

FREE REPORT

Divorce Survival Guide

Zinda Law Group, PLLC
Attorneys at Law

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Children Come First

Divorce & Custody

- Be Reasonable
- Stand Up For Your Rights
- Put the Kids First

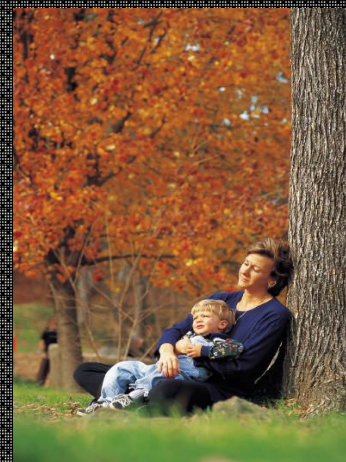
"Always Put the Children First when considering a Divorce."

Introduction

There are many mistakes that people make when they are divorcing. Often these mistakes cost client's additional attorneys' fees, financial ruin and loss of their children.

This report is designed to give people a general idea of what these mistakes are and some basic ways to achieve a better outcome.

Below are nine of the most common mistakes that should be avoided to ensure the divorce process is as painless as possible for everyone involved.



Helping Families Thrive In Difficult Times

The Most Common Mistakes in Custody & Divorce Disputes

Not Putting the Kids First

When a parent places their interests before their children's, difficult schedules are created or one of the parent's misses out on time with the children. In many situations the child is put in the middle and forced to choose sides.

This only prolongs the litigation process and causes undue stress on your children. In the worst of cases, it creates a divide between you and your child which may never be closed. Always put your children first when you are divorcing. All other issues should be secondary.

Following the Advice of Non-lawyers

Usually friends and family are great sources of emotional support, but you should listen to the advice of your attorney when making decisions crucial to the outcome of the divorce.

Obviously, friends and family only have your best interests in mind, but the advice they give may not always be accurate or a good idea.

Even if they have been through a divorce, what worked for them may not work in your case.

Worrying about losing or winning on Minor Issues

Everyone agrees, you should fight on key issues, but compromising on small issues almost always leads to a smooth and less costly divorce.

Emotions run high during a divorce so it is important that you make each decision as logically as possible, this will lead to the best possible outcome.

Failure to Pay Child Support to the Office of Attorney General

This occurs more often than not with individuals who have large salaries that come from investments rather than pay checks.

If child support is not paid through the Texas Office of Attorney General, disputes will arise on whether or not funds were actually child support or were gifts.

The Attorney General's Office will keep track of the payments and ensure that the parties receive credit for making child support payments.

Child support paid directly to the Attorney General will prevent mistakes, and protect both sides from either getting short changed or making double payments.



Not taking your Divorce Attorney's Advice

If a doctor tells a patient they should take medicine most people listen, because a doctor is an expert.

It is no different with a divorce attorney. The attorney is the expert and can best judge what the best way is to get the outcome you desire so you should follow their recommendations throughout the divorce. Many cases are won or lost because the client decided they knew better than the attorney what legal avenue they should take.

The lawyer-client relationship requires an honest and open dialogue to take full advantage of your attorney's legal skills, so it is crucial that you always ask questions when you don't understand a particular course of action.

Setting an Workable Visitation Schedule

Many clients come into a divorce not wanting to have a "visitation schedule" or want visitation to be a strict "50-50" division.

In nearly every case at some point in the future a vague visitation schedule turns into a feud as to who gets to spend time with the kids and when.

There should always be a detailed visitation schedule outlined in any Final Decree of Divorce.

Not Accurately Appraising Asset Values

If you don't know the correct value of your property, it is very likely you could end up with an unfair division of your property.

It is very important to make sure you know the real value of all of your assets. This can be done with the aid of your attorney, research and property valuation experts.

Not making it Clear Who Will Claim the Children on Taxes

At first this appears to be a minor issue, but not including this in the Divorce Decree can lead to one or both parties getting audited.

Specifying who gets to claim the children as dependents helps insure that you don't get audited by the IRS when you both attempt to claim the children.

Choosing the Wrong Attorney

Hiring the law firm that is going to represent you in a divorce needs to be done with careful consideration. It is important for your future financial, emotional and personal well-being that you make the right choice.

You should look for an attorney that has knowledge, experience and skill in all aspects of family law. You also want an attorney that will put your needs first, second and last. Be careful, choosing the wrong attorney can ruin you and your children's future.

Divorce and Family Law Practice Areas

We provide compassionate and experienced legal support to clients in all types of family law matters, including filing for divorce, whether it is an uncontested divorce, contested divorce, high end divorce or military divorce. Furthermore, we provide exceptional assistance for those looking for soldiers' & sailors' civil relief or divorce mediation as an alternative to the traditional divorce. For those who are looking for information on legal separation and common law marriage, our firm can happily provide this for you. During divorce, there are many different important decisions that you and your soon to be ex-spouse must come to. While it may seem difficult to agree on such important aspects of the divorce, it is absolutely vital and our firm is prepared to help you do exactly that.

For matters of property division, including that involving complex property division, community property and asset division, we truly understand the ins and outs of divorce and can use this to your advantage. Cases in which child custody and child support must be decided can get quite complex if the divorcing family has not already made the decision as to who will retain custody of the children. Not to fear, though, because modifications of spousal support, child support, and child custody can be obtained where necessary in the future. For cases in which a parent refuses to abide by the court orders, we can provide services to help you with child custody enforcements, child support enforcements, spousal support and spousal support enforcements. Lastly, our firm is prepared to help you develop prenuptial/postnuptial agreements, with serious matters such as relocations, father's rights, parental alienation, grandparent rights, adoption, domestic violence, and in seeking a protective order when the family is in danger.

A marriage fails for many different reasons and divorce happens to couples every day. That doesn't make your situation any less painful. We understand. The legal team at our firm offer experienced marital and family law representation to men and women, parents, and couples without children. Our practice is focused on divorce cases and the highly charged and often contested matters in divorce, including custody of the children, how assets will be divided, and whether you will have to pay child support or spousal support.

Negotiation can be extremely effective in resolving family issues during a divorce. However, there are other circumstances when going to court is the only realistic way to achieve your goals. Our law firm is made up of skilled litigators and trial lawyers with extensive experience in difficult contested divorce cases. We have the experience you need in family law matters to effectively advocate for your interests in divorce proceedings before a family law judge in Austin. If the differences and contested issues are too great to overcome through negotiation, we are prepared to take your case to court, and have the trial skills and experience to seek to achieve the best possible outcome for our clients.

Divorce Overview

Filing for divorce can be an emotionally charged circumstance for former couples that have made the decision that their marriage is irreparably damaged. If you are considering divorce, or have already been served divorce papers, you should contact an attorney that is well versed and experienced in cases pertaining to divorce laws and procedures and can inform you of your legal options in this difficult and generally complex process.

While divorce is a difficult task because emotions generally run high for couples, the actual process can be simplified with professional legal assistance. We are here to provide you with answers to questions and the information you need, in order to move forward in a way that feels appropriate for you, your family and the circumstances of your situation. We will protect your rights and seek the best result possible in your divorce proceedings. You can read more about our areas of practice below.

Adoption

When you are looking to adopt, it is smart to learn your rights to ensure that the process runs smoothly and effectively. Adoption can involve a step child or an unrelated child, and through the process you can gain legally gain parental rights.

Alimony

Alimony is sought often by a dependent spouse that has come to rely on the other spouse as a source of income. When the marriage ends, the more financially independent spouse may be required to pay alimony for a length of time dependent on the situation.

Asset Division

Asset division is a difficult, but necessary process in divorce. During marriage, you have acquired assets and you may want to keep them in your possession. After a couple separates, they will also need to split many other areas of their lives including property, savings and more.

Child Custody

In matters of child custody, many people may find it painfully difficult to come to reasonable decisions regarding which parent the child or children would be most suitable to live with. Couples often find it difficult to agree on who should be awarded custody and how much. This decision is left up to the courts many times.

Child Support

When a decision is made regarding which parent will gain custody of the children, the court may or may not order a parent to pay child support in order to help provide for the child's life. Even if one parent does not have custody rights, they do not lose the obligation to supply for the child's needs.

Common Law Marriage

A common law marriage is one that is recognized by the state. It does not require a formal wedding ceremony to be considered valid in the state of Texas. When a common law marriage ends and divorce is necessary, the steps will be the same.

Contested Divorce

A contested divorce is a painstakingly difficult process to endure for all parties involved. In many cases, people are forced to file for contested divorce when they have extreme difficulty agreeing on several or all of the important aspects in the divorce, including custody, child support, asset division and more.

Domestic Violence

Domestic violence affects millions of people in the country and it can involve two or more parties that are in a close relationship. At our office, we help families obtain protective orders when a member of the family has been victimized by spousal abuse, rape, child abuse or threats of violence.

Fathers' Rights

In cases regarding child custody during divorce, fathers' rights are often overlooked. The mother is often given priority when determining child custody, child support and alimony. However, more and more changes are being made to give fathers' the same consideration.

Filing for Divorce

A divorce legally terminates a marriage in the eyes of the law. There are various reasons that are considered grounds for divorce in the state, including the option of a no fault divorce for an insupportable marriage. Making the decision to file is a difficult one, and without legal assistance it may be nearly impossible to get through.

Grandparent Rights

When a couple is facing a dispute the grandparents may often be caught up in the turmoil. They may be unable to see their grandchild, even if they are not involved in the conflict. Grandparents can seek the legal right to have visitation with their grandchild even after a marriage has been ended.

High End Divorce

A high end divorce occurs when spouses own a large amount of property and assets, either together or individually. While every divorce can be complicated, these ones can be particularly complex. A couple must be careful in their asset and property division since one small mistake can jeopardize their estate.

Legal Separation

While it is not the same as divorce, legal separation is used as a similar tactic as divorce. However, legal separation is not available in the state of Texas. Some may look to end various aspects of their marriage while keeping some intact, for various reasons, however, in order to separate ties with a spouse in Texas, a divorce must be sought.

Mediation

When you and your spouse have decided upon a more subtle and less expensive divorce, choosing the path of mediation is strongly advised by our firm. For many people going through uncontested divorce, this is the best option. It can reduce the time and cost that many face when they are dragged into court.

Military Divorce

A military divorce follows many of the same rules as a civilian divorce, while also carrying a different set of issues such as military pensions and the issues of serving a member of the military that is serving overseas. There are various regulations to protect a military member including a cap on the percentage of their pay that alimony can take.

Modification of Court Orders

The more time that passes between the finalization of a divorce, the situation of each party will change. This can include the financial standing or need of both former spouses or the needs of their shared child. Modifications can be sought by the court to change the original ruling and it must be proven that there is logical reasoning to do so.

Parental Alienation

Parental alienation is a problem in Austin. When a parent refuses to give visitation rights to the child's or children's other parent, they are risking parental alienation and violating the terms of their child custody or visitation court order. Legal action can be taken and a ruling by the court can be enforced.

Paternity

Paternity tests can be requested by either the mother or father of a child. A mother may choose to request a paternity test if it will require the father to assist financially in raising the child. A father may request a paternity test if it is necessary to his ability to have custody rights of the child.

Prenuptial/ Postnuptial Agreements

If you have assets that you would like to keep in case of a divorce, it is important to obtain a prenuptial agreement. It is not only for the significantly wealthy, and in fact many couples can benefit from establishing clear guidelines early on. While no person would ever wish for their marriage to end, it is always a possibility and is best to protect yourself for the worst case scenario.

Property Division

Dividing your property can be tricky; you may wonder who has the right to keep the house, the car, any vacation homes or other real property that you have acquired during the marriage. The state follows the laws of equitable distribution and property will be divided based on community property and separate property.

