AN OREGON GUIDE
PART 1

$1.50

PROPERTY DIVISION & SPOUSAL SUPPORT WHEN DIVORCE OCCURS

EC 1378
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OREGON STATE UNIVERSITY EXTENSION SERVICE

Important: Please read this first!

1. What is considered property to be divided at divorce, and the guidelines for child and spousal support, differ from state to state. This publication is based on Oregon law in effect in September 1997. *Do not use it as a substitute for seeking necessary advice from attorneys and other qualified advisers.*
2. For information about child support, see OSU Extension Publication EC 1379, *An Oregon Guide, Part 2: Child Support Decisions When Divorce Occurs*. (See ordering instructions on back cover.)

This material should not be used as a substitute for seeking needed advice from attorneys or other qualified advisors.

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Contents

An Oregon Guide, Part 1: Property Division and Spousal Support When Divorce Occurs

The decisions made at divorce have long-term financial effects on wife, husband, and children. The decisions—valuation and division of property, payment of debts, provisions for children and child support, and (in some cases) support payments from one spouse to the other—are interrelated.

The decisions may be made by the couple; by the couple with assistance from a mediator, counselor, or the attorneys of husband and wife; or, in a contested divorce, by the judge. However they are made, an understanding of your financial situation is very important.

It takes time and effort to become familiar with your family financial situation. The purpose of this publication, and the worksheets it contains, is to help you understand your financial situation.

Property and debts

A divorcing couple needs to determine how to divide family property and who will pay family debts. Before doing this, you need a list of all property owned, its estimated value, and a list of debts. Property is real estate, personal property, and enhanced earnings.

Real estate and personal property

Real estate is land, buildings, and things growing on the land. Your home is real estate. Personal property is all property that is not real estate—automobiles, furniture, appliances, bank accounts, stocks, bonds, life insurance, pensions, etc. Using Worksheet 1, list the property owned by you and/or your spouse.

When estimating the dollar value of your property, it's important to differentiate between fair market value and replacement value. Fair market value is the price you would get if you sold the property. Replacement value is the cost of replacing the property.

When discussing property values, the person planning to keep the property sometimes thinks in terms of fair market value while the person who will be replacing the property thinks in terms of replacement value.

For example, the one keeping the furniture thinks, "This stuff is old and almost worthless; I couldn't even sell it." That's fair market value. The other person thinks, "I have no furniture, and it will cost a lot to get my apartment furnished." That's replacement value.

Both fair market value and replacement cost are considerations. But property must be valued the same way by husband and wife; the most common way to value property is fair market value.

Enhanced earnings

When a person obtains additional education or training, he or she has an increase in his or her lifetime earning potential. This is called "enhanced earnings" and in Oregon is considered property. If this enhanced earning capacity was acquired during the marriage and if the other spouse made a substantial contribution (financial or otherwise) over a prolonged period, the other spouse may have a property interest in the enhanced earnings.

The period before divorce is difficult. You are expected to make rational decisions at a time of emotional turmoil and in a setting that does not lend itself to rational discussion.

Most couples experience increased financial pressures due to separation and pending divorce. Do not let emotions result in missed payments, lapsed insurance, or unnecessary additional financial pressures.

Develop a temporary income and expense plan to keep up to date with financial obligations and, if possible, avoid incurring additional debt.

Each spouse should keep records of all expenses he or she pays.

If you have no money for current living expenses or if you fear your spouse will sell or dispose of assets, get legal help.

If you helped your spouse increase his or her earning capacity, make a list of the ways in which you contributed and discuss this with your attorney.

Debts

On Worksheet 2, make a list of all of the debts of husband and wife. Include home mortgage, car payments, student loans, credit card accounts, unpaid bills, and unpaid taxes. Decide who will be responsible for each debt.

Proposed property division

The goal in property division is a "fair and equitable" settlement. What's "fair and equitable" depends on the situation. In some situations, dividing assets and debts equally is fair and equitable; in others, it is not. "Fair and equitable" in a short-term marriage differs from "fair and equitable" in a long-term marriage.

