



# ***PRO SE*** **DIVORCE HANDBOOK**

**"Representing Yourself in Family Court"**

Produced and distributed as a public service by  
the Texas Young Lawyers Association and the State Bar of Texas

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Last updated: February 2019

## **IMPORTANT INFORMATION – PLEASE READ THIS FIRST –**

IN THE EVENT YOU OR ANY MEMBER OF YOUR FAMILY IS THE VICTIM OF DOMESTIC VIOLENCE, YOU SHOULD IMMEDIATELY CONTACT LOCAL LAW ENFORCEMENT OFFICIALS BY CALLING 911. HELP IS ALSO AVAILABLE AT 1-800-799-SAFE (1-800-799-7233) THE NATIONAL DOMESTIC VIOLENCE HOTLINE.

YOU SHOULD ALSO CONTACT A PRIVATE ATTORNEY OR YOUR LOCAL LEGAL AID PROVIDER BEFORE FILING FOR DIVORCE. THIS HANDBOOK AND THE PRO SE DIVORCE PROCESS MAY NOT BE APPROPRIATE FOR A DIVORCE WHERE DOMESTIC VIOLENCE IS INVOLVED. DOMESTIC VIOLENCE CAN INCLUDE PHYSICAL, MENTAL, EMOTIONAL AND VERBAL ABUSE.

The Texas Family Code (Section 71.004) defines Family Violence as: *(1) An act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault or sexual assault, but does not include defensive measures to protect oneself; (2) Abuse by a member of a family or household toward a child of the family or household; or (3) Dating violence (as defined by Texas Family Code Section 71.0021.)*

The Texas Council on Family Violence defines Battering (or Abuse) as: *A pattern of coercive control that one person exercises over another. Battering is a behavior that physically harms, arouses fear, prevents a woman from doing what she wishes or forces her to behave in ways she does not want. Battering includes the use of physical and sexual violence, threats and intimidation, emotional abuse and economic deprivation.*

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# **PRO SE DIVORCE HANDBOOK**

## **“REPRESENTING YOURSELF IN FAMILY COURT”**

*The following information is not legal advice and is not a substitute for legal representation by an attorney. Be aware that pro se litigants must follow the same rules as those represented by attorneys.*

Divorce is more than an emotional event; it is also a legal proceeding. Failing to protect your rights during a divorce, as with any legal matter, can have serious, long-term consequences. The most common issues resolved in a divorce include division of community property (and debt), determination of parental rights, possession and access of a child, and child support.

This handbook provides a general introduction to representing yourself in a simple (uncontested) divorce. Although you have the legal right to represent yourself in any court proceeding, the process can be quite complex and, if at all possible, it is recommended that you have an attorney represent your interests, especially if domestic violence, child custody or large amounts of property are involved.

A “*pro se*” litigant is a person who appears on his or her own behalf in court, without a lawyer. Whether you are *pro se* or represented by an attorney, there are specific rules and deadlines that you will be expected to follow. Some of these rules and deadlines will be addressed in this handbook. However, should you choose to represent yourself, you will also need to consult all relevant and current law, including the current version of the Texas Rules of Civil Procedure, the Texas Civil Practice and Remedies Code, the Texas Family Code, and the local rules for the county in which your divorce is pending. You can visit your county law library in your county courthouse, or go online at [www.capitol.state.tx.us](http://www.capitol.state.tx.us) to find these resources.

## **THINGS TO KNOW BEFORE YOU GET STARTED**

Always keep in mind that a divorce is a legal proceeding, and that at some point during a divorce proceeding, you will most likely have to appear in court. Although courtrooms are very formal places with their own rules for how people are to conduct themselves, there is no need to be afraid of going to court or addressing the judge. A few simple rules regarding manners should get you through your experience:

### **1. Always Dress Nicely.**

There is no need to purchase new clothes to appear in court. However, everything you wear should be clean and ironed.

Men should wear pants and a shirt with a collar. A suit, jacket or tie always look good if you have them available.

Women should wear a dress, skirt and blouse, or pants and a jacket.

Never wear shorts, T-shirts, sandals, sunglasses, hats, or excessive make-up and jewelry to court.

## 2. Behavior.

All persons are expected to act their very best in the courtroom.

When speaking in court, speak clearly, politely, and loud enough to be heard by the judge and the court reporter. If the court reporter is making a transcript, all responses must be verbal (e.g., not by a nodding or shaking of the head).

Never interrupt anyone, especially the judge.

When addressing the judge, refer to him or her as “Your Honor.”

When addressing or referring to anyone else, refer to him or her as “Mr.,” “Mrs.,” or “Ms.”

If the judge asks you a question, always begin or end your answer with “Sir,” “Ma’am,” or “Your Honor.”

Never read anything in court except court documents.

Never eat, drink or chew gum in court.

Finally, turn off all noise-making items such as cell phones. If you must keep such items turned on, switch the item to silent mode.

## 3. Friends and Family.

Although you may want the support of your family or friends, you generally should not bring children to court. Children often are not permitted in court because they can be distracting to you, the judge and other parties in the courtroom.

# MARITAL PROPERTY

**Presumption of Community Property.** Texas is a “community property” state. In other words, all property owned by married persons on the dissolution of a marriage, whether by death or divorce, is presumed to be the property of both spouses. Likewise, any debts incurred during marriage are presumed to be community debt. This means that the debts are presumed to be owed by both spouses. Like community property, community debt must also be divided in a divorce.<sup>1</sup>

The presumption of community property may only be overcome by clear and convincing evidence that certain property is separate, rather than community property. This is generally done by tracing and clearly identifying property as separate property

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<sup>1</sup> TEX. FAM. CODE ANN. §§ 3.002-.003 (West 2017).

at the “inception of title,” or the moment when the property was first acquired.<sup>2</sup> Documentation that clearly proves that the property is separate is almost always necessary if the parties do not agree on whether an asset is separate or community. Consequently, testimony that property is separate likely will be insufficient to prove the separate nature of an asset without other documentary support.

**Separate Property.** Generally speaking, property acquired before a marriage and property acquired during marriage through gift or inheritance, or with funds that were themselves separate property, is and remains separate property. A recovery for personal injury by a spouse for a loss sustained during the marriage is also separate property. However, it is worth noting that a recovery for loss of earning capacity is not separate property.<sup>3</sup> Finally, spouses may enter into a signed, written agreement known as a Premarital or Marital Property Agreement, discussed in further detail below, which documents separate property rights or can convert community property into separate property.<sup>4</sup>

**Claims for Reimbursement.** When the spouses contribute community property funds or pay debt towards one spouse’s separate property, or if a spouse’s separate property contributes funds or pays debt that is community or the other spouse’s separate debt, a claim for reimbursement can be made. An example of this would be if a spouse purchased a home before marriage, but then paid down the mortgage on the home during the marriage or if one spouse used inherited funds to pay toward a community credit card.<sup>5</sup> There are certain types of payments or debts that are not subject to a claim for reimbursement. A party cannot seek reimbursement for payment of student loans, payments of nominal value, living expenses of a child or a spouse or payments for child support or spousal maintenance.<sup>6</sup> The laws on reimbursement claims can be complicated depending on the situation, so it is advisable to consult an attorney if this issue arises.

**Premarital and Marital Property Agreements.** At any point before or during the marriage, spouses may enter into a signed, written agreement regarding whether certain assets or debts are to be community or separate and how property would be divided in the event of a divorce.<sup>7</sup> An agreement that is entered into prior to the marriage is called a “Prenuptial” or “Premarital” Agreement. A Premarital agreement takes effect on the date the parties are married and is usually designed to limit the accumulation of community assets and debts. An agreement entered into during the marriage is a Marital Property Agreement and is sometimes known as a “Partition” or “Postnuptial” Agreement. An agreement entered into after marriage is often very similar to a Premarital Agreement. However, the parties to a Marital Property Agreement often agree to convert community property into the separate property of the parties, thereby “partitioning” the community property between the spouses.<sup>8</sup> It is important

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<sup>2</sup> *Id.* at § 3.006

<sup>3</sup> TEX. FAM. CODE ANN. § 3.001 (West 2017).

<sup>4</sup> *Id.* at § 4.001-.003.

<sup>5</sup> *Id.* at § 3.402.

<sup>6</sup> *Id.* at § 3.409.

<sup>7</sup> *Id.* at § 4.001 et seq.

<sup>8</sup> *Id.* at § 4.102



to disclose the existence of a property agreement to the court so that the judge can divide the property based upon the agreement of the parties.

**Division of Community Property.** Community property and community debt are supposed to be divided in a manner that the court “deems just and right, having due regard for the rights of each party and any children of the marriage.”<sup>9</sup> This does not mean that community property or debt must necessarily be equally divided, and it often will not be. The judge dividing community property and debt may consider many factors, such as the size of your and your spouse’s separate estates, and any fault in causing the divorce.

Community property cannot always be easily divided. Take for example the situation where two people own a home and want to get divorced. The easiest solution would be for the judge to order the parties to sell the house and divide the proceeds. However, now add children to the picture. The judge will often order that the spouse with whom the children will live be permitted to remain in the house with the children to permit the children to continue living in their home and upset their lives as little as possible. However, this does not mean that the other spouse loses his or her community interest in the house. The judge may order that the house be sold and the proceeds divided after the youngest of the children reaches the age 18. Another remedy may be to award full ownership of the house to the spouse with whom the children will reside, but give the other spouse the full interest in some other community property, such as a ranch, vacation home, savings account or a retirement account to offset equity in the home awarded to the other spouse.

