

Chapter 107

1955 REPLACEMENT PART

Divorce, Annulment and Separation from Bed and Board

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DIVORCE AND ANNULMENT

107.010 When void marriage may be annulled. A marriage may be declared void from the beginning, at the suit of either party, for any of the causes specified in ORS 106.020; and, whether so declared or not, shall be deemed and held to be void in any action, suit or proceeding in which it may come into question. A marriage once declared valid by the decree of a court having jurisdiction thereof, in a suit for that purpose, cannot afterwards be questioned for the same cause directly or otherwise.

107.020 When voidable marriage may be annulled; cohabitation as defense. A marriage shall not be declared void for any of the causes specified in ORS 106.030 except at the suit or claim of the party laboring under the disability or upon whom the force or fraud was imposed or practiced. The suit or claim of such party shall fail if it appears that the parties freely cohabitated together as husband and wife after the suing or claiming party arrived at legal age, acquired sufficient understanding, was restored to reason, was freed from the force or discovered the fraud, as the case may be.

107.030 Grounds for divorce. The dissolution of the marriage contract may be declared at the suit or claim of the injured party for any of the following causes:

- (1) Impotency existing at the time of the marriage and continuing to the commencement of the suit.
- (2) Adultery; but a confession of adultery, whether in or out of the pleadings, is not of itself sufficient to justify a decree of divorce.
- (3) Conviction of a felony.
- (4) Habitual gross drunkenness contracted since marriage and continuing for one year prior to the commencement of the suit.
- (5) Wilfull desertion for the period of one year.
- (6) Cruel and inhuman treatment or personal indignities rendering life burdensome.
- (7) Permanent mental illness where the defendant has been adjudged mentally ill by a court of competent jurisdiction, and such mental illness has been continuous since such adjudication for at least three years, and the person has been confined in either a private or public institution upon the grounds of mental illness for the major portion of the three years immediately preceding the commencement of the suit and where it appears

to the satisfaction of the court by competent evidence that the illness is incurable. No decree of divorce shall be granted under this subsection unless there is presented to the court as evidence a certified copy of the order of adjudication of mental illness. The prevailing party shall not be awarded any property or property right of a mentally ill spouse, notwithstanding the provisions of ORS 107.100, except that upon competent, satisfactory evidence other than the testimony of the prevailing party the court may award to the prevailing party such property or property right standing in the name of the mentally ill spouse as has been acquired exclusively by the prevailing party. [Amended by 1953 c.439 §2]

107.040 State as party to annulment and divorce suits; service of summons on district attorney. (1) In any suit for the dissolution of the marriage contract, or to have a marriage declared void, the state is to be deemed a defendant, and the plaintiff shall cause a summons to be served upon the district attorney of the district within which the suit is commenced, or his duly appointed deputy, at least 10 days before the time at which the defendant is required to appear and answer. The district attorney, so far as may be necessary to prevent fraud or collusion in the suit, shall control the proceedings on the part of the defense and in case the defendant does not appear therein or defend against the same in good faith, shall make a defense therein on behalf of the state.

(2) The court shall not hear or determine any suit for a divorce until service has been made upon the district attorney as provided in this section, except where the district attorney or his duly appointed deputy waives the provisions of this section by appearing in person at the trial of the cause or by written acknowledgment of service waiving time for his appearance therein.

107.050 Residence requirements for annulment. If the marriage was solemnized in this state, a suit may be maintained to have it declared void if the plaintiff is an inhabitant of the state at the time the suit is commenced. If the marriage was not solemnized in this state, a suit may be maintained to have it declared void if the plaintiff is an inhabitant of the state at the time the suit is commenced and has been for one year prior thereto; which residence is sufficient to give the court jurisdiction.

107.060 Residence requirements for divorce. In a suit for dissolution of the marriage contract, the plaintiff must be an inhabitant of the state at the time the suit is commenced and must have been such inhabitant for one year prior thereto. Such residence is sufficient to give the court jurisdiction, without regard to the place where the marriage was solemnized or where the cause of suit arose.

