

This guide is intended to help you use the **uncontested** divorce forms provided by www.TexasLawHelp.org

Do not use these forms or this guide if:

- ❶ Your divorce is contested*
- ❶ The wife is pregnant.
- ❶ You have a bankruptcy pending. (If you have a pending bankruptcy, talk with a bankruptcy lawyer before filing for divorce.)
- ❶ Neither you nor your spouse has lived in Texas in the last 6 months.

Is your divorce contested? -Or- Is your divorce uncontested?

*Your case is **contested** when you and your spouse don't agree about getting the divorce, dividing your property and debts, or what to do with your children. **DO NOT USE THESE FORMS** or this brochure for a contested divorce.

Your case is **uncontested** when:

- ▶ It is 'agreed' – You and your spouse agree about all of the issues in your case.
- or**
- ▶ It is 'default' – Your spouse does not file an answer with the Court after being officially served with your divorce paperwork.

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REMEMBER: It is always best to have the advice of a lawyer. The court clerks, librarians, and judges want to help you, but they cannot give you legal advice, help you fill out your forms, or tell you what to do. If you proceed without a lawyer, you will be responsible for protecting yourself.

Basic Information

What is a divorce?

A divorce ends your marriage.

A divorce *decree* says who keeps what property and who pays what debts.

Where do I get divorced?

- ✓ You can get divorced in Texas if you **or** your spouse has lived in Texas for the last 6 months.
- ✓ File your divorce in the county courthouse where you **or** your spouse has lived for the last 90 days.

Why do I need to wait until after the baby is born?

Most Texas courts will not finalize a divorce if the wife is pregnant, even if the baby is not the husband's. Instead, the courts wait until after the baby is born so that orders regarding the baby can be included in the divorce decree.

Do I need a lawyer?

You do not *have* to have a lawyer to get a divorce, but it's a good idea especially if:

- You and your spouse do not agree (the divorce is contested).
- Your spouse has a lawyer.
- You are afraid for your safety or your children's safety.
- You are unsure how to divide property such as retirement and real estate correctly.

Getting a divorce can be complicated. If you make a mistake, it could affect your children, your property, and your income. Try to speak to a lawyer about your legal rights before you file your *Petition for Divorce*. Some lawyers will **unbundle** their services. They will "coach" you to represent yourself and only charge for the services you request. Other lawyers are available only if you hire them to handle every step of the case. If you can't afford to hire a lawyer, contact your local Legal Aid office.

What forms do I need?

There are several form packets to choose from on www.TexasLawHelp.org.

Choose the **Divorce without Children** forms if you do not have minor children of the marriage **or** if you have child support and visitation orders already in place.

Choose the **Divorce with Children** forms if children were born or adopted during the marriage and the children are younger than 18 or have not graduated from high school. Exception: If you already have final court orders for custody and support of the children, and you are **not** asking for a change to those orders in the divorce process, then use the Divorce without Children forms and attach a copy of the current custody and support orders (showing the judge's signature) to the Decree.

If you cannot afford the court filing fees, you should also file an **Affidavit of Inability to Pay Costs**. This form tells the court about your income and assets and asks the court to waive the filing fee.

The **Default Judgment Kit** explains what you need to do to get a final judgment when your spouse will not respond to the divorce. This kit includes instructions and explanations about what you must do, a checklist for the forms you need, and the forms you can use.

If you cannot find your spouse, review the **Legal Notice**, the **Service by Posting**, and the **Service by Publication**, kits on www.TexasLawHelp.org.

Important Note:

The www.TexasLawHelp.org forms are forms used in a basic, uncontested divorce.

You will need to hire a lawyer to draft forms for special issues like spousal support, transfer of land and houses, division of retirement and investment accounts, etc.

You need an attorney for a contested divorce, especially if temporary support or restraining orders are needed.

DO NOT use the www.TexasLawHelp.org forms for a contested divorce.

Divorce in Texas – Know the Steps

Step 1. Fill out the Original Petition for Divorce.

