

# Texas Divorce Guide

This guide is created to empower Texans to obtain a divorce on their own, and to navigate the legal system with ease and comfort. Below you will find answers to common questions and step-by-step instructions on how to file an uncontested no-fault divorce.

## **Do you need to get a divorce?**

There are two kinds of marriage in Texas: formal (licensed marriage) and informal (common law marriage). A formal or licensed marriage is when you were married by an official, such as a justice of the peace, and obtain a marriage license in accordance with the laws of Texas. An informal or common law marriage is created in two ways. The first is when you and your partner agree to be married, live together in Texas, and act like you are married. There is no minimum time period to create this type of informal marriage. The second is when you and your partner sign and register an official document of marriage at the County Clerk's office. If you want to end a formal marriage or a registered informal common law marriage, you will need to get a divorce.

## **Is there common law divorce?**

No. Depending upon the circumstances, parties who have a non-registered informal common law marriage and have been living apart for at least two years may or may not need a divorce.

## **Is there legal separation in Texas?**

There is no legal separation in Texas. You may be able to obtain temporary orders from a Judge after you file for divorce, with respect to living and support arrangements and child custody, support, and visitation to keep things stable while the divorce is pending.

## **Can you get child support without filing for divorce?**

Yes. If you and your partner are living apart, you can apply for child support through the Office of Attorney General, Child Support Division first before filing for divorce.

## **What does a divorce accomplish?**

A divorce accomplishes five things:

- 1) Dissolves your marriage;
- 2) Divides your community property and debt;
- 3) Determines child custody, visitation, and child support;
- 4) Changes names to maiden names; and
- 5) Orders spousal support (maintenance) if specific requirements are met under the law.

## **What are the qualifications for divorce?**

You qualify for a divorce if either spouse has been living in Texas for the past six months and have been a resident of the county where the divorce is to be filed for the past ninety days.

## **What types of divorce are available in Texas?**

There are two types of divorce: for no-fault of either party, or for the fault of one or both of the parties.

The reasons for no-fault divorce include insupportability (a personality conflict which does not support continuing the marriage), living apart for at least three years, or confinement in a mental hospital for at least three years.

The reasons for a fault divorce include adultery, cruelty, felony conviction, and abandonment for at least one year.

Is your divorce based on the fault of one or both parties? If so, then your divorce is fault based. If not, then your divorce is a no-fault divorce.

## **What is the difference between an uncontested and contested divorce?**

Do you and your spouse agree to be divorced and do you agree on the custody, support, and visitation of the children (if any); spousal support (maintenance) (if applicable); and the division of property and debt? If yes, your divorce is uncontested. If not, your divorce is contested.

If your divorce is contested and/or fault based, you should seek the advice of an attorney.

If your divorce is an uncontested, no-fault divorce, you may be able to represent yourself by completing the divorce forms located at Texas Law Help (<http://texaslawhelp.org>) or we can assist you. Contact us at <http://difilippoholisticlaw.com/contact>.

## **How do I file for an uncontested no-fault divorce? (Six Steps)**

1. Complete the divorce forms located at Texas Law Help (<http://texaslawhelp.org>), and file such forms in the District Clerk's office in your county of residence. Or we can assist you at <http://difilippoholisticlaw.com/contact>. The local rules for filing for a divorce may vary from county to county and the filing fees may vary as well. Please call the District Clerk's office in your county of residence to determine the filing fee and to determine whether divorce forms are processed in the District Court or the County Court. The District Clerk's office is there to help you so please feel comfortable contacting this office about all of your questions pertaining to your divorce.
2. Upon filing your divorce forms in the District Clerk's office, you become the Petitioner and your spouse becomes the Respondent. It is the Petitioner's responsibility to make sure that the Respondent has been properly served (notified) by making a request to the District Clerk's office. After the Petitioner has made such request and paid the required fees, the Respondent may receive service (notification) by receiving a copy of the divorce forms from a sheriff, constable, or private process server or by certified mailing from the District Clerk's office. If the Respondent cannot be located, service (notification) can be posted at the

- courthouse or by publication, where notification of the divorce is published in a newspaper or other publication. The Petitioner should inquire at the District Clerk's office about the proper procedure and requirements for service (notification) by posting at the courthouse and publication.
3. The Respondent may sign and have notarized a Waiver of Service, after receipt of the filed divorce forms, which indicates that the Respondent is accepting notification (service) of the divorce. The Petitioner must then file the signed and notarized Waiver of Service with the District Clerk's office. The Respondent should read the Waiver of Service very carefully to ensure that the Respondent is comfortable with all of the waiver provisions. A Waiver of Service may waive Respondent's right to appear at any hearings and allow the Court to finalize a divorce decree that has been signed and agreed to by the Respondent and Petitioner without the Respondent being present and without providing notice to the Respondent.
  4. After service (notification), the Respondent will then file an answer with the District Clerk's office. The Respondent has until 10:00 am on the first Monday after the expiration of twenty days from the date the Respondent was served (notified) to file an answer. If the Respondent was served by posting at the courthouse, then the answer is due by 10:00 am on the first Monday after the expiration of twenty-seven days from the date the citation (notification of the divorce) was posted. If the Respondent was served by publication, then the answer is due by 10:00 am on the first Monday after the expiration of forty-two days from the date the citation (notification of the divorce) was published. If the Respondent fails to file an answer by the deadline, a Judge may enter a default judgment, which means the Judge may grant Petitioner's requests in the divorce forms without any notification to the Respondent. Filing an answer will prevent a Judge from entering a default judgment.
  5. The Petitioner may schedule the final divorce hearing on the family law uncontested docket by calling the District Clerk's office in the county of residence after sixty days from the filing of the divorce forms once the Respondent's deadline for filing an answer has passed. The scheduling process for setting final divorce hearings may vary from county to county., so it is best for the Petitioner to call the District Clerk's office to make sure

the Petitioner clearly understands the process of setting the final divorce hearing, and to obtain the date and time for the hearing. If the female spouse is pregnant at the time of filing, then a final divorce hearing cannot be held until after the child is born. If you need assistance with court coaching, we can help you at

<http://difilippoholisticlaw.com/practice-areas-online-legal-services/texas-legal-advice>.

6. On the date of the final divorce hearing, the Petitioner should dress in formal attire and arrive at the courthouse early. Upon arriving at the courthouse, the Petitioner should inquire at the information desk as to which courtroom is hearing the uncontested docket. The Petitioner should then go to the courtroom where the uncontested docket is being heard and wait until the Judge calls the divorce matter. The Petitioner should bring a copy of all of the divorce forms filed with the District Clerk's office, including at least two copies of the Final Divorce Decree. The Petitioner will then be required to "prove up" the divorce to a Judge, which means to establish that divorce is desired and it complies with the requirements of Texas law. You are officially divorced when the Judge signs your Final Divorce Decree. After the Judge signs your Final Divorce Decree, you will need to file it in the District Clerk's office.

At DiFilippo Holistic Law Center, we want to make the process of getting a divorce as easy as possible, at rates affordable to you. If you need any assistance with your divorce, we're here to help. We offer legal advice along with the documents you need to for an easy, uncontested divorce. Our goal is to make legal matters convenient for every Texan.

For help with other legal needs, please visit us at <http://difilippoholisticlaw.com>.

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