107.070 Defenses to suit for divorce.

(1) In a suit for dissolution of the marriage contract on account of adultery, the defendant may admit the adultery and show in bar of the suit that:

(a) The act was committed by the procurement or with the connivance of the plaintiff;

(b) The act has been forgiven, expressly or by implication from the voluntary cohabitation of the parties after the injured party had knowledge thereof;

(c) The plaintiff has been guilty of adultery also without the procurement or connivance of the defendant and not forgiven as provided in paragraph (b) of this subsection; or

(d) The suit has not been commenced within one year after the discovery of the act by the plaintiff.

(2) When the suit is for any of the causes specified in subsections (3), (4), (5) or (6) of ORS 107.030, the defendant may admit the charge and show in bar of the suit that the act was committed by the procurement of the plaintiff or that it has been expressly forgiven; and, in case the suit is founded on subsection (3) of ORS 107.030, the defendant may also show in bar thereof that the suit was not prosecuted within one year after the cause of suit accrued to the plaintiff.

107.080 Suit to have marriage declared valid; relief permitted. When either husband or wife claims or pretends that the marriage is void or voidable, as provided in ORS 106.020 and 106.030, respectively, it may be declared valid and lawful at the suit of the other. In such suit the court may, if the pleadings and proofs authorize it, declare the marriage void from the beginning, or from the time of the decree, or that it is valid and binding on the parties thereto.

107.090 Provisions court may by order make after commencement of suit and before decree. (1) After the commencement of

a suit for dissolution of the marriage contract or to have a marriage declared void and before a decree therein, the court may, in its discretion, upon proper showing of the necessity therefor, provide by order as follows:

(a) That the husband pay to the clerk of the court such amount of money as may be necessary to enable the wife to prosecute or defend the suit, as the case may be, and also such amount of money as may be necessary to support and maintain the wife during the pendency of the suit.

(b) For the care, custody and maintenance of the minor children of the marriage during the pendency of the suit.

(c) For the restraint of the husband or wife from in any manner molesting or interfering with the other or the minor children.

(d) Restraining and enjoining either the husband or wife, or both, from encumbering or disposing of any of their property, real or personal, during the pendency of the suit, except as ordered by the court.

(e) That in case default is made in the payment of any moneys falling due under the terms of an order pending suit, any such delinquent amount shall be entered and docketed as a judgment, and execution may issue thereon to enforce payment thereof in the same manner and with like effect as upon a final decree. The remedy provided in this subsection shall be deemed cumulative and not exclusive.

(2) The court shall not require an undertaking in case of the issuance of an order under either paragraph (c) or (d) of subsection (1) of this section. [Amended by 1953 c.602 §2; 1955 c.648 §4]

107.100 Provisions of decree of divorce or annulment. (1) Whenever a marriage is declared void or dissolved, the court has power further to decree as follows:

(a) For the future care and custody of the minor children of the marriage, as it may deem just and proper, having due regard to the age and sex of such children, and unless otherwise manifestly improper, giving the preference to the party not at fault.

(b) For the recovery from the party at fault, and not allowed the care and custody of such children, such amount of money, in gross or in instalments, or both, as may be just and proper for such party to contribute toward the nurture and education of such children.

(c) For the recovery from the party at fault such amount of money, in gross or in instalments, or both, as may be just and proper for such party to contribute to the maintenance of the other; provided, that the court may approve, ratify and decree voluntary property settlement agreements that provide for contribution by the prevailing party to the maintenance and support of the party in fault. In case a divorce is granted under the provisions of subsection (7) of ORS 107.030, the court may require the prevailing party to contribute to the support and maintenance of the mentally ill party to such extent and in such manner as the court may determine to be just and equitable.

(d) For the delivery to one party of such party's personal property in the possession or control of the other at the time of giving the decree.

