

# **GENERAL OVERVIEW OF THE PROCEEDINGS**

*The following are some of the most common areas of concerns in the hope that it will alleviate some of the uncertainties you may have.*

*A typical Timeline of events follows this article.*

## ***I. PRELIMINARIES***

- A.  GROUNDS FOR DIVORCE.** Texas has adopted the concept of "no-fault" divorce, making it generally unnecessary to prove "grounds", such as cruelty or adultery, in order to obtain a divorce. "No-fault" means that the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation. In some cases, it may be appropriate to allege other grounds, but other allegations are made only when absolutely necessary in an attempt to get more than a 50/50 split of the community property.
- B.  RESIDENCE REQUIREMENTS.** Prior to filing your petition or modification, you must have resided in Texas for six months and in the county where a petition is to be filed for 90 days; there are limited exceptions.
- C.  ACTUAL SEPARATION.** There is not a legal requirement for actual separation before filing a petition. Under Texas law, there is no legal separation. Our version of a legal separation@ is through Temporary Orders. You have to file for divorce and then ask the court to make the rules during a separation, which we call Temporary Orders.

## ***II. COMMENCING THE COURT PROCEEDINGS***

- A.  THE PETITION.** The first step is the preparation and filing of a petition. The person who files a divorce petition or petition to modify is known as the "Petitioner" and the other party is the "Respondent". It states, among other things, that the residence requirement has been satisfied and asks the court for the results you want if you and your spouse or ex-spouse do not reach an agreement. If your spouse or ex-spouse has already filed a petition, be sure to bring a copy with you, especially if you have been served.
- B.  WAITING PERIOD.** No divorce can be granted until 60 days after the date the petition was filed. This is the minimum waiting period by law, and cannot be waived. Our experience is that the usual interval for an uncontested divorce is about 90 to 120 days. There is no "usual" length for a contested case; it may take as long as two years or more. During the waiting period we will be attempting to negotiate the details of an acceptable possession schedules, support, and property settlement. If a settlement is not

possible, we will use this time to prepare for trial and we will also try other means of resolving your case such as mediation.

If the divorce is unfriendly or contested, we usually obtain Temporary Orders while waiting for a final trial or settlement. Please keep in mind that in Tarrant County the dockets are overcrowded. It takes an average of six months to two years to get to a final trial. You will have to wait your turn just like everyone else. You can shorten this period of time by coming to an agreement. We will always work with you to set up mediation or other alternate means of finalizing your case. However, do not accept a bad deal just to get divorced.

- C. **TEMPORARY RESTRAINING ORDER.** Contained in the petition for divorce at the time it is filed with the Court, may be a request for a temporary restraining order (TRO). TRO's are not only common in divorce cases, there are some who would say they are required any time a party is asking for temporary orders. If a TRO is requested, it is issued at the time the divorce petition is filed, so your spouse may be served with the petition and the temporary restraining order all at once. Typically, the order will restrain (that is, forbid) the Respondent from spending or borrowing money unnecessarily, from hiding or destroying property, or from doing anything that might reduce the value of the marital property. The restraining order also prohibits the other party from threatening or harming you or your children.

***\*\*\*\*A Temporary Restraining Order does not remove an unwilling spouse from the home without a hearing. If Family Violence has occurred, you must discuss this with your attorney to determine whether emergency removal from the home through a protective order is appropriate.***

- D. **TEMPORARY ORDERS.** Once a petition is filed, the first step is to bring some order to your life. In a divorce, a request for Court orders regarding temporary matters (those issues that need to be decided until the final order is entered) can be resolved by agreement or by hearing before an associate judge.

In Tarrant County, each family court judge has an assigned associate judge who functions as the judge and conducts hearings on temporary orders. The necessary temporary provisions, whether decided by agreement or by ruling of the associate judge, will be contained in a Temporary Order of the court. In a divorce, these temporary matters may include temporary custody of the children, temporary right to live in the family home, payment of temporary child support, temporary spousal support, payment of interim attorneys fees and payment of ongoing bills and obligations until the divorce suit is final.