This form tells the judge and your spouse that you want a divorce.

Step 2. Make 2 copies of your completed Original Petition for Divorce.

Step 3. File your Original Petition for Divorce.

Take the original and 2 copies of your completed *Original Petition for Divorce* to the Courthouse. File your papers with the District Clerk's Office.

The clerk will ask you to pay a fee (around \$250 - \$300) to file your *Original Petition for Divorce*. If you cannot afford the fee, you should also file an *Affidavit of Inability to Pay Costs*.

This form tells the court about your income and assets and asks the court to waive the filing fee.

The clerk will stamp your papers with the date you file. She will also assign a cause number and a judicial district. The clerk will keep the original and give back your copies. Keep a copy for yourself in a safe place. You will need the other copy to give legal notice to your spouse.

NOTE: In most counties family law cases are heard in the *district* courts and all paperwork is filed in the *District Clerk's Office*. In counties where family law cases are heard in county courts, you would file your paper work in the County Clerk's Office.

Step 4. Give Your Spouse “Legal Notice.”

You must **notify** your spouse that you are asking the court for a divorce and you must **prove** to the court that you did so. This is called giving “**legal notice**.” There are 4 ways to give legal notice:

1) Waiver of Citation. You may give legal notice by giving your spouse a file-stamped copy of your *Original Petition for Divorce* and a *Waiver of Citation* that he or she signs in front of a notary and files with the Court. If you choose this method, do not give your spouse the *Waiver of Citation* until after you file your *Original Petition for Divorce*.*

*The *Waiver of Citation* in this packet is a global waiver. By signing a global waiver, your spouse gives up the right to be given a copy of the divorce *Petition* by Official Service and the right to know what orders you will ask the judge to make regarding your children and property. If your spouse signs the *Waiver of Citation* provided in this packet s/he does not have to sign the *Decree of Divorce* or go to court.

2) Answer. If your spouse agrees to the divorce and wants to know what orders you will request, or when hearings are scheduled, then s/he should sign and file an *Answer* instead of a *Waiver*. If your spouse files an *Answer*, s/he must also agree to and sign the *Decree of Divorce* to finish your divorce without a contested hearing. You do not need to have your spouse officially served.

3) Official Service in Person or by Mail. You can have an official process server give notice to your spouse either in person or by certified mail.

If you are having your spouse served in jail, do not use Official Service by Mail. Instead, send your divorce paperwork to an official server in that county so that your spouse can be personally served.

After your spouse is served the official server fills out a *Return of Service* form stating when and where your spouse was served. This is proof to the court that you notified your spouse of the divorce.

The *Return of Service* form must be filed with the clerk's office.

4) Official Service by Publication or Posting. Either Publication or Posting is used when a spouse can't be found. You will have to prove to the judge that you tried hard to find your spouse. You may have to pay your spouse's attorney's fees. There is more information about this type of service at www.TexasLawHelp.org.

Read the Legal Notice chart on page 6 to select the method of notice you plan to use.

Step 5. Wait.

61 Day Waiting Period – (Applies in Most cases)

In most cases, you must wait at least 61 days from the day you filed your *Original Petition for Divorce* before you can finish your divorce. You can always wait longer than 61 days, but your divorce cannot be finished in less than 61 days. When counting the 61 days, count the day you filed your *Original Petition for Divorce* on a calendar, and then count out 61 more days.

The 61 Day Waiting Period can be waived in cases of domestic violence if:

You have an active Protective Order against your spouse who committed family violence during your marriage, or your spouse has received deferred adjudication or a final conviction for committing family violence against you or a member of your household.

Other Waiting Periods

21 Day Answer Period – (Applies in Official Service cases only)

If your spouse was served with legal notice by an official process server, you must wait at least 21 days after your spouse was served, to see if your spouse will file an answer. This 21-day period may or may not fall within the 61 day waiting period. When counting the 21 days, count the day your spouse was served on a calendar, and then count out 21 more days. Go to the next Monday on the calendar. This is the last official day of your spouse's answer period. However, your spouse can file an answer any time before you finish your divorce.