Many factors go into a judge’s decision regarding the division of community property in a contested divorce matter.<sup>10</sup> However, the parties may agree to almost any type of division that they deem to be fair. If an agreement is made, it is important that the agreement divide all of the marital property so as not to risk having to return to court to request the judge divide an asset or debt that was not addressed in the original divorce proceeding.

**Spousal Maintenance.** Spousal Maintenance is a payment ordered to be made from the future income of one spouse for the support of the other spouse. Texas does not recognize the common term of “alimony”, but maintenance is essentially the same thing.<sup>11</sup> Spouses can agree to spousal maintenance.<sup>12</sup> A judge can order spousal maintenance only if the spouse seeking maintenance will lack sufficient property, including the spouse’s separate property, on divorce to provide for that spouse’s minimum reasonable needs and: (1) the paying party has been convicted of or received deferred adjudication for an act constituting family violence within the two years prior to filing, or during the divorce; (2) the parties have been married for at least 10 years and the receiving spouse lacks the ability to earn sufficient income to provide for that spouse’s minimum reasonable needs; (3) the spouse is unable to earn sufficient income to pro-

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<sup>9</sup> *Id.* at § 7.001

<sup>10</sup> TEX. FAM. CODE ANN. § 3.306 (West 2017).

<sup>11</sup> *Id.* at § 8.001.

<sup>12</sup> *Id.* at § 7.006.

vide for that spouse's minimum reasonable needs because of an incapacitating physical or mental disability; or (4) due to the spouse caring for a disabled child, the spouse cannot earn sufficient income to provide for that spouse's minimum reasonable needs.<sup>13</sup>

The court is also limited on the amount of support it can order and the duration of the support. A judge must only order what is necessary to meet the minimum reasonable needs of the receiving spouse and the judge cannot order more than \$5,000 per month or 20% of the paying spouse's gross monthly income, whichever is less.<sup>14</sup> Spousal Maintenance awards are also limited to a period of time based upon the length of the marriage, unless the receiving spouse cannot provide for his or her own support due to an incapacitating mental or physical disability or because that spouse is providing care for a child with mental or physical disabilities.<sup>15</sup> Chapter 8 of the Texas Family Code specifically delineates the parameters for the court to order spousal maintenance as a result of a divorce. If spousal maintenance is court ordered, it is often as enforceable as child support and failure to pay it may result in fines or even jail time.<sup>16</sup> Spousal maintenance can also have income tax implications and it is important to consult a CPA to determine if the payments are deductible or should be declared as income.

## ISSUES CONCERNING CHILDREN

**Parenting Plan.** In 2005, the Texas Legislature began requiring the addition of a "Parenting Plan" in the Final Decree of Divorce.<sup>17</sup> The Parenting Plan includes the conservatorship rights of the parents, the visitation schedule, child support, and also provides for other issues that may affect the child in order to minimize the risk of future disagreements.<sup>18</sup>

**Parenting Coordinator and Parenting Facilitator.** Another creation of the 2005 Texas Legislature is the "Parenting Coordinator." In a suit affecting the parent-child relationship (such as a divorce or custody or child support law suit), the court may appoint someone known as the Parenting Coordinator. It is the job of this coordinator to meet with the parents and to assist them in reaching agreements regarding their children.<sup>19</sup> The difference between the Parenting Coordinator and the Parenting Facilitator is that the Parenting Facilitator may "also monitor compliance with court orders."<sup>20</sup>

Parenting coordinators and facilitators can serve as very effective tools in high-conflict custody cases. Most parenting coordinators and facilitators are mental health professionals or social workers who have lots of experience in working with high-con-

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<sup>13</sup> *Id.* at § 8.051.

<sup>14</sup> *Id.* at § 8.055.

<sup>15</sup> *Id.* at § 8.054.

<sup>16</sup> *Id.* at ch. 8 *et seq.*

<sup>17</sup> *Id.* at § 153.603.

<sup>18</sup> *Id.* at § 153.601(4).

<sup>19</sup> *Id.* at § 153.606.

<sup>20</sup> *Id.* at § 153.6061.

flict families and who are trained to effectively resolve disputes with regards to visitation, child support or child custody. If a dispute arises in a case, the parties generally attend a series of sessions with the parenting coordinator or facilitator in an attempt to resolve the dispute before any court action is taken.

**Duration of a Child Custody and Child Support Order.** Texas courts generally have jurisdiction to make orders regarding the support and conservatorship of a child until that child reaches the age 18 or until that child graduates high school, whichever occurs later.<sup>21</sup> However, this jurisdiction can be extended if the court determines that a child has a physical or mental disability that exists prior to the child's 18th birthday and the court determines that the child will not be capable of self-support.<sup>22</sup> If you have a child that has any form of disability, it is important for you to consult with an attorney prior to the finalization of your divorce to ensure that you are preserving the rights for that disabled child.

**Child Custody.** The court that handles a divorce proceeding also determines who shall have custody of any children from the marriage. The term "custody," in a divorce, often serves as shorthand for "who gets the children." The vast majority of parents are awarded "joint managing conservatorship" in a divorce, meaning that all rights and duties concerning the children are shared.<sup>23</sup> In every case, however, the court must ultimately decide what custody arrangement is in the children's best interest.<sup>24</sup> The legal term for joint custody is Joint Managing Conservatorship, and this arrangement is presumed to be in the best interests of the children of the marriage. However, even in the joint custody situation, the court must designate one parent who has the authority to determine the location of the children's primary residence. This parent is called the Primary Joint Managing Conservator and also referred to as the "custodial parent," because most Primary Joint Managing Conservators will decide that the children's primary residence is in that parent's home. The other parent is commonly referred to as the "non-custodial parent." Aside from the decision regarding the location of the children's primary residence, most other major parenting decisions are shared between the conservators.<sup>25</sup>

In rare circumstances, one parent may be appointed as the Sole Managing Conservator. In this case, the other parent is referred to as the Possessory Conservator. In making the decision between joint and sole conservatorship, the court shall consider: (1) family violence; (2) child abuse or neglect; or (3) a final protective order is rendered.<sup>26</sup> The court can also consider other factors, such as whether: the other parent has been absent from the children's lives; or there is a history of extreme conflict between the parents over educational, medical, or religious values. However, this does not mean that the other parent loses his or her right to visit with the children. The only rights a Sole Managing Conservator has over a Primary Joint Managing Conservator

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<sup>21</sup> *Id.* at § 154.002.

<sup>22</sup> *Id.* at § 154.306.

<sup>23</sup> *Id.* at § 153.131.

<sup>24</sup> *Id.* at § 153.002.

<sup>25</sup> *Id.* at § 153.134.

<sup>26</sup> *Id.* at § 153.005(c).

relate to the sole right to make certain decisions regarding the children's lives, such as educational and health matters.<sup>27</sup>

Other legal custody arrangements that can be ordered at divorce include split custody, in which one or more children live with one parent while the remaining children live with the other parent, and divided custody, also referred to as alternating custody. This form of custody allows each parent to have the child for alternating blocks of time, often every year or two years, with equal visitation rights. Such legal arrangements are much less common. Judges are reluctant to order split custody, in particular, because of a firm belief that children should not be separated from their brothers and/or sisters as it is not in their best interest.<sup>28</sup>

**Supervised Visitation.** If there has been a history of abuse or neglect, the court may require that any visitation by the abusive or neglectful parent be supervised. Generally, courts will appoint a mutually agreed upon family member or third party to supervise the periods of possession or will appoint a supervision facility to conduct the supervision.<sup>29</sup>

**The Right to Decide Where a Child Will Live.** As discussed above, only one parent may have the right to establish the primary residency of the children. The parent who is named the Primary Joint Managing Conservator or the custodial parent will typically be restricted geographically on where they can reside with the children. This geographic restriction will be listed in the Final Decree of Divorce and will usually restrict the residence of the children to the county in which the children resided prior to the divorce if both parties still reside in the same county or the county where the divorce is pending. Courts will sometimes expand this geographic restriction to also include the counties that are contiguous to the restricted county.<sup>30</sup>

**Standard Possession Order.** Visitation arrangements can have many variations. In fact, parents may agree to almost any arrangements regarding child custody. However, if parents cannot agree, child custody will generally follow a schedule developed by the Texas Legislature that is designed to be fair and workable for both parents in most circumstances. In general, the Standard Possession Order ("SPO") provides that the noncustodial parent is granted visitation of the child beginning at 6 p.m. every first, third and fifth Friday of each month and ending at 6 p.m. on the following Sunday, as well as every Thursday evening from 6 p.m. to 8 p.m. during the regular school year. All holidays, including Thanksgiving, Christmas (winter) and spring break are divided between the parents, giving one parent the right to spend a particular holiday with the child every other year. The SPO also provides for the noncustodial parent to have 30 days with the child during the summer, or 42 if the child lives more than 100 miles away from that parent.<sup>31</sup> A sample form of the Standard Possession Order can be found at [texaslawhelp.org](http://texaslawhelp.org).

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<sup>27</sup> *Id.* at § 153.132

<sup>28</sup> *Id.* at § 153.253.

<sup>29</sup> *Id.* at § 153.004.

<sup>30</sup> *Id.* at § 153.133.

