

# DRAFTING DISSOLUTION JUDGMENTS CHECKLIST

## GENERAL PROVISIONS FOR JUDGMENTS

- When saving drafts, save each new draft separately as opposed to saving over an earlier draft so you can track your changes and revisions. E.g. Judgment v. 7, or Judgment with client's revisions, etc. (when tendering the document electronically to opposing party or counsel name the document appropriately such as "draft to opposing party" "proposed final judgment" etc so as not to reveal confidential information or the revision process.)
- Caption the document consistent with ORCP 67: General Judgment, Limited Judgment, etc, and state such other information as may be relevant including whether the judgment is by default or stipulation, what it pertains to, and whether a money award is included: E.g. General Judgment of Dissolution of Marriage (Stipulated) and Money Award.
- Do NOT include confidential information that is required to be segregated, such as dates of birth and social security numbers. This does not preclude you from including information as may be appropriate including year of birth, last four digits of account numbers, last four of social security numbers or last four of driver license numbers OR from referencing that the information is "Provided as required by UTCR 2.100".
- Recite jurisdictional facts in the findings including the facts necessary for personal jurisdiction and subject matter jurisdiction.
- Comply with UTCR 2.010(12) Leave sufficient room for the judgment to be dated electronically and signed electronically by the judge (1.5 inches of blank space from the last line of text before the signature line for the judge.) Do not date the judge's signature line. The judge's signature must appear on a page with at least two lines of text appearing before the signature line. (To avoid a "floating" judge's signature on an otherwise blank page which would allow it to be attached to anything.)
- Be mindful of what signatures are required. A stipulated order will require the signature of parties or their counsel unless consented to in open court on the record. If the settlement has been placed on the record the parties' signatures are not necessary. (If a case settles last minute, best practice is to place the settlement on the record unless a judgment has been submitted to the court prior to the date of trial or hearing.)
- In preparing judgments allot sufficient time to circulate to your client for CAREFUL review prior to tendering the proposed judgment to opposing counsel/party. Best practice is to have your client approve the judgment in writing via an email of consent, initialing a paper draft, or other written assent.
- In drafting the judgment review the initiating and responsive pleadings to see that all issues raised are addressed and disposed of.
- If you are not seasoned or are not working from a reliable template, review the statute at issue in your matter such as ORS 109.119 (third party custody), or ORS 107.105 (provisions of dissolution judgments) for findings and requirements. The proper statute to refer to is often cited in initiating pleadings. Also, refer to forms provided by the Department of Justice and Courts. Although these documents are often intended for pro se parties, they provide useful reference tools.

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- Even where attorney fees and costs are not awarded, specify such in lieu of simply omitting the issue. “Neither party shall be responsible for the attorney fees or costs of the other” Or “No attorney fees or costs are awarded herein.”
- Use nomenclature you are LESS likely to accidentally invert. For example, Petitioner and Respondent are easily (and often) interchanged. Consider using Mother/Father, Husband/Wife, last names (if different) or other such designation for a party. When doing so simply state the designation in the findings or intro: “Petitioner, Jane Doe, hereafter referred to as “Mother” or “Wife”.
- If the court has issued a written decision letter, consider whether to attach and incorporate the decision letter. Doing so is standard practice when it is available. However, if the decision letter contains detailed personal information that your client may prefer not to attach to a document that will be provided to the child(ren)’s school, care providers, doctor, etc. assess whether attachment is necessary or sufficiently valuable.
- In order to avoid objections, draft findings and rulings as closely to the verbiage rendered by the court as possible. Best practices include requesting and listening to the court audio to prepare the judgment if the ruling is complex or there is other good cause.
- If you need clarity on an issue ruled on by the judge, you may confer with opposing counsel to attempt to resolve an ambiguity by agreement, review the court record, or seek clarification from the judge by writing to the court.
- Include a UTCR 5.100 Certificate of Readiness that is properly completed when submitting any proposed judgment to the court.
- Include a certificate of service that is properly completed when submitting a proposed judgment to the court, unless service is not required because a party is in default.
- Double check that all of your exhibits are accurately labeled, numbered, referenced and (actually attached!) to your judgment when you serve the document on the opposing party or counsel and when you file it with the court.

### DISSOLUTION JUDGMENTS

- In a stipulated judgment include that each party has had the opportunity to confer with counsel, has done their own due diligence, that the parties acknowledge the ORS 107.089 discovery obligations and are satisfied with the information they have reviewed, that the award (whether or not equal) is just and equitable.
- Recite in the findings the relevant and pertinent facts of the matter, most especially those disputed facts resolved by the court, paying particular care to those that may be at issue in an appeal or subsequent modification proceeding.
- Include in the order that marriage is dissolved and the effect that has on estate planning, beneficiary designations, transfer on death deeds and power of attorney designations.
- Specify the award of assets and debts per the parties’ agreement or the order of the court. Follow the terms with specificity and clarity.