7 Day Waiting Period – (Applies in Posting cases only)

If your spouse was served by **Posting** add an additional 7 days to the 21 day answer period. Go to the next Monday on the calendar. This is the last official day of your spouse's answer period. However, your spouse can file an answer any time before you finish your divorce.

10 Day Waiting Period – (Applies in Official Service cases only)

If your spouse was served with legal notice by an official process server, the official process server fills out a return of service form stating when and where your spouse was served. The **return of service** must be on file with the District Clerk's office for 10 days. When counting the 10 days, do not count the day your spouse was served or the day you go to court. There must be 10 days in between.



What about mediation?

If you and your spouse do not agree on all issues you should consider mediation. In mediation, an independent person will try to help you reach an agreement. The divorce process is usually easier when you have an agreement. Talk to a lawyer first so that you understand your legal rights.

Mediation is not a good idea if you are afraid of your spouse.

Step 6. Determine if your case is *contested* or *uncontested*.

How did your spouse respond to the court when you gave him or her legal notice?

- Your case is **contested** if your spouse files an answer and does not agree to the terms of the divorce.
- Your **uncontested** case is '**agreed**' if you and your spouse agree on what to put in your Decree of Divorce, your spouse has signed a waiver or answer, and your spouse is willing to sign your *Decree of Divorce*.
- Your **uncontested** case is '**default**' if your spouse did not file an answer after being officially served by the Official Service Process method. After the waiting periods have passed, call the Clerk's Office to find out if your spouse filed an answer. If your spouse did not file an answer you can finish your divorce without your spouse. Download the "Default Judgment Kit" from www.TexasLawHelp.org. This kit includes the extra paperwork you will need to finish your divorce by default.

Step 7. Find out when the Court hears uncontested divorce cases.

Call the District Clerk's Office to find out when the Court in your county hears uncontested divorce cases. Some courts in big counties have an "uncontested docket" where they hear uncontested divorce cases every day. Other courts, especially those in smaller counties, only hear uncontested divorce cases on certain days.

Step 8. Write your Decree of Divorce.

Fill out your *Decree of Divorce*. This is the paper the judge signs, granting your divorce. The *Decree of Divorce* also says who keeps what property and who pays what debts. If you and your spouse have children, the decree of divorce says who makes decisions about your children, when the children see each parent and which parent pays child support and provides health insurance for the children. The decree of divorce may include other orders such as who pays spousal support and how much.

It's best to have a lawyer review your *Decree of Divorce* before you present it to the Court. You may also need to hire a lawyer to write additional documents if you are dividing retirement benefits or a 401(k) account or transferring ownership of a house or land.

Step 9. Go to court.

Bring all of your paperwork to the courthouse on the day the court in your county hears uncontested divorce cases. Read "Are you ready for court?" on page 7.

If your case is **agreed** bring:

- 1) a copy of your *Original Petition of Divorce*; and
- 2) the *Waiver of Citation or Answer* signed by your spouse; and
- 3) "*Information on Suit Affecting the Family Relationship*" form; **and**
- 4) your *Decree of Divorce*, (if your spouse filed an answer, make sure s/he signed the *Decree of Divorce*).

If your case is **default** bring:

- 1) a copy of your *Original Petition of Divorce*; and
- 2) your *Decree of Divorce*; and
- 3) Military Servicemember's Affidavit and Certificate of Last Known Address, (these forms are part of the Default Judgment Kit at www.TexasLawHelp.org); **and**
- 4) "*Information on Suit Affecting the Family Relationship*" form

Step 10. Finish your divorce by filing your decree in the District Clerk's Office.

Take your paperwork back to the Clerk's Office after it is signed by the Judge. Your divorce is not final until the paperwork is filed. File the "*Information on Suit Affecting the Family Relationship*" form.