<sup>31</sup> TEX. FAM. CODE ANN. §§ 153.251-.316 (West 2017).

**Expanded Standard Possession Order.** In 1995, the Texas Legislature enacted a provision that allows for the noncustodial parent to elect alternate beginning and ending possession times when exercising the SPO. Under the current statute, the noncustodial parent can elect to modify their possession periods to begin at the time the child's school is regularly dismissed and to end at the time the child's school resumes as opposed to the 6 p.m. start and end time as set forth above. To make this election, the noncustodial parent must make this election prior to or at the time the judge signs the possession order. The election must be made in a written document filed with the court or must be made orally by the noncustodial parent in open court to the judge.<sup>32</sup>

**Establishing Child Support.** As noted above, the Primary Joint Managing Conservator, or the custodial parent generally has the right to receive child support on behalf of the child. The amount of support owed by the Possessory Conservator, or non-custodial parent will depend on the income of the non-custodial parent, as well as the number of children for whom the non-custodial parent has a duty to support (both from the marriage at issue as well as any other children). If there is only one child of the marriage and no children outside the marriage, child support will be set at 20% of the non-custodial parent's net income (after FICA, Social Security, and Medicare have been taken out). If there are two children, the child support will be set at 25% of the net income. If there are three children, child support will be set at 30% of the net income, and it will increase at 5% increments thereafter. No parent however, may be required to pay more than 50% of his or her net earnings to fulfill all of his or her child support obligations.<sup>33</sup> These percentages are adjusted slightly when the non-custodial parent has other children from outside the marriage for whom the non-custodial parent must also pay child support. Also, factors such as whether the non-custodial parent is intentionally unemployed, or underemployed (not earning as much as he or she is capable) will be considered by the court.<sup>34</sup> Finally, although child support is discussed in this manual within the scope of a divorce proceeding, a custodial parent, whether named as Primary Joint Managing Conservator, or Sole Managing Conservator need not have ever been married to the non-custodial parent to receive child support. This child support calculation does not apply when the noncustodial parent has net income per month in the amount of \$8,550.00 or more.<sup>35</sup>

The Texas Legislature has found that the following items constitute net resources for purposes of calculating child support:

- (1) 100 percent of all wage and salary income and other compensation for personal services (including commissions, overtime pay, tips, and bonuses);
  - (2) interest, dividends, and royalty income;
  - (3) self-employment income;
  - (4) net rental income (defined as rent after deducting operating expenses and mortgage payments, but not including noncash items such as depreciation);
- and

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<sup>32</sup> *Id.* at § 153.317

<sup>33</sup> *Id.* at § 154.125.

<sup>34</sup> *Id.* at § 154.066.

<sup>35</sup> *Id.* at § 154.125.

- (5) all other income actually being received, including severance pay, retirement benefits, pensions, trust income, annuities, capital gains, social security benefits other than supplemental security income . . . unemployment benefits, disability and workers' compensation benefits, interest income from notes regardless of the source, gifts and prizes, spousal maintenance, and alimony.<sup>36</sup>

**Additional Factors in Determining Child Support.** Texas courts can order child support amounts that are different from the guidelines as set forth above if the court finds that the application of the guidelines would not be in the best interest of the child. In determining whether it would be in the best interest of the child to order more or less child support than the guidelines require, the court will look at a number of factors including things such as the age and needs of the child, the child care costs for the child, the ability of both parents to contribute to the support of the child, the amount of time and possession both parents have with the child, any special or extraordinary educational, health care, or other expenses of the parties and the child, and the cost of travel in order for the noncustodial parent to exercise possession of or access to the child.<sup>37</sup> For example, if a child has a medical condition or a learning disability that requires special medical care, tutoring, or therapy that costs more than the monthly guideline support, the court could order the noncustodial parent to pay for these additional costs as additional child support.

**Medical Expenses as Additional Child Support.** The noncustodial parent is also generally required to pay for the children's health insurance expenses as additional child support. If the custodial parent maintains health insurance on the children then the noncustodial parent will be required to reimburse the custodial parent for the cost of the health insurance premium for the children's health insurance. If the noncustodial parent maintains health insurance on the children then the noncustodial parent will be required to maintain health insurance coverage on the children at his or her sole expense. In addition, the court will also require the parents to pay for any and all reasonable and necessary healthcare expenses of the children that are not covered by the health insurance premium or reimbursed by health insurance such as copays and deductibles for the children.<sup>38</sup> Typically the court will require the parents to split these costs as additional child support. As of September 1, 2018, parents are required to maintain dental support of a child.<sup>39</sup>

**Employer's Order to Withhold.** Texas courts require that an Employer's Order to Withhold be signed at the time that a divorce with children is finalized.<sup>40</sup> An Employer's Order to Withhold orders the employer of the non-custodial parent to take the child support owed directly from the non-custodial parent's paycheck. All child support payments are then sent by the employer to a central processing center where the checks are processed and submitted to the parent to whom the support is owed.

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<sup>36</sup> *Id.* at § 154.062.

<sup>37</sup> *Id.* at § 154.123.

<sup>38</sup> *Id.* at §§ 154.181-182.

<sup>39</sup> Acts 2015, 84th Leg., ch. 1150 §14, eff. Sept. 1, 2018 (to be codified at TEX. FAM. CODE ANN. § 154.1815).

<sup>40</sup> TEX. FAM. CODE ANN. § 154.007 (West 2017).

**Modifying Child Support.** In order to request a change, the parent who is requesting the modification must file a Petition to Modify, in which he or she seeks modification of the Final Decree of Divorce. Unless there is a material and substantial change in circumstances, such as the non-custodial parent getting a really big raise, or the child suddenly requires additional support due to illness, child support may generally only be modified every three years, and then, only if the amount of the child support payment would increase or decrease by 20% or \$100.<sup>41</sup>

## GETTING STARTED

**Filing the Petition:** The spouse who files for divorce is called the Petitioner. The other spouse is called the Respondent. The first decision to be made is where to file for divorce. To file for a divorce in Texas: (i) you and/or your spouse must have lived in Texas for at least six months before filing for divorce; and (ii) you must file in the county in which either you or your spouse has lived for at least 90 days.<sup>42</sup> A sample divorce petition (called an “*Original Petition for Divorce*”) can be found online at [texaslawhelp.org](http://texaslawhelp.org).

Although most divorces in Texas are “no-fault,” sometimes, parties will plead grounds such as cruelty or adultery in order to gain a tactical advantage, especially when one person is seeking an unequal division of the community estate.<sup>43</sup> You should take extreme caution when pleading specific grounds for divorce, however. The Texas Family Code permits the court to strike certain types of inflammatory remarks or detailed allegations of marital misconduct from a petition for divorce. The specifics of such matters should not be set forth in detail in the petition. In other words, to plead the ground of adultery, you should say “Petitioner requests a divorce on the grounds that Respondent has committed multiple acts of adultery” rather than “Petitioner requests a divorce from Respondent because Respondent has repeatedly cheated on Petitioner with the next door neighbor.” The Petition should also briefly state whether you believe an agreement will be reached with respect to any custody or property issues and, if an agreement cannot be reached, what you are requesting the court to order in your case.

The Original Petition For Divorce (the “Petition”), along with two extra copies, and the appropriate filing fee, should be filed by hand delivery, or mail, with the District Clerk’s office in the appropriate county. The clerk will date stamp and file the original, and will date stamp the copies to show the date and time the Petition was filed. The original will be assigned a “cause number” that will be listed at the top of the Petition, and one copy will be returned to you. If you choose to mail the Petition, include a self-addressed and stamped envelope for the clerk to return your copy to you. The third copy will be used to notify the Respondent of the divorce proceeding. There is no cost for file stamping of extra copies. However, there is a fee if the clerk later has to make a copy for you from the court’s file. At the time of filing, you will also be required to pay a filing fee. Filing fees vary from county to county and you should call

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<sup>41</sup> *Id.* at § 156.401.

<sup>42</sup> *Id.* at § 6.402.

<sup>43</sup> *Id.* at § 6.001-.007.

ahead to determine the filing fee for your case. If you cannot afford the filing fee, you must file an Affidavit of Inability to Pay Court Costs, which you must sign in the presence of a notary public, at the same time you file your Petition. If the judge accepts your Affidavit of Inability to Pay Court Costs, your filing fee and other court costs will be waived. A sample form of the Affidavit of Inability to Pay Costs can be found at [texaslawhelp.org](http://texaslawhelp.org).

**Notifying Your Spouse:** The second step is to legally notify your soon to be ex-spouse (the “Respondent”) of the Petition for divorce. You must serve the Respondent in one of the following ways: (1) have the Respondent sign a waiver of citation; (2) hire a private process server or a county constable to personally serve the Respondent with a “citation,” which is formal notice of the filing of the Petition for divorce prepared by the District Clerk; or (3) if, after a diligent search, you cannot locate the address of the Respondent, you may request that the court order that Respondent be served by publication or posting.<sup>44</sup>

The first and easiest method of legal notice to the Respondent is through a Waiver of Service. A Waiver is only valid if it is signed by the Respondent *after* the Petition for divorce has been filed with the court and the Respondent has been provided with a file-stamped copy of the Petition. Once the Waiver has been signed by the Respondent, the Waiver should be filed with the court. Make a copy of the Waiver and take the copy to the district clerk’s office. Tell the clerk you would like to file the Waiver. The clerk will file stamp the original and the copy. She will then keep the original and return the copy to you for your records. The Waiver must be on file a minimum of 10 days before a divorce can be finalized. A sample form of the Waiver of Service can be found at [texaslawhelp.org](http://texaslawhelp.org).