If an agreement regarding temporary matters cannot be reached, a hearing will be held at which both parties and possibly other witnesses testify. After the hearing, the associate judge makes a written recommendation to the judge. If either party is dissatisfied with the associate judge's recommendation, that party can appeal to the judge who will conduct a hearing on the issues appealed and make a decision to follow

the associate judge's recommendations or to make a different temporary order. If the associate judge's recommendations are not appealed, it will be reduced to an order that will be signed by the judge. The temporary order will set forth the rules the parties will follow until the final decision in the case. If circumstances change before finalizing the case, the temporary orders can be modified in a relatively quick manner.

- E. ONE LAWYER FOR BOTH OF YOU?** It is neither practical nor ethical for a lawyer to represent competing interests. In those isolated instances where you and your spouse have agreed on everything, it may be possible for us to do all the legal work. To make this determination, both parties must come to the office together and give us the chance for eye-to-eye contact and discussion. Even if it appears you will agree on all issues, it is our policy and it is legally required for us to represent only one party. We will advise your spouse or ex-spouse, in writing, that if he/she has any issues which might be contested, to seek the advise of an attorney of his/her choice. If you and your spouse or ex-spouse disagrees at any point in the suit, we will continue to represent you unless we have been directed otherwise.
- F. CHANGE OF WIFE'S NAME.** In a divorce, a wife's former name may be restored as a part of the final decree of divorce at no additional charge. We generally suggest that this be limited to restoration of the maiden name when there are no children, or the restoration of a former married name if there are children of that former marriage. If such a name change is desired, you should let us know before we prepare the petition.
- G. RECONCILIATION.** Sometimes a divorce seems to be the only solution -- often it is not. After a divorce action is initiated, you may change your mind and try to reconcile your differences with your spouse. Our policy is to encourage efforts toward reconciliation, and if you decide to dismiss the divorce action, you have that option. We will do everything we can to provide you with resources to assist you and your spouse in any reconciliation attempts.
- H. MEDIATION.** The family law courts are increasingly in favor of mediation as a tool to resolve disputed issues in litigation. If custody or access to children is one of the disputed issues, the Court may order both parties to attempt mediation, either through Family Court Services or through a private mediation service. If you do attempt mediation, keep in mind that the mediator cannot testify for either you or your spouse if mediation fails. Anything you tell the mediator about your marriage remains confidential.
- I. COLLABORATIVE LAW.** Please take the time to read our information on Collaborative Law. This is a process in which the parties agree not to take the case to court, and instead settle all issues through a series of four-way meetings between them and their lawyers. **In our opinion, this is the best way to handle a divorce or family law situation.**

[Collaborative Law](#)

### ***III. WHILE THE DIVORCE IS PENDING***

**A. SETTLEMENT ATTEMPTS.** After all the information has been gathered, we will work with your spouse or ex-spouse or his/her attorney to reach a settlement. There are many advantages to a resolution by settlement. It makes it easier to get through this experience for the parties and for the children. And it is, of course, less expensive in terms of legal fees and court costs, giving both you and your spouse or ex-spouse a measure of control over the outcome. But, if it is just not possible to reach a settlement, a trial will be necessary.

**B. CHILDREN.**

**1. Possession.** Bear in mind that a disagreement over custody and visitation is guaranteed to place you in the middle of a bitterly contested and expensive case. For further information concerning custody, refer to the link on this site entitled “Child Custody” The court will appoint parents joint managing conservators, unless it can be shown to be unworkable.

Through Temporary Orders, the Court will make specific orders as to a possession schedule for each parent. The Court often does not designate a primary caretaker on a temporary basis and instead, simply sets out where the childrens residence or school shall be while the case is pending.

**2. Visitation.** Most parents have joint managing conservatorship arrangements that give one parent primary possession and the other schedule of possession failing agreement. If you and your spouse or ex-spouse can agree on a plan concerning the details of visitation, the court will usually approve this plan. The policy of the courts and our office is to encourage liberal and flexible possession times except in extraordinary circumstances. Failing agreement, there are standard guidelines for possession that will be ordered by the court.