NOTE: In some counties, the court, not you, files the signed Decree in the Clerk's Office.

The clerk will keep the original documents and make copies for you for a fee. You might consider asking the clerk for a certified copy of your Decree of Divorce. If you have **child support orders**, ask the clerk what you need to do to set up your child support account and wage withholding. There will be a fee.

Steps in a divorce if your case is Uncontested

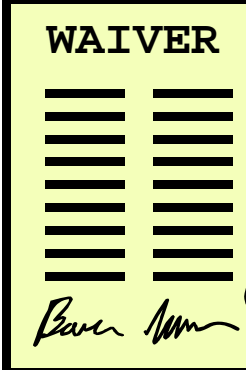
- 1 Fill out the *Original Petition for Divorce*.
↓
- 2 Make 2 copies of your completed *Original Petition for Divorce*.
↓
- 3 File your *Original Petition for Divorce*.
↓
- 4 Give Your Spouse "Legal Notice."
↓
- 5 Wait the required waiting periods.
↓
- 6 Determine if your case is *uncontested* or *contested* case before proceeding.
↓
- 7 Learn when & where the court hears uncontested divorces.
↓
- 8 Write your *Decree of Divorce*.
↓
- 9 Go to court and get the needed signatures.
↓
- 10 **Finish your Uncontested divorce** by filing the signed decree in the Clerk's Office.

**Giving Legal Notice in Agreed and Default Divorces:
Proving to the Court You Notified your Spouse of the Divorce**

If you can locate your spouse AND . . .

You want to give the divorce papers to your spouse yourself AND . . .

Your spouse **agrees** to all parts of the divorce and does not want to be notified of hearings or sign the decree, **THEN USE** →



The Waiver of Citation is a form signed by the responding spouse and filed with the court to show that he or she has received a notice and waives the right to know what orders for child support & property you will ask the judge to make.

Waiver of Citation method

Your spouse wants to sign the decree, to know what orders you will ask for, or wants to know when hearings are scheduled, **THEN USE** →

The Answer is a form filed by the respondent instead of the Waiver of Citation when the respondent wants to retain certain rights.



Spouse files Answer method *

You want someone else to give your spouse the divorce papers or you believe your spouse would not respond using the Waiver or Answer methods AND . . .

You want a constable, sheriff's officer or other official process server to deliver the paperwork or your spouse is in jail, **THEN USE** →



The official server needs to personally give your spouse the paperwork, *unless s/he voluntarily files an Answer.**

Official Service by Official Server method

You have a good mailing address for your spouse and you can be sure your spouse will be the person who signs the green certified mail card and your spouse is not in jail, **THEN USE** →



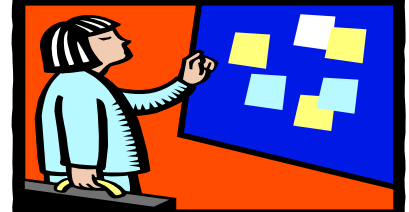
The server will mail the paperwork by certified mail, return receipt requested.

Official Service by Mail method

If you don't know where your spouse lives, works, or can be found AND . . .

You don't have children or valuable property **THEN USE** →

A server will post notice of your divorce at the courthouse for 7 days.



Official Service by Posting method

You have children or valuable property **THEN USE** →



If you serve by publication, your spouse has the right to an attorney and *you* would have to pay for the attorney's fees.

Official Service By Publication method

Are you ready for court?

Be prepared:

- ✓ Get to the courthouse early to find parking and your courtroom.
- ✓ When the courtroom opens, go in and tell the clerk you are present. The clerk usually sits next to the judge's bench.
- ✓ Most courtrooms do not allow children.