The second way to provide legal notice to the Respondent is to personally serve the Respondent with the citation. This will generally involve some type of fee. To accomplish personal service, you will need to provide to the District Clerk the address where you believe the Respondent may be served and request that a citation be issued. The District Clerk will then issue a citation and forward a copy of your Petition to the constable or sheriff in the county where the Respondent will be served. If the Respondent will be served in a different county or if you would like to have the Respondent served by an authorized private process server, the District Clerk will return the citation to you. It is then your responsibility to deliver the citation to the appropriate process server. Personal service is considered complete when the process server hands the citation to the Respondent. The process server, whether a sheriff, constable, or private process server, must file an affidavit with the court stating he or she served the citation and Petition on the Respondent. If an Affidavit of Inability to Pay Court Costs is on file with the court, the sheriff or constable may waive their fee. However, a private process server will not normally waive his fees even if you have the affidavit on file with the court. The benefit of a private process server is that he or she will try to serve the Respondent at any place and time you believe the Respondent can be found while a sheriff or constable may only attempt service at certain times of the day and week.

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<sup>44</sup> *Id.* at § 6.408-.409.



The third method of notifying the Respondent of the Petition for divorce is by posting or publication. This method requires a court order and should only be used if you have tried everything possible and cannot locate the Respondent. Service by posting is done usually when no children or property are involved in a divorce. To obtain service by posting, you must request that the District Clerk post the citation at the courthouse. After a certain amount of time has passed, the clerk will notify the court that service by posting has been completed. Service by publication is done in the newspaper in the city where the Respondent was last known to have resided. To obtain service by publication, request that the District Clerk issue publication in the particular newspaper authorized by the court. You will be responsible for any fees charged by the newspaper. Once the publication is complete, you must file proof of the publication with the District Clerk's office.

**The Answer:** Once the Respondent has been notified of the Petition for Divorce, whether through Waiver of Service, Personal Service of Citation, or publication, the Respondent's deadline to file an answer is at 10 a.m. on the Monday following 20 days after the date the Respondent is served. However, in a divorce, an Answer is still considered valid as long as it is filed before the divorce is final. Once the Respondent files an Answer, he or she is entitled to receive notice of all court hearings and to be present in court for any proceedings in the case. If the Respondent does not file an Answer, it is possible for you to move forward with the divorce without notice to the Respondent until after the case is final.

**The Counterpetition.** In addition to an Answer, the Respondent may also file a Counterpetition. This document is similar to the Original Petition for Divorce, but states the Respondent's grounds for filing a divorce and states what the Respondent is requesting from the court. A citation does not have to be served on a Counterpetition. However, the Counterpetition must be sent to the opposing party and a verification that the Counterpetition was sent, known as a "Certificate of Service," must be included and signed with the Counterpetition.

**Middle of the Case (the "Waiting Period").** A court cannot grant a divorce until the Petition for divorce has been pending for at least 60 days. This time period begins to run on the date the Petition is filed with the court. This "waiting period" serves many purposes. Sometimes it permits the parties to "cool-down" and possibly reconcile. Generally, however, it is hoped that the parties will use this time to reach an agreement regarding the specifics of their pending divorce. Reaching an agreement with your soon-to-be ex-spouse during the waiting period can prevent an outside party (usually a judge) from making decisions regarding your life, property and relationship with your children.<sup>45</sup>

After a Petition for divorce has been filed, the court, on its own motion, or the motion of either party, after notice and a hearing, may grant temporary orders. Temporary orders set out the "ground rules" for the parties' conduct during the waiting period with regard to such matters as the preservation of property, the protection of both parties, and issues pertaining to the children such as child support and visitation. The court can also decide who will temporarily remain in the marital residence, which

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<sup>45</sup> *Id.* at § 6.702.

party will have to move out and how the bills and expenses of the family will be paid during the pendency of the divorce case. This would also be the proper time to request the court appoint a therapist and/or a parenting coordinator/facilitator. If the right to determine the primary residence of the children or possession of the children is a contested issue in the case, the court might also order the parties to complete an evaluation with an expert to assist that court in determining what the best interest of the children might be. This is known as a “custody evaluation” or “social study.”

If the Respondent files an Answer or makes a court appearance, negotiations may be necessary to reach a final settlement. The courts require or encourage parties to try to reach an agreement. A common dispute resolution method is called mediation. Mediation is a non-binding, confidential process that may be done at any time during the divorce proceedings and the cost is paid by the parties. The mediator is a neutral third party either appointed by the court or selected by the parties by agreement. The mediator meets separately with the parties and tries to assist in finding a common ground solution acceptable to both parties. Mediation does not require a resolution or a settlement, but if a settlement is reached, the agreement is then usually considered binding. Many counties in Texas have services that offer discounted or free mediations. The court will also sometimes appoint a mediator if the parties cannot agree on the mediator.

If a settlement cannot be reached, the issues will then be presented to the judge or a jury (if timely requested and the jury fee paid) at the final hearing. If a final hearing is necessary, you should request the court clerk to schedule a final trial date for your case. Some courts require that a request for final hearing be in writing. The law requires the opposing party be given at least 45 days’ notice prior to a final trial. However, an earlier date may be scheduled if the court is available and if all parties agree.

## CONCLUDING DIVORCE PROCEEDINGS

**Timing Issues:** You may set your case for a final hearing any time after the 60-day waiting period ends. A final hearing may consist of a jury trial, if requested, or a bench trial (where the judge acts as the jury). However, if you and the Respondent are in complete agreement and have reduced your agreement to writing, the final hearing can be as simple as answering a few questions and having the judge enter the agreement into the court’s records.

**Final Decree of Divorce.** The Final Decree of Divorce, whether reached by agreement, or decided by the judge or a jury, should dispose of all issues outstanding in the divorce. Generally, this means that the decree should provide for the division of all community property and all community debt, set forth all matters of child custody and provide for the amount and frequency of child support payments. A Final Decree of Divorce may also provide for the name change of either party to a name previously used. This generally means that the wife may use the Final Decree of Divorce to change her last name back to her maiden name or any other name, so long as it was previously used. You may not use a Final Decree of Divorce to change your name to a brand new name. This requires a separate proceeding. Some courts require that a pro se litigant submit his or her draft of the Final Decree of Divorce and receive approval of the decree before appearing in court for the final hearing. The court administrator

may be able to tell you whether this is required. Be sure not to leave blanks in the Final Decree of Divorce that you are presenting to the court. Any order you are requesting a judge to sign must be completed in full. A sample form of Final Decree of Divorce can be found at [texaslawhelp.org](http://texaslawhelp.org).

**Court Mandated Parenting Courses.** In Texas, many counties now require parties in a divorce with children to attend a parenting course before the date of divorce. If this parenting course is required, most courts will not allow the parties to prove-up their divorce until both parties have filed their certificate of completion with the court. If you have not received any form of notice of this requirement from the court, contact the court administrator to ensure that this course is not required before you schedule the prove-up of your divorce. If this is required, be sure to get the certificate of completion for both parties filed with the court before your date of divorce.

**The Day of the Divorce.** A simple, uncontested divorce may be concluded when you appear before the judge and give evidence and testimony as to the terms of your divorce. This proceeding is sometimes called the “prove-up.” **Sample prove up scripts are attached to this manual Appendices “A” and “B.”** However, if your divorce involves contested issues, such as division of property or child custody issues, this simple transcript will not work, and you should consider hiring a lawyer.

You should call the court to find out when the judge hears uncontested divorces, and whether an appointment is required. Also find out whether the judge requires you to retrieve the official court file from the clerk’s office on the day of the hearing and to bring it to the courtroom with you. On the day of final hearing, you should bring the original Final Decree of Divorce, the Employer’s Withholding Order if child support is an issue, and proof of service on the Respondent, or a file-stamped copy of a Waiver of Service, showing that the Waiver of Service has been on file for at least 10 days before the final hearing, as well as three copies of each document. When the judge calls your case (remember your proper courtroom etiquette), approach the judge, hand him or her the original Final Decree of Divorce and any other documents you have brought with you. Then read the prove-up script as it applies to your situation. The judge may then ask you some questions. If the judge approves the divorce, he or she will tell you that the divorce is granted and will sign the Final Decree of Divorce and any other appropriate orders. The judge will return the court’s file to you. You will then take the court file and the extra copies of the Final Decree of Divorce and any other documents, to the judge’s court administrator. The administrator will “conform” the copies (stamp the judge’s signature on the copies) and return the copies to you. You must leave the court file with the administrator. It is your duty to send one set of copies of the final documents to the Respondent. The court clerk will also require you to complete what is known as an “Austin” form. The information on the Austin form is required in all cases involving a family relationship and is necessary for the State of Texas to process your divorce. **A copy of an Austin form is attached to this manual as Appendix “C.”** In cases where child support is ordered, you may also be required to complete forms necessary for the Attorney General or the Child Support Disbursement Unit to process the court ordered support. The court clerk will have copies of these forms for you to complete.