(e) For the appointment of one or more trustees to collect, receive, expend, manage or invest, in such manner as the court directs, any sum of money decreed for the maintenance of a party or the nurture and education of minor children committed to such party's care and custody.

(f) To change the name of the wife.

(g) A judgment against one party in favor of the other for any sums of money found to be then remaining unpaid upon any enforceable order or orders theretofore duly made and entered in the proceedings pursuant to any of the provisions of ORS 107.090, and for any such further sums as additional attorneys fees or additional costs and expenses of suit or defense as the court finds reasonably and necessarily incurred by such party; or, in the absence of any such order or orders pendent lite, a like judgment for such amount of money as the court finds was reasonably necessary to enable such party to prosecute or defend the suit, as the case may be.

(2) If an appeal is taken from a decree declaring a marriage void or dissolved or from any part of a decree rendered in pursuance of the provisions of ORS 107.010 to 107.100, the court making such decree shall provide for the temporary support of the minor children of the parties thereto, and may provide for the temporary support of the party found not to be at fault. The order may be modified at any time by the court making the decree appealed from, shall provide that the support money be paid in monthly instalments, and shall further provide that it is to be in effect only during the

pendency of the appeal to the Supreme Court. No appeal to the Supreme Court lies from any such temporary order.

(3) If an appeal is taken from the decree or other appealable order in a suit for dissolution or annulment of the marriage contract, and the Supreme Court awards costs and disbursements to the prevailing party, it may also award to that party, as part of the costs, such additional sum of money as it may adjudge reasonable as an attorney's fee on the appeal.

(4) Whenever a marriage is declared void or dissolved, the court shall make such division or other disposition between the parties of the real or personal property, or both, of either or both of the parties as may be just and proper in all the circumstances, in addition to any further relief decreed as provided for in subsections (1), (2) or (3) of this section.

(5) If, as a result of a suit for the dissolution or annulment of a marriage, the parties to such suit become owners of an undivided interest in any real or personal property, or both, either party may maintain supplemental proceedings by filing a petition in such suit for the partition of such real or personal property, or both, within two years from the entry of said decree, showing among other things that the original parties to such decree and their joint or several creditors having a lien upon any such real or personal property, if any there be, constitute the sole and only necessary parties to such supplemental proceedings. The procedure in the supplemental proceedings shall be, as far as applicable, the procedure provided for in ORS 105.205 to 105.405, for the partition of real property, and the court granting such decree and the judges thereof shall have in the first instance and retain jurisdiction in equity for such purpose of partition as provided for in this subsection. [Amended by 1953 c.553 §2; 1953 c.635 §2]

107.110 Annulment or divorce decree ends marriage; remarriage limited. (1) A decree declaring a marriage void or dissolved at the suit or claim of either party terminates the marriage as to both parties, except that neither party shall be capable of contracting marriage with a third person until the expiration of six months from the date of the decree or, if an appeal is taken, until the suit is determined on appeal, whichever is later.

(2) If either party does so contract, he

is liable therefor as if the decree had not been given.

107.120 Decrees and orders as liens; duration. No order or decree for the future payment of money in gross or in instalments, entered under the subsections (1) and (2) of ORS 107.100 and Acts supplementary thereof, shall continue to be a lien on real property for a period of more than 10 years from the date of such order or decree unless it is renewed as provided in ORS 18.360.

107.130 Vacation or modification of decree. (1) The court, or judge thereof, has the power to set aside, alter or modify at any time after a decree is given, upon the motion of either party, so much of the decree as may provide for the appointment of trustees, for the care and custody of minor children, for the nurture or education thereof, or both, or for the maintenance of either party to the suit; and such decree is a final judgment as to any instalment or payment of money provided for therein which has accrued up to the time either party makes such a motion.

(2) The court does not have the power to set aside, alter or modify such decree, or any portion thereof, which provides for any payment of money, either for the nurture or education of minor children or the maintenance of either party to the suit, which has accrued prior to the filing of such motion.

