



# DESCHUTES DISCOVERY

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## DIVORCE IN OREGON

Although no one likes to think that they will ever need a family law attorney, the fact remains that some of you or your loved ones have already gone through a divorce, a custody dispute, or a child or spousal support agreement, or will go through a divorce in the future. People facing hard choices need good advice so that they can make informed decisions. This article is designed to answer many of the most commonly asked family law-related questions.

### GENERAL QUESTIONS

**Q: What happens if I want a divorce, but my spouse does not?**

A: In Oregon, if one spouse claims there are "irreconcilable differences" that have led to the divorce, a court must grant a divorce, even if the other spouse claims that their differences are reconcilable.

**Q: How long does a divorce take?**

A: In an uncontested divorce, the parties agree upon the terms, much like negotiating the dissolution of a business partnership. When they have reached a final agreement that they both can live with, they can enter into either a marital settlement agreement or a stipulated judgment of divorce and are legally bound by the terms of their agreement or stipulation. An uncontested divorce usually takes about three to six months but may be accomplished in a much shorter time if all matters are agreed upon prior to filing.

A contested divorce means that the parties cannot agree upon the terms of the judgment and will need to resolve the case either through trial, mediation, or arbitration. This will usually take considerably more time--often six months to a year or longer.

**Q: Are prenuptial agreements valid?**

A: Yes. A prenuptial agreement is an enforceable contract between the parties and is enforceable if it was obtained fairly, does not violate public policy, and is not ignored by the couple once they are married (i.e., they fail to keep their individually-owned property separate). The primary requirements for such an agreement are that there be full and adequate disclosure of assets and liabilities and that each party be separately represented by legal counsel.

**Q: What about postnuptial agreements?**

A: This presents a much more difficult question. There is no statutory basis for a postnuptial agreement, but courts have enforced them if they are fair and there has been no undue pressure exerted by either party upon the other.

**Q: How much will my divorce cost me?**

A: The cost of your divorce depends on the type of case and the degree of conflict involved. The more hotly contested the case, the more expensive the case. Even in cases where the parties agree, you can anticipate paying from two to three thousand dollars to complete your divorce. Going to trial greatly increases the amount of attorney fees. The more the parties can agree upon, the more fees will be saved.

**Q: Can I make my spouse pay my attorney fees?**

A: In the majority of cases, each side has to pay his or her own attorney fees. The decision of awarding attorney's fees is within the discretion of the court. If one party makes substantially more income than the other, chances increase for an award to the disadvantaged party.



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## **CHILD CUSTODY AND PARENTING TIME**

### **Q: What does “custody” mean?**

A: There are two types of custody—physical and legal. Physical custody is determined by where the child primarily lives. Legal custody determines which parent has primary decision-making authority on the major issues in a child's life—education, religion, healthcare, and residence.

### **Q: Can I demand joint custody?**

A: No. Joint custody may only be awarded by the court if both parties agree. It should be used only when the parties can work cooperatively and keep the best interests of the children as their primary goal.

### **Q: I understand “custody,” but what is “parenting time”?**

A: Parenting time is the division of the child's time between the parents. The term “parenting time” generally refers to the time allocated to the non-custodial parent for visitation with the child. In Oregon, there must be a written plan designating the minimum amount of parenting time a non-custodial parent will receive. Parenting time usually includes weekends, holidays, and school vacations. The

schedule of parenting time will depend on the situation of the parties and take into consideration the ages of the children, the relationship of the children with each parent and the respective locations of the parties. There is a standard Deschutes County Parenting Plan which can either be adopted as “the Plan” or which can be consulted for guidelines.

### **Q: How is custody determined?**

A: The court determines custody “in the best interests of the child.” This means that the court is not to put the needs of either parent above the needs of the child in determining custody and parenting time. The court is specifically directed not to award custody to either parent based upon one parent being the “mom” or one parent being the “dad.” The court is to look at the relationship each parent has with the child, and based upon a list of statutory factors, determine which parent will best meet the needs of the child. Usually the parent who does most of the day-to-day care is awarded custody. As a practical matter, this is often the mother.

### **Q: What is a “custody study”?**

A: A custody study is a process through which an evaluator examines a family, interviews the parties and the children, looks at relevant information, and makes a recommendation to the court as to which parent they believe should be awarded custody based upon “the best interests of the children.” These evaluations are not binding on the court, but usually weigh heavily in the court's decision. They are expensive but give the court a much better basis for making a decision than two groups of biased witnesses supporting “their” side of the battle.

## **CHILD SUPPORT**

### **Q: Who pays child support?**

A: Generally, only the non-custodial parent has an obligation to pay child support. There are very few instances where child support can be avoided by the non-custodial parent, even in cases of severe financial hardship.

### **Q: How is the amount of the child support determined?**

A: Child support is usually determined according to a complex formula that takes into account the incomes of both parties, the number of children, and the costs of daycare and health insurance. Additionally, the amount of parenting time a non-custodial parent has with the child can dramatically impact the amount of their child support obligation. You may access the forms and formula online at [www.dcs.state.or.us/calculator/](http://www.dcs.state.or.us/calculator/).

### **Q: How long will I have to pay child support?**

A: Child support is required in most cases until the child turns 18, marries, becomes emancipated, or enters military service. Additionally, the support obligation can continue until age 21 if the child is attending a post-high school education program. There are rules regarding the number of hours the child must carry and grades which must be achieved to retain eligibility under the statute. ORS 107.108.