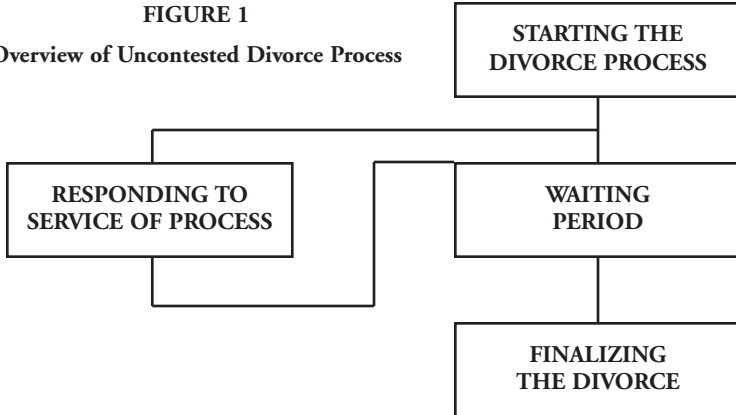
Your divorce is considered final as soon as the judge signs and dates the Final Decree of Divorce. Because you and the Respondent have 30 days to appeal the judge's decision, neither you, nor the Respondent may marry again until after that 30-day period.

## **REVIEWING THE UNCONTESTED DIVORCE PROCESS:**

The following is a simplified summary of the uncontested divorce process. Figures 1-5 present a flow chart depicting the process graphically.

1. Starting the Divorce
  - a. Prepare your Original Petition for Divorce
  - b. File your Petition with the District Clerk's Office.
  - c. Give your spouse legal notice of the divorce, by using either:
    - (1) Service of Citation; or
    - (2) Waiver of Citation; or
    - (3) Service by Publication or Posting
2. Responding to the Divorce
  - a. Your spouse may file an Answer
  - b. Your spouse may file other court documents or request court hearings
3. Waiting Period
  - a. Wait the mandatory 60 days after your Petition is filed
  - b. A temporary hearing and/or temporary orders may occur during this time
  - c. Negotiation and/or mediation may occur during this time
  - d. The court may require parenting classes if children are involved in the divorce
4. Finalizing Your Divorce
  - a. Prepare your Final Decree of Divorce
  - b. Schedule your divorce for a final hearing, either
    - (1) on the uncontested court docket
      - (a) if you and your spouse have reached an agreement, or
      - (b) if your spouse has not filed an Answer or otherwise made a court appearance in the divorce
    - (2) on the contested court docket
      - (a) if you do not have an agreement and your spouse has filed an Answer or made a court appearance.
      - (b) give your spouse written notice of the date, time and location of the trial (contested court hearing) date.
  - c. Finalize your divorce in the presence of the judge at the court hearing.
  - d. If your divorce includes child support, set up the child support account and issue the child support withholding order pursuant to the directions of your local District Clerk's office.
  - e. Make sure either you or the court provides a copy of the Court Orders to your ex-spouse.