(3) The court may assess a reasonable attorney's fee against an unsuccessful moving party who files a motion to set aside, alter or modify a decree as in this section provided.

107.140 Validation of certain divorce decrees. (1) (a) Any decree of divorce heretofore granted in which the requirements of ORS 107.040 have not been complied with is hereby validated and declared to be legal and binding upon the parties thereto, if otherwise regular.

(b) Any decree of divorce had prior to the passage of chapter 35, Oregon Laws 1923, wherein neither of the parties thereto were bona fide residents of the county wherein such decree was given is validated and confirmed.

(c) Any decree of divorce rendered by a circuit court of this state more than 60 days prior to the passage of section 1, chapter 118, Oregon Laws 1945, from which no appeal was taken to the Supreme Court and in which service of summons upon the defendant was made and had by publication or

by personal service outside the state in lieu of publication, as provided by law, hereby is validated and confirmed, regardless of any defect in any proof or return of service of such summons.

(d) Any decree of divorce rendered by a circuit court of this state more than 60 days prior to the passage of section 2, chapter 118, Oregon Laws 1945, from which no appeal was taken to the Supreme Court, in which a member of the Armed Forces of the United States was and is a party plaintiff or defendant, and in which such member of the armed forces, if a defendant, caused to be filed a written waiver of his rights under the Soldiers' and Sailors' Civil Relief Act of the United States, or, if a plaintiff, has alleged in his complaint and the court has found, either directly or by implication of law, that he is and was a bona fide resident and inhabitant of this state for one year continuously immediately prior to the commencement of the suit in which such decree was rendered, hereby is validated and confirmed, regardless of any defect in the making and filing of such waiver or in the time or place of the residence of such member of the armed forces in this state.

(e) Any decree of divorce entered prior to January 1, 1949, otherwise valid but the validity of which may be affected by failure of the court records to evidence the service of process upon the district attorney or the presence of the district attorney at the final hearing is in all respects valid.

(f) Any decree of divorce entered prior to January 1, 1955, otherwise valid but the validity of which may be affected by failure of the court records to evidence the service of process upon the district attorney or the presence of the district attorney at the final hearing, is in all respects valid.

(2) Nothing in paragraphs (c) or (d) of subsection (1) of this section shall be construed to affect in any way the right either party to any such decree of divorce as mentioned in those subsections may have under the provisions of ORS 16.050 and 18.160. [Paragraph (f) of subsection (1) enacted as 1955 c.72 §1]

107.150 Validation of certain marriages.

(1) The subsequent marriage of a party to a divorce validated by paragraph (b) of subsection (1) of ORS 107.140 hereby is validated in so far as the validity of such marriage is affected by any irregularity men-

tioned in paragraph (b) of subsection (1) of ORS 107.140.

(2) The subsequent marriage of a party to a divorce validated by paragraph (c) of subsection (1) of ORS 107.140 hereby is validated in so far as the validity of such marriage is affected by any irregularity mentioned in paragraph (c) of subsection (1) of ORS 107.140.

(3) The subsequent marriage of a party to a divorce validated by paragraph (d) of subsection (1) of ORS 107.140 hereby is validated in so far as the validity of such marriage is affected by any irregularity mentioned in paragraph (d) of subsection (1) of ORS 107.140.

(4) All marriages made prior to April 21, 1947, hereby are declared valid where the period of six months had not elapsed from the date of a decree declaring a marriage void or dissolved in which suit or claim either party to such subsequent marriage was a party if the subsequent marriage was in all other respects legal and regular.