Relocations

When one party in the divorcing family wishes to relocate to another state or country, a strain is put on the relationships between the parents and the children. Child custody and visitation orders may be violated in an attempt to relocate. A parent that is looking

to relocate for a job or other reason may face difficulty gaining the ability to do so, while another parent with visitation rights may seek to prevent their child from being moved to a further location.

Spousal Support

Spousal support, or alimony as it is commonly referred to, is a type of support paid to a party who is currently unable to pay for their basic needs or to maintain the standard of living they had during their marriage. Long term support may be given if they are unable to be competitive in the job market, or support may only persist until they finish schooling and are able to find a job. Spousal support can be modified as necessary.

Uncontested Divorce

An uncontested divorce in Austin, Texas takes place when both parties in the divorce have come to mutual agreements on virtually every aspect of the divorce. It is often much less expensive and can use the path of mediation to resolve any outstanding disagreements.

Visitation Rights

During the divorce process, when there are children involved, the parents must decide on child custody and visitation arrangements or it will be decided by the court. A parent who is granted visitation rights is generally the parent who does not have physical custody of the child. Visitation rights include having the child over for weekend visits and/or specifying a time and place to see the child.

Adoption

Adoption pertains to minors and there are many children that are in need of a caring home. It is a legal process that allows a person to become a lawful member of another's family. If a court of law rules a final order of adoption, the new parents gain the same legal rights as blood-related parents would. Child support and other legal matters involving the child may also come into play and should be reviewed by a qualified attorney.

Adopting a child is one of the most important and emotional decisions that an individual or family can make. If you are considering adopting a child, it is extremely important that you understand the legal ramifications that go along with your decision and how the whole process works. There are many qualifications that need to be met and inspections will be carried out to ensure the home is a good fit for the child.

In order to be able to adopt a child, the parental relationships of their birth parents must have been terminated or be in the process, the individual looking to adopt has been a managing conservator for a period of at least six months for a child two years or older, they are the former stepparents that has had possession, care or control of the child for one year or more or they are looking they are looking to become a stepparent.

Who Can Adopt?

The terms of who can adopt a child in Texas are outlined under the Family Code Sec. 162.001. Adoption can be sought by a family member, and even those that have no blood relation with the child. A married couple may look to welcome a child into their home, or in other instances it can be a single person that is looking to care for a child. In many cases a couple that marries may have children from a previous relationship and as part of seeing these children as their own, the spouse may seek to legally become their parent. Those looking to adopt must be 21 or older, along with being financially stable.

There are various terms of an adoption in regards to the level of contact that occurs between a biological parent and the adopted child. This should be established before the adoption takes place and will be carried out after the fact. It is up to those involved to decide if any form of communication will continue between the child and their biological parents.

Intra-Family Adoption

How to Adopt a Family Member

Depending on your situation, the opportunity to adopt a family member of yours may have arisen. There are many different scenarios that could warrant a situation like this. The main reason for a familial adoption is that the legal parents of the child can no longer provide the care for them that they could before. It is possible that a parent has become abusive, lost their job or become addicted to narcotics. There are also many tragic accidents that could incapacitate a parent to the point of no longer being able to take care of their child.

If one or both parents are involved in a car accident, for example, that leaves them both in a weakened physical and mental state, then a family member may be able to adopt their children. This is, of course, dependent on whether or not the legal parents have a will. This form of adoption is often called a "next of kin" adoption. When there is a case of abuse, abandonment or the like and the children go to the custody of a public agency, then relatives can contact that agency to express their interest in adopting the children.

Is a kinship adoption possible for me?

Grandparents, siblings, aunts and uncles are all relatives that can be considered for a kinship or family adoption. In some situations, full legal custody is not transferred from the parents to another family member. This scenario is called kinship caregiving and it usually only takes place for a limited amount of time until the legal parents can again take over parenting responsibilities. This is a private rather than a courtroom arrangement. If a caseworker is assigned to your particular case then you may have to work with the state. Arrangements that are not adoption may warrant child support payments. By adopting a child as your own, you are taking on full responsibilities and custody of the child. You may or may not be able to receive child support assistance from a state child welfare agency.

There is an entirely different scenario in which you may be wishing to adopt your new spouse's children as your own. In most cases, you will need the consent of the children's other genetic parent. If the other parent agrees to stepparent adoption, then they will be released from having to pay child support. Although this is true, it is typically difficult to get a parent to consent to forego their legal rights as a parent of their own volition. When this is finally made possible and the children are now under the care of their adoptive family member, you may still have to consent to visitation. If you only took the children under your care but have not yet formally adopted them, then you may be able to seek legal representation to have the custody status changed.

Alimony in a Divorce

In Texas, alimony is actually called spousal maintenance. Maintenance is typically sought by a dependent spouse from the spouse with greater financial means. Along with the length of the marriage, courts will assess certain criteria to determine whether the spouse that seeks maintenance truly lacks the property needed to sufficiently maintain his/her minimum reasonable needs. It is important to note that either spouse may be eligible for maintenance, and the decision is made after the division of property.

When it comes to receiving the alimony you're entitled to, stress and emotion levels between the divorcing couple may sometimes escalate. You need a divorce attorney who can help subdue these emotions and professionally work to help you get your desired outcome. We understand this, and we have experience handling divorce cases like yours.

Eligibility for Alimony

The court may choose to award support based on a number of influences including if the marriage endured for 10 or more years, the spouse that maintenance is being sought from was convicted of family violence, the dependent spouse is unable to provide for their basic needs or the spouse is a custodian of a child and needs financial assistance. Support may be given for varying lengths of time and amounts that are reliant on the needs of the individual and their ability to eventually provide for themselves.

Factors taken into consideration include financial resources, education and employment level, marital misconduct, child support and more. Sec. 8.054. of the Family Code specifies the terms that are looked at when considering the duration of support. If a marriage was less than 10 years, maintenance cannot continue on for more than five years. If it was less than 30 years then maintenance will not continue on for over 10 years. Under Sec. 8.055., the amount of maintenance will be established and it cannot exceed over \$5,000 or more than 20 percent of the individuals monthly income.

Texas divorce courts limit the length of time that maintenance payments will be made, and they usually aim for the shortest amount of time within reason. However, there are possible exceptions, including physical or mental disability, duties of the custodial parent or types of employment impediments.

Divorce and Asset Division

Over the course of a marriage a couple accumulates any number of assets and property. Considering that most couples do not see divorce immediately on the horizon, these assets fall under the category of belonging to both parties equally. These shared assets, whether they are a house, a vehicle, or anything else obtained during the course of a marriage, are labeled community or marital assets. Because Texas is a community property state, state law dictates that regardless of who earns the actual income to pay for such things as a house or car, these assets are nonetheless the equal property of both spouses.

Community Property and Separate Property

The basis of the laws surrounding community property stem from the understanding that the state of Texas recognizes that both spouses contribute to the marriage equally, therefore community property assets should be divided equally should the marriage fail. The division of community property assets can be a split of the sale of an asset or, in the case of a house for example, one spouse lets the other spouse keep the asset in exchange for a 50% reimbursement of the asset's current market value.

Texas family code § 3.002 states that community property includes any salary or wage that was acquired during marriage, or most assets purchased while the couple remained married. Under Texas family code § 3.001, separate property is considered property that a spouse had prior to the marriage, they acquired during the duration of

the marriage as a gift or by descent or it was from a recovery for a personal injury, aside from compensation for wage loss.

We highly recommend you gather as much information as possible about the current value, purchase price, date of purchase and any other relevant information about any community property assets.

Child Custody Cases

When spouses decide to separate, they do so knowing that they will have to make many tough decisions. If the divorcing couple has a child, they are now forced to make an even harder choice. Child custody is a legal decree from the court that awards the parental rights to either one or both of the parties. The process can be incredibly difficult and there are many factors involved. The Equal Rights Amendment was incorporated in the state in 1973, stating that the sex of a parent will not be factored when the court considers the qualifications of a parent. While either parent can pursue custody, the court will evaluate a number of aspects when making their decision.

Understand Filing for Custody

A child is defined as anyone under the age of 18 years old. In order to be eligible to file for custody in the state of Texas there are a number of requirements that must be met. First, the child must have resided in the state or currently resides in the state six months prior to the case taking place. Next there will need to be information available within the state regarding the care of the child and other useful information that will be assessed. The parents must also have some form of connection to the state, apart from only residing there. This is often in the form of a job.

Joint Managing Conservatorship

Custody can involve legal custody, physical custody, joint custody and even visitation rights. The parent that is awarded sole custody is referred to as the sole managing conservator, where two parents sharing joint custody are considered to be the joint managing conservatorship. The state often looks to keep both parents involved if it is possible. Joint custody allows both parents to stay in the child's life and they make many decisions together. This does not mean that they will both have equal rights and one parent may be given physical custody, permitting the child to remain living with them, while still allowing the other party to have a voice in issues regarding their child. In other cases of joint custody the child may spend time living with both parents.

Sec. 153.002. of the Family Code states that the court will consider what is in the best interests of the child as their main priority when awarding conservatorship. If the child is over the age of 12 they can also be brought in to give a testimony. Visitation may be awarded when one person is given sole custody, but the other wishes to still remain in contact with the child. A schedule can be made to determine when these visits will take place. After the ruling has been made in a custody battle, it may then need to be enforced to ensure that both parents are following the court's decision.

Child Custody Enforcement

Divorcing couples with children arrange for the care and support of their children as part of marital settlement agreements. The terms of child custody are legally binding with court approval. When the court establishes rules for custody and visitation, and disregard for that ruling can result in negative repercussions. A parent who does not comply with the arrangements of the marital settlement agreement regarding child custody may be in contempt of court. In an extreme circumstance, a restraining order may be required to stop an abusive situation. If a divorced spouse cannot uphold the agreements regarding child custody, it may become necessary to enforce the arrangements with the help of the family court system.

Agreed Parenting Plan

It is often challenging for a divorcing couple to come to a resolution that works for both of them on their own. The court can step in to make a judgment call or the couple can form a parenting plan that the court will review. Terms of agreed parenting plans are specified under Sec. 153.007. of the Family Code. A parenting plan can stipulate conservatorship, possession of the child and even modifications to the matters. The court will examine the plan to ensure that it is in the best interest of the child. If they find that it is, they can issue a court order that supports it or if their findings are not satisfactory, they can request a new plan be submitted. This allows the parents to have a say in the matter and can make it easier for them to adhere to the guidelines set in it.

Modifying an Agreement

Circumstances can change with parents and children that can affect a child custody arrangement. A parent may have financial difficulties and become unable to care for a child. A spouse may remarry or move away. Our attorneys encourage the parties to modify their child custody agreements rather than resort to enforcement actions by the courts. Through a modification those involved may be able to gain the changes they are looking for, without having to break the terms of the custody agreement. If the parties cannot reach a satisfactory modification, enforcement of the child custody terms may become necessary.

Child Support

The terms of child support are outlined under Chapter 154 of the state Family Code. State lawmakers have addressed the area of family law attempting to make marriage dissolution fair with regard to child support. The state puts its main focus on the best interests of the children involved. A divorce can be very destabilizing to a child and child support that allows a family to maintain a customary lifestyle can be beneficial to all parties involved. One or both of the parents may be ordered to pay support and the specific situation of the couple will be reviewed when making the ruling. Even if one parent is given sole custody, the other parent may still have a legal obligation to provide support. Duty of support may be terminated for the following reasons:

- The child turns 18 or graduates high school
- Marriage of the child
- Death of the child
- The child enlists in the U.S. armed forces
- The parent-child relation is terminated upon finding from genetic testing

How Support is Determined

Support can be given in periodic payments, a lump sum, property set aside, annuity purchases or through a combination. In deciding child support issues, attorneys meet with the parties and decide upon workable numbers that aid in providing for the children and their education as well as day-to-day expenses. Once the figures become part of the marital settlement agreement with court approval it becomes a legal obligation. The courts consider many factors when deciding child support and may include the following:

- The earning potential of each parent
- The income of each parent
- The number of children in need of support
- The ages of the children in need of support

Support can also be retroactive and the court may rule that a parent needs to pay for past support. Any violations of the child support arrangements are subject to enforcement actions by the proper authorities. It is a good idea to spend the necessary time to prepare a child support agreement that is workable to avoid problems and disagreements in the future. Sometimes there are unforeseen circumstances that can affect the ability to provide child support necessitating child support modifications and new agreements.