**FIGURE 1**  
**Overview of Uncontested Divorce Process**



**FIGURE 2**

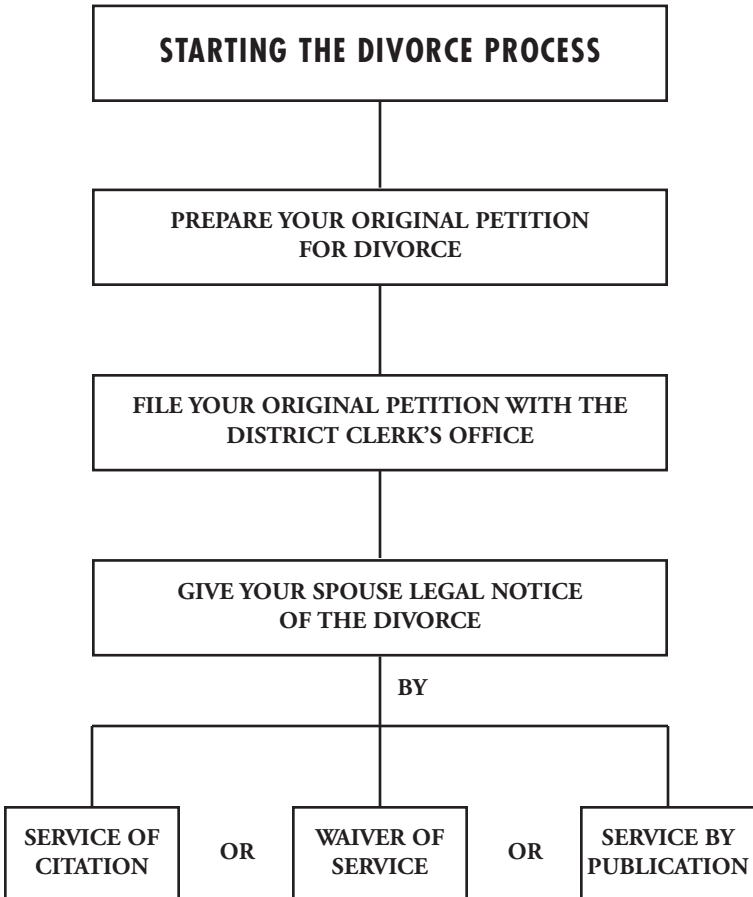


FIGURE 3

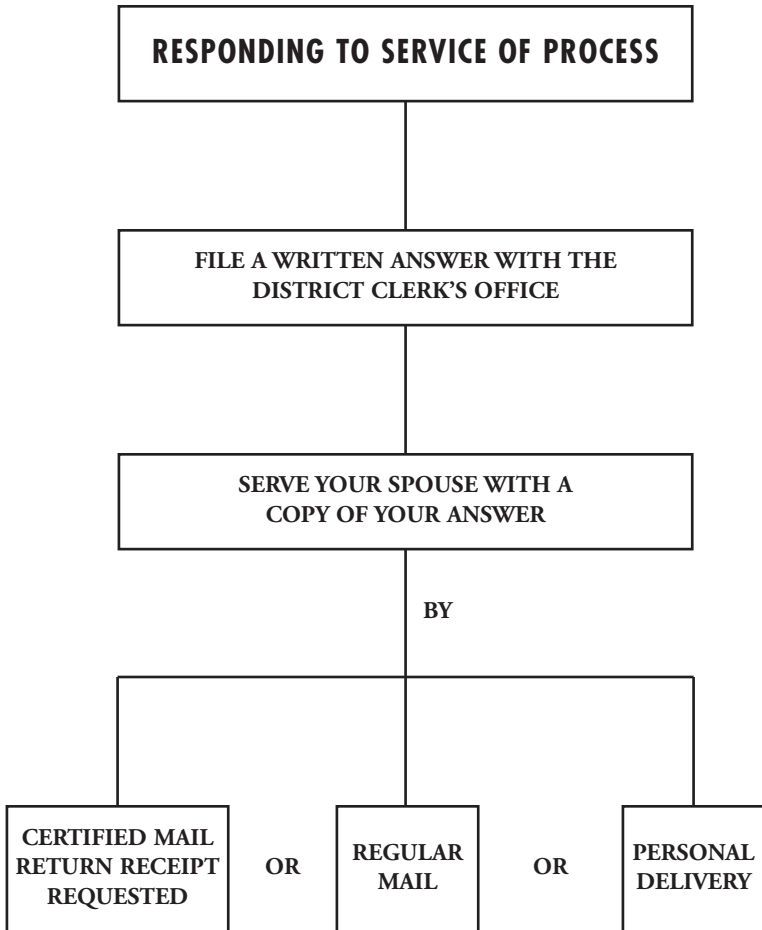
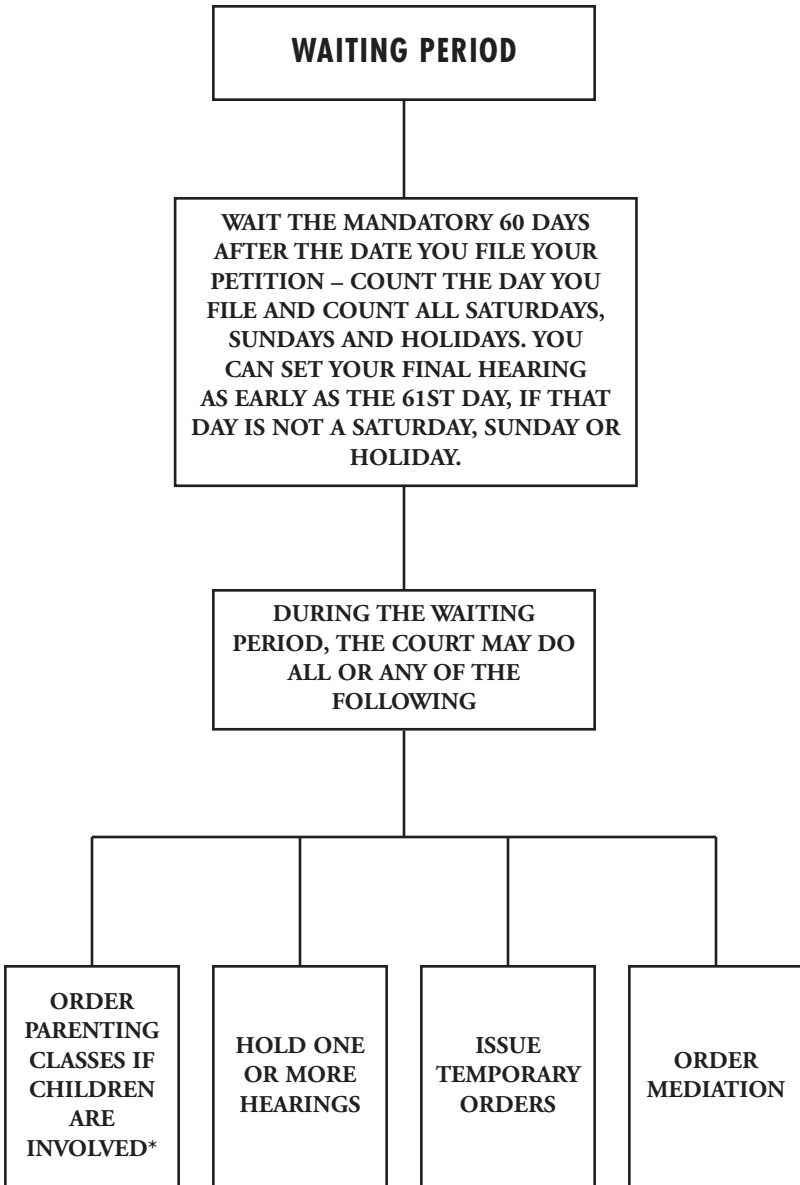
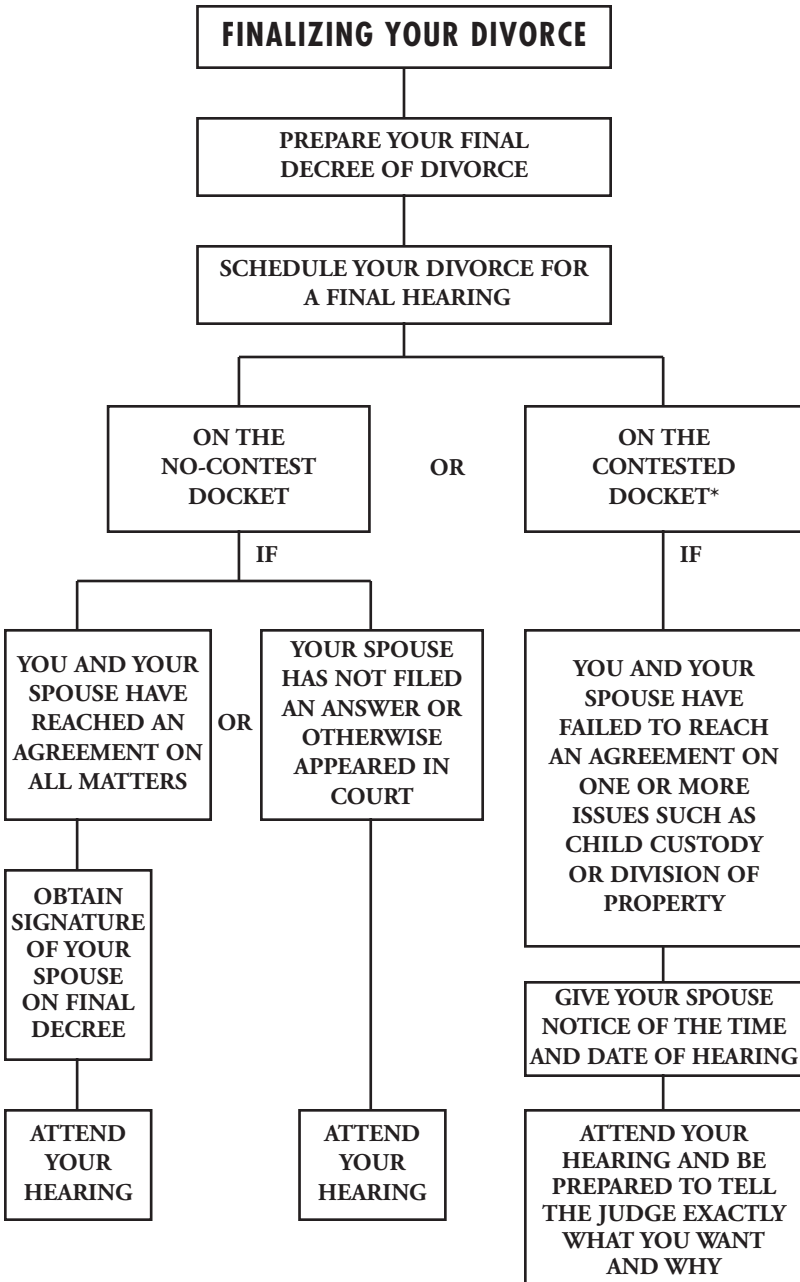


FIGURE 4



***\*WE RECOMMEND THAT YOU SEEK THE ADVICE OF A LAWYER IF DISPUTES REGARDING CHILD CUSTODY ARE INVOLVED.***

FIGURE 5



***WE RECOMMEND THAT YOU SEEK THE ADVICE OF A LAWYER FOR CONTESTED ISSUES.***



## HELPFUL TIPS:

1. Always write down the date and name of the person you talk with at the courthouse and the information given to you.
2. Mail important documents by certified mail and ask for a return receipt so you will have proof that you mailed the document and it was received.
3. Keep all documents related to the divorce in one place such as an envelope, folder, or binder.
4. When filing documents with the court, always include the full court docket number, court number and case name on the document.
5. Always keep a copy of every document for yourself. Do not give away your only copy.
6. When you get your copy of the Final Decree of Divorce conformed by the court administrator or clerk, ask for at least one certified copy of the order. In some counties you can obtain a free certified copy of your divorce decree on the day your divorce is proved up. After that date, you will usually be charged a fee for this copy. A certified copy is normally required to prove that your copy is an authentic copy of the order and will be required by many entities when transferring accounts from one party to the other or when changing your name on certain accounts like your social security account.

## COMMON WORDS IN A TEXAS DIVORCE

**ADR Statement** – Alternative Dispute Resolution Statement. A written statement to the court that you will try to resolve the issues in the divorce between you and your spouse before asking the judge to make a decision. This document was previously required to be attached to the divorce petition.

**Affidavit of Inability to Pay Court Costs** – A sworn statement of your income, assets and expenses.

**Alternate payee** – A spouse, former spouse, child, or other dependent of a member or retiree who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by a retirement system with respect to such member or retiree.

**Amicus Attorney** – An attorney appointed by the court to represent the best interest of the child.

**Arrearage** – Money that was court ordered to be paid and is overdue and unpaid.

**Attorney Ad Litem** – An attorney appointed by the court to represent the wishes of the child as he would for an adult client. The rules of confidentiality and undivided loyalty apply.

**Binding Agreement** – An agreement between the parties that is signed by both of them, and is often also filed with the court. It is enforceable as a contract and the judge may decide to make the agreement enforceable as a court order.

**Child Support** – Money paid by a parent to help the other parent support the child.

**Collaborative Law** – A method of alternative dispute resolution where all parties agree to resolve their disagreements without going to court. Each person hires his or her own attorney and everyone works together in a series of meetings to reach an agreement.

**Community Debt** – Debts that occurred during the marriage.

**Community Property** – Property owned by either party during the marriage.

**Conservatorship** – A court order deciding where a child will live and the rights each parent will have to make decisions regarding the child. Also known as “custody.”

**Court Clerk** – The person who works for the judge assigned to your case. He or she receives court papers and assigns hearing dates.

**Court Reporter** – Types and/or records a record of everything said during a court hearing. If requested, the court reporter will prepare a written record for a fee.

**Custodial Parent (Sole or Joint Managing Conservator)** – The parent who has the legal right to determine the primary residence of the child.

**Decree** – Also known as Final Decree of Divorce. The legal document signed by the judge that grants the divorce and describes the specific terms of the divorce.

**District Clerk** – Maintains the official court records for the county. The District Clerk’s office receives all court papers and keeps the divorce files.

**Divorce** – The legal end of the marriage relationship.

**Docket Number** – The number given to your case by the District Clerk’s office that specifically identifies your case. Also called the “Cause Number”.

**Domestic Relations Order** – Any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a member or retiree, and is made pursuant to a domestic relations law, including a community property law of the State of Texas or of another state.

**Dual Role Attorney** – An attorney appointed in a suit by a governmental entity to represent both the child’s wishes and the child’s best interest.

**Employer’s Order to Withhold** – A court order to deduct child support payments from someone’s employment wages. All child support court orders must include an Employer’s Order to Withhold.

**Evidence** – Proof given to the court.

**Filing** – Submitting your prepared legal documents to the District Clerk’s office and paying a filing fee.

**Guardian Ad Litem** – A person appointed by the court to represent the best interests of a child.

**High-conflict Case** – a suit affecting the parent-child relationship in which the parents demonstrate a pattern of going back to court, anger and distrust between each other, difficulty in communicating about and cooperating in the care of their children or other behavior that concerns the judge. A high-conflict case may be a reason for the judge to appoint a parent coordinator.

**Insupportability** – The most common reason given for a no-fault divorce.

**Joint Managing Conservatorship** – Also known as Joint Custody. A court order stating both parents have equal rights and duties to make decisions regarding the child.

**Judge** – The person who hears and makes the final legal decision in your divorce.

**Law Librarian** – The person who maintains legal reference and research materials for public use.

**Managing Conservator** – The parent who has the legal right to determine the primary residence of the child. Also known as Custodial Parent, Primary Conservator or Primary Joint Managing Conservator.