When you are in court:

- ✓ Dress neatly. Do not wear shorts, tank tops, or hats. Do not chew gum, or bring food or drink into the courtroom.
- ✓ Turn off your cell phone.
- ✓ Stand up when the judge enters the courtroom.
- ✓ Be calm and polite to everyone. Avoid gestures and facial expressions.
- ✓ Do not talk to the judge or your spouse, unless it is your turn to speak.
- ✓ The judge may not call your case right away. Wait patiently. If you have to leave the courtroom, tell the clerk where you are going.
- ✓ If friends or relatives come to court with you, ask them to follow these rules, too.

About testimony →

In some counties, the judge will ask you questions.

In other counties, you will be expected to have testimony prepared.

The judge will call your case.

- ✓ You will raise your right hand and swear to tell the truth.
- ✓ The judge will ask you questions. Wait until the judge finishes speaking before you start to speak.
- ✓ If you do not understand a question, say, "I don't understand." If you do not know an answer, say, "I don't know."
- ✓ Tell the truth and don't exaggerate. Give complete answers.
- ✓ Speak slowly and loud enough so everyone in court can hear you.
- ✓ Call the judge "Your Honor."
- ✓ Say "Yes" or "No" out loud. It's not enough to nod or shake your head.
- ✓ The judge will listen to what you say and review your papers. If everything is in order, the judge will sign your *Final Decree of Divorce*.

SAMPLE TESTIMONY FOR DIVORCE WITHOUT CHILDREN

My name is _____. I filed this suit for divorce from my spouse _____. (State your spouse's name.)

At the time I filed this divorce, I had lived in Texas for at least the last six (6) months, and in _____ County for at least ninety (90) days.

My marriage to _____ (State your spouse's name) _____ has become unworkable because of differences and misunderstandings between us. There is no reasonable chance that we will get back together.

There are no children born to or adopted of this marriage, who are under 18 years old and we are not currently expecting any other children.

I am requesting that the community property and debts be divided as set forth in the Decree of Divorce. I believe this division is fair.

(OPTIONAL) I am (or My spouse is) requesting a name change to the name that was used before we were married: _____ (State the name used before marriage)

I would respectfully request the Court to grant my divorce.

SAMPLE TESTIMONY FOR DIVORCE WITH CHILDREN

My name is _____. I filed this suit for divorce from my spouse _____. (State your spouse's name.)

At the time I filed for divorce, I had lived in Texas for at least the last six (6) months, and in _____ County for at least ninety (90) days.

I am seeking a divorce because of differences and misunderstandings between us. There is no reasonable expectation that we will get back together.

I am requesting that the community property and our debts be divided as set forth in the Decree of Divorce. I believe this division is fair to both of us, and to our children.

We have ___ child(ren) of this marriage, who are under 18 years old. (State the number of children you have with your spouse who are under 18 years old) We are not expecting any other children of the marriage.

I am requesting that conservatorship and child support be ordered as set forth in the Decree of Divorce. I believe that these orders would be in the best interest of our child(ren).

(OPTIONAL)

I am (or My spouse is) requesting a name change to the name used before we were married: _____ (State the name used before marriage)

I would respectfully request the court to grant my divorce.

Common Questions

Is it difficult to handle a contested case without a lawyer?

Yes. The court rules are very hard to understand if you are not a lawyer. If you make a mistake, the judge may not be able to see your side of the case. A mistake can affect your children, your property, and your income. If at all possible you should hire a lawyer. If you cannot afford a lawyer, contact your local Legal Aid Office.

Where can I read the laws about divorce?

You can read the Texas Family Code at <http://tlo2.tlc.state.tx.us/statutes/fa.toc.htm>.

You can the Texas Rules of Civil (court) Procedure at www.supreme.courts.state.tx.us/rules/trcphome.asp.

How long will it take to get divorced?

It will take at least 61 days after the day you file your *Original Petition for Divorce*.

When can I get married again?

You must wait at least **30 days** after the judge signs your *Decree of Divorce*.

Exception: There is no waiting period if you want to remarry the spouse you just divorced. If you want to marry some one else, you can ask the judge who signed your *Decree of Divorce* for permission to marry sooner than 30 days. This is called a *Waiver of the 30 Day Prohibition Against Remarriage*.