Child Support and Taxes

First of all, child support is not tax deductible. Rather than philanthropy, this is a court-ordered requirement for one parent to pay toward the other for the support of their children. Conversely, the parent that is receiving child support payments does not have to include the child support payments they receive as a part of their income.

According to the Internal Revenue Service (IRS), child support payments cannot be taxed. In order for this to remain true, this has to be a court-ordered agreement rather than a personal agreement. You must go to court and have this amount of money designated as child support or else it may be subject to taxation.

There are regular tax exemptions for those people who have children, so how does this factor into the situation if you only have partial custody of your children? According to the IRS, a person must be able to prove that they provide more than half of a child's annual financial support in order to be able to declare the child as an exemption for taxes. If you and the other parent of your children are at a disagreement concerning who gets the exemption, then you must evaluate your situation on the following standards. First of all, there must be a legal divorce or separation agreement between you and the other parent. Either this or you must have been living separately from them for at least six months.

Exemptions for Custodial Parents

If you are the custodial parent, then there is a high likelihood that you will be able to declare your children on your tax return. There are exemptions that must be considered though, especially if you are receiving a significant amount of child support from the other parent. If you pay less than half of what it takes to raise your children each year then you may not be able to get the child tax exemption. Typically though, it is true that the parent who has primary custody (for more than half of the year) is paying more to raise the children than the parent who has custody of the children for less than half of the year. Remember, there is no overarching rule and this may not be true in your particular situation.

Parents who do not have a majority of the custody can sometimes be the ones who get to declare their children for exemptions. You may have to obtain a written agreement from the custodial parent that relinquishes their right to declare their children for taxes or this may already be included in the terms of your divorce or separation agreement. This particular form is called an 8332 form. For those who know they are entitled to this exemption but the other parent is refusing to sign this form, a copy of the divorce decree may be attached to your tax return as proof. One thing that is always true is that exemptions cannot be split; they either go to one parent or the other. This is an interesting situation because it does not necessarily reflect the best interests of the children. The issue is not "is custody provided" but rather which parent gets the benefits of that custody.

Enforcing Child Support

Child support is one of the issues that spouses must address in a divorce. Payment may be ordered by the court from one of both parents even if only one of them has custody of a child. Support payments are to help pay for the education and day-to-day expenses of raising children. The court must approve the proposed support agreement as a part of the divorce settlement, which will then be legally enforceable. Some parents are unable to meet their financial obligations and make timely payments per the schedule set out in the settlement agreement. Many factors can affect the ability of a parent to pay child support payments and may include job loss or a medical emergency. When that money is late or unpaid, the stability of the children can be at risk.

Payment Enforcement

Payments can be made in various forms that will be dependent on the court's decision. Due to the high instance of late payments or no payments at all, legal action is often taken by parents that depend on support as a means to pay for their child's needs. When the court issues a ruling in a case, failure to meet its demands can lead to penalties. Those that do not make payments can have further expenses charged. Without paying support, some may be unable to receive grants or loans. Delinquent accounts can have interest accruing; raising the cost they already owe.

Contempt of Court

Contempt of court occurs when a person does not follow an order from the court. This can be a parent that is not paying child support they are legally obligated to. It is one means for punishing a person that has not met the terms of the agreement, and can lead to jail time of up to six months and a fine up to \$500 for each instance of a court violation.

Government agencies have the means to track taxpayers and garnish their wages if required to enforce payments. In some instances, a parent may decide to stop payments for various reasons. That parent would be in violation of the law and be subject to child support enforcement actions.

Mistaken Paternity

What happens when you find out the father of your child is not who you thought they were? Mistaken paternity can give way to many issues, but the primary one being child support payments. Only the legal father can be considered for child support payments. Recently, the 82nd Texas Legislature addressed this issue. According to these new rules, a court can legally terminate a parent-child relationship between a non-genetic father and a child. What this can do is eliminate the necessity for child support. In order to establish paternity, you should not go through any other means than the court. Men who qualify can request this type of testing in order to prove, legally, that they are or are not the parent of the child.

For men who have been ordered to pay child support but they do not believe they are the father, they must take a paternity test. According to Texas Family Code § 161.005, men who are determined to not be the biological father can be removed from child support responsibilities but they must still pay all child support payments that have already accrued prior to this termination. Men who discover they are not the biological father do not automatically get their child support revoked, but rather they must file a petition with the court, according to the same Texas Family Code statute.

Time Limit for Terminating Parental Rights

There are certain time parameters that must be considered when filing for a modification after mistaken paternity is discovered. Going into effect the first of September of 2012, there is a limit of one year from when the man becomes aware that he is not the genetic father in which he can file a petition to have his parental rights and obligations revoked. There are other special circumstances which can occur. For example, some men although they know that they are not the biological father will sign an Acknowledgement of Paternity order. This acknowledgement is a legal admission of paternity. A judge may consider the arguments of the father, but nothing is guaranteed.

At this point, visitation issues come into play. A father, up until discovering that he is not the biological father of the child, may have grown accustomed to the child and even think of the child as his own. He may decide to retain his rights to parenthood even though he is not the father, but he also may revoke these rights. If the man does choose to revoke his paternity if he is not the biological father, he may petition to retain some sort of visitation rights to the children which the court may or may not approve of. Like all issues involving children, this will come down to what is in the best interests of the children. If the children have developed an emotional bond with the man they thought was their father, then the court may deem that visitation would benefit.

You may be a mother wishing to establish the correct paternity so that you can receive child support payments, a man who is unsure of whether or not he is the biological father of children or a man who is wishing to retain visitation rights.

Texas Child Support Calculator

Each state calculates child support differently, but they all have certain things in common. The amount that one parent has to pay to the other is determined by a number of factors. One thing to be considered is the income of each parent both before and after taxes. Not only do the parents' income and expenses need to be evaluated, but the expenses of the children must be as well. Children may have special medical needs or require money to go to a certain school. It is important to remember that child support can be a voluntary agreement between two parents, but this agreement is not legally binding. In this scenario, there is no way to enforce that one parent pay the other for the expenses of the children.

State legislature has authority to choose which type of calculation method to use to determine the amount of support payments one parent makes to the other each month. Which parent is responsible for paying child support? The obligor is typically the parent who does not have custody of their children. Upon divorce, this parent will likely be required to pay the other spouse as much as was necessary to support the children before divorce. Sometimes, even grandparents or other family members can receive child support, depending on who has been given legal or temporary custody of the children.

Texas Family Code § 150.001

According to the Texas Family Code, one parent or both parents may be responsible to support the child or children. The amount of support and who is entitled to pay it is up to the court's discretion (unless it is uncontested divorce), but the terms of child support are the same across the board. Child support is only necessary until a child turns 18 or graduates from high school, is emancipated through marriage or another legal avenue, until the child dies, or if the child is disabled for an indefinite period.

These payments may be periodic, but the court may also decide that they can be in lump-sums, through an annuity purchase or any combination of those options. If one parent is struggling to make child support payments, but the support order has not been modified, then Texas allows for support to be gained through wage garnishment, that is, withholding part of the obligor's paychecks in lieu of support payments. There is also something called "retroactive child support" which can require one parent to pay child support for the periods of time when there was no child support order.

If you are interested in finding out a general idea for how much child support you may owe, please visit the Texas child support calculator service. There is no way to come to a conclusive number without speaking to an attorney or a judge.

Common Law Marriage

In our state, a formal wedding ceremony is not necessary in order to be considered married in the eyes of the law. It is the general assumption that this is a requirement, and many people are surprised to hear that this assumption is incorrect. A common law marriage can lead to the same legal effects as a marriage after it has been fully established. The primary difference between this form of union and a traditional marriage is the existence of a marriage certificate. One of the main requirements is that the couple must agree that they both desire for the marriage to take place. There are three criteria that must be met for a common law marriage, also referred to as "informal marriage", to exist. This is important to know, so that you can determine if it applies in your situation.

Proof of an Informal Marriage

Informal marriage is outlined in § 2.401 of the Texas Family Code, explaining what must be met in order to establish one. Couples have the option of filing a Declaration of Informal Marriage before the County Clerk or by adhering to three requirements including an agreement to marry, living together in the state and presenting themselves as married to others. A couple does not need to repetitively represent themselves as married for the informal marriage to be valid and even one instance can be enough.

Ending a Common Law Marriage

If you are involved in an informal or common law marriage, the same basic steps of a divorce, as if you were married in a legal ceremony, should be followed. The judge will review a number of factors in order to establish that the common law marriage did actually exist and can then make decisions regarding child custody, visitation and support. One of the more complicated issues to resolve in an informal or common law marriage is property division. Figuring out what is considered to be community property and dividing it fairly can be a rigorous and difficult process. In the same manner as a marriage, an individual looking to remarry must complete the divorce process for their informal marriage.

Contested Divorce Cases

When spouses have decided to file for divorce but cannot agree on key issues, this is considered a contested divorce, which can include a high level of conflict between the opposing parties. Every divorce case is challenging but contested divorces can be particularly difficult. Many aspects of a couple's life together will be divided and it can be more than complex to agree on how to do this.

In the state of Texas a couple can choose to pursue a divorce based on fault or no fault. Grounds for fault include adultery, 3 years of confinement for insanity, a prison sentence of a year or a felony conviction, abandonment or inhuman treatment. A no fault divorce can be sought when a couple is already living apart and has done so for three or more years. Insupportable marriage is also commonly sought as a no fault reason, stating irreconcilable conflict or differences as the cause. Many times an uncontested divorce will involve an issue of fault; increasing the tension between a couple and the likelihood that they will be unable to agree.

Contested Divorce in the Court

In many instances, the matters that one or both parties are contesting can be resolved out of court, either through attorney negotiation or divorce mediation. This is the best option since taking a case to court can increase the length and cost that is endured. This can sometimes be the best option, however, for those looking to gain certain results. When children are involved in a divorce, it can be imperative for an individual to have their case go to court to ensure both they and their child are protected. You will need to be fully prepared for litigation as you only have a small window of opportunity to present your case to the judge.

In a contested case, the hearing will generally take place between 7 to 14 days and if in that time a decision is not met, the court will make a temporary decision determining who has the children, where the parties live and who pays for what. In any divorce proceedings, major issues will have to be ironed out, whether the spouses can cooperate and agree, or not, in which case a judge will ultimately decide. Community property and assets will need to be divided. If there are children involved in the divorce, child custody, visitation arrangements and child support will have to be determined. Also, if a spouse is seeking or challenging spousal support, those financial matters will have to be decided as well.

Division of Assets

How Property Is Divided During Divorce

Property is divided differently in every state. With some exceptions, there are nine states in the U.S. that consider themselves community property states. Community, in the legal sense, refers to the property acquired while a couple was married. For example, if a couple jointly bought a boat during their marriage and then decided to obtain a divorce, the boat along with all other jointly owned property would be divided equally. This is in direct comparison to an equitable division. Although the state of Texas is a community property state, family law sometimes allows for an equitable distribution of the property that was jointly owned, according to Texas Family Code Section 7.001. Equitable, while not split evenly, is split fairly. Fairness is based upon a variety of factors including each spouse's income, expenses and circumstances.

