and Authorities**

ORS 107.095 authorizes the court to enter certain temporary orders after commencement of suit and before judgment

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**Declaration**

1.  The family home listed above is real property owned by one or both parties.
2. It is in the children's best interest to stay in the home and to have the other parent move out because (*explain*) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Additional page attached

3. The other party assaulted or threatened to assault me (*explain*) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Additional page attached

3. I am requesting temporary use, possession, and control of the above listed real or personal property because (*explain*): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Additional page attached

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

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

\_\_\_\_\_

Print Name

\_\_\_\_\_

Contact Address

\_\_\_\_\_

City, State, Zip

\_\_\_\_\_

Contact Phone

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

Case No:

\_\_\_\_\_  
Petitioner

and

\_\_\_\_\_  
Respondent

**ORDER TO APPEAR AND  
SHOW CAUSE RE:  
TEMPORARY ORDERS**

Petitioner's

Respondent's

**TO:**  Petitioner  Respondent, (name) \_\_\_\_\_.

BASED UPON the Motion and Declaration of the  Petitioner  Respondent on file herein,

YOU ARE HEREBY ORDERED TO APPEAR before the above-entitled Court at the Lane County Courthouse, Lane County Circuit Court, 125 E. 8<sup>th</sup> Avenue in Eugene, Oregon on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ at 9:00 a.m. in courtroom \_\_\_\_\_, then and there to show cause, if any you have why the relief requested in the Motion should not be ordered.

YOU ARE FURTHER ORDERED to appear and be heard or to otherwise contest the issues, either in whole or in part, if you so desire, to file a Responding Affidavit with the Court prior to the scheduled hearing in response to the moving party's Affidavit and allege matters to the extent you wish to put matters of fact at issue. You must further provide  Petitioner  Respondent or his/her attorney, if any, with a certified true copy of said Affidavit prior to the hearing. In the event you should fail to appear in Court or to file a Responding Affidavit as ordered above, this Court shall enter such Orders and Judgments in this matter as are appropriate.

The Motion for Order to Show Cause is allowed. The parties are ordered to appear for a hearing on this issue as specified above.

Denied \_\_\_\_\_

*Judge Signature:*

\_\_\_\_\_

\_\_\_\_\_

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**Certificate of Readiness.** This proposed order is ready for judicial signature because service is not required under UTCR 5.100 or because this order is submitted ex parte as allowed by statute or rule.

**Submitted by:**

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Submitting Party, *Print Name*

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Telephone or Contact Telephone

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Address or Contact Address

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City / State / Zip

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

Case No: \_\_\_\_\_

\_\_\_\_\_  
and  
\_\_\_\_\_  
Petitioner  
Respondent

**CERTIFICATE OF SERVICE**

(ORCP 7D(2))

- (a) Personal Service  
 (b) Substitute Service  
 (c) Office Service  
 (d) Service by Mail

I, **(name)** \_\_\_\_\_, declare that I am a resident of the state of \_\_\_\_\_ . I am a competent person 18 years of age or older. I am not a party to or lawyer in this case, and not the employee of a party. I certify that the person served is the person named below. I served true copies of the original **(check all that apply):**

- Petition and Summons  
 Information about mediation  
 Notice of Confidential Information Form (CIF) Filing  
 Notice of Statutory Restraining Order Preventing Dissipation of Assets  
 Order to Show Cause re: Modification with Motion and Declaration  
 Information about continuing insurance coverage (COBRA)  
 Uniform Support Declaration  
 Other information provided by the court clerk **(name all forms or documents served)** \_\_\_\_\_  
 Other **(name all forms or documents served)** \_\_\_\_\_

**by (check a, b, c, or d and complete all information):**

(a)  **Personal Service** on **(date)** \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m., to { Petitioner  Respondent} **(name)** \_\_\_\_\_ in person at the following address \_\_\_\_\_ in the County of \_\_\_\_\_, State of \_\_\_\_\_.

(b)  **Substitute Service** on **(date)** \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m., by delivering them to the following address \_\_\_\_\_ in the County of \_\_\_\_\_, State of \_\_\_\_\_ . Delivered to **(name)** \_\_\_\_\_, who is a person age 14 or older and who lives there.

**(Complete the section below only if the server also did the follow-up mailing required by ORCP 7D(2)(b). If a person other than the server did the follow-up mailing, that person must complete a separate Certificate of Service Mailing.)**

On **(date)** \_\_\_\_\_, I personally deposited a true copy of the same documents served with the U.S. Postal Service, via first class mail, in a sealed envelope, postage paid, addressed to the party to be served:  Petitioner  Respondent **(name)** \_\_\_\_\_, at the party's home address listed above, together with a statement of the date,



time and place that the documents were hand-delivered to the party's dwelling (residence).

(c)  **Office Service** on *(date)* \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m., by delivering them to the office of the party to be served, located at: *(address)* \_\_\_\_\_, during normal working hours for that office, where I left the documents with *(name)* \_\_\_\_\_, who is a person apparently in charge, to give the documents to the party to be served.

***(Complete the section below only if the server also did the follow-up mailing required by ORCP 7D(2)(c). If a person other than the server did the follow-up mailing, that person must complete a separate Certificate of Service Mailing.)***

On *(date)* \_\_\_\_\_, I personally deposited a true copy of the same documents served with the U.S. Postal Service, via first class mail, in a sealed envelope, postage paid, addressed to the party to be served:  Petitioner  Respondent *(name)* \_\_\_\_\_, at the party's:  home address at: \_\_\_\_\_, **OR**  business address above, together with a statement of the date, time and place that the documents were hand-delivered to the party's office.

(d)  **Service by Mail, Return Receipt Requested** on *(date)* \_\_\_\_\_, I personally deposited **two** true copies with the U.S. Postal Service. **One** by first class mail, and the **other** by certified or registered mail, Return Receipt Requested, or by express mail, postage paid, addressed to the party to be served:  Petitioner  Respondent *(name)*, at the party's home address located at: \_\_\_\_\_ *(address)*. ***(NOTE: If mailed Return Receipt Requested, the return receipt must be attached to this Certificate of Service.)***

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**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.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Print Name

***If person serving is NOT a sheriff or sheriff's deputy, address and phone number of server:***

\_\_\_\_\_  
\_\_\_\_\_