Using the list of property owned and debts owed, determine what property will go to husband and what will go to wife. Determine what debt husband will be responsible for and what debt wife will be responsible for. Record this on Worksheet 7.

If the property settlement includes promises to pay debts or to sell property in the future, it must be in writing. This is called a "property agreement."

Do not sign a property agreement until you understand it. If you are uncertain about what it means or if you feel it's unfair, consult your own attorney—not your spouse's attorney—before you sign it.

> Note: This publication does not discuss the valuation of closely held corporations, family businesses, professional practices, and professional licenses. Discuss these issues with your attorney.

If you own a home

If you own a home, its value is property to be divided at divorce. This value may be divided in several ways:

- Sell the home and divide the proceeds.
- One spouse buys the other spouse's share of the house.
- One spouse has the right to live in the house for a certain period of time (while the children are minors, for example) and at some future date the house is sold and the proceeds divided.
- One spouse keeps the home, and the other spouse receives other property and/or income of comparable value.

When you make decisions about the house, consider carefully the economic aspects. Here are some considerations:

- What is the market value (estimated sales price) of the house? (See Worksheet 3.)
- How long would it take to sell the house?
- How much equity do you have in the house? (Equity is the value of your investment—what you could sell it for, less the balance due on the mortgage or purchase contract.)
- How much cash would be available after the house is sold? (See Worksheet 3.)
- Are there income tax considerations?
- Can either spouse afford to live in the house after divorce? (See Worksheet 4.)

- What is the cost of alternate rental housing? (See Worksheet 5.)

Some property settlements provide for the sale of the family home sometime in the future; one spouse will continue living in the family home for a certain period of time. At the end of this time, the home is sold and the proceeds divided.

If you are considering postponing sale of the house, decide these points:

- Before the sale, who pays the principal? interest? insurance?
- Before the sale, who pays for major repairs such as a new roof?
- Before the sale, who pays for routine upkeep such as lawn care?
- Are there income tax consequences to consider?
- Will one person have a lien on the house that will be paid off at sale? Or will the sale proceeds be divided?

If you have retirement plans/accounts

Many couples have substantial sums of money in retirement accounts or plans. Money accumulated in these accounts during the marriage, and the future benefits resulting from the contributions during the marriage, are property to be considered in the divorce settlement.

There are many types of retirement accounts and retirement plans, including: Individual Retirement Accounts (IRAs), Keogh plans, tax-sheltered annuities, deferred compensation, profit-sharing, employee stock ownership, and many varieties of employee pensions. List all of these accounts in the name of either spouse and gather as much information as possible about each account.

In most cases, retirement plans should be valued by a qualified person, such as an actuary. Your accountant or attorney may be able to recommend someone with actuarial training.

After plans are valued, decisions need to be made about how these values will be allocated to each spouse. In some cases, the value of retirement accounts/plans is assigned to the employed spouse, and assets of equal value are assigned to the other spouse.

In other cases, the present value of the future benefits of the retirement accounts/plans is divided. And in still others, the retirement assets are not divided until the benefits of the accounts/plans are actually received.

If the divorce settlement requires that, at retirement, a portion of the pension benefits be paid directly to the former spouse, a "qualified domestic relations order" is necessary. **This must be prepared by an attorney.**

> Money accumulated in retirement accounts is often a couple's largest asset. Do not make decisions about retirement assets without legal advice.

Spousal support

Spousal support, sometimes called "alimony'' or "maintenance," is payments made after divorce by one spouse to the other spouse. There is no automatic right to spousal support. It's awarded when one of the spouses has no means of adequate support. When it's awarded, it usually is for a temporary period to give the spouse time to become employable.

In deciding whether or not one spouse should pay the other spouse support, consider the earning capacity of each and what happened to the earning capacity of each during the marriage.

