

# While the Divorce is Pending

*The divorce has been filed but there is no final divorce judgment*

An excerpt from the Community Education booklet *Family Law in Oregon\**

## Can I move out of state while waiting for my divorce to be finished?

Maybe. You can't take your children out of state if your spouse got a court order to keep you from doing this. If you and your spouse are fighting about custody or parenting time of your children, you may want to get advice from a lawyer before moving. Also, if you have moved out of state, you probably will have to return for any divorce hearings.

## Will I be able to get a temporary custody order?

Maybe. There could be a court hearing about the custody arrangements while the case is pending. In court, you and your spouse would have a chance to prove which temporary custody arrangement would be best for the children. Many times, the parent who is given a temporary custody order also is given custody in the final judgment.

But temporary custody orders may not be easy to get right away. Judges want to give parents time to try to work out an agreement about the children, and do not want to give one parent the advantage of a temporary custody order while these discussions are taking place. Mediation may be required. See Question 70 of the [Family Law in Oregon\\*](#) booklet.

Often these judges will issue a “protective” or “status quo” order at the

beginning of a divorce case. This protective order keeps the child's situation the same as it was at the time the divorce case started (same home, school, child care schedule, same amount of contact with the other parent, etc.). With a protective order, there often is no need to have a custody hearing until the time of the final divorce judgment. Both parents are usually ordered to keep the child in Oregon unless the other parent agrees in writing to the travel or move.

Sometimes judges grant temporary custody without a hearing, if there is proof that the child is in immediate danger or is likely to be taken from the state. If you get an emergency custody order without a hearing, the other parent will be given a chance to present his or her side soon afterwards.

If you have been physically abused or threatened by your spouse in the last six months, you may be able to obtain a temporary custody order as part of a Family Abuse Prevention Act (FAPA) restraining order, even if a divorce is pending. See Questions 9, 10, and 12 of the [Family Law in Oregon\\*](#) booklet for more information about this type of restraining order.

For more information about how child custody is decided, see Questions 64 through 85 of the [Family Law in Oregon\\*](#) booklet.

## **Is there a way to decide child support, spousal support, and who stays in the family home while the divorce is pending?**

Yes. You and your spouse can agree on these issues. It may be best to put the agreement into a court order. If you and your spouse do not agree, you will need to file papers asking the court to order your spouse to pay support and move. For more information about child support orders, see Questions 100 through 110 and 115 through 123 of the [\*Family Law in Oregon\*](#)\* booklet.

## **Do I have to see or talk with my spouse or his attorney while the divorce is pending?**

It is up to you how and whether to have contact with your spouse. If you believe you can settle some or all of your divorce case, it might be a good idea to talk with your spouse. If you are afraid of your spouse or if a restraining order or stalking protective order is in effect, contact with your spouse may be dangerous (or even unlawful for the spouse restrained by the court order).

If you don't have an attorney but your spouse does, the attorney might contact you to attempt to get information or settle the case. You can, but do not have to, speak with your spouse's attorney. You might also receive a notice for a deposition (answering questions under oath in the attorney's office) or a request to produce documents (such as tax returns, pay stubs, etc.). You may want to talk with an attorney if you get any legal papers like these.

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\* The *Family Law in Oregon* booklet is available at [www.oregonlawhelp.org](http://www.oregonlawhelp.org).

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