(5) Any marriage in all other respects legal and regular, made prior to April 28, 1953, and before the expiration of six months from the date of a decree declaring a previous marriage of one or both of the contracting parties void or dissolved, hereby is declared valid; and any child conceived or born of such marriage shall be deemed legitimate. [Subsection (5) enacted as 1953 c.491 §1]

107.160 Attorney's fees in certain domestic relations matters. In any proceeding brought under ORS 108.110 and 108.120 and in any contempt proceeding brought to compel compliance with any other orders provided in ORS 107.090, or with the decree in any suit to avoid or dissolve the marriage contract or for separate maintenance or separation from bed and board the court or judge thereof may make an order awarding to the petitioner, relator or defendant prevailing in such proceeding a sum of money determined to be reasonable as an attorney's fee therein. The order shall be entered and docketed as a judgment, and execution may issue thereon in the same manner and with like effect as upon a final decree.

107.170 Payments under support or maintenance orders or decrees to be made to clerk of court; contempt proceedings to enforce. (1) When pursuant to ORS 107.090, 107.100, 107.250, 107.260 or 108.120 any

court decrees or orders the payment of money for the support, maintenance, nurture and education of any person, the person ordered to pay the money shall make payment thereof to the clerk of the court, who shall transmit the payment to the person for whose benefit the decree or order was made.

(2) Failure without good cause to make any payment on or before the tenth day after the payment is due is punishable as for contempt.

(3) When the person for whose benefit a payment described in subsection (1) of this section is decreed or ordered is a person to whom or for whom general assistance or public assistance, as the terms are defined in ORS 411.010, is granted, if the clerk of the court has notice thereof, he shall, 10 days prior to the date on which any such payment described in subsection (1) of this section is due, transmit to the person ordered to pay the money a statement of the amount due addressed to the last-known address of such person as shown by the record of the case. After any such payment has been 10 days in default, the clerk of the court shall in writing notify the district attorney of the default and, on the basis of this notice, the district attorney shall institute contempt proceedings under ORS 33.010 to 33.150 against the person ordered to pay the money. The notice may be used in lieu of the affidavit required under ORS 33.040. [1955 c.648 §1]

107.180 to 107.200 [Reserved for expansion]

SEPARATION FROM BED AND BOARD

107.210 Grounds for separation. (1) A permanent separation of married persons from bed and board may be decreed by the circuit court for adultery if the adulterous act was not the result of connivance or consent of the parties and the plaintiff is not guilty of the same offense.

(2) A separation of married persons from bed and board for a limited or unlimited time may be decreed by the circuit court for the following causes:

(a) Wilful desertion or, where the wife is plaintiff, neglect or refusal to provide for her during a period of six months.

(b) Conviction of a felony.

(c) Habitual gross drunkenness contracted since marriage and continuing for

one year prior to the commencement of the suit.

(d) Cruel and inhuman treatment or personal indignities rendering life burdensome.

107.220 Length of separation; vacation or modification of decree. The court shall fix such length of time as, in its estimation, the cause for separation will continue to exist. At the expiration of such time, the decree shall be of no further force or affect, unless, upon the application of either party, the court shall, upon good cause shown, extend or renew such time. When the separation from bed and board is for an unlimited time, if either party believes that the cause for separation has ceased to exist, he may apply to the court for an order vacating the decree or modifying it on such terms as may appear to be just and proper.

107.230 Residence requirements in suit for separation. In any suit for the separation from bed and board, one of the parties must be a resident and inhabitant of this state at the commencement of the suit, which residence shall be sufficient to give the court jurisdiction thereof.

107.240 Condonation of separation cause. The offending spouse may plead in defense that the cause for the separation has been condoned.

107.250 Provisions court may make after commencement of suit and before decree. After the commencement of a suit for separation from bed and board and before the decree therein, the court may, in its discretion, provide as follows:

(1) That the husband pay to the clerk of the court such amount of money as may be necessary to enable the wife to prosecute or defend the suit, as the case may be, and also such amount of money as may be necessary to support and maintain her during the pendency of the suit.

(2) For the care, custody and maintenance of the minor children of the marriage during the pendency of the suit.

(3) For the freedom of the wife from the control of the husband during the pendency of the suit.