Did one spouse decrease earning capacity during the marriage by staying home to care for children? Did one spouse decrease earning capacity during the marriage by quitting a job to move when the other was transferred?

Once the right to spousal support is waived, it is waived permanently. Do not sign a document waiving spousal support without talking with an attorney.

Look at present earnings. If both of you are employed and have similar incomes, there is most likely no need for spousal support. If one spouse is not employed, is it possible for that spouse to become employed? Will that person's health and family responsibilities allow employment? If so, estimate the probable salary by checking the local newspaper or talking with an employment counselor.

Is it possible for the unemployed or underemployed spouse to increase earnings by attending school or participating in a training program? If so, how much would this cost, and how long would it take? One spouse may pay spousal to support the other during this "employment rehabilitation."

In addition to the present earnings of husband and wife, consider what earnings will be in the future—are they likely to increase or decrease? Estimate past retirement income for each spouse from pensions, Social Security, and investments.

If you are unsure whether or not you should receive spousal support, get legal advice.

Other financial considerations

Health insurance

If one spouse is insured under the other spouse's health insurance policy, the couple needs to determine how each spouse will continue to have health insurance coverage after divorce.

If both are employed, does each have health insurance coverage available through employment? If so, when can each transfer to his or her own policy? Some policies have specified periods for changes and enrollment.

It is sometimes possible for a former spouse to continue coverage under the employed spouse's policy. Check the cost of this with the employer.

If one spouse is presently unemployed, would she or he be able to obtain her or his own coverage through group insurance or an individual policy?

Divorced parents of a minor child must determine which parent claims the child as a dependent. The parent who has major physical custody is entitled to claim the child as a dependent, regardless of the amount of support provided by the other parent.

A custodial parent can waive the right to claim the child as a dependent in a given year, and the other parent can claim the child as a dependent. If this is done, the other parent must attach to his or her federal tax return IRS Form 8332, which is a signed statement from the custodial parent waiving the dependency exemption.

Either parent can deduct medical expenses he or she paid for the child, regardless of who claimed the child as a dependent.

Income tax

Divorce has income tax consequences. A helpful guide is IRS publication 504, *Tax Information for Divorced and Separated Individuals.* To order IRS publications, look under "U.S. Government" in the phone book.

Your marital status on December 31 determines your tax filing status for that year. If you were married on December 31, you may file a joint return even if you were divorced at the time of filing in April. You also may file as a head of household if you meet the conditions outlined in the Form 1040 instruction book. If you were divorced on or before December 31, you cannot file a joint return.

If you are filing a joint return and expect a refund, the refund belongs to both of you. How will the refund be divided? Likewise, if you are filing a joint return and owe additional taxes, that is a debt you both owe. Who will pay the taxes?

For tax purposes, child support is not income to the parent receiving it and is not deductible to the parent paying it.

Maintenance or spousal support payments are usually but not always considered taxable income to the person receiving them and usually but not always deductible to the person paying them. Before finalizing agreements about spousal support, get tax advice.

Wills and estate planning

Estate planning is deciding who will receive your property at your death. You may already have done some planning—preparing a will, and naming beneficiaries on insurance policies, pension funds, IRAs, certificates of deposit, or government bonds. If you are divorcing, review these and see whether changes are needed.

If you have minor children and, in the event of your death, you would want your property to be used for your children, you need to determine the best way to do this and to provide for someone to manage the property for the children. Two alternatives are:

Write a will naming a conservator to manage the child's property,

or

Develop an estate plan that, if you died, would pass your property into a trust for the benefit of the children. The trust would be managed by a trustee you name according to a trust agreement you prepare.

A new financial life

Your income and expenses after divorce will not be the same as they were during the marriage. A saving/spending plan (budget) will help you adjust to the changes, save for emergencies, plan ahead for big expenses, and control your financial life.

Step 1: Estimate income. The first step is to estimate your income. If income varies from month to month, use average monthly income (yearly estimated income ÷12).