Separate Property

Even though a married couple shares the bulk of their assets, there may be some things that are individually owned. This is considered separate property, rather than community property. For example, if one spouse had a vacation home prior to marriage, even if the vacation home was jointly used by both spouses, in the event of a divorce the vacation home would go back to the spouse who owned it prior to marriage. Inherited items and money are also included in separate property. This has the potential to include things like stock accounts, insurance and business investments. The assets that will be divided in the event of a divorce do not only include physical property such as jewelry or commercial buildings. Property division includes non-physical property such as intellectual property, retirement benefits and stock accounts. Below are examples of other assets that can be divided:

- Oil & Gas Interests
- Primary Residence
- Rental Properties
- Insurance
- Country Club and Private Club Memberships
- Annuities
- Business Investments
- Loans to Businesses
- Stocks in Privately Held Company

Don't get cut short!

These issues are typically not as black and white as they may seem on the surface. Property that is held in one spouse's name may have been paid for by the other spouse's inheritance, for example. Things tend to look very different on paper than they do when you dig a little deeper. Although Texas is a community property state, there are special considerations that need to be taken into account in order to make sure that both parties are fairly distributed assets. There may be special health issues to take into consideration and each spouse's income must also be evaluated.

Annuities

Annuities are contracts that are created by an individual or a party to an insurance company in a single amount, the premium, which the insurance company will then repay to the individual or party group over a period of time established with the insurance company. This time period can be until a specified date or until the death of that individual who had signed up for it originally. Annuities are a valuable tool of investment that can allow a steady flow of income to the person receiving it for a long span of time. These are only known to be valuable to investors when they are able to do so for a long amount of time, due to the time it takes to mature before actually becoming profitable.

These contracts are defined by the Internal Revenue Code in the United States, and then specifically regulated by the individual states. There are two phases of the annuity: the deferral phase and the income phase. The first phase is where the individual adds their money into a specific account; here is where the original premium payment and its interest accumulate into the account. Second is the income phase, or the payout, of the money that the customer has been putting away. This money can come to the individual in various forms such as a set amount of payments, limited or full withdrawals, and the last option is withdrawing due to death of the customer. Annuities are controlled by the Texas Department of Insurance (TDI) and ensure that only those companies and agents that have Texas insurance licenses are able to handle these documents with customers. In many instances, plans such as annuities and retirement can often be the biggest financial decisions that the court will have to determine in the divorce.

Dividing an Annuity Plan with Your Spouse

The state of Texas considers all property between a husband and wife to be community property, disregarding who received it; this also applies to investment and retirement plans and savings. Due to the joint nature of being married, the court views all of these plans to be community. As with most laws, there are exceptions depending on the situation per each case. For this reason, it is important to understand the plans that you are a part of so that an attorney may properly walk through these details with you in divorce. While most annuity plans are purchased for an individual person, it is possible for a married couple to share a plan though it is not entirely common. The annuity is originally sold to one individual person, therefore making the payments that have been set up go directly to one individual for their lifetime or set period of time.

Due to the nature of this document, the owner of this plan has the right to determine the recipient of these funds when they die. Usually when filing for a divorce, and dealing with properly dividing the assets, a Qualified Domestic Relations Order (QDRO) form is required to be filled out in order to determine what rightfully belongs to which spouse in the area of insurances and benefit plans. These forms can be done with a help of an attorney in order to make sure that the individual receives what is rightfully their property in the divorce. It is vital that annuity plans be accurately calculated when filing for the divorce. This type of account is often worth more in the future due to the money's maturing process. There are various formulas and calculations that need to be done in order to ensure that the division of assets is done properly in the divorce, leaving both parties with the amount that is considered just and fair.

Boats and Asset Division

How is property divided during a divorce?

During a divorce, assets are divided between couples differently depending on which state they live in. In the United States, nine states are considered community property states. Generally speaking, community property refers to any assets acquired while the couple was married. For instance, if a husband and wife purchased a car when they were married and then decided to file for a divorce, the car would be divided equally between each partner. This is different than states that allow equitable distribution. Equitable distribution involves dividing the couple's assets "fairly." Fairness may be determined by a variety of factors, such as income, circumstances of the divorce, and other expenses. Texas is a community property state, but may permit equitable division of assets in certain circumstances.

Boats and Property Division

Couples filing for divorce will have many questions about asset division. A boat can be a sizable financial asset. Thus, it is important for couples to know who will get the boat in the event of a divorce. Because Texas is a community property state, the time that the boat was purchased will determine who acquires it after a divorce.

If the boat was purchased by a spouse before marriage, it may be considered the personal property of the spouse. If the boat was purchased while the couple was married, it will most likely be considered community property. Thus, the boat would be divided equally between the husband and wife. Of course, this does not refer to physically dividing property. When a large asset (such as a house, car, expensive jewelry or boat) needs to be divided equally between two people, it will most likely be liquidated and divided equally between each spouse.

What is Personal Property?

Technically speaking, a divorce terminates a legal partnership. During this process, the couple's property must be divided between the husband and wife. Legally, a boat is considered "personal property." Marital property is divided into several categories: real property, personal property, financial assets, and business assets. Real property refers to actual real estate and land owned by the married couple, such as vacation homes,

rental properties, and marital homesteads. Financial assets include pensions, stocks, annuities, trusts, checking accounts, etc. Business assets might include business partnerships, professional practices, degrees, and other business interests. Any property that doesn't fit into one of these categories is probably considered personal property, which refers to most of the couple's physical belongings. Art, collectibles, jewelry, boats, cars, guns, and other belongings are considered personal property.

Proving Separate Property

Even though Texas is a community property state, certain situations allow for equitable division of assets during a divorce. Property is divided into two, distinct categories: separate property and community property. According to community property laws, any asset (real, personal, or financial) that the couple acquired while married is considered community property. On the hand, any assets that either the husband or wife acquired before marriage is considered separate property. Separate property includes:

- Any property owned before the marriage took place
- Assets and property acquired via gifting or inheritance
- Compensation or recoveries for a personal injury during marriage, excluding lost wages
- Any property traded or exchanged for another piece of separate property

In the state of Texas, all property is assumed to be community property in a marriage relationship. If a spouse wants any piece of property to be treated as a separate property asset, he/she must be able to demonstrate that the asset was acquired before marriage, a gift, or recovered in a claim or lawsuit. Otherwise, the property will be treated as community property. The easiest way to prove whether or not a piece of property is separate or community property is to trace its ownership to the date it was acquired and compare this to the date of the couple's marriage. If the asset was a gift or won in a legal battle, the spouse must be able to demonstrate that it is separate property in some other way.

Business Investments

If you're facing a divorce, you probably have a lot of questions. Where will I live? How will I tell my children? Who will get the house? What about child support? If you or your spouse were business owners or business investors, the division of your assets may become even more complicated. Generally speaking, anything that you owned before the marriage is considered separate property; it will not be divided between you and your spouse.

However, if the business grew substantially in the duration of your marriage, your husband/wife may be entitled to some of your business assets. Any property that you obtain during your marriage will probably be considered "joint" property. Thus, even though you started or obtain the business before you were married, some of it may be

considered a joint (or "community") property because it expanded while you were married. In this situation, the division of your business could become very complicated and tedious.

What will happen to my business?

According to Forbes, most businesses in the United States have fewer than 500 employees. This means that a large portion of the American economy relies on small businesses. Inevitably, family and marital crises will influence these small businesses. How do the courts handle these situations? Most businesses are considered community property. That is, if the husband and wife owned the business together it will be divided equally between them.

In most states, property is divided equitably during a divorce. This means that the court divides property between the husband and wife "fairly." Fairness is determined by the courts the couple's income, financial circumstances, etc., may influence the division of their property. For instance, if one spouse makes significantly more money than the other, the court may decide that it is "fair" to give the spouse with a lesser income more assets from the marriage.

Texas is considered a community property state. This means that assets are divided evenly between the husband and wife, regardless of income or other factors. Under community property laws, anything that you acquired before your marriage (such as a car, rental property or business) will not be divided. Anything that you acquired after your marriage is legally considered joint property and will be divided evenly. If you acquired a business or invested in a business in the duration of your marriage, you and your spouse have equal rights to the investment.

Because of this, dividing a small business or business investment is one of the trickiest assets to divide during a divorce. Why? Businesses are innately complicated. They are comprised of tangible assets like buildings, vehicles, cash, bank accounts, and inventory, as well as intangible ones like leases, patents, mortgages, etc. Dividing these assets may be extremely tedious - if not relative.

Commercial Buildings

Asset division may be one of the most stressful and frustrating elements of divorce. Who will get the house? What about my car? Will I lose my business investments? What about our rental and commercial properties? These are valid questions in need of real answers.

Generally speaking, the term "commercial building" refers to any structure employed for commercial use. Commercial buildings can be divided into six broad categories: leisure, retail, office, industrial, healthcare, and apartment buildings. These categories might include:

- Office buildings
- Warehouses
- Convenience stores
- Shopping malls
- Hotels
- Restaurants
- Medical centers
- Garages
- Distribution centers

If you or your spouse own or are invested in any of these types of buildings, asset division may become considerably more tedious and complicated than just dividing your personal belongings and financial assets.

Texas Law and Asset Division

The state of Texas operates under community asset division laws. This means that any property you or your spouse acquire in the duration of your marriage will be divided equally in the event of your divorce. Only nine states operate under this assumption. They are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Washington, Wisconsin and Texas. Besides these states, the rest of the U.S. conducts asset division under equitable property laws.

This means that any property you acquire in the duration of your marriage will be divided between you and your spouse fairly. "Fairness" is determined by the court and may be influenced by your income, your spouse's income, and other financial circumstances. For instance, if you make significantly more money than your spouse, you might receive fewer assets than your spouse.

Thus, if you acquired any commercial property before you were married, it is yours to keep. Community property laws apply to the buildings, cars, personal belongings, and any other possession you may have purchased or acquired. Under community property laws, inherited items and gifts are exempt from division as well. If you acquired a commercial building in the duration of your marriage but obtained ownership or interest through an inheritance, your spouse may not have any ownership of the structure.

Avoiding Asset Division Conflict

If you are filing for a divorce and own commercial property, you probably understand how complicated asset division can get. One way to avoid the overwhelming legal process of actually dividing your assets in the event of a divorce is to obtain official prenuptial and postnuptial written agreements.

In short, pre and postnuptial agreements are written (not oral) agreements that clarify property rights and exemptions in the event of a divorce. The agreement is signed by both parties in before the marriage is officiated and is designed to eliminate future tension between both parties of the marriage if they become separated. In the agreement, there must be full disclosure between the parties; no asset can be hidden. If one party hides an asset, the agreement is nullified.

Additionally, the agreement must be reasonable. If one party is significantly wealthier than the other, the wealthy party must agree to give up more than their insignificant belongings. Finally, prenuptial and postnuptial agreements should be executed by both parties in front of a notary. This way, the document is completely valid and will not be brought into question at any point in the future.

Club Memberships

Is this divisible property in divorce?

A country club is just one type of private club that any individual or family can purchase membership in. These differ from public clubs, in that only those who pay for membership packages or make monthly payments can have access to the facilities and anything else the club provides. There are typically different levels of packages that can be purchased. The highest levels of these packages will include complete and total access to all the club's facilities and events. Other packages can include access to selected facilities such as just a golf membership, just a pool membership, etc. The longer an individual is a member at a private club, the more valued they become. What happens then if you and your spouse were joint members of a club for ten years and now you are divorcing?

It is not as easy as one might think to cease membership at a club. Many will do whatever it takes to get you to stay on their policy. Since the money paid toward membership policies are the primary source of income for an institution such as this, letting members go is synonymous with letting monthly income go. In the event of a divorce, this might mean that the club will try to make both you and your spouse sign up for separate policies, essentially starting from scratch. In order to become members of a private club, the club may require an initial down payment. What an individual may be able to do upon divorce is request that their half of the down payment be reimbursed to them.