Can I get divorced if I do not know where my spouse is?

Yes. But first, you must prove to the court that you have tried hard to find your spouse. Read about service by posting and publication at www.TexasLawHelp.org.

What if I started my divorce in a different county?

You can finish your divorce in the county where you originally filed if you or your spouse had lived in that county for at least 90 days and Texas for at least 6 months at the time you filed your *Petition for Divorce*. If you want to have the case heard in the county where you are now living, talk to a lawyer.

Terms to Know

Petitioner: The spouse who asks the court for a divorce by filing a Petition. Even if both spouses want the divorce, only one spouse can be the petitioner.

Respondent is the other spouse.

Contested: A divorce is contested when the spouses don't agree about getting the divorce, dividing property and debts, or what to do about child support and custody.

Uncontested: Either the divorce is *agreed* (both parties agree on all the issues) or *default* (the respondent does not file an Answer).

Uncontested Docket is the court that hears divorce cases when the case is either an agreed (uncontested) or a default divorce.

Petition: This is the form the petitioner files to ask the court for a divorce.

Decree: This is the form that the judge signs to grant the divorce. A divorce decree says who keeps what property and who pays what debts.

In a divorce involving children, a divorce decree says which parent pays child support and provides health insurance. The decree also says when the child can visit a parent and which parent makes certain decisions about the child.

A divorce decree can include other orders, such as spousal support.

File: Giving legal papers to the courthouse clerk. There is usually a fee to file a petition, have a citation issued, or to have copies made.

Official Process Server: A constable, sheriff, or private process server who delivers court papers and files notice that the delivery was made in the Clerk's Office. There is a fee for Official Process Service. If your spouse lives or is jailed in another county, learn who provides Official process Service in your spouse's county by asking the Clerk's Office of that county. Contact information for Texas clerk's offices can be found at <http://www.txlaw.org/clerks.html>.

If my spouse and I do not own any property together, do we still have to fill out the property and debt sections on the Decree of Divorce form?

Yes. Anything you or your spouse purchased during your marriage, even if it was purchased after you separated, is community property. Any debts you or your spouse incurred during your marriage, even if they were incurred after you separated, are community debts. Answer each section carefully so you will be able to keep *any* property that belongs to you.

If my spouse filed an Answer, but later agrees to sign the Decree of Divorce, can I still go to an Uncontested Docket?

Yes, if your spouse has signed the *Decree of Divorce*.

How much will child support be?

In most cases, the court uses a special formula to calculate child support. This is called *Guideline* support. Usually, the supporting parent pays the following amounts to the parent with whom the children live most of the time.

For help calculating child support you can use the child support calculator at www.TexasLawHelp.org.

number of Children*	Percent of Supporting Parent's Income <i>After Taxes</i>
1 child	= 20%
2 children	= 25%
3 children	= 30%
4 children	= 35%
5 children	= 40%

→ *Important Note:

The formula is different if the supporting parent also has children with someone else. Use the child support calculator at www.TexasLawHelp.org or talk to a lawyer.

The Court can order a child support amount different from guideline support if the Court determines that amount to be in the best interest of the child.

Where do I send my child support payments?

The State Disbursement Unit, P.O. Box 659791, San Antonio, Texas, 78265-9791.

Can child support be paid directly to the other parent?

No. Unless the court orders otherwise, all child support payments must be sent to the State Disbursement Unit, P.O. Box 659791, San Antonio, Texas, 78265-9791.

What if I already have court orders regarding my children?

If there is a final court order for the custody and support of your children and you are not asking to change that order, you can file your divorce using the **Divorce No Children forms** at www.TexasLawHelp.org. When you fill out your *Original Petition for Divorce* include information about your children and your current custody and support order. You must attach a copy of your current custody and support order to your *Decree of Divorce*.

If there is a final order for the custody and support of your children and you do want to change those orders talk to a lawyer