

## CHAPTER 11

# Family Relationships

Family relationships are always changing, whether because of marriage, divorce, death or birth. Elders—especially grandparents—are often affected by these changes. This chapter discusses issues grandparents often must deal with, such as the right to visit grandchildren and taking custody or guardianship of grandchildren or other child relatives.

Divorce, change of name and prenuptial agreements are issues affecting people of all ages. This chapter will familiarize you with the requirements for a divorce and guidelines you must follow if you decide to remarry. You will also find out how to decide, before marriage, what rights you want to keep over certain property if divorce or death occurs.

Finally, this chapter discusses family violence and how the Oregon Family Abuse Prevention Act and the Abuse Prevention Act for Elders and Persons with Disabilities can help you with restraining orders.

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## Grandparents' Visitation

If you have a dispute with your adult children or if one of your children gets a divorce, you could be denied contact with your grandchildren. If a parent does not let you visit your grandchildren, a court can order the parent to allow you to spend time with them. You must prove to the court that you already have a strong relationship with the children and that your spending time with them is in their best interest. Some counties may want you to meet with a trained mediator and the children's parents or custodian to try to reach an agreement before the court listens to your case. If you have concerns about being kept from your grandchildren, talk to a lawyer about getting visitation.

If the court gives you visitation rights, your rights continue if the parents divorce or legally separate, or if one or both of the parents die. Your rights may end if your grandchild is adopted or if the parents lose their rights over the child.

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## Custody of Grandchildren

Sometimes grandparents care for grandchildren permanently or temporarily. If you are caring for grandchildren for a short time, you should get written permission from at least one parent to authorize school attendance and emergency medical care for the child. A delegation of guardianship form is good for up to six months. However, the parent can revoke the delegation at any time.

If you expect to care for your grandchild for an extended time, you may want a legal **guardianship** over the child. A legal guardianship gives you stronger authority over the child's care and well-being. Legal guardianship generally will allow you to cover the grandchild under your health insurance. The court also can order the child's parents to pay child support. You must apply to a circuit court to become your grandchild's guardian. If the parents do not agree to the guardianship, you must show the court why the child needs a guardian. With or without a guardianship, you may qualify for Temporary Assistance for Needy Families (TANF) and Medicaid coverage for a grandchild in your care.

In unusual circumstances, grandparents may seek full legal custody of a grandchild. To win such a case without the cooperation of the parents, you must show the court that the parents are unfit to have custody of the child. You also must show that it is in the child's best interest for you to have custody. In 2004, the Oregon Department of Human Services and AARP published "Oregon's Legal Guide for Grandparents and Other Relatives Raising Grandchildren," which describes grandparents' rights in greater detail. The guide is available online at [extension.oregonstate.edu/fcd/oregoncares.php](http://extension.oregonstate.edu/fcd/oregoncares.php) and in hard copy from Oregon AARP.

## Divorce

Divorce has become more common in recent years. In Oregon, you do not have to prove that a failed marriage is anyone's fault. A "no-fault" divorce will be granted based on your inability to get along with each other. (Listen to Tel-Law topic 1132, "Dissolution of Marriage.")

A **divorce judgment** restores your status to that of a single person. It also divides your property and debts and may provide for **spousal support** when appropriate. Either spouse may receive temporary or permanent spousal support. The law considers each person's job skills, income, resources, age and health in deciding whether and how much spousal support to give. For couples with minor children, divorce settles custody, parenting time and child support issues. In Oregon, a child attending school at least half-time may receive support until he or she is 21 years old. (Listen to Tel-Law topic 1134, "How Financial Support for a Child or Spouse Is Established in a Marriage Dissolution.")

You can get a divorce in Oregon if you or your spouse has been living in Oregon for six months prior to filing. You can file for a **legal separation** before six months. A legal separation decides all the issues a divorce decides, except that it does not free you to remarry. Either spouse can change the legal separation to a divorce at a later time.

If you move to Oregon and leave your spouse behind in another state, an Oregon court may not be able to decide property, child custody and support issues. A family law lawyer can help you find out the state where you should file your case.

If you cannot agree on care and support for minor children or the division of property or debts, you should each see your own separate lawyer. One lawyer cannot protect the interests of both sides.