Accruing Value Over Time

Club memberships are valuable pieces of property, and often accrue value over time. After so many years of membership, you and your spouse may have been awarded many perks that have monetary value. Upon divorce, your club membership may be worth more than you originally paid for. Therefore, it is essential to value property for what it is worth at the time of division, rather than solely look at the value at the time of purchase. A club membership is both community property and an intangible asset. It belongs to both you and your spouse, but it is not something that can be held in your hand. Like many other types of divisible property, a club membership can change in value over time.

Let us look at a hypothetical scenario. Say that Mr. Smith and Mrs. Smith belong to a country club. Upon divorce, Mr. Smith wishes to retain his membership while Mrs. Smith wants out. What this may mean is that Mrs. Smith could be entitled to monetary compensation for the property she is relinquishing, while Mr. Smith is being "compensated" in a sense by means of retaining his membership. This would be a splitting of community property while still retaining the membership. If neither individual wished to retain membership to the country club, this may present new issues.

Since membership to a club is an illiquid asset (an asset that cannot have a solid monetary amount placed on it for sale due to uncertainty or lack of market value), membership may simply be dropped with no compensation for either of the spouses. Again, no two cases are alike. It is important that you consult an experienced divorce attorney who can evaluate the property in question so that you retain the assets or are compensated for your portion of the assets accordingly. No one should have to lose out on assets that they rightfully deserve.

Inherited Items and Money

Texas Law and Property Division

Because divorce laws vary from state to state, property is divided during divorces depending on where the couple lives. In Texas, property is divided according to a community property standard. In short, community property states divide any property that either spouse acquired in the duration of the marriage equally between each marriage partner. For instance, if the couple purchased a boat after they were married, then the boat would be considered community property and divided equally between the husband and wife. If one spouse purchased a car shortly before the marriage was officiated, the car would not be considered community property and would be given to whichever spouse purchased it.

Only nine states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin) operate under community asset division laws. Most states are considered equitable division states. This means that any assets acquired in the duration of the marriage will be divided fairly between the husband and wife. Fairness is determined by the court and a multitude of variables may influence the way that the couple's property is divided. For instance, if one couple makes significantly more money than the other, it may not be considered fair to divide property equally between each spouse. Although Texas is community asset division state, the court may allow property to be divided fairly instead of equally under certain circumstances.

Separate and Community Property

There are two types of marital property: community property and separate property. Community property is owned by both spouses equally. In the event of a divorce, community property will be divided equally between each spouse. Separate property, on the other hand, is owned by only one spouse. Separate property belongs solely to the spouse that it legally belongs to and will not be divided between the husband and wife in the event of a divorce. Separate property includes:

- Any asset owned or acquired before the marriage took place
- Property that was the result of a gift or inheritance
- Assets gained as compensation for a personal injury claim (excluding lost wages)
- Any property exchanged for another piece of qualifying separate property

During the legal proceedings of a divorce, all property is presumed to be community property unless one spouse is able to demonstrate otherwise. For instance, if one spouse purchased a car before the couple was married, he/she would have to demonstrate that it was separate property by producing some form of proof that shows that the vehicle was purchased before the marriage. Similarly, inheritance money is considered separate property, but the spouse who acquired the inheritance must be able to demonstrate in court that they received the inheritance. Otherwise, it will be considered community property.

Inheritances and Asset Division: Special Considerations

Although inheritance is considered a separate asset, one spouse must be able to demonstrate that the inheritance is their own. If not, the money or item will be considered a mutual asset. Additional variables may complicate inheritance money and asset division as well. For instance, if the recipient of the inheritance takes the money and puts it into a mutual bank account (shared by the recipient and his/her spouse), the court may decide that the money is now community property. Because of this, it is wise for spouses to keep separate property truly "separate" to avoid confusion and unnecessary complications in the future.

There are a variety of situations that may cause the court to consider an inheritance community property. If the inheritance has been used for the mutual benefit of each spouse, it may be considered community property. For instance, the inheritance may become comingled if one spouse helps the other pay inheritance tax on the money. If both spouses use portions of the inheritance regularly, the court may decide that it is community property. For instance, if the couple uses some of the inheritance money to finance a home improvement project over an extended period of time, the court may decide that the money has been used for the mutual benefit of each spouse and identify it as community property.

Intellectual Property

Defining Intellectual Property

Intellectual Property is defined as anything invented or created from the mind. This includes a variety of categories such as: literary and artistic works, symbols, images, designs, and inventions, among many others. Technically speaking, it is a legal right to the conception of an idea. Originating at a thought and turning it into a creation is something that an individual can take great pride in. When filing for divorce, there can often be complications between spouses in determining whether or not their intellectual rights are divisible. Intellectual Property can be explained by using these separate categories: copyrights, patents, trademarks and occasionally trade secrets. A copyright is legal term that gives the creator exclusive rights to his or her own original design, often just for a limited time. This allows time for their work to eventually be copied, or recreated while still allowing them the right to have credit for their original work.

Artistic and literary rights fall under the copyright category, as well, under the Berne Convention which is an international treaty that protects the rights of individuals for their copyrighted materials. A patent is another legal term that is used to give an inventor specific rights by the government for a set amount of time in agreement that the inventor will eventually share their invention with the public. A trademark is a legal term that is used to describe ownership or title for a certain product or design. It is used to show consumers that a product or design is from a specific source or company. This allows the consumer to distinguish companies by their unique trademarks. Lastly, trade secrets are patterns, formulas, recipes, designs or certain information that is specific to an entity and not generally known by the public; this usually is in regards to certain businesses and their own private information.

What can be divided in divorce?

Whether it is a painting created in your spare time, a book written during a period of inspiration, or a secret recipe that is used in your family business; intellectual property is something that may need to be divided at the time of your divorce. Legally, whatever was created or invented prior to marriage is considered to be separate property which then gives the individual spouse complete ownership to their original idea in the divorce. This same rule applies to post-divorce as well, leaving the inventor spouse with the rights over their original idea. However, intellectual property is subject to division in court if it was created during the time of your marriage. This also relates to an idea that was created during the marriage, and then continued post-divorce; the courts will decide the percentage that is appropriate for the other spouse to receive as community property.

There are many details that the courts will take into consideration when it comes to dividing intellectual property, one of these being the time that is invested during the marriage and then the remaining work that is accomplished after the divorce. If most of the development is still done after the divorce, the courts are more likely to still consider it as separate property for the spouse who created it. Another example of this is if an

invention accumulates greater revenue due to more advertising and marketing after the divorce, then this too would be considered a separate property. It comes down to the attorney being able to accurately research the spouse's original ideas and be able to trace when and where it originated from, how much time was invested prior, during, and post marriage; and then aid the spouse in receiving a fair amount of their spouses intellectual property, or keep the right amount of the rights to their own intellectual property.

Jewelry

Who does it belong to?

As with any personal belonging in marriage, jewelry is determined to be either separate or community property based on the time it was received or purchased, and by the order in which it was received. If one of the spouses owned any jewelry prior to the marriage union, then those items are considered to be separate, and ownership is still held by the original spouse who received it. This remains true as long as that spouse has considered that item separate throughout the time of their marriage. However, if it is an item that was purchased during the time of the marriage, it would then be considered as community property.

Certain situations allow for an item to remain as separate property even if given to one spouse during their marriage. If the jewelry is something that was given to a spouse as a gift by friend or family, then it is considered to still remain with that spouse after the divorce as their separate property. Another example is that if jewelry was handed down or inherited by a relative it would remain on that side of the family in the divorce. This inheritance remains as separate property whether it was obtained prior to or during the marriage. In regards to other jewelry that has been purchased as an investment rather than for sentimental reasons, the courts will take into consideration the value of those pieces, and often divide equally between the spouses.

Engagement and Wedding Rings

One of the most popular topics when filing for a divorce and dividing the assets is the question of jewelry; specifically engagement and wedding rings. Who do these belong to? Is it considered separate property or community based on the idea of it being given? Is that ring considered to be a gift or a mere symbol of the marriage? An engagement ring is considered to be the property of the original purchaser during the time of the engagement, so if the engagement ends it is naturally the right of the person who originally purchased that ring. However, once the marriage is consummated, that definite line of ownership becomes less clear.

For example, a man and a woman are engaged and they break it off prior to the actual wedding, then the man would have the right to get back the ring and take full ownership of it again. However, if this same couple follows through with their wedding and years down the line decides to terminate their marriage, the ring in question has by this point switched ownership. By their marriage being made official through consummation, the husband has legally agreed to give her rights of ownership to that property, the engagement ring.

Using the Principle of Fairness

The courts often favor the case with recipient of the wedding ring because of the condition principal that is sanctioned in the marriages consummation. There are cases that can be argued when the husband has used a family heirloom as the engagement and/or wedding ring. Largely due to the fact that this ring belonged to the family before the engagement or wedding, this approached could be argued. The attorney would approach this argument from the sentimental angle to grant ownership to the person who held the greatest attachment to the ring; this would be called a principal of fairness in which the court takes personal matters into consideration as they rule the case.

Life Insurance

Term Life v. Whole Life

Division of any type of assets in the event of a divorce is difficult, let alone when that property is intangible. Life insurance policies are an area of much confusion for those who are seeking to separate or obtain a divorce from their spouse. Texas, just like all other states, has its own laws when it comes to how to divide property in the event of a divorce. Texas is a community property state, although courts may sometimes grant equitable distribution, which means that all property owned between the spouses will be divided up fairly based on factors pertaining to how the marriage functioned. Before talking about how life insurance can be divided, there needs to be a distinction between the two types: term life and whole life insurance.

Term life insurance provides coverage for a fixed payment rate over a limited period of time. This option is prized by those who want affordable death benefits for the family that they will be leaving behind. The reason that this option is affordable is because it expires. When it expires, the individual is responsible for either A) foregoing further coverage or B) purchasing additional coverage. Whole life insurance is a type of permanent life insurance along with insurance options such as universal life insurance and variable universal life insurance. Like it sounds, this type of policy will cover an individual for their entire life as long as the premiums are paid each year.

Insurance with Investment Value

Whole life insurance policies have investment value added. This means that as the years go on and premiums are paid, the policy builds cash value. Anything that has cash value should be considered when it comes to divorce. Texas, as stated before, is a community property state. What this means is that spouses who own property independent of their spouse may keep that (separate) property in divorce. All property that is jointly owned is considered community property, and must be divided equally between both spouses in divorce. Even a life insurance policy that is for one spouse, but the premiums were paid by both spouses, may be divided between both spouses rather than sticking to the spouse who the policy is actually for.

Inception of Title, Apportionment or Annual

There are many different views when it comes to dividing this type of asset in divorce that a Texas court might consider. The first is inception of title view. This approach evaluates the original state of the life insurance policy. Whatever it was when it was first commissioned, regardless of any later payments, is the only thing that matters. If this approach is used, even premiums that were paid by a community fund between you and your spouse do not matter and the person who took out the policy originally and paid originally is the one it will belong to.

The next approach is apportionment. If a life insurance policy is divided this way, it means that the funds that the insurance policy holds will be split between both spouses who made the payments. If you took out a life insurance policy and paid some of the premiums before marriage, and then got married and paid the premiums jointly with your spouse, a portion of your policy may still be allocated to your spouse in the event of a divorce. The last theory for dividing this type of property is called annual policy and it refers to term life policies. In this case, the policy will likely be awarded to the person who last paid a premium.

Loans to Businesses

Understanding Community Property

Opposed to separate property, community property refers to anything -such as a house, car, loan, financial asset, furniture, painting, jewelry, stamp collections, etc. - acquired by either spouse in the duration of their marriage. Just because one spouse is named in the title, deed or on a specific account doesn't mean that the asset solely belongs to him/her; any asset that either the husband or the wife obtained while they were married is considered the equal property of both individuals. Additionally, all property owned by the husband and wife is assumed to belong to you and your former spouse.