Step 2: Estimate expenses. Use old bills, canceled checks, and receipts to estimate expenses.

Set up an emergency fund for unexpected expenses, such as auto repairs, dental and medical bills, and appliance repairs.

Look ahead to see what money must be set aside for future expenses. Some expenses, such as car insurance, holiday expenses, back-to-school clothes, and property taxes, occur only once or twice a year. Know when these expenses occur. Figure the average monthly cost.

It's okay if every penny isn't budgeted. In fact, it's good to have some leeway for the unexpected.

Step 3: Keep track of actual income and expenses. During the month write down the income you actually receive and the money you spend. Compare actual expenses to your plan. If you overspend in one area, adjust the plan.

Monthly spending/saving plan

Income	**Amount**
Wages/salary	
Other work	
Alimony	
Child support	
Social Security	
Other income	
Total estimated income	
Take-home pay	
Total income	
Less Fed/state inc. taxes	
Less Social Sec. taxes	
After-tax income	
Less Other payroll ded.	
Total estimated take-home pay	$

Expense	**Amount**
Rent/mortgage	
House/auto insurance	
Property taxes	
Electricity/gas	
Water/sewer	
Telephone	
Cable TV	
Child care	
Life/health insurance	
Loan payments	
Car	
Other	
Transportation (gas, auto repair, bus fare)	
Alimony payment	
Child support pymt.	
Household supplies	
Food—at home	
Food out	
Clothing	
Personal care	
Recreation	
Education	
Other	
Savings	
Total expenses	$

To convert weekly income or expenses to monthly, multiply by 4.33.

Worksheet 1: Real estate and personal property

Property	Description	Value	Comments
Real estate			See Worksheet 3
Home			
Other			
Personal property			
Cars		[1]	
Other vehicles			
Furniture		[2]	
Appliances			
Bank accounts		[3]	
Stocks, bonds			
Mutual funds			
Retirement accounts			
Cash value of life insurance			See Worksheet 6
Other			

[1]**Value of cars and automobiles.** Most automobiles and other vehicles depreciate in value over a period of years. Reference books on values of used cars are published by the National Automobile Dealers Association (N.A.D.A.) and by Kelley Blue Book, and are available in most libraries.

A car dealer can tell you the high and low book values for a particular make, model, and year of car. The high book value is an estimate of its retail value—what it would sell for to a consumer. The low book value is an estimate of its wholesale value—what the dealer would pay for it. These are estimates. Cars in very good condition may be sold for more, and cars in poor condition may be sold for less.

[2]**Value of furnishings and appliances.** Household appliances and furnishings are expensive to replace with new ones, but the fair market value is often very low.

If you overestimate the fair market value of household appliances and furnishings, you also overestimate both the value of the property to be divided and the share of the property of the person receiving the appliances and furnishings.

Estimate the fair market value by pricing similar items of the same age at second-hand stores and garage sales, and in newspaper ads. You could hire a second-hand dealer to appraise the household goods.

[3]**Value of bank accounts, stocks, bonds, etc.** Determine current value, using annual or quarterly statements. Indicate the date of the value in comment section.

Worksheet 2: Past-due bills, debts, loans, etc.

List all debts, credit card accounts, back taxes, loans, student loans, etc.					
Creditor's name	Balance owed	Monthly payment	Date when total debt will be paid	Name on bill/loan	Comments

Usually, the property agreement states the person agreeing to pay "assumes the obligation" and agrees to "hold the other party free from liability" or "hold harmless the other party."

However, if the loan is in the names of both husband and wife, the creditor (the person to whom the money is owed) can require payment from either husband or wife. If that happened, the person whom the property agreement stated was to be "free from liability" pays the creditor and then may bring legal action against the spouse who agreed to pay.