[Texas Family Code Section 153.313](#)

[Texas Family Code Section 153.314](#)

[Texas Family Code Section 153.315](#)

[Texas Family Code Section 153.316](#)

[Texas Family Code Section 153.317](#)

**3. Child support.** There are standard guidelines that the court will use to determine the amount of child support applicable in your circumstances. The court

requires support of a healthy child until the age of 18 or until they graduate from high school, whichever is later. Please let us know if you have a child with a mental or physical disability, as it may be necessary to continue support after this child becomes 18. The courts rarely deviate from the child support guidelines except in unusual circumstances.

[Texas Family Code Section 154.061](#)

[Texas Family Code Section 154.125](#)

**4. Mental Health services.** Our experience, especially in cases involving children, is that the assistance of a qualified mental health professional is often essential to the satisfactory resolution of a case. We may, therefore, refer you to such a person for the assistance he or she can provide. Typically, a mental health professional will want to see both parents and the children for evaluation.

**5. Social Study.** When children are involved, the court may order the preparation of a social study investigation into the circumstances and condition of the child and the home of any person requesting conservatorship or possession of the child.

**C. PROPERTY DIVISION IN DIVORCE.** There is no guideline or formula to determine how you or the court should divide the community property. One thing is clear -- liabilities, as well as assets, must be considered. If you and your spouse can agree, and if your agreement for the division of the property is reasonable, it will be approved by the court. Other factors that can be considered include: the nature and extent of the property, whether the property is community or separate, the duration of the marriage, and the economic circumstances of each spouse.

[Property Division](#)

***IV. CONCLUDING THE PROCEEDINGS***

**A. FINAL DIVORCE.** A divorce or modification will be granted the day the judge signs your decree of divorce or order on a modification. The terms of the decree will officially be final 30 days after it is signed, if an appeal has not been filed. As long as an appeal is not filed, the date of your divorce is the date the judge signs your decree.

**B. REMARRIAGE AFTER A DIVORCE.** You may not marry anyone other than your spouse until 30 days after the signing of your decree of divorce by the Judge unless a court order is obtained waiving that waiting period.

**C. NEW WILLS IN A DIVORCE.** During a divorce, you may need a new will. After the divorce, your previous will may become invalid or may not accurately reflect your wishes for the distribution of your estate. If you do not have a will, we would strongly

urge you to obtain one. Our office is able to handle most simple will matters or we will refer you to a specialist.



*The following timeline is based on our experience with past cases and is only meant as an example. Your case may vary depending on the court you are in, the cooperation of the opposing party, the cooperation of the opposing counsel, changes in the case as we proceed, payment of attorneys fees, and personal preferences. This timeline is meant only as an estimation and is not meant to imply directly or indirectly that your case will proceed as shown in this example.*

## **TYPICAL TIMELINE FOR DIVORCE PROCEEDINGS**

### **Day 1**

Lawyer retained - retainer paid, contract signed.

### **Between Day 2 and 5**

Documents drafted, filed with the court, and Temporary Orders are set usually within the next 14 days

### **2 Weeks**

Parties appear for a Temporary Orders hearing and Temporary Orders are entered while the divorce is pending. A social study will probably be ordered if conservatorship or possession is at issue. The socialworker has a minimum of 90 days to complete the social study. This is also the time you will probably be ordered to complete an Inventory and Appraisalment of your property.

### **1 Month**

Parties have attended orientation for the social study and it officially begins.

Formal Discovery Requests will be sent out in the next month. The other party has 30 days to respond but due to the volume and complexity of many cases, the discovery deadlines are often extended for up to sixty days.

### **2-3 Months**

Both sides should have completed their Inventory and Appraisements and/or sent out discovery and responded. Again, depending on the complexity, this may take longer.

### **4 Months**

Social Study should be completed and available to the attorneys for review.

### **6 Months**

Attorneys should have had opportunity to review social study and discovery. He or she will then be able to assess whether mediation is a viable option or start preparing for trial.

### **9 Months**

Mediation should have been set up and attempted if feasible. Failing that, additional discovery, depositions or other investigations should be initiated.

### **1 Year**

If Mediation was successful, a Decree should have circulated and been approved. This often takes longer depending on the complexity of the terms of the Decree, especially if retirement or other accounts have to be divided through a separate document such as a Qualified Domestic Relations Order.

### **18 Months to 2 Years after Filing**

If your case has not settled and has to be tried, this is the minimum amount of time it will take to obtain a final court date.