Proving Separate Property

In other words, you must be able to demonstrate that you acquired your car or other asset before you and your former spouse married. How? Most of the time, you can present any form of legitimate documentation that show when you bought or were given a piece of property. There are some exceptions to the community property law. Gifts, inheritances, personal injury damages (excluding missed wages) and any property exchanged for other separate property will not be divided between you and your spouse.

Dividing Business Loans

Generally speaking, financial assets are one of the most difficult assets to divide between divorced spouses. Why? For one thing, they are flexible. If you start a business before you married, the business is yours to keep during a divorce, according to community/separate property law. However, if the business's value increased while you were married, a portion of it is jointly owned by you and your former spouse.

What about loans to businesses? To fully understand your legal position, talk to an attorney; there are a multitude of specifics that influence how this asset would be divided.

To begin with, lending money to a business should be considered a financial investment. Did you lend money to the business before you married or after? Even if you lent money to a business while you were married as an individual, the loan is still considered marital property. If you lent the money before you married, the loan is considered separate property. However, if you have collected substantial interest from the loan, this profit will be divided between you and your spouse.

Things to Consider

Lending money to a business is an investment. If you lent money to help a friend start a business, what did you get in return? Loans may entitle you to ownership, profits, sharing or other benefits. If, as compensation for your loan, you were given partial ownership of the business, this asset may be subject to division - unless you acquired ownership before you and your spouse married.

What about profits? Any profits you gathered in the duration of your marriage are probably marital property and will most likely be divided between you and your spouse. If you are not a partial owner or collecting profits from the business, any money you made in interest may be divided between you and your spouse, depending on the specific circumstances of the loan and your divorce.

Oil & Gas Interests

Dividing Royalties in Divorce

Divorce is a difficult process for many reasons. The process is difficult emotionally, because you are making the decision to sever a union that you once had with your spouse. This is made even more emotionally burdensome when there are children involved. Divorce can also be difficult financially, in that what you and your spouse once jointly owned, you will now have to split. The process of splitting and dividing property in Texas is done on the basis of community property, rather than equitable distribution. All states in the U.S. fall into either of these categories, with some states possessing provisions for both. For example, although Texas is a community property state it is not unheard of for certain assets to be divided by way of equitable (fair) distribution.

The state of Texas is no stranger to the oil and gas industry. Many families live on oil rich land and are heavily involved in the industry. For example, the Eagle Ford shale field is massive, spanning underneath the sediment of most of South and East Texas. Onshore oil fields such as this are springing up left and right because of the continuously rising demand for domestic oil production and decreased dependency on foreign oil. Shale is a type of rock containing oil that can be harvested through the process of fracking (hydraulic fracturing). Those who live on land on top of a shale field such as this may have been approached by an oil and gas production company who was looking to lease the mineral rights to your property.

Mineral Rights as Community Property

Community property is a principle that simply means any property that was obtained while the two were married is jointly owned by them, therefore it will be evenly divided upon divorce. Although this is the over-arching principle, no two cases are alike. For example, if the house was an inheritance specifically for one of the spouses, then the rights to that property will likely be given solely to that spouse upon divorce. In some cases what will happen is one of the spouses will be offered a lump-sum payment (a buyout) so that the other spouse can retain sole ownership of the interests. There are many contributing factors that go into division of these properties, including when the property was purchased, when the interests will expire, how much the interests are worth, etc.

Another contributing factor that must be considered upon divorce or separation is the leasing agreement itself. Carefully go over the terms of your oil and gas lease with an attorney so that you can fully understand all of the terms and conditions. Complications have the potential to arise not only with your spouse, but with the oil and gas company that is drilling on your land as well. There may be terms and special conditions in your agreement that detail the price of the interests, as it ebbs and flows with the current economic situation. An oil and gas interest is not something concrete like a car or a home. Rather, it is something that is in a constant state of flux. This is why it is so important to obtain legal counsel. These types of contracts are complicated. In order to ensure that you get the assets that you are entitled to, please speak with us as soon as possible.

Primary Residence

Dividing Your Home in Divorce

When filing for a divorce, it can be fairly simple to decide who takes the washing machine, and who gets the china cabinet. However, it can be much more difficult to decide how to go about dividing up the home that husband and wife live in together, and possibly even have family members and children living there as well. There are many questions that can be asked such as: Who gets the house? Who moves out of the house? Do we sell it and then split the value equally? What about the children? Many circumstances come into play when working through all of the details of a divorce. Not only must the physical aspect of living arrangements be taken into consideration, but also the important details that go along with having a property such as the total equity value of the home and the property, and the remaining debt that is still owed, etc.

The first point that must be acknowledged when dividing the assets in a divorce, specifically with the primary home, is the understanding of community vs. separate properties. If this home was owned prior to the marriage then it would be considered to be separate property, and not liable to division in court. Other options that fall under separate property, even in marriage, would be if a spouse inherited the property it too would be considered that individuals separate property. In order to prove the separate ownership, one must be prepared with the proper documents for the attorney to use in order to use in court.

Selling Your Home

One of the common options when getting divorced is to sell the home and split the valued asset equally. This option tends to be a simpler approach leaving less long-term attachments to the home and to the divorcees down the line. While this may be the easiest option with paper work and interactions with the ex-spouse down the line, there can also be harder consequences on the families such as the children be required to have two new homes rather than just one parent living into a new place. Not only can this option be hard on the children, but finically it can be stretching on the individual spouses due the fact they will each have to pay for real estate costs for both their selling family home, and each of the two new homes in the future. Still, this tends to be a popular route among divorcing couples by allowing a clean break and they will be less tied down to anything from their marriage in the future.

Another popular option is transferring ownership of the house to one spouse. This option is very common when it involves families who have children. Usually in these cases, the primary caretaker of the children will be left with the home in order to continue taking care of them. This process requires the husband and wife to sign various forms of paperwork, such as signing over the Deed of Trust to Secure Assumption (DOTSA), and others, all of which can be taken care of by your local family attorney.

Just and Fair Division

During a divorce, the primary goal of the attorney is to assist their client in receiving a just and fair outcome when dividing of the assets. While the state of Texas is a community property state, the court system values the interests of the people to receive what is fair when going through a divorce. During a divorce the court takes into consideration the needs of the children primarily (where children are involved), and as the rulings are made on dividing the assets, this is of great importance.

Divorce, Asset Division, and Rental Properties

During a divorce, the couple's property is divided into several categories: real property, personal property, financial assets, business assets and "other" assets. Most of the couple's physical belongings will be considered personal property. Personal property includes cars, boats, antiques, rugs, china, collectables, stamp collections, furniture, computers, ATVs, dishes, recreational vehicles, and other physical belongings.

Financial assets include cash, savings accounts, educational accounts, 401(k) plans, annuities, life insurance policies, trusts, retirement accounts, checking accounts, etc. Generally speaking, any monetary property is a financial asset. Business assets include sole proprietorships, partnerships, professional practices, professional degrees, and other business interests. The term "real property" usually refers to real estate. For instance, the couple's marital homestead, vacation homes, business properties, and undeveloped land fall into this category. Because rental properties are a kind of real estate, they are considered real property.

Property Division Basics

In the state of Texas, marital property is divided into two distinct categories: separate property and community property. During a divorce, the court will assume that all marital property possessed by the husband or the wife is community property; separate property must be proven. Community property refers to any asset that is equally owned by each partner of the marriage. Separate property is only owned by one spouse and includes:

- Assets and property owned prior to the couple's marriage
- Property that was given to one spouse as a gift or the result of an inheritance
- Financial recoveries won in a personal injury case, excluding lost wages
- Any property or asset that was acquired in exchange for another piece of separate property

Although these distinctions may seem confusing, the easiest way to prove that a piece of property, such as a rental property, is separate property is to trace the date that it was acquired to before the marriage took place. If the rental property was willed or gifted to one spouse and not the other, legal documentation of this exchange will prove that it is separate property instead of community property.

Rental Properties: Special Considerations

Although most property - such as personal property or a financial asset - is relatively easy to divide between spouses, rental property poses unique problems during a divorce. Why? Rental property is more difficult to assign a specific value. In fact, there are numerous variables to take into consideration when dividing rental properties. Firstly, the cash flow of the rental property plays a significant role in determining the value of it. If the property is generating enough rent to cover its own mortgage, repairs, management fees, property taxes and other expenses, it is a valuable asset and is creating a positive cash flow.

Similarly, if the value of the property is greater than its debt, it is a valuable asset. In some cases, rental property is acquired through property exchanges. If the couple acquired a property through an exchange its value may be harder to determine. In some divorce cases, rental properties are divided completely upon the basis of their equity. However, because so many factors have a significant bearing on the value of a specific rental property, couples seeking a divorce should take the time to carefully analyze their property assets. This way, community property can be divided between each partner fairly.

Community Property Division in Texas

There are two types of divorce property division: equitable and community. Community property division involves equally dividing any property mutually owned by the couple between the husband and wife. On nine states in the U.S. divide assets in this manner; Texas is one of them. Equitable property division separates assets between the husband and wife "fairly." Fairness is determined by a variety of factors, including spousal income and other circumstances. Although Texas is, legally speaking, a community division state, it allows for equitable division of assets in certain situations.

For instance, community property is divided between the husband and wife in fairly and justly. In some cases, this does not mean that the property is divided equally. If one spouse earns significantly more than the other, the court may decide that it would be unfair to divide their assets equally. In many cases, though, equal division is just and right. Equal division is determined by the value of each asset. Because rental properties are assigned complex values, just and fair division of rental properties may differ from case to case.

Retirement Benefits

Dividing a Plan with Your Spouse

When filing a divorce there are many facets that must be addressed. This can be difficult and take time. Retirement benefits are one of the many areas that must be decided on in the divorce to determine whether they are to be split between spouses or remain with the individual who earned the plan. A retirement benefit is considered community property of both husband and wife by Texas courts, regardless of who the employee that earned the benefit is. These plans are called indirect compensation to the spouse employee, which is considered to be an actual income making it subject to be divided in court. However, each case is considered individually by the court to determine "just and right" outcome taking into account the specific circumstances.

Any benefit or retirement plan collected before marriage is considered to be that employee's individual property and is not generally divided by the court. Once the employee is married, the benefits accumulated are then subject to be split in court, the standard division being in half, though that is not required by law. There are events in which the court will unevenly split the benefits between separated spouses often in regard to the custody of children, the division of properties, health of the spouses or children, different educational backgrounds, disparities in the income, etc. Due to these different variables that must be taken into consideration when dividing the assets between spouses, the attorney will need to trace the money and specific plans to determine what was acquired before the spouse was married, and what is their community property.

Specific Retirement Plans

In order to split these benefits properly, a legal document, the Qualified Domestic Relations Order (QDRO) is needed. A QDRO is a legal tool that is used by attorneys to divide benefit and retirement plans originally earned by the employee, determining the calculations that will then be awarded to the employee's spouse in the divorce. This legal document must fulfill the requirements of the law, and should be filled out by an attorney who is well educated in this specific area. This document can be applied to the following options:

- Deferred Pension Plan
- IRA's
- 401K
- Stock Options
- Military Pension Plans
- State of Texas Pension Plans
- Federal employee and civil service retirement plans
- County pension plans

Some of the most common retirement plans include deferred compensation, defined compensation, stock option, and job specific retirement benefits. Deferred compensation is a tax-exempt savings plan that is established by the employees with their employer to set aside a set amount of money each month from their paycheck that will go towards their retirement. Defined contribution plans are accounts that have been established which contain stock, cash, or other forms of liquid assets. Employees then set aside money into these accounts with the employer's agreement to match a certain amount at the end of the employee's service with the company. This plan includes 401K, IRA and stock. Stock options are given by the employers as a separate addition to their original salary, often as bonuses or compensations. Job specific is defined as the individual retirement plans for certain occupations such as teachers, firefighters and police officers, and these will need to be determined by the attorney as to whether the individual plan is considered community or individual property in the divorce. It is important to have a knowledgeable attorney who is able to sort through these many details and legal documents in order to receive the proper division of retirement benefits between the two spouses.