Worksheet 3: Estimated proceeds from sale of house

Estimated sale price[1]		$____________(a)
Selling expenses		
Realtor's commission (6–8% of sale price)	$____________	
Fix-up costs connected with sale (paint, minor repairs, etc.)	____________	
Seller's portion of closing costs (approximately 1% of sale price)	____________	
Amount required to pay off loan(s) in full	____________	
Other sale costs	____________	
Total selling expense		$____________(b)
Estimated proceeds from sale (a minus b)	$____________(c)	
Less any taxes due on gain from sale[2]	$____________(d)	
Estimated after-tax proceeds from sale (c minus d)		$____________

[1]**Market value or estimated sale price.** Market value is what a buyer would pay for your house. Market value is not necessarily the same as the price at which a real estate agent would list the house; houses often sell below list price.

You might hire a real estate appraiser to determine the market value of the house. Before you hire an appraiser, find out the cost. When you receive the appraisal, read it carefully. Know what the appraisal includes (it usually includes the major household appliances).

Your property tax statement gives a dollar amount that the assessor's office considers market value. If you do not have the property tax statement, you can get one from your county assessor's office for about 50¢.

Since market values change continuously, the assessor's figure may not be an accurate estimate of value. For example, it may not reflect the current condition of the house or the current state of the real estate market.

[2]**Taxes on sale of residence.** In general, sellers of a principal residence sold after May 6, 1997, owe no capital gains taxes unless the gains exceed $500,000 for married couples and $250,000 for individuals. Get advice to be sure you qualify as "sellers of a principal residence."

If you are selling real estate that has not been your principal residence, get tax advice.

Worksheet 4: Estimated cost of staying in the family home

Is staying in the home affordable on after-divorce income?

In addition to costs, think about the household work. Who has been doing the repairs, maintenance, yard work, and housekeeping?

If you are staying in the home, will you be able to do all the household work? Will you be able to afford to hire someone to do some of the tasks?

Monthly mortgage payment	$________
Monthly insurance payment*	________
Monthly property tax payment*	________
Gas, electricity	________
Water and sewer charges	________
Garbage pickup	________
Maintenance and repair	________
Yardwork	________
Homeowner fees, association fees	________
Other	________
Total monthly cost	$________

*These may be included in the mortgage payment. If not, divide the yearly expenses by 12 to arrive at the monthly cost.

Worksheet 5: Estimated cost of renting

If you move, is rental housing available? If so, what will it cost?

In addition to monthly costs, there are one-time costs such as the cost of moving, security deposits, telephone and utility deposits, and hook-up costs. You may have to pay the first and last months' rent.

If you move, will you be closer to or further from work? If children live with you, will you be closer to or further from day care and schools?

Monthly costs	
Rent	$________
Gas, electricity	________
Yardwork, if it is the renter's responsibility	________
Other	________
Total monthly cost	$________
One-time costs	
Moving	________
Deposits (security, cleaning, pet, etc.)	________
Utility hookups and deposits	________
Other	________
Total one-time costs	$________

Worksheet 6: Life insurance policies

Life insurance company, policy #	Name of insured[1]	Policy owner[2]	Beneficiary[3]	Face value[4]	Cash value, if any[5]	Loans against cash value[6]

[1]The insured is the person on whose death benefits will be paid. The policy states the name of the insured.

[2]The owner is the person who pays the premium, names the beneficiaries, and can cancel the policy. The owner has control over the policy. The policy states the name of the owner.

[3]The beneficiary is the person who receives the benefits on the death of the insured; his or her name is stated on the policy.

[4]Face value is the amount of money that will be paid to the beneficiary at the death of the insured.

[5]Some insurance policies have cash value. Cash value is the amount of money the owner of the policy would receive if the policy were canceled before the death of the insured. Typically, whole life insurance has cash value; term and group life policies do not. Cash value is property to be divided at divorce.

[6]Cash value may be used as collateral for loans. A loan reduces the death benefit of the policy.

Life insurance and child or spousal support

When there are young children, the parents may want the insurance policies on one or both parents to continue after divorce.