(4) That in case default is made in the payment of any moneys falling due under the terms of an order pending suit, any such delinquent amount shall be entered and docketed as a judgment, and execution may issue

thereon to enforce payment thereof in the same manner and with like effect as upon a final decree. The remedy provided in this subsection is cumulative and not exclusive. [Amended by 1955 c.648 §5]

107.260 Provisions of decree of separation. Whenever the court grants a decree of separation from bed and board, it has power further to decree as follows:

(1) For the future care and custody of the minor children of the marriage as it may deem just and proper, having due regard to the age and sex of such children and, unless otherwise manifestly improper, giving the preference to the party less at fault.

(2) For the recovery from the party not allowed the custody and care of such children, such amount of money, in instalments, as may be just and proper for such party to contribute toward the nurture and education of such children.

(3) For the recovery from a party at fault such amount of money, in instalments, as may be just and proper for such party to contribute to the maintenance of the other.

(4) For the delivery to either spouse of his personal property in the possession or control of the other at the time of granting the decree.

(5) For the appointment of one or more trustees to collect, receive, expend, manage or invest in such manner as the court directs, any sum of money decreed for the maintenance of either spouse and for the nurture and education of their minor children.

107.270 Provisions court may make pending appeal. If an appeal is taken from all or part of a decree rendered in pursuance of ORS 107.260, the court which made the decree shall provide for the temporary support of the minor children of the parties thereto and may provide for the temporary support of the party in whose favor a decree for maintenance was rendered. Such order may be modified at any time by the court granting the decree appealed from, shall provide for such support money to be paid in instalments, and shall further provide that it is to be in effect only during the pendency of the appeal to the Supreme Court. No appeal to the Supreme Court lies from any such temporary order.

107.280 Decree disposition of property. Whenever a decree of permanent or unlimited separation from bed and board has been

granted, the party at whose prayer such decree was granted shall be awarded in individual right such undivided or several interest in any right, interest or estate in real or personal property owned by the other or owned by them as tenants by the entirety at the time of such decree, as may be just and proper in all circumstances, in addition to the decree of maintenance. The court may, in making such award, decree that dower and curtesy are extinguished and barred.

107.290 Vacation or modification of decree. Upon motion of either party at any time after a decree is given, the court may set aside, alter or modify so much of the decree as provides for the appointment of trustees, for the care and custody of the minor children, for the nurture or education thereof, or both, or for the maintenance of either party to the suit; and such decree is a final judgment as to any instalments or payments of money provided for therein which have accrued up to the time either party makes such a motion. The court shall not have the power to set aside or modify such decree, or any part thereof, which provides for payments of money, either for the nurture or education of the minor children or the maintenance of either party to the suit, which have accrued prior to the filing of such motion.

107.300 Attorney's fees upon appeal from separation decree. If an appeal is taken from all or part of a decree rendered in pursuance of ORS 107.250, 107.260, 107.280 or 107.290, the Supreme Court may award attorney's fees in addition to those awarded under ORS 107.160.

107.310 Effect of separation statutes on divorce rights or statutes. ORS 107.210 to 107.320 are not intended to and shall not repeal or affect any existing law pertaining to the granting of an absolute divorce. The obtaining of a temporary separation under ORS 107.210 to 107.320 shall not be a bar to the entering of a suit for absolute divorce by either party. No decree of divorce granted by a court of this or any other state upon constructive service of summons shall affect an award of maintenance made pursuant to ORS 107.250, 107.260 or 107.270.

107.320 Conversion of divorce suit into suit for separation. If, after a suit for divorce is commenced and prior to the entry of final decree, the court finds that neither party is entitled to a decree of divorce, the court may allow, upon motion of either party, amendment of the pleadings to conform to the requirements of a suit for separation from bed and board and then may allow the suit to proceed as provided in ORS 107.210 to 107.310.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on October 15, 1955.

Sam R. Haley
Legislative Counsel