**Marital Property Agreement** – Also known as a Partition Agreement, Partition and Exchange Agreement or Postnuptial Agreement. A signed, written contractual agreement entered into by spouses during the marriage establishing each party’s property rights with respect to some or all of the assets and debts.

**Mediation** – A process to help the parties reach an agreement.

**Mediator** – A neutral person who helps the parties reach an agreement.

**Negotiations** – An attempt to reach an agreement.

**No-Fault Divorce** – The most common type of divorce, where no one needs to prove that the husband or wife caused the marriage to end.

**Non-binding** – A process where no specific result is forced on the parties. There is no penalty if the parties are unable to come to an agreement.

**Non-custodial Parent** – Also known as the Possessory Conservator. The parent that does not have the legal right to determine the primary residence of the child.

**Obligee** – The parent who receives child support on behalf of the child.

**Obligor** – The parent who is court ordered to pay child support.

**Parenting Coordinator** – A neutral person, who does not have an interest in the case, appointed by the court to assist parents in resolving issues relating to parenting and other family issues arising from a court order in a suit affecting the parent-child relationship. A Parenting Coordinator may not be required to testify as to any communications they have had with the parties.

**Parenting Facilitator** – A neutral person, who does not have an interest in the case, appointed by the court to assist parents in resolving issues relating to parenting and other family issues arising from a court order in a suit affecting the parent-child relationship. A Parenting Facilitator may be required to testify as to any communications they have had with the parties, as to the basis of their recommendations to the parties and as to the parties compliance with their recommendations. In addition, the Parenting Facilitator may also monitor the parties compliance with court orders regarding the children.

**Parenting Plan** – A temporary or final court order that sets out the rights and duties of parents in a suit affecting the parent-child relationship and includes provisions relating to conservatorship, possession of and access to a child, child support, and in some cases, a dispute resolution process to minimize future disputes.

**Parties** – The husband and wife, and anyone else who has filed a court appearance in the divorce.

**Paternity** – A court finding that a certain person is legally the father of the child.

**Petition** – A legal paper that starts your divorce case and tells the court and your spouse what you want.

**Petitioner** – The person who files for the divorce.

**Possession Order** – Also known as “visitation” or “access.” A court order stating the specific days and times a noncustodial parent may spend time with the child.

**Possessory Conservator** – Also known as the non-custodial parent. The parent who does not have the legal right to determine the primary residence of the child.

**Primary Conservator** – The parent who has the legal right to determine the primary residence of the child. Also known as Custodial Parent, Managing Conservator or Primary Joint Managing Conservator.

**Process Server** – A person approved by the court who gives official legal notice to another person by giving him/her an official copy of a court document.

**Pro Se** – Representing yourself without an attorney.

**Prove Up** – The process of finishing your divorce in front of the judge at an uncontested court hearing. At the prove up, one or both of the parties recite the required information to the court. The judge then has the discretion to approve the terms, grant the divorce and/or make any other orders the judge believes are appropriate.

**Psychiatric Evaluation** – A court ordered evaluation of a person involved in the lawsuit. The evaluation is conducted by a psychiatrist who will provide a written report to the court.

**Psychological Evaluation** – A court ordered evaluation of a person involved in the lawsuit. The evaluation is conducted by a licensed psychologist who will provide a written report to the court.

**QDRO – Qualified Domestic Relations Order** – A domestic relations order which creates or recognizes the existence of an alternate payee’s right or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a member or retiree under a public retirement system, which directs the public retirement system to disburse benefits to the alternate payee.

**Respondent** – The spouse of the person who filed for divorce.

**Retroactive Child Support** – Child support that was not previously ordered, but should have been paid at a time after the child was born and the parties were separated.

**Return** – Also called a Sheriff’s Return. An affidavit signed by a sheriff or official process server stating the date and time he or she provided legal notice to the other party, or the reason as to why he or she was unable to provide legal notice to the other party. The return is filed with the court.

**Separate Property** – Property that a spouse owned prior to the marriage, or property that was given to the spouse as a gift or inheritance.

**Service** – The legal method for giving your spouse a copy of the divorce petition.

**Settlement** – An agreement reached between the parties.

**Social Study** – A court ordered investigation of the circumstances and home life of the parents and the child. The social study is usually conducted by a social worker.

**Sole Managing Conservatorship** – Also known as sole custody. A court order stating one parent has more rights and duties regarding the child than the other parent.

**Spousal Maintenance** – Also called “spousal support” or “alimony.” Money a court requires one spouse to pay to the other spouse for support during and/or after the divorce is granted.

**Standard Possession Order** – A specific possession schedule designed by the Texas Legislature and found to be in the best interest of the child in most circumstances.

**Temporary Mutual Injunction** – Also known as a Mutual Injunction. A common order contained in Temporary Orders in a divorce that prohibits the parties from destroying or transferring any community property, incurring further debts, and from any type of harassment to the other party or the child.

**Temporary Orders** – Court orders during the pendency of a divorce. Temporary orders may address any issues that need to be dealt with while a divorce is pending, such as custody, visitation, child support, use of property and responsibility to pay debt.

**Temporary Restraining Order** – Also known as a TRO. A common order at the beginning of a divorce that prohibits the other spouse from doing anything to transfer or destroy the property of the marriage or to cause harassment to the other spouse or the child.

**Waiver of Service** – A legal document, signed by the Respondent in the presence of a notary, that states he/she accepts legal notice of the Petition without an official process server or sheriff or constable giving it to him/her. The waiver of service may also have other legal consequences depending on what is stated in the waiver.

## LEGAL RESOURCES

### CHILD SUPPORT

Office of the Attorney General, 1-800-252-8014  
[texasattorneygeneral.gov/child-support](http://texasattorneygeneral.gov/child-support)

### LEGAL AID OFFICES

Legal Aid of Northwest Texas has several offices in north and west Texas. See a directory of offices at [lanwt.org](http://lanwt.org)

Lone Star Legal Aid serves 72 counties in the eastern and Gulf Coast regions of Texas. Find them at [lonestarlegal.org](http://lonestarlegal.org)

Texas RioGrande Legal Aid serves central and southwest Texas. Find them at [trla.org](http://trla.org)

### ONLINE LEGAL ASSISTANCE

Texas Law Help provides free legal information and court forms for simple civil legal problems at [texaslawhelp.org](http://texaslawhelp.org)

Texas Legal Answers operates as an online legal clinic where individuals who meet certain income requirements can post questions and have them answered by volunteer attorneys. Visit [texas.freelegalanswers.org](http://texas.freelegalanswers.org).

### LAWYER REFERRAL SERVICES

State Bar of Texas Lawyer Referral Information Service (statewide)  
800-252-9690  
[texasbar.com/lris](http://texasbar.com/lris)

Certified Regional Lawyer Referral Services:

Corpus Christi Bar Assoc. LRS, 361-883-3971  
Dallas Bar Association LRS, 214-220-7444  
El Paso Bar Assoc. LRS, 915-532-7052  
Harris County Bar Assoc. LRS, 713-236-8000  
Houston Lawyer Referral Service, Inc., 800-289-4577  
Jefferson County Bar Assoc. LRS, 409-835-8438  
Lawyer Referral Service of Central Texas, 512-472-8303  
Plano Bar Association LRS, 972-424-6113  
San Antonio Bar Assoc. LRS, 210-227-1853  
Tarrant County Bar Assoc. LRS, 817-336-4101  
Texas Legal Services Center, 800-622-2520

## APPENDIX A

### *SAMPLE PROVE UP QUESTIONS FOR UNCONTESTED DIVORCE WITHOUT CHILDREN*

1. Your Honor, my name is \_\_\_\_\_. I am the Petitioner in this suit for divorce.
2. I am presently married to \_\_\_\_\_.
3. At the time I filed for divorce, I was a domiciliary of Texas for the preceding six-month period and a resident of this county for the preceding 90-day period.
4. My spouse and I stopped living together as husband and wife on or about \_\_\_\_\_.
5. My marriage to my spouse has become insupportable because of a discord or conflict of personalities that destroys the legitimate ends of the marriage relationship.
6. There is no reasonable expectation of reconciliation.
7. There were no children born or adopted during this marriage.
8. We are not expecting any children at this time.
9. I am requesting the following division of property and debts: (briefly tell the judge how the property and debts will be divided)
10. I believe this is a fair and equitable division of the community property and debts.
11. I am requesting my name be changed from \_\_\_\_\_ to my maiden name: \_\_\_\_\_.
12. I am not requesting a name change to avoid creditors or to avoid criminal prosecution.
13. This is a copy of the Final Decree of Divorce, which bears my signature (and my spouse's signature).
14. I respectfully ask the court to grant me a divorce and approve all provisions in the proposed Final Decree of Divorce.