If you have young or handicapped children and presently have insurance, ask your attorney about ways to assure continuation of the insurance.

When one spouse is paying spousal support or a property settlement over a period of years, you may want to continue the insurance policy on the spouse owing the payments.

If there are either child support or spousal support obligations, the court can order present life insurance policies to continue, the purchase of additional life insurance coverage, or (if there is no insurance) the purchase of new life insurance policies.

Worksheet 7: Proposed property division

Assets	Fair market value (FMV)	FMV allocated to wife	FMV allocated to husband	Debt	$ of debt allocated to wife	$ of debt allocated to husband	Comments
Totals							

Value of assets allocated to wife	less	Value of debts allocated to wife	equals	Net value of property allocated to wife
$______________	-	$______________	=	$______________*

Value of assets allocated to husband	less	Value of debts allocated to husband	equals	Net value of property allocated to husband
$______________	-	$______________	=	$______________*

*If this division of property between spouses is not what the couple desires, see next page.

Worksheet 7 explanation

If the net values allocated to each spouse are not what is desired, the couple may either reconsider who gets what property or adjust the allocation by having one spouse make a payment to the other spouse. If cash is available, the payment may be made in a lump sum. If not, the payment may be paid in installments over time.

Example: A couple wants to divide their property equally. They decide that the wife will keep the house and be responsible for the mortgage, and she also will keep the car and be responsible for the loan remaining on it. The husband will keep the value of his retirement plan and the truck and camper, and the husband is responsible for the loan remaining on the truck. They have divided their furnishings equally. They have no other property. They completed worksheet 7 and determined that the husband was to pay the wife $750 in order to divide property equally.

Summary of proposed property division

Assets	Fair market value (FMV)	FMV allocated to wife	FMV allocated to husband	Debt	$ of debt allocated to wife	$ of debt allocated to husband	Comments
House	56,000	56,000		42,000	42,000		
Retirement Plan	8,000		8,000				cash value as of 1/1
Car	4,200	4,200		1,200	1,200		
Camper	8,000		8,000	3,700		3,700	
Truck	6,200		6,200				
Totals	82,400	60,200	22,200	46,900	43,200	3,700	

Value of assets allocated to wife	less	Value of debts allocated to wife	equals	Net value of property allocated to wife
$ 60,200	—	$ 43,200	=	$ 17,000
Value of assets allocated to husband	**less**	**Value of debts allocated to husband**	**equals**	**Net value of property allocated to husband**
$ 22,200	—	$ 3,700	=	$ 18,500

Net value of all assets = $35,500 ($82,400 - $46,900)

Net assets allocated wife	Desired allocation	Difference
$60,200 - $43,200 = $17,000	50% of 35,500 = 17,750	17,750 -17,000 $ 750 (less than 50%)
Net assets allocated husband		**Difference**
$22,200 - $3,700 = $18,500	50% of 35,500 = 17,750	18,500 -17,750 $ 750 (less than 50%)

If the husband pays the wife $750, each will have received an amount equal to half the net value of the assets.

Husband $18,500 in property less $750 payment = $17,750
Wife $17,000 in property plus $750 payment = $17,750

For further reading

An Oregon Guide, Part 2: Child Support Decisions When Divorce Occurs, EC 1379, by Alice Mills Morrow (Oregon State University, Corvallis, 1995). $1.50

Remarriage: Legal and Financial Issues, EC 1484, by Alice Mills Morrow (Oregon State University, Corvallis, 1997). $2.00

Estate Planning for Families with Minor Children, FS 313, by Alice Mills Morrow (Oregon State University, Corvallis, 1998). No charge.

Shared Custody: Financial Considerations, FS 324, by Alice Mills Morrow (Oregon State University, Corvallis, 1995). No charge.

Modification of Child Support in Oregon, FS 326, by Alice Mills Morrow (Oregon State University, Corvallis, 1995). No charge.

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