

# **How Do I Get a Divorce?**

**By Dallas Divorce Lawyer Michelle May O'Neil**

Although it is highly unlikely anyone enters into a marriage with the thought that divorce will be the inevitable end to the union, the unfortunate reality is that many people will have to endure the pain of divorce. Statistics tell us that about half of all first marriages will end in divorce. However, in the Dallas area alone, the divorce rate is closer to 60 percent for first marriages and climbs to 75 percent for second marriages!

For those that have reached the point where divorce is the last remaining option, questions are likely more prevalent than answers. Here are answers to some of the most common questions in the divorce process:

## **What is a divorce?**

A divorce is a lawsuit to dissolve the marriage relationship. A divorce encompasses many different issues including the division of property and debts, and what rights each parent will have to the children.

## **What are the grounds for divorce in Texas?**

Texas is a “no-fault” divorce state. This means in order to get divorced it is not necessary to prove either spouse caused the breakdown of the marriage. The marriage must only be “insupportable” (that discord or conflict of personalities has destroyed the marriage relationship) in the opinion of at least one spouse. Simply put, you guys just don’t get along anymore!

The vast majority of divorces are granted on this basis.

In some situations it is preferable to seek a divorce based on fault. The grounds for fault in Texas include: cruelty, adultery, a felony conviction and imprisonment, abandonment for at least a year, separation for three years, and confinement in a mental hospital for three years with the condition likely to continue or recur in the future.

## **What is the procedure?**

The first step toward the dissolution of the marriage is to file a divorce petition with the court. This is the legal document that tells the court of your intention to seek a divorce. At this point, it is possible one party or the other will request certain restraining orders and ask that a temporary hearing be set to resolve issues while the divorce is pending.

A restraining order in Texas divorce law is a standard, normal part of the process. The purpose is to make sure that both parties “do the right thing” regarding dealing with each other, children, mail, bank accounts, credit cards, personal property, etc.

A restraining order should not be confused with a protective order that addresses family violence and is enforceable by the police.

The next step is to notify the other party that you have filed for divorce. This is usually done through formal service of process by a constable or process server.

If a temporary hearing is requested, it is typically held within two to four weeks of the filing. At the temporary hearing, a judge will address such issues as possession of the children, child support, use of property and payment of debts during the course of the divorce proceedings.

The time between the temporary hearing and the final hearing is the “discovery” phase. Discovery is the process through which each side learns information from the other.

For example, during discovery each side may learn the other's position concerning division of property, the existence and value of the marital estate, custody/possession of the children or income, for the purpose of establishing child support. Discovery includes written discovery, such as interrogatories or requests for production, oral depositions, and the Inventory and Appraisal, which contains each parties' position on the character and value of the marital estate.

Once discovery is completed, the case will be set for final trial. Typically trials are held in front of a judge, who decides the contested issues. However, in Texas, a trial before a jury is allowed in certain circumstances involving child custody and characterization and valuation of property.

Most judges prefer that the parties attend mediation in an attempt to settle their issues without the necessity of a trial. Mediation is a process where a neutral third party, usually a very experienced family lawyer or former judge, facilitates negotiations between the parties to bring a resolution to the contested issues. Mediation is a very successful process, and most cases settle without the necessity of having a trial.

The overall divorce process averages approximately a year in length, although it could be as short as 60 days or as long as 10 years!

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

The difference between a "contested" and "uncontested" divorce is generally a matter of how much time your attorney will have to spend analyzing the issues and contemplating the fairness of the settlement.

In an "uncontested" divorce, usually the parties have gathered information, negotiated and reached a settlement agreement on *all* issues prior to filing the divorce. The attorney's job in that situation is to draft the paperwork according to the agreements the parties have reached.

It is very important to note that in an "uncontested" divorce, the attorney will likely not have enough information to advise the client on whether the settlement is fair or whether the client is making a wise decision.

If there are any issues that are not agreed to in advance by the spouses, then the divorce is considered "contested." If a temporary hearing is necessary, then the divorce is "contested." If there is a need for a temporary restraining order, then the divorce is "contested."

### **Do I need an attorney?**

It is a good idea to have an attorney represent you in your divorce. Some people are able to navigate the court system on the simplest of divorces representing themselves (called "*pro se*"), but on any case with children or where the parties have assets or debts that need to be divided, an attorney will be able to guide the process more efficiently. An attorney who is licensed in the State of Texas is qualified to represent a person in any type of matter, but most people want to have an attorney experienced in the area of their case. The Texas Board of Legal Specialization provides voluntary certification for attorneys in many different areas, specifically including family law. Hiring a board certified attorney will ensure that your attorney has a minimum level of qualifications to handle family law matters.

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