



How to Respond When Your Spouse Files for Divorce

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Avoiding Five Common Mistakes Oregonians Make After Being Served with Divorce Papers

Getting served with divorce papers from your spouse can be emotional and confusing, even when you are expecting it to happen.

Unfortunately, the worst possible thing you can do is ignore those papers, hoping the problem will go away. The reality is that you are about to enter a new chapter of your life, one that is governed by legal rules and court-mandated timelines, and once you are served with papers the clock starts ticking.



The choices you make in the 30 days after being served with divorce papers can impact you for the rest of your life.

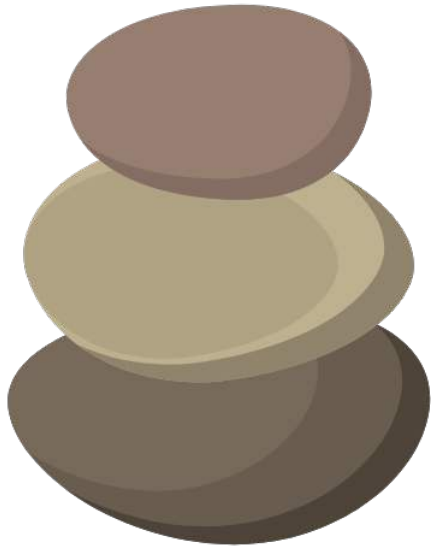
As soon as you have been served, you need to make a legal filing called a “Response” within 30 days or you could risk losing important rights in the legal process. The Response is where you set out the things you want when the divorce is final—things like property, money, financial accounts, and custody and visitation arrangements for your kids (if you have any). It is also where you can respond to the things your spouse is asking for.

Many people find the legal process to be confusing, and that’s on top of the normal emotions you’re having about the divorce itself. Some people may want to fight tooth and nail, others will want to do whatever it takes to get it over with as soon as possible.

In the big picture, however, you should know that the legal portion of your divorce will be over sooner than you think. This process is really just a bridge to your “new normal,” and it is your first and best opportunity to make your new normal as good as possible for yourself and your loved ones.

Regardless of how you feel, the choices you make in the 30 days after being served with divorce papers will impact you for the rest of your life. Like most people in this situation, your ability to make rational decisions is likely to be clouded with feelings of fear, uncertainty, doubt, sadness, anger, or frustration (or all of the above).

The good news is that you don’t have to make all of the important decisions right now. But you do have to act quickly to protect your legal right to make



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those decisions later. If you don't, the court—or even your spouse—will be able to take control.

The ONLY way to preserve your ability have input in making those decisions is done by filing a formal “Response” to the divorce petition. And doing that means you will be entering the legal system.

Engaging in the legal process can be intimidating, and the forms at the courthouse are not always easy to understand. Here are 5 common mistakes that people make when responding to a divorce petition in Oregon and tips on how to avoid them:

Mistake #1: Not Responding at All

What happens if you never respond to those divorce papers? If you are served with a divorce petition (called in Oregon a “Petition for Dissolution of Marriage”) and never file a Response with the court, then your spouse can ask the court for a “default judgment.” A default judgment means that the court gives your spouse whatever they asked for in their Petition, even if it's not fair! It is very difficult to get a default judgment “set aside” later.

What this means is it is very important to file a Response in your divorce case. Even an imperfect Response is better than none, because you can often amend your Response later if you need to. You have 30 days to file a Response before your spouse can begin the process of getting a default judgment. Make sure you file a Response before 30 days is up!

Mistake #2: Not Asking for a Fair Share – or – Asking for More Than a Fair Share



Something can be a marital asset even if it is only under the name of one spouse.

This may include your home, bank or retirement accounts, cars, jewelry, and other personal property.

In Oregon we have a rule that both spouses are presumed to have contributed equally to a marriage (called “the presumption of equal contribution”). It doesn’t matter if only one spouse worked or if one spouse made more money than the other during the marriage. The court presumes that all marital assets and all marital debts should be split fairly. The presumption of equal contribution can be overcome, but it’s hard to do.

So you need to be careful when filing your Response with the court to not ask for more than your fair share OR less than you are entitled to. One way to do this is ask for an “equitable division” of all assets and liabilities. Or, if you really want certain assets, think of all of the things that you and your spouse earned or bought during your marriage. Then list them in your Response and tell the court how you want them divided. You can always deal with the details later in your divorce proceeding, but you need to start off by asking for your fair share.