Stock Accounts

Who gets the percentage of ownership?

Those who purchase stock in a company are doing so to stake their claim in a percentage of a company. By being partial owners, you benefit when the company's stock increases and are hurt financially when it tanks. Many married couples choose to hire a financial advisor who is responsible for protecting investments by way of asset allocation. What this process does is balance the risk versus reward. The goal is to see that the stockholders benefit financially as much as is possible.

When it comes to dividing assets in a divorce, it may sound relatively easy to divide cars and homes in comparison to intangible property. According to the Texas Constitution, Article XVI, Section 15, all real and personal property that a spouse owned before a marriage (or acquired as a gift after marriage) is the separate property of that spouse. It is also possible that both spouses can agree in writing that all separate property from that point on should be considered as community property.

Community v. Separate Property

Separate property, like it sounds, is property that is under the sole ownership of one of the spouses and not the other. Although this is the general rule for separate property, spouses may at any time during their marriage make any of their community property, separate property according to Texas Family Code Section 3.001. Community property gets a little bit trickier. This distinction is basically by default: anything that is not separate property is community property (implied).

There are three divisions of joint or community property: sole management, joint management and quasi community property. Sole management includes things such as a spouse's earnings, their income from any separate property and any increases/revenues from a spouse's sole management property. Joint management is any individually managed property that is mixed with the property of the other spouse. Quasi community property has to do with any separate property that was acquired while not in Texas (Texas Family Code Section 7.002).

Stocks as Property

Stocks, just like any other type of property, can be divided in divorce. If those stocks were owned as separate property by one of the spouses, then it must remain under their ownership in the event of a divorce. If it is community property (both spouses equally owned the stock) then a family court will have to step in and decide who gets what percentage of the stocks based on what is just and right. Take stock options for example.

Sometimes an employee will be given stock in the company that they work for as a reward. In the event of a divorce, even though both spouses benefitted from these stock options, the spouse that is the employee of said company will be the one that keeps this stock. Each case will differ depending on factors such as the date that the stock was granted, the date it was vested and why the stock option was obtained in the first place.

For more information on how to divide stock options, benefits and the like, it may be helpful to read over the Texas Family Code. Section 3.007 in particular has much to say about stock options. It details the timeline for stocks: granting, vesting and expiration, as well as how that relates to division of community property in the state of Texas. The best way to fully understand your rights as a stockholder going through a divorce would be to obtain legal counsel.

Stocks in Private Companies

Whether you are facing a peaceful or tumultuous divorce, asset division may be the most difficult ramification of terminating your marriage. You probably have a lot of questions. Who will get the house? Where will I live? What about child custody? Can I keep my financial assets? These are valid questions with real answers, but the answers to them may be subject to your circumstances.

Generally speaking, any assets or property that you acquired before you married your spouse is considered separate property; it is yours to keep. Anything that you or your spouse obtained in the duration of your marriage is considered community (or marital) property. This means that, in the event of your divorce, it will be divided equally between you and your spouse.

Separate vs. Marital Property

In the Texas, any property owned by you or your spouse is presumed by the court to be jointly owned. It is marital property unless you can prove otherwise. For example, if you bought a car shortly before you married, it is not subject to division if you are able to sufficiently demonstrate you acquired it before you wed. If your spouse purchased a car shortly after you married, the car belongs to you and your spouse equally and is subject to division. Other assets are more complicated.

For example, if your spouse started a business before you married, he/she should be the sole owner of it, right? It depends. If the business increased in value in the duration of your marriage, you are entitled to a portion of the increased value. If the business was worth \$10,000 when you married and is worth \$25,000 now, the difference of these two amounts is most likely subject to division: \$15,000. Of course, many scenarios are more complicated than this, but the general principle of community/separate property remains.

Dividing Stocks

Dividing financial assets is one of the most complicated components of the asset division process. Unlike a car or house, your financial assets are subjective and flexible - determining their value may become extremely complicated. If you own stock in a privately held company, you and your spouse may face an extremely complicated asset division process in court.

Why? Like dividing any financial asset, stock ownership isn't always easy to determine. For instance, sometimes the insurance or non-insurance of your stock certificates may or may not be relevant. The outcome of your case may be determined by any number of tedious variables, such as K-1 tax form insurance or your contribution/non-contribution of start-up funds to the company. As you can see, dividing stocks in privately owned companies becomes meticulous and complex very quickly.

Vacation Homes

Who gets the second home?

You and your spouse may have made the decision to purchase a second home or vacation home during your time together. A vacation home is considered real property and also immovable property. Real property is a legal term that refers to physical property or real estate. Immovable property refers to assets that cannot be moved because they are fixed to the earth. This then would make vacation homes real and immovable property. Dividing this type of property can get complicated in the event of a divorce, because vacation homes are typically jointly owned by spouses.

Any estate may be held jointly. Under Texas property law, this is called concurrent estate. Some of the duties included with joint property are that each co-owner has the responsibility to make payment for the property, this likely means that both spouses own the mortgage together. It may also be true that one spouse took out a mortgage solely on their share of the property, which would mean that the other spouse would have no obligation to pay for the other share. Since a vacation home is not a primary residence for either individual, the monetary value of the property will likely be the major focus when looking to divide this property equally between the spouses.

Division of Joint Property

Community property law means that even if the vacation home in question is in the name of only one partner, it is still considered community property if obtained during the marriage. However, if the vacation home was owned by one of the spouses before marriage, it will be considered separate property. Likewise, if the vacation home was an inheritance received by one of the spouses, it is the individual property of that spouse. There are no blanket rules in divorce because each situation will be evaluated for its unique circumstances by a judge or mediator.

Domestic Violence

Divorce is never easy or pleasant. Divorce coupled with domestic violence is especially treacherous. The Texas Council on Family Violence estimates that in 2007 there were 189,401 incidents of family violence. In 2008, 136 women were killed by a partner. Domestic violence is a serious issue and needs to be handled with care. Spouses who are victims of domestic violence may spend a good amount of time saving money for accommodations once they are actually able to leave their abuser. During this contemplation and planning stage, it's important to erase browser history, keep e-mail secure, and make phone calls in private. Safety should always be considered first. It's best to not agitate the abuser and to seek safety immediately.

Finding Help for Victims

When domestic violence is an issue in a marriage, there are some things that are unable to be worked out. Not only may the decision be made to pursue divorce, the victim of the violence may also need to seek additional legal means to stop the episodes from occurring. One of the first options that is available is calling the police. After that there are numerous shelters and organizations that can help a domestic violence victim. Some victims may be able to seek shelter with family members. Some cannot due to family dynamics or out of fear that the abuser may harm one of their family members.

If you are a victim of domestic violence, you need to consider the safety of you and your children first. Contact a family lawyer as soon as it is safe to do so and make sure you inform your family law attorney of the domestic violence. This can be a crucial part of evidence in your divorce case and a judge can take it into great consideration before making their ruling regarding child custody, visitation and more. In addition, a protective order may need to be sought even for the duration of the divorce to protect both the victim and their children from a spouse. Keeping your lawyer informed of your fears and concerns is the best way to see to your safety.

Family Violence & Child Custody

Family violence, also called domestic violence and spousal abuse, plays a great role in which parent gets custody and visitation rights to their children. In the event that two parents are divorced, separating or were never together in the first place, the parents will have to go to court for one reason or another. One reason why the parents may go to court is to establish paternity. A mother cannot get child support for her child if she does not know for certain whom the father is. If it is established in court, then the biological father will be charged with child support payments. Parents may also go to court specifically to determine who gets custody of their child. If parents are fighting over custody and visitation, the court will determine what is in the best interests of the child.

The "best interests of the child" is an interesting principle that U.S. courts operate on. If any situation involves a child, especially in the case of divorce or separation, then the court will choose everything on this basis. Should the child live primarily with the mother or the father? The court will evaluate whether living with the father or mother would be in the child's best interests, etc. A judge will evaluate factors such as the income of both parents, the emotional connection that the child has with either parent and they will also evaluate any criminal background or history of violence.

Restraining Orders Affect Visitation

If one parent has a restraining order issued against them, then they will likely be forbidden from coming within a certain distance of the filer and any children if they are involved. What happens in these scenarios is one individual will file an order against the father of the children and obtain a temporary restraining order until both parties can then appear in court to evaluate evidence. If the judge determines that the claims are valid, then the restraining order will become permanent. You have the right to contest this restraining order, but this would best be done with the help of an attorney.

Obtain a Protective Order

Everyone going through a divorce would prefer an amicable parting of ways, however, this is not always the case. In many instances tension is high and when a temper is lost, it can cause others to be in fear of harm. The event may rise to the level of domestic violence, whereby members of the home fear for their safety. In Chapter 5, Code of Criminal Procedure, violence within the family is viewed as a serious crime. Not only do the culprits have to deal with the legal penalties if convicted for a crime, domestic violence can also be brought up in a divorce case and can often be a factor in the decision making.

Domestic violence is defined as an act by a member of the home or family that intends to harm another member or makes a threat of the intention to harm. It can be against an adult or a child. In cases such as these, the endangered party can seek legal help in the form of a temporary restraining order or protective order, also referred to as judicial ex parte orders. To be eligible to obtain an order, the offender and the victim must have lived together or are currently living together, be related through marriage or biologically or have had a child together.

How a Protective Order Can Help

A protective order is designed to guard an individual and/or their children from a potentially violent or abusive party. By obtaining a protective order, the courts will take several measures to ensure the safety of the petitioner such as requiring the opposing party to vacate the shared residence until matters have been resolved. While the order is in place, the party specified is also not allowed any form of contact in person or via phone with the victim. They must also remain a specified distance at all times from the individual and/or their children, including their workplace, home and school. The distance is usually set to a minimum of 100 yards.

The abuser may also be required to attend some form of anger management or other psychological counseling if he/she is deemed a continued threat. Violation of a protective order can result in immediate arrest, potential fines and in some cases, jail time. While there are many websites and legal aid groups you rely on to obtain more information regarding divorce and protective orders, it can be difficult to be successful obtaining a protective order without the help of an attorney. If you are involved in a divorce and feel that you and your children have a reason to feel threatened in any way, you should contact an attorney immediately for a consultation.

Fathers' Rights

There are a number of complex matters such as child custody and child support issues that must be handled in divorce or paternity cases. These issues may compromise the rights of the father in court depending on the laws of the state. In the state of Texas, once the biological father of a child has been determined through paternity testing, he obtains certain legal rights and responsibilities. The legal father of a child is given the same consideration as the mother when the court determines the time sharing plan with the children.

The Fathers' Rights Movement

The fathers' rights movement has gained more headway over the years with the roles of fathers and mothers changing within the family. In the past more fathers took the role of providing and the mother would stay home and care for the children. Today they may share the role more or a father may even stay at home while his spouse goes to work. The courts would often give the mother more consideration, in issues of support or custody. With many taking action against this, the courts are beginning to be held to a standard of equality. This can mean a father gets custody of the children or even is awarded spousal support if he is found to be dependent on his wife.

If you were never married to the child's mother, you may have the same legal rights as a married father once your paternity is established and you are declared the legal father. Fathers' rights in Texas will also recognize you as a natural guardian of a child and you may be eligible to take legal action to obtain custody of your child. In the case of a divorce, the husband is considered to be the father of the children of the marriage. This presumption is rebuttable, which means that the assumption of the husband's fatherhood can be overcome by the evidence that the husband is not the father. In Texas, father's rights may include time sharing (visitation), or contact rights with the child. These contact rights include physical visits with the child as well as telephone and internet contact.