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- Include an award of retirement benefits and accounts to the parties, even if each party is only keeping his or her account. Review barbooks or confer with a QDRO attorney for the appropriate verbiage for an award of retirement benefits. A QDRO is not going to be required for all types of accounts and should not be treated as a default. PERS forms and provisions are readily available online for example. <https://www.oregon.gov/pers/MEM/Pages/Divorce-Forms.aspx>.
- Be sure to give a party the opportunity to have a prior legal name restored to said party if so desired.
- When the award includes a transfer of title you wish to be self-executing per the judgment, follow the formalities and include the information necessary to perfect that process such as a paragraph specifying that if title is not transferred then the judgment shall be self-executing, notarized signatures of parties and the legal description of real property (if at issue), make, model, year and VIN for vehicles, etc.
- Be mindful of who is required to sign the judgment and whether the signatures of parties need to be notarized. Notarization is beneficial for recording in property records but can cause delay and be a barrier to signing for some parties. Likewise, approval as to form by opposing counsel is a best practice, but not required for submission to the court.
- Make sure you include a money award as appropriate for any equalizing award or monetary award and that the money award complies with ORS 18.042.

(See below for terms related to custody, parenting time and support).

### CUSTODY AND PARENTING TIME JUDGMENTS

- Recite the names and ages of the parties' children, including year of birth if desired.
- Recite the UCCJEA jurisdiction and jurisdictional facts in the findings.
- If a party has requested equal parenting time in the proceeding and that request is denied, you must include a WRITTEN FINDING as to why equal parenting time is not in the child(ren)'s best interest or endangers the safety of the parties. ORS 107.102(5).
- Recite in the findings that the custody and parenting time ordered therein are in the child(ren)'s best interest.
- Address how the children are insured for medical at the time of entry of judgment, and who shall be required to insure the children going forward. If the children are on public health insurance, address the responsibility to keep the children insured if they remain eligible. If insurance is required to be provided through employment, use the appropriate language defining whether the insurance is available at a reasonable rate.
- Required notices: ORS 107.159 Notice Regarding Relocation, ORS 107.106 Notice to Parents; Optional notices: ORS 107.154 authority of other parent when one parent awarded custody, 107.164 Parental duty to provide information to each other,



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children if for child?) and how long the obligation continues (typically “so long as the obligation to pay spousal/ child support exists”).

- All orders and judgments providing for support of a child must include the appropriate statutory notices: ORS 25.384 Notice of Income Withholding; ORS 107.106 Notice to Parents; ORS 25.020 Notice About Periodic Review and Modification of Child Support Orders; and ORS 107.159 Notice Regarding Relocation.
- If parties have agreed to an arrangement for payment of support other than wage withholding, this other arrangement must be clearly identified in the order or judgment. Use language required by ORS 25.396. Be mindful that waiver of child support or waiver of DCS collection is revocable.
- Make sure that the dissolution judgment, the money award within the dissolution judgment, the support computation worksheet and the wage withholding order accurately and consistently state the support amount.
- Make sure the money award complies with ORS 18.042.

### MODIFICATION JUDGMENTS

- Recite the UCCJEA jurisdictional facts in the findings.
- Include a finding of fact as to whether the burden of proof (substantial change in circumstances) has been established and any supporting findings of fact from the court's ruling.
- Recite the prior relevant judgments (with specificity sufficient to identify them) and include to what extent they are superseded by the terms of the modification. (For example, perhaps the award of child support is modified, but the previous terms regarding health insurance, unreimbursed expenses, and life insurance are not.)
- Comply with all relevant requirements and recommendations depending on the issues addressed in the modification, such as spousal support factors, child support factors, attaching child support calculation, etc.

### POSTJUDGMENT MATTERS

- If you are continuing to assist the client with post-judgment matters such as the preparation/ exchange of documents such as titles or deeds, with the sale of real property or transfer of personal property, be sure to calendar any deadlines provided in the judgment and communicate with the client about same.
- Advise party on modification of spousal or child support, including jurisdictional issues, and availability of administrative modification
- Confer with client regarding whether the judgment should be registered in a foreign jurisdiction, such that if the appropriate requirements for UIFSA are met, it is possible for the party in that jurisdiction to have the dissolution judgment modified/enforced in that jurisdiction for support matters.

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- If client is receiving child support, provide a link to the Division of Child Support page for requesting assistance including administrative review and enforcement services. The client can easily apply online. <https://www.doj.state.or.us/child-support/>.
- Send copy of judgment to DCS and District Attorney if either party is a recipient of public benefits.
- Trial court administrator and DCS do not add in judicial interest on arrearage (judgment) amounts. Advise client to have an accountant figure the interest and inform the appropriate agency so that judgment amount includes the interest.
- Advise client to seek appropriate advice regarding any tax consequences from a licensed tax attorney or qualified accountant. Refer the client to appropriate official IRS guides and publications such as that found here: <https://www.irs.gov/publications/p504>.
- Even if the parties have agreed to allocate the federal dependent tax exemption or credit, advise the client that the Internal Revenue Code controls the federal dependent tax exemptions, credit or deductions proper forms need to be completed and tendered to avoid issues or delays on processing of taxes.
- Advise client about expiration of judgment remedies and motions to extend time and remedies.
- Advise client to seek legal advice regarding modification or enforcement of judgments at any time that there is a concern including, but not limited to, changes in parenting time, changes in income or finances, decreased ability to pay, missed payments, etc.
- If you represent the obligee, provide or advise your client to provide a certified copy of the judgment to the life insurance company of the obligor if life insurance is required.

## IMPORTANT NOTICES

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