## APPENDIX B

### *SAMPLE PROVE UP QUESTIONS FOR UNCONTESTED DIVORCE WITH CHILDREN*

1. Your Honor, my name is \_\_\_\_\_. I am the Petitioner in this suit for divorce.
2. I am presently married to \_\_\_\_\_.
3. At the time I filed for divorce, I was a domiciliary of Texas for the preceding six-month period and a resident of this county for the preceding 90-day period.
4. My spouse and I stopped living together as husband and wife on or about \_\_\_\_\_.
5. My marriage to my spouse has become insupportable because of a discord or conflict of personalities that destroys the legitimate ends of the marriage relationship.
6. There is no reasonable expectation of reconciliation.
7. There were \_\_\_\_\_ (number) of children born to or adopted by my spouse and I.
8. We are not expecting any children at this time.
9. I am requesting the following rulings regarding the children: (briefly tell the judge the terms regarding custody, visitation and child support).
10. I believe these rulings would be in the best interest of my children.
11. I am further requesting the following division of property and debts: (briefly tell the judge how the property and debts will be divided).
12. I believe this is a fair and equitable division of the community property and debts.
13. I am requesting my name be changed from \_\_\_\_\_ to my maiden name: \_\_\_\_\_.
14. I am not requesting a name change to avoid creditors or to avoid criminal prosecution.
15. This is a copy of the Final Decree of Divorce, which bears my signature (and my spouse's signature).
16. I respectfully ask the court to grant me a divorce and approve all provisions in the proposed Final Decree of Divorce.

## APPENDIX C

### INFORMATION ON SUIT AFFECTING THE FAMILY RELATIONSHIP (EXCLUDING ADOPTIONS)

#### SECTION I GENERAL INFORMATION (REQUIRED) STATE FILE NUMBER

1a. COUNTY \_\_\_\_\_ 1b. COURT NO. \_\_\_\_\_  
 1c. CAUSE NO. \_\_\_\_\_ 1d. DATE OF ORDER (mm/dd/yyyy) \_\_\_\_\_

2. TYPE OF ORDER (CHECK ALL THAT APPLY):

DIVORCE/ANNULMENT WITH CHILDREN (Sec. 1,2 AND 3)       DIVORCE/ANNULMENT WITHOUT CHILDREN (Sec 1 AND 2)

ESTABLISHMENT OF COURT OF CONTINUING JURISDICTION (SEC 1 AND 3)  
*(Court Order Establishing Paternity, Conservatorship, Child Support or Termination of Parental Rights)*

CHANGE IN THE NAME OF THE CHILD (SEC 1 AND 3)  
*(PROVIDE PRIOR AND NEW NAME OF CHILD IN SECTION 3)*

TRANSFER OF COURT OR CONTINUING JURISDICTION (SEC1,3 AND INFORMATION BELOW)

TRANSFER TO: COUNTY \_\_\_\_\_ COURT NO. \_\_\_\_\_ STATE COURT ID# \_\_\_\_\_

3a. NAME OF ATTORNEY FOR PETITIONER	3b. TELEPHONE NUMBER (including area code)
3c. CURRENT MAILING ADDRESS (STREET AND NUMBER OR P.O BOX, CITY, STATE, ZIP)	

#### SECTION 2 (IF APPLICABLE) REPORT OF DIVORCE OR ANNULMENT OF MARRIAGE

PETITIONER	4. NAME (FIRST MIDDLE LAST SUFFIX)	5. MAIDEN LAST NAME (NAME BEFORE 1 <sup>ST</sup> MARRIAGE)	
	6. PLACE OF BIRTH (CITY AND STATE OR FOREIGN COUNTRY)	7. RACE	8. DATE OF BIRTH (mm/dd/yyyy)
	9. USUAL RESIDENCE	STREET NAME & NUMBER	CITY
RESPONDENT	10. NAME (FIRST MIDDLE LAST SUFFIX)	11. MAIDEN LAST NAME (NAME BEFORE 1 <sup>ST</sup> MARRIAGE)	
	12. PLACE OF BIRTH (CITY AND STATE OR FOREIGN COUNTRY)	13. RACE	14. DATE OF BIRTH (mm/dd/yyyy)
	15. USUAL RESIDENCE (STREET AND NUMBER CITY, STATE, ZIP)		
16. NUMBER OF MINOR CHILDREN	17. DATE OF MARRIAGE (mm/dd/yyyy)	18. PLACE OF MARRIAGE (CITY AND STATE OR FOREIGN COUNTRY)	

#### SECTION 3 (IF APPLICABLE) CHILDREN AFFECTED BY THIS SUIT

CHILD 1	19a. CHILD CURRENT NAME (FIRST MIDDLE LAST SUFFIX)		
	19b. DATE OF BIRTH (mm/dd/yyyy)	19c. SEX	19d. BIRTHPLACE (CITY, COUNTY AND STATE)
	19e. PRIOR NAME OF CHILD (FIRST MIDDLE LAST SUFFIX) – IF APPLICABLE		
CHILD 2	20a. CHILD CURRENT NAME (FIRST MIDDLE LAST SUFFIX)		
	20b. DATE OF BIRTH (mm/dd/yyyy)	20c. SEX	20d. BIRTHPLACE (CITY, COUNTY AND STATE)
	20e. PRIOR NAME OF CHILD (FIRST MIDDLE LAST SUFFIX) – IF APPLICABLE		
CHILD 3	21a. CHILD CURRENT NAME (FIRST MIDDLE LAST SUFFIX)		
	21b. DATE OF BIRTH (mm/dd/yyyy)	21c. SEX	21d. BIRTHPLACE (CITY, COUNTY AND STATE)
	21e. PRIOR NAME OF CHILD (FIRST MIDDLE LAST SUFFIX) – IF APPLICABLE		

ADDITIONAL CHILDREN LISTED ON BACK OF THE FORM.

I CERTIFY THAT THE ABOVE ORDER WAS GRANTED ON THE DATE AND PLACE AS STATED. \_\_\_\_\_  
SIGNATURE OF THE CLERK OF THE COURT

**WARNING:** This is a governmental document. Texas Penal Code, Section 37.10, specifies penalties for making false entries or providing false information in this document. VS-165 REV 07/2017

**ADDITIONAL CHILDREN AFFECTED BY THIS SUIT FROM SECTION 3 (IF APPLICABLE)**

CHILD 4	23a. CHILD CURRENT NAME (FIRST MIDDLE LAST SUFFIX)		
	23b. DATE OF BIRTH (mm/dd/yyyy)	23c. SEX	23d. BIRTHPLACE (CITY, COUNTY AND STATE)
	23e. PRIOR NAME OF CHILD (FIRST MIDDLE LAST SUFFIX) – IF APPLICABLE		
CHILD 5	24a. CHILD CURRENT NAME (FIRST MIDDLE LAST SUFFIX)		
	24b. DATE OF BIRTH (mm/dd/yyyy)	24c. SEX	24d. BIRTHPLACE (CITY, COUNTY AND STATE)
	24e. PRIOR NAME OF CHILD (FIRST MIDDLE LAST SUFFIX) – IF APPLICABLE		
CHILD 6	25a. CHILD CURRENT NAME (FIRST MIDDLE LAST SUFFIX)		
	25b. DATE OF BIRTH (mm/dd/yyyy)	25c. SEX	25d. BIRTHPLACE (CITY, COUNTY AND STATE)
	25e. PRIOR NAME OF CHILD (FIRST MIDDLE LAST SUFFIX) – IF APPLICABLE		

**Instructions for Completing the Suit Affecting Parent Child Relationship Form****GENERAL REQUIREMENT:**

All divorces/annulments (with or without children) and all suits affecting the parent-child relationship must be reported through the clerk of the court to the State Vital Statistics Unit (VSU).

Consolidated reporting by petitioners, attorneys, and the courts is designed to make mandatory reporting more efficient, timely, and improve the quality of reporting. However, this reporting system is only as good or timely as you make it; therefore, your attention in completing and filing this report is critical.

Legal basis for this reporting is contained in Health and Safety Code §194.002 and Texas Family Code §§108.001-.002 and 108.004.

For information concerning reporting or questions about this form, contact field services at [fieldservices@dshs.texas.gov](mailto:fieldservices@dshs.texas.gov) or by phone at 512-776-3010.

**The VSU-165 form must be printed double-sided (one sheet not two).**

For information on the court of continuing jurisdiction of a child, contact VSU at (888) 963-7111 ext. 2529. Inquiries should be addressed to VSU, 1100 West 49th Street, Austin, Texas, 78756-3191; inquiries may also be faxed to (512) 776-7164.

**SECTION 1 GENERAL INFORMATION (REQUIRED)**

This section must be completed for each report filed.

- 1a – d. Enter the required information to identify the court proceeding.
- 2. Check the type of suit being reported. This determines also which sections of the form must be completed. If more than one type of order applies, check all that apply. Transfers from one jurisdiction to another must be reported in this section (if court number is unknown, specify "unknown").
- 3a – c. Complete the attorney information to assist in questions or follow up. If case was pro se, please enter the information of the person completing this form.

**SECTION 2 (IF APPLICABLE) REPORT OF DIVORCE OR ANNULMENT OF MARRIAGE**

All divorces/annulments must be reported, even if there were no minor children. All information is required.

- 4-9. Report the Petitioner's information including maiden name (if applicable).
- 10-15. Report the Respondent's information, including maiden name (if applicable).
- 16. Report the number of minor children affected by this divorce; if none, record "0." This number must correspond to the listing of children in Section 3.
- 17-18. Enter the date and place of the marriage being dissolved.

**SECTION 3 (IF APPLICABLE) CHILDREN AFFECTED BY THIS SUIT**

Every child affected by the suit being reported must be listed, and all items concerning that child must be completed. If more than three children are affected, check the "additional children listed on back of form" box, and continue to list the additional children. If more than 6 children complete section 3 on another form, label it "continuation" and attached the continuation form to the original form.



Prepared as a public service by the  
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**[pamphlets@texasbar.com](mailto:pamphlets@texasbar.com)**  
or by calling (800) 204-2222, ext. 1800