

GENERAL INFORMATION ABOUT A TEXAS DIVORCE

In order to get a Texas divorce, you or your spouse must live in Texas for at least six months and in the county where you file the divorce for ninety days. Once a divorce (“Petition for Divorce”) is filed, there is a sixty day waiting period before a divorce can be granted.

Texas does not recognize as a legal status such as “Separation.” In Texas law, you are either married or you are not. However, you can enter into a separation agreement with your spouse should you wish to do so.

In most Texas counties, a Temporary Restraining Order (“TRO”) will be attached to the Original Petition for Divorce. Do not confuse a TRO with a Protective Order (which orders a party to stay away from someone’s residence/employment). Most family law TROs are issued to restrain the parties from a laundry list of bad acts against each other (such as hiding assets or children from the other spouse).

Unless an agreement can be reached, a hearing for temporary orders must be set. At that hearing, the judge will issue temporary orders which will be followed by the spouses until the final divorce is granted. Temporary orders generally address: temporary child support; temporary conservatorship and visitation of children; temporary spousal maintenance; temporary use of property; and any other issues (such as drug testing) which need to be addressed until the final divorce is granted.

Generally, but not always, the court will order the parties to exchange and Inventory and Appraisal form (“I&A”). This is a form that lists all the parties’ assets and liabilities. At this time, the judge may also order a social study and/or forensic testing of the parents if requested or if the judge so orders because a custody battle is anticipated.

While a judge’s ruling is the Court’s order, judges do not write orders. Attorneys draft the orders. If both parties are represented by an attorney, then the drafting attorney must send the proposed order to the opposing attorney to review. If the attorneys reach an agreement as to the wording of the order, then it is signed by the attorneys and tendered to the Court for the judge’s signature. If the attorneys cannot agree to the wording of the order, then it may be necessary to have a hearing to have the judge rule on the wording of the order.

Temporary orders can also be accomplished through arbitration if the parties agree to this procedure.

DISCOVERY

After the Petition is filed, the parties may pursue discovery. Discovery is a process to find out facts, legal positions, and information about the parties and their respective cases. The following are requests for discovery:

Request for Disclosure: This document requests the proper names of the parties; whether any other parties may be liable in the case; the name, address, telephone number of any person who has knowledge of relevant facts and the person's association with the case. The document also requests names, address and telephone numbers of expert witnesses and the expert's opinion is also requested. The Request for Disclosure also requests the facts and legal theories of the case; whether any witness statements exist; and whether any settlement agreements exist.

Request for Admissions: This document requests a party to admit or deny certain statements.

Request for Interrogatories: This document requests that the party answer specific questions.

Request for Production of Documents and Tangible Things: This documents requests documents and other things that a relevant to any issue in the divorce to be produced.

Compliance and Sanctions: A party has thirty days to respond to the above requests unless another due date is agreed upon by the attorneys. If a party does not answer fully or makes objections which have no basis, then the attorneys must confer regarding the response and if unable to reach an agreement, a Motion to Compel will be filed and set for a hearing with the court. Generally such motions will request sanctions against the non-producing party. Sanction may be either a monetary sanction or, in the case of multiple refusal to comply with discovery, striking the non-cooperative parties' pleadings which generally put that party at a disadvantage in the case.

Depositions: Some discovery may conducted by taking a party or witness' deposition. A deposition is normally taken with both attorneys present. The attorney who requests the deposition will ask questions of the spouse or other witness (referred to as "deponent") and the deponent (unless instructed otherwise by his/her attorney) answers the questions. A court reporter is present to transcribe the questions and answers. The deposition may also be videotaped.

The discovery process and compliance may also be accomplished by arbitration if the parties agree to this process.

SETTLEMENT

After discovery, most cases will attend mediation to attempt to resolve the case. If an agreement is reached it is usually binding on the parties and a Final Divorce Decree with be drafted which contains the parties' agreement. If the case does not settle, then the parties go to trial or arbitration.