In Oregon, the court usually assumes that each party has contributed equally to the marriage and the property of the parties, even if only one party was employed outside the home during the relationship. The court tries to divide property with this in mind. This is less true for very short marriages, in which the court will consider the property each spouse had at the time of the marriage.

You may have more property than you realize. Property isn't just your home, cars and household items. It also includes the cash value of life insurance, future pensions and retirement benefits. Inheritance and gifts may be included in some instances. Usually, the part of a pension earned during the marriage is property the court can divide. This can happen even if you are not receiving benefits from the pension yet. If your divorce involves a pension, you should get legal advice.

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#### Short Form Divorce

If you and your spouse meet certain requirements, you can get a simple "short form" divorce. This type of divorce is not appropriate if there are minor children, if you have been married more than 10 years, if you own a home, if your debts are higher than a certain amount, or if you can't agree how to handle your property and debts. Remember that any agreements not included in your court papers cannot be enforced later.

Married couples who meet **all** of the following requirements can use the short forms available at courthouses to get a divorce without having a lawyer:

1. You or your spouse are Oregon residents and have been living here for the last six months;
2. You have not been married for more than 10 years;
3. Neither you nor your spouse owns any **real property**;
4. Neither you nor your spouse owns **personal property** worth \$30,000 or more;
5. Debts you have incurred from the date of your marriage are not more than \$15,000;
6. You are not asking for spousal support;
7. You do not have minor children, children older than 18 attending school, or children born to you or adopted by you and your spouse either before or during the marriage;
8. The wife is not pregnant. If a child was conceived or born to the wife during the marriage, but the husband is not the father, you should discuss this with a lawyer before filing for divorce;
9. You are not asking for any temporary orders (except a restraining order in a domestic violence situation);
10. You are unaware of any other divorce or annulment proceedings involving this marriage that are filed in a court and are not yet decided; and
11. You and your spouse agree on how to divide your belongings and debts.

If you meet **all** of the above requirements, contact the circuit court clerk in your county to get the forms free of charge. If neither you nor your spouse can afford to pay filing fees, you may request a fee waiver. In some counties, the court will not waive fees but will defer them until you can afford to pay. If fee waiver or deferral forms are not available at the courthouse, you may be able to get them from your local legal aid office or a private lawyer.

If you are in danger of family or household violence, the Oregon Family Abuse Prevention Act can help protect you. See more information on page 115.

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## “Pro Se” (Self-help) Divorce

Even couples who do not meet the requirements for a short-form divorce can file for divorce without using a lawyer, although the process can be frustrating without help. The forms you need for an uncontested divorce (a divorce in which the parties do not argue over property, debts or children) are available at most courthouses and can be downloaded from the Oregon Judicial Department website at [www.ojd.state.or.us](http://www.ojd.state.or.us). (You may want to check with your local court to find out exactly which forms it will accept.)

The forms can be used even if you have children and need child support or spousal support. They even include forms to request reasonable parenting time. In some counties, courthouse facilitators help people fill out and file the forms; in many locations, low-income Oregonians can get help completing the forms from local legal aid offices. Still, it is extremely important to get specific legal advice about dividing real estate, dealing with taxes, and claiming pension rights and spousal support. Remember too that you cannot enforce anything that you and your spouse agreed to in the divorce if that agreement is not part of your divorce judgment.

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## Use of Former Name

When you marry, you can keep your own name or use your spouse’s name. You also can resume using your own name after you have started using your spouse’s name. When you divorce, the court will enter an order allowing you to use any former name. (Listen to Tel-Law topic 1137, “Change of Name.”)

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## Anticipating Marriage

Often, people marrying later in life have property or children from earlier relationships. A **prenuptial agreement** allows the couple to decide, in advance, what rights each of them will keep over certain property if a divorce or death occurs. The prenuptial agreement must be in writing and signed by both parties. The couple can revoke or change the agreement later only by a signed written agreement. People who want such an agreement should ask their own separate lawyers well before the wedding. If there is a divorce, will contest or other action where the property rights are an issue, a prenuptial agreement would help decide the matter.

## Protection from Violence at Home

If a family or household member has threatened you with violence or abused you, the Oregon Family Abuse Prevention Act (FAPA) can help protect you. Under FAPA, you can get an order keeping the abuser from contacting you or coming to your home, school or workplace. In some cases, the court can order the abuser to leave the family home if you live there.

