

TO DIVORCE OR NOT TO DIVORCE?

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To Divorce Or Not To Divorce?

To divorce or not to divorce? This is a question that many people face for a variety of compelling reasons. After exhausting all possible means to save your marriage, if you are seriously considering a divorce in Texas, understanding your rights, duties, and responsibilities before you begin the process is crucial.

Grounds For Divorce

The most common ground used for filing a divorce is insupportability, which is more commonly described as a “no fault” divorce. Other grounds for divorce include cruelty, adultery, conviction of a felony, abandonment, living apart, and confinement in a mental hospital.

Residency Requirements

In order to file for a divorce, either party must be a resident of the State of Texas for at least six (6) months prior to the time the divorce is filed, and a resident of the county in which the divorce is filed at least ninety (90) days prior to filing.

Alternative Dispute Resolution (ADR)

An agreement to resolve contested divorce issues without the necessity of court intervention is required in all divorce proceedings. Mediation is the most common form of dispute resolution utilized by parties.

Length Of Time To Finalize Divorce

A divorce must be on file with the court at least sixty (60) days before it can be finalized. Ordinarily, if the divorce is not contested, it generally takes sixty-one (61) days to one hundred eighty (180) days to obtain a divorce. If the divorce is contested, i.e. the parties are not able to agree on the issues involved, often it may take twelve (12) months or more, to finalize a divorce.

General Issues Involved

Two major issues that constantly arise in divorce are children and property division.

Child Custody

The “best interest of the child” is always used to determine custody of a child. Each

parent may be appointed a managing conservator of a child. Commonly, the parents are appointed as joint managing conservators unless there is a determination that such an appointment is not in the best interest of the child. Under the joint managing conservator arrangement, one of the parents is designated as the conservator who has the exclusive right to establish the primary physical residence of the child.

Child Visitation

The “best interest of the child” is also used to determine a parent’s access to and possession of a child. Texas has established guidelines in a "Standard Possession Order" that assures responsible parents the opportunity to have frequent and continuous contact with their child. These guidelines commonly establish the terms and conditions for possession of a child by a parent who does not live with the child. The guidelines apply to a child three (3) years of age or older. Court orders regarding a child younger than three years are customized to the particular circumstances.

The parents and the court may, by agreement or court order, customize the terms for possession and access of any child. If the facts are sufficient to show that a parent is a danger to the emotional and physical welfare of the child, visitation can be restricted or denied.

Child Support

Texas recognizes the duty of each parent to support his/her child. Usually, child support is paid until a child graduates from high school or until the child is eighteen years of age, whichever happens later. There are other circumstances when child support may terminate earlier, or may be extended longer.

Generally, child support is determined by calculating a percentage of the individual’s “net resources”. Examples of resources include wages, self-employment income, pensions, workers’ compensation benefits, disability benefits, and other sources of income.

Texas has established “Child Support Guidelines” that are used to determine a fair and appropriate amount of child support. There are instances when child support may be greater or less than the established guidelines if it is determined that the guidelines are not fair or appropriate. Usually, the parent who pays child support is also the parent who is required to provide medical coverage for the child.

In the majority of instances, periodic monthly payments for child support are ordered. However, child support may be paid in a different manner. Examples include an annuity purchase, and a lump-sum payment for child support.

Separate and Community Property

Often, separate property and community property exist when the parties are divorcing. Separate property includes 1) property owned before the marriage by a spouse, 2) property acquired by the spouse during the marriage by gift or inheritance, and

3) damages for personal injury received during the marriage, except for loss of earning capacity. Other property accumulated during the marriage is generally considered community property.

A spouse's inheritance of \$100,000.00 from a relative, and a home owned prior to the marriage are examples of separate property. Community property may include the parties' homestead, vehicles purchased during the marriage, retirement benefits, wages, bonds, investments, and savings accumulated during the marriage.

“Just and Right Property Division”

To determine property division, the court applies a “just and right” standard. Factors considered include the earning ability of the parties, educational background, physical condition of the parties, disparity of age, and size of separate estates. For example, a spouse may be awarded 80% of the parties' marital estate when the circumstances merit a disproportionate division.

Areas for division of the parties' estate include retirement benefits, tax obligations, real property, stocks, 401(k)s, trusts, life insurance policies, community debts, tax obligations, furniture and furnishings, and vehicles.

Reimbursement to either the community estate or to a spouse's separate estate may be requested. Community funds used to pay off a spouse's separate credit card debts is an example where a request for reimbursement to the parties' community estate is appropriate. Funds from the sale of a spouse's separate real estate used to purchase the parties marital homestead is an example where a request for reimbursement to a spouse's separate estate exists.

The Right Answer

To divorce or not to divorce? Only the parties can answer the question. Knowing your rights, duties, and responsibilities will assist you in making the right decision.

The information in this article is not intended as legal advice but to provide a general understanding of the law. Any readers with a legal problem, including those whose problems are addressed here, should consult an attorney for advice on their particular circumstances.

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