Mistake #3: Not Knowing What Your Marital Assets Are

What kinds of property can the court divvy up in a divorce case? The differences between various classifications of property are confusing, but it is important to know what assets belong to both you



If you don't ask for something now that you think you might want later, you may lose your chance.

Now isn't the time to compromise. Ask for everything you think you might want, that way you can negotiate later in the divorce process.

and your spouse under the law. These are known as “Marital Assets.”

Many people think marital assets are just things like jointly titled cars, houses, or bank accounts. But retirement accounts, pension plans, stocks & bonds, business interests, and other valuables are also marital assets.

Something can be a marital asset even if it is only under the name of one spouse. The same principles apply to you and your spouse's debts. Most property, or debt, acquired by either spouse during the marriage is presumed to be marital. Sometimes even something bought by a spouse before the marriage—but then improved during the marriage—could also be marital property.

Mistake #4: Not Asking Now for Something You Might Want Later

Are you trying to be nice to your spouse in your Response? Do you think asking for less upfront will just get the process over with more quickly? People sometimes don't ask for everything they can when responding to a divorce petition. Although wanting to avoid conflict is understandable, the problem is that (in general) a court cannot award or order something that was not asked for at the beginning of the case in the Petition or Response.

The time for compromises is during settlement negotiations, not at the start of a case! It's better to ask for everything you want up front and then make concessions later. There will be time to try and work out a solution later down the road. But



Even if you don't think you will use a lawyer, you should consider asking for attorney fees in your response.

If you don't ask now, you probably won't be able to change your mind later.

you also want the ability to be flexible in case things change—for you or your spouse—during the course of the divorce process. Ask for everything you reasonably want in the Response you file with the court. You can always informally let your spouse know that you are hoping to negotiate and settle everything together.

Mistake #5: Not Asking for Attorney Fees

Why would asking for attorney fees be important? At the start of a divorce case, you never know what will happen by the end. Many people hope that they will never need a lawyer and that they can work things out on their own. Unfortunately, that's not always the case. Situations and relationships change, especially during the divorce process. And during the divorce process, they usually don't change for the better.

Even if you don't think you will use a lawyer, you should consider asking for attorney fees in your response.* You might find you need legal help and may want to leave open the option of asking for attorney fees at the end of the case. The Response is your primary opportunity to preserve your right to attorneys fees, so consider your options carefully.

* Many of the court-provided Response forms for self-represented parties don't include a section to ask for attorney fees. You can normally attach Addendums (extra pages with more detail) to standard court filing forms to ask for attorney's fees.

The Commons Law Center

We are a nonprofit law firm that serves income-qualified Oregonians in family law matters.

We offer affordable unbundled legal services and sliding-scale hourly rates.

To learn more about our services, find out if you qualify, or schedule a low-cost consultation, call (503) 850-0811, visit our website, or email us.

Resources

Low-Cost Legal Services (clickable):

- The Commons Law Center
- St. Andrew Legal Clinic
- De Muniz Resource Center Legal Clinic
- Oregon Bar Lawyer Referral Service

Conclusion

To summarize, almost any Response is better than no Response at all. One option is to work through the self-help forms (called “pro se forms”) available on the court’s website or at the courthouse.

Unfortunately, those forms are not always perfect for your unique circumstances, and they don’t necessarily hit all of the points made above.

If you don’t want to go it alone, The Commons Law Center offers legal coaching as well as a low-cost “unbundled” drafting services for income-qualified Oregonians. We will help you prepare your Response and explain the legal process to make sure your divorce gets started on the right foot!

If you hire us to help you prepare your Response, you will be under no obligation to pay any additional lawyer fees. You will get to decide how to move forward after your Response is made. However, if you need more help, you will be able schedule follow up appointments with an attorney. To get started, visit our website at thecommonslawcenter.org and click the “Become a Client” button.

Court-Provided Information:

- Oregon Court Guide to Responding to a Dissolution With Children.
- Oregon Court Guide to Responding to a Dissolution Without Children.
- Oregon Court Family Law Facilitator Program (varies by county—see your county court website).