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WHAT YOU SHOULD KNOW ABOUT DIVORCE

GROUND FOR DIVORCE

Texas recognizes a number of legal reasons for divorce. They include adultery, abandonment, conviction of a felony, cruelty and others. The most common grounds, however, is called “insupportability.” This 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 other words, you just don’t get along and cannot stay married.

Occasionally, one spouse wants a divorce and the other doesn’t. In Texas, if you want a divorce you can get one; your spouse cannot prevent you from doing so.

PROPERTY DIVISION

All community property will be divided between you and your spouse. If the two of you can agree on just how the property will be divided, so much the better. You will need to put that agreement in writing and submit it to the court. Courts usually approve these agreements. Your agreement needs to account for all of your assets, including your home, cars, retirement accounts, investments, etc. It also needs to include all of your liabilities—mortgages, loans, credit cards, unpaid taxes, and other debts.

So, what is considered community property? In Texas, *anything* acquired during the marriage is community property, with a few exceptions. Your salary, for example, is community property. If you receive property as an inheritance or a gift, it is your separate property. Payments received for personal injury are separate property, unless the payment is meant to reimburse you for medical expenses or lost wages—then it is community. Finally, if you have royalty income from oil or gas leases that you owned prior to marriage, that income is your separate property.

In Texas, it is presumed that anything owned at the time of the divorce is community property. If you own separate property, you must prove to the court that it is separate.

Characterization of property as separate or community can be complicated and tricky. You should discuss this in detail with your attorney.

If you and your spouse cannot come to an agreement on the division of your property, the court will divide it for you. The division will be made “in a manner the Court deems just and right, having due regard for the rights of each party and any children of the marriage.” This does NOT mean that the Court will split everything right down the middle in an even 50/50 split. The court may consider such things as the difference in income and earning capabilities of the parties, their



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age, health, and education, and fault in the breakup of the marriage. There is no way to tell what the Court will do; it's a gamble.

ALIMONY

In most cases, Texas courts will not award alimony to either the husband or the wife. The Texas legislature has adopted some very strict guidelines for alimony. First, it may not be awarded unless the marriage lasted for at least ten years. It can only be awarded if the spouse seeking alimony lacks sufficient property to provide for his or her minimum reasonable needs. Further, the spouse seeking alimony must show that he or she:

1. is unable to support himself through appropriate employment because of physical or mental disability; or
2. is the custodian of a child with a disability that makes it impossible for the adult to work outside the home; or
3. clearly lacks earning ability in the labor market to provide for his or her minimum reasonable needs.

If the court does grant alimony, it can generally only be awarded for three years or less. The amount is limited to \$2500 per month OR 20% of the paying spouse's monthly income, whichever is less.

Alimony in Texas is designed to be temporary in nature. The purpose is to give the person receiving alimony some time to re-enter the job market.

CHILD SUPPORT

The Texas legislature has enacted guidelines for determining the amount of child support that must be paid. Courts must follow these guidelines unless there is a compelling reason not to do so. The amount is based on a percentage of the paying parent's net resources—usually all wages, salary, interest, dividends, and other income, less social security taxes and federal income tax withholding for a single person claiming one personal exemption and the standard deduction. For one child, child support will be 20% of the paying parent's net resources.

Child support is paid by wage withholding and is paid to the State Disbursement Unit in Austin. The disbursement unit then forwards the funds to the receiving parent.

The paying parent is usually required to provide health insurance coverage for the children as well.

You should note that these guidelines apply to men and women equally.



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Child support is a completely separate issue from visitation. It is very common for parents to think they should not pay child support because they don't get to see their children, or that they shouldn't allow visitation because the other parent is not paying court-ordered child support. As unfair as it may seem to you, if you are ordered to pay child support you **MUST** pay. Failure to do so can have very unpleasant consequences, including time spent in jail.

FAMILY VIOLENCE

Unfortunately, violence is often a factor in divorce. Often there is a long history of violence in the relationship. The Courts will not tolerate ANY family violence. If family violence is an issue in your relationship, the court can enter a protective order that prohibits one party from committing acts of family violence. Usually it will prohibit one person from going near the other person's home or place of business. A copy of the protective order is given to the police. If the person against whom the order is entered violates it, the police will make an arrest.

If you have a protective order, you should keep copies of it in your car, at your place of employment, and on your person at all times. If you spend time with family members, give them a copy as well. If the order also protects your children, make sure their schools or day care centers have copies.

If a protective order has been entered against you, you must obey it or risk jail time. **NO ONE** has the authority to rescind the order—only the court that issued the order can do so. If your spouse calls and invites you over when the protective order is in effect, **DO NOT GO**. As soon as you arrive, you are in violation of the order, your spouse can call the police and you **WILL BE ARRESTED**. The fact that s/he invited you over does not matter.

CHILD CUSTODY

Texas courts use very particular language to describe child custody arrangements. Here are some terms you should know:

Joint Managing Conservator: this means that both parents share all the rights, privileges, duties and power of a parent. You both have the right to, for example, make decisions regarding the child's health, education, and religious training. Being appointed as JMC's does **NOT** mean that you will have equal or nearly equal periods of physical possession or access to the child.

Sole Managing Conservator: this means that one parent has certain exclusive rights and responsibilities, including the right to designate the child's primary residence, consent to certain invasive non-emergency medical procedures, and grant consent for the child's marriage or enlistment in the military.



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Possessory Conservator: the possessory conservator has almost all of the same rights as the sole managing conservator while the child is in his or her possession. The PC cannot determine the child's primary residence or school, or grant consent to the child's marriage or enlistment in the military.

The Texas legislature adopted the following policy in 1987:

“It is the policy of this state to assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child and to encourage parents who share in the rights and responsibilities of raising their children after the parents have separated or dissolved their marriage.”

Texas has adopted presumptive Joint Managing Conservatorship. The court is **REQUIRED** to appoint both parents as JMC's unless it finds that the appointment would significantly impair the child's physical health or emotional development.

Sometimes parents will say, “We couldn't get along while we were married; what makes you think we can get along after we're divorced?” Please keep in mind that the adults got divorced—not the children. You are both parents of the children and they have the right to have two parents. You may benefit from parenting classes, either together or separately.

Trying to convince the court to appoint one of you sole managing conservator is not realistic. Unless the court finds that one parent is unfit, it will probably not grant the petition. The rights and duties of sole and possessory managing conservators are so similar that it will probably not be worth the fight.

Whenever children are involved in a divorce settlement, the situation can easily get out of control. Children are often the innocent victims of their parents' inability to get along. It is critically important that you save your children as much stress and trauma as possible. Custody battles are always expensive and usually destructive. Courts will usually order mediation in cases involving children. If you and your spouse cannot come to an amicable agreement regarding your children, you should attend mediation whether it is court-ordered or not.

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