To qualify for a **FAPA restraining order**, you must show that:

1. The violence or threats occurred within 180 days of your petition for the order;
2. The abuser intentionally or recklessly caused or tried to cause bodily harm or placed you in fear of serious harm; and
3. The abuser is a spouse, former spouse, adult relative (by blood, adoption or marriage), person living in the same house, person who has lived in the same house with you within the last two years, or the other parent of your child.

People aged 65 and older or people with disabilities can also get a restraining order against family members, household members and certain caregivers under the **Abuse Prevention Act for Elders and Persons with Disabilities**. You can qualify if there has been violence, threat of violence, neglect, abandonment or verbal abuse that is likely to cause significant physical or emotional harm. You can also qualify if someone has improperly taken from you or refused to return to you your possessions or funds.

Abuse restraining orders are free. You can get the necessary forms and instructions from the circuit court clerk at your county courthouse. If your abuser disobeys the court order and comes to your home or workplace or threatens you, you can get immediate help from the police. The court order is valid for one year. You can renew the order within the year for good reason.

The Victims' Assistance Program in your county's district attorney's office can help you prepare the forms you need. It also can refer you to safe shelters and other services. The State Office for Seniors and People with Disabilities is another resource. It investigates complaints of abuse involving seniors and people with disabilities. (Listen to Tel-Law topics: 1140, "Restraining Orders and Domestic Violence"; 1193, "Protection of Elders and Disabled Adults from Violence and Emotional Abuse"; and 1195, "Financial Abuse of Vulnerable Adults.")

Persons of any age, even if they have not been physically harmed, may be able to obtain a **stalking order** against anyone who repeatedly behaves in a threatening manner toward them and who makes them reasonably fear for their safety.

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## Resources

See **General Resource List** for AAA/SPD offices, legal aid offices, OSB Tel-Law service and more.

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### **National Domestic Violence Hotline**

800-799-SAFE (7233); TTY: 800-787-3224

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### **Oregon Coalition Against Domestic and Sexual Violence**

380 Spokane Street, Suite 100  
Portland, OR 97202  
**503-230-1951**  
www.ocadsv.com

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### **Oregon State Bar Tel-Law Topics**

- 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 Is Not Being Paid
- 1136 - General Information About Adoptions
- 1137 - Change of Name
- 1139 - Financial and Legal Responsibilities of Parents for Damage Caused by Their Children
- 1140 - Restraining Orders and Domestic Violence
- 1141 - Foster Care and Termination of Parental Rights
- 1193 - Protection of Elders and Disabled Adults from Violence and Emotional Abuse
- 1195 - Financial Abuse of Vulnerable Adults

**503-620-3000 or 800-452-4776**  
www.osbar.org

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### ***Oregon's Legal Guide for Grandparents and Other Relatives Raising Children (AARP 2005)***

**866-554-5360**  
extension.oregonstate.edu/fcd/oregoncares.php

# Glossary of Terms

**Abuse Prevention Act for Elders and Persons with Disabilities:**

*Protection for people aged 65 and older or people with disabilities. Under this act, people may get restraining orders against family members, household members and certain caregivers.*

**Divorce Judgment:** *A court order that restores one's status to that of a single person. It divides property and debts and provides for spousal and child support when appropriate.*

**Family Abuse Prevention Act (FAPA) Restraining Order:** *An order that keeps an abuser in your family or household from contacting you or coming to your home, school or workplace. A similar order is available under the Elder Abuse Prevention Act.*

**Guardianship:** *See Chapter 4.*

**Legal Separation:** *A court order that divides property and debts and provides for spousal and child support when appropriate. It does not free spouses to remarry.*

**Personal Property:** *See Chapter 5.*

**Preuptial Agreement:** *An agreement, in writing, between two people before marriage on what rights each of them will keep over certain property if a divorce or death occurs.*

**Pro Se Divorce:** *A do-it-yourself divorce for which you do not have to hire an attorney.*

**Real Property:** *See Chapter 5.*

**Spousal Support:** *Financial support ordered by the court and paid by one ex-spouse or spouse to another in a divorce or legal separation case. Also called alimony.*

**Stalking Order:** *A court order that keeps away from you someone who has behaved intentionally in a threatening manner toward you more than once and who puts you in reasonable fear for your safety.*

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