### **Q: Who pays for the child's health insurance?**

A: Usually the parent who can provide the best health insurance for the least amount of money provides the health insurance because that is in the best interest of the children. The parent paying the health insurance receives a credit against the child support amount based upon the income ratio of the parties.

### **Q: Who pays for childcare?**

A: Daycare and childcare expenses are generally paid by the custodial parent. In order to qualify, daycare expenses must be work-related (or school-related if a parent is returning to school to train for a career). However, the amount of child support paid by the non-custodial parent is increased to cover his or her proportionate share of that cost.

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**Q: Who gets to claim the children for tax purposes?**

A: It is presumed that the custodial parent will claim the children for any tax deductions or credits. However, in some cases, the court can award the non-custodial parent some or all of the children as dependents for tax purposes. The parties may also agree to split the tax deductions and credits or alternate who gets to claim the children each year.

**Q: Is child support tax deductible?**

A: No. The person paying child support cannot claim a deduction for child support. The spouse receiving child support does not have to claim child support as income.

**Q: Does the payment of spousal support affect the amount of child support?**

A: Yes. The amount of child support paid is determined by the percentage of total income contributed by each party. The payment of spousal support alters this ratio and impacts the child support amount.

## SPOUSAL SUPPORT

**Q: Will I be required to pay spousal support?**

A: Not necessarily. Spousal support may not be appropriate in every case. In cases where both parties worked during the marriage and have an ability to support themselves, then spousal support may not be appropriate.

**Q: What are the different types of spousal support?**

A: In Oregon there are three types of spousal support: transitional, maintenance, and compensatory.

- Transitional support is short-term support intended to help a spouse "transition" to a self-supportive position. This is often used while a spouse returns to school to improve job opportunities or while a spouse returns to work after an absence from the work force. The monthly amount of support may be more during this period and "stepped down" after the spouse's training is complete.

- Maintenance support is usually longer-term support designed to allow a spouse to live at a level not too disproportionate with that he or she was used to during the marriage. This is usually awarded after longer marriages where the spouse receiving support has little chance of becoming self-sufficient, usually due to age or health considerations.

- Compensatory support is intended to compensate the spouse receiving support for some form of contribution to the paying spouse's education, career, or earning capacity. For example, a husband who worked two jobs to put his wife through law school may have a claim for compensatory support. This is more in the nature of a repayment and once awarded is not modifiable.

**Q: How long will my spousal support obligation last?**

A: This depends on a number of factors, including the ages of the parties, the relative health of the parties, the education and work experience of the parties, and the likelihood that the spouse receiving support will be able to become self-sufficient. The court has great latitude in awarding support so, not surprisingly, there is little uniformity in the awards.

**Q: May I take a tax deduction for the spousal support that I pay?**

A: Yes. Spousal support is fully deductible to the spouse paying spousal support and taxable as income to the spouse receiving spousal support.

## PROPERTY DIVISION

**Q: How will assets be divided?**

A: As a general rule, the court will decide assets on a 50-50 basis unless there are extenuating factors such as poor health or extreme discrepancy in earning capacity, which may allow the court to give the disadvantaged spouse a greater percentage. In very short-term marriages where assets have not been co-mingled, the court may return all property to the party who brought it into the marriage.

**Q: What happens if I owned an asset prior to the marriage?**

A: In the case of an asset that was owned prior to the marriage, the court generally awards the premarital value of the asset to the spouse bringing the asset to the marriage. However, in most cases, the appreciation of the asset is subject to division by the court. For example, wife owned an IRA prior to the marriage worth \$40,000 at the time of marriage. At the time of the divorce, the IRA is worth \$100,000. The \$60,000 in appreciation may be subject to division, but wife will receive the \$40,000 initial value of the IRA without any interest of the husband.

*David Brown, an associate attorney with Merrill O'Sullivan, LLP, practices Business and Corporate Law, Commercial Transactions, Employment Law, Construction Law, and Domestic Relations.*



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## MEET JANEL GRAVON GILLIHAN

Janel came to Merrill O'Sullivan in 1997 as Terry O'Sullivan's assistant. She began her legal career in 1981 interning for Sterling & Gretchen Williver while attending the legal secretarial program offered at that time at COCC. She was named 1988 Legal Secretary of the Year by the Central Oregon Legal Professionals association. Prior to becoming a legal secretary, she worked for ten years in retail fashion merchandising. Janel particularly enjoys working for Terry O'Sullivan because of the variety of law that he practices, the ethical way that he practices law, his wonderful wry sense of humor and his courteous and interesting clients.

Janel is a Bend native. She was born in the original St. Charles Hospital and graduated from Bend High. Her grandfather, John Gravon, was Bend's first golf pro, and her father, Frank, was one of Oregon's first denturists.

Janel is active in Chapter FY of the PEO International Sisterhood and enjoys gardening. She likes to hike and ski. She is an avid reader and belongs to a reading group. She has been collecting books for about 20 years, primarily cookbooks, gardening and interior design books, literary fiction, histories, biographies, and memoirs. She enjoys all kinds of music, particularly Central Oregon Symphony concerts and the Cascade Festival of Music. Janel is an enthusiastic traveler and cook and enjoys experimenting with cuisines of different cultures that she has visited or intends to visit someday. She has an adult son, Cameron, and two high maintenance cats, Toby and Graycee.



Photograph by Nancy Ryan

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