What Rights Entail

Each case is determined on an individual basis and the court considers a number of factors such as: the father's relationship with the child, his experience in child rearing, his work schedule and much more before deciding visitation rights. Fathers have important rights in Texas. If joint managing conservatorship (shared parenting) is awarded, you and your child's mother will share in the responsibility of making all minor and major decisions affecting your child's welfare such as those involving education, health care, religion, illnesses, vacations and more.

Filing for Divorce

In Texas, even if one spouse is opposed to the divorce, the spouse seeking it is likely to get it. When both parties are on the same page it can provide greater ease to smooth the transition and resolve matters in an amicable way. In order to begin the divorce process, one party, known as the petitioner, will be required to file an Original Petition for Divorce in the appropriate county. The papers will then be served to their spouse. Eligibility requirements state that you must be a resident of our state for at least 6 months, and have lived in the county where you will be filing for at least 90 days before submitting the paperwork.

After filing, the opposing party will be served with the Original Petition for Divorce. Grounds will need to be determined in a divorce, stating the reason that the couple has decided to part ways. The act of filing for divorce starts the countdown towards the date that the proceedings can be finalized. State law provides for a mandatory 60-day waiting period between the date of filing and the date the Court can grant your divorce. The process may take longer than the 60 day period since there will often be many issues to resolve before it can be completed.

Temporary Orders

While you wait for this period to expire, important issues may arise, which need to be swiftly addressed. What can you do during this time period? If you need immediate resolution for matters such as child custody and child support or property division problems, we can file for temporary orders. Temporary orders are rules that are set in place by the Court which govern your children and property until your divorce is finalized. An order can put a temporary freeze on assets, mandates spouses do not harass each other, take children from each other, steal items, cut off insurance or do other harmful acts during the period the order is established.

Temporary orders may be appropriate in the following situations:

- If your spouse is trying to kick you out of the house
- If your spouse is attempting to kidnap your child
- If your spouse has shut off the electricity and/or utilities to your house
- If your spouse is liquidating your assets in anticipation of a divorce
- If your spouse has abused you or your children

When a Temporary Restraining Order is filed, a hearing must be scheduled by the court within 14 days. If no order is filed, then a respondent must file an "Answer" within 20 days. Information between the two parties will be exchanged in the discovery period. If through negotiations the two can come to an agreement, an attorney can then get started on forming an Agreed Decree of Divorce which will outline these terms. If an agreement cannot be made then the case will go to trial. Once the trial is complete, a Final Degree of Divorce stating ruling will be given to the judge to sign.

How Does a Divorce Start?

To begin the divorce process, one party needs to file an Original Petition for Divorce in the appropriate county. Texas law requires that you be a resident of the state of Texas for 6 months and a resident of the county for 90 days prior before you can file for divorce. The next step is serving the opposing party with the Original Petition for Divorce. Contact an attorney immediately to file an answer or Counter petition for Divorce before any legal deadlines expire. If you do not file an answer within the appropriate deadlines, Texas law allows a default judgment to be granted against you.

Original Petition for Divorce

Filing for divorce in the appropriate county starts the countdown towards the date that you can be divorced. Texas law provides for a mandatory 60-day waiting period between the date of filing and the date the Court can grant your divorce. While you wait for this period to expire, there may be important issues that arise that need to be immediately addressed. What can you do during this time period? If you have issues that need to be addressed by the Court immediately involving child support, property issues, or spousal support, Temporary Orders are the remedy. Temporary Orders are rules that are set in place by the Court that govern your children and property until your divorce is finalized.

Community Property vs. Separate Property

When a family decides upon divorce, they must figure out how to divide their assets and property. There are several types of property, and these include community property and separate property. Community property is anything that you and your soon to be ex-spouse have acquired during the marriage, while separate property is anything you have come into possession on your own or before the marriage.

Grandparent Rights

Grandparents are devoted to their grandchildren, and when divorce occurs, they can suffer from being restricted from access to them. When this occurs, it is possible to take legal action to resolve the situation and once again have the ability to visit grandchildren. Grandparents do not have automatic rights, but can petition the court to legally gain visitation rights. Divorce is a difficult situation, even in the extended family, and when you are restricted from spending time with your grandchildren, it may be necessary to take legal action. In order to prove to the court that rights should be awarded, it must be demonstrated that the visitation with grandparents is in the best interest of the child and that a lack of a relationship with them can have a negative impact on the child.

How the Court Decides

The court always puts the best interests of the child first and they will assess if having access to their grandparents falls in line with this. The following are situations that may encourage the court to allow grandparents' rights:

- The parents have divorced
- The child was abused or neglected by a parent
- The parent-child relationship was terminated by an order from the court
- The parent is incompetent, dead or serving time
- The child has been living with their grandparent for six months or more

Grandparents' can often be at a loss if their child dies or another issue arises and their contact from their grandchild is cut off. In many instances there are steps that can be taken to win the ability to visit with them, however, in cases where the child was adopted by someone other than a stepparent, they may not have the right to seek visitation. They may also not be granted access if both of the child's birth parents have died or have lost parental rights. Visitation will vary depending on the situation and the terms of it may not be absolute. In many cases, negotiations or even the threat of legal action from our attorney can lead to a fast resolution in cases of grandparent access to the children of a divorce or relationship split.

High End Divorce

Resolving Property Division & Child Custody

When spouses, either individually or together, own significant property and assets, divorce can become a lot more complicated. There can be a lot on the line in these types of cases and this will often mean that tension is high. In high end divorce, any improper handling of a case can cause serious ramifications that can be costly. As in other divorce cases, various matters will need to be decided upon.

While all of the issues that must be addressed are very similar to a basic divorce, one of the more complicated areas is property division. Most of the property that is acquired during a marriage will be considered community property and the court will look to divide it fairly based on a number of factors regarding the couple. In many marriages, community property will consist of the family home, perhaps a business that the couple owns together and other smaller assets that were purchased jointly during the marriage.

In a high-end divorce, there can be a lot more to take into account such as:

- Business valuation and division
- Stocks
- Pensions, 401K and other retirement funds
- Trusts
- Debts
- Other property

In addition to guiding clients through asset division, when children are involved in the divorce, child custody, visitation and child support will also need to be addressed. The children's best interests should always be considered and our goal with every family is to minimize any negative effects the divorce may have on them.

Spousal support is another big topic in high-end divorce proceedings. Many marriages consist of one spouse that is financially dependent on the other, because they stayed home to manage the house and the children's lives, while the other spouse worked. This type of situation is an example of what can necessitate the grounds for spousal support after the divorce is finalized. Depending on individual circumstances, alimony may be paid for a short or long-term period.

Legal Separation

In some states, you can file for legal separation, which allows couples to legally make agreements on key issues like child custody and visitation, child support, property division and spousal support. There are varying reasons that a couple may choose this route, however, our state does not provide this option, so if spouses decide to separate, they will need to actually file for divorce and seek temporary orders regarding these matters.

Temporary Court Orders

Temporary orders are outlined in Texas Family Code § 105.001. They are rules that are set in place by the court to determine various matters. These orders can also be modified if the court finds there is valid reason to do so. An order can be issued in regards to the following:

- Reasonable payment for attorney's fees
- Restraining a party from interacting with a child or another individual
- For temporary child support
- For temporary conservatorship of a child
- Restricting an individual from taking a child out of the area

If you or someone you know has decided that separating is an option that fits your situation, it is best to seek the legal counsel of a knowledgeable divorce attorney that can guide you and inform you of your legal options. Issues like health insurance and religious conflicts can prevent a couple from seeking a finalized divorce. Filing for divorce will require that the action be completed in order for it to be finalized and legally recognized as a divorce.

Submitting the paperwork and filing for temporary orders can give you time to think things through or remain in effect until they are changed by the court or superseded by a divorce decree. Separation and divorce are difficult and complex tasks for people that once thought they could commit themselves to each other forever. We aim to advocate your best interests in whatever your ultimate goal is for you and your family and will zealously protect your rights in your legal matter.

Mediation in a Divorce

Why choose the path of divorce mediation?

Divorce mediation is basically a process where the opposing parties involved in a divorce meet with a third party mediator in order to come up with solutions that can be mutually agreed upon to the issues that must be resolved. The parties may be represented by an attorney during mediation or can represent themselves. At the end of a successful mediation, the mediator creates a legally binding settlement agreement, essentially bringing any disputes to a conclusion. If no agreement can be made, the parties have not waived their rights to seek resolution in a judicial setting, and may proceed with any other methods of resolving their issues.

Benefits of Choosing Mediation

If you are considering filing for divorce and are wondering if mediation would be useful for you and your spouse to reach agreements regarding the issues that pertain, consider these plus points:

- Typically faster than traditional judicial methods
- No need to appear in court
- Determine your own compromise
- Initiate open communication

- Avoid legal battles and the fees that are associated
- Turn collaboration into cooperation
- Children's best interests can be highlighted

Mediation resolves disputes of child support or property division quickly, often with more creative and satisfying results than are available in court. It allows spouses to have more of a say in the end results than they may be able to have if the case is decided by a judge. Many times, when spouses are able to come to agreements on issues together, the need for child custody modifications, child support modifications or spousal support modifications in the future is significantly less. While this is not a workable method for everyone, if you are able to communicate with one another and are willing to use mediation, it can be an effective way to get a more favorable result for you and your family's future wellbeing from your divorce.

Learn About Military Divorce

Legal Rights as a Member of the Armed Forces

A military divorce typically carries all the difficulties of an ordinary divorce, with the added stresses that may be involved with couples that are physically separated because of a military partner that is currently serving on active duty. State divorce laws will still apply, but special rules enacted by the federal government cover certain situations in military divorces. To file for divorce under the state law, one of the spouses must reside or be stationed in the state.

Military personnel who are on active duty can request that a pending divorce action be held until as long as 60 days after the end of active duty. In some cases you may not be penalized for missing court deadlines while you are away on active duty, but you will need an attorney to formally request the delay if you need one. An experienced attorney can also help if you decide it is in your best interest to delay the divorce proceeding, considering your circumstances, and will help you determine whether the Soldier & Sailors Civil Relief Act applies to your situation. A military divorce may also have more options about what state to file in, which could affect your rights concerning property division.

Protecting Military Personnel and Spouses

When children are involved, there may be creative options with regard to visitation and child custody that will allow your children to spend time with grandparents or other family members if you are on duty and cannot exercise visitation rights yourself. There are also special rules about when and how a military pension is divided in a divorce, and various laws have been enacted to protect both parties, such as the Former Spouses' Protection Act which protects the spouses of a military member.

The length of the marriage is often used as a guideline when making many decisions and a couple must have been married 10 years or more for the military member's retirement to be divided. Both those serving in the armed forces and their spouses will need a more unique form of representation to properly handle modifications to agreements, child support and child custody involved in military divorce. We provide divorce representation to men, women, military personnel, parents and couples without children.

Military Divorce Distinctions

What's different about these divorces?

According to a recent article by USA Today, the military divorce rate is the highest it's been since 1999. In 2011, 30,000 military marriages ended. While the civilian divorce rate was 3.5%, the military divorce rate reached 3.7%. The truth is that military divorce has risen 42% this decade.

Unique Laws Surrounding Military Divorce

What exactly differentiates a military divorce from a civilian divorce?

- Military divorces are governed by federal and state law.
- When a military couple is pursuing a divorce they have to keep in mind division of the military pension.
- In a divorce, military couples must also comply with all military rules and regulations.
- Under the Service members Civil Relief Act, military personnel are protected from lawsuits
- In order for a state court to have jurisdiction over a military divorce, the active duty spouse must be personally served with a summons and petition for divorce.
- Residency requirements are reduced: many states allow a person to file wherever the couple is stationed.
- The Uniformed Services Former Spouses' Protection Act (USFSPA) governs the division of military pension benefits.
- USFSPA allows state courts to treat retired pay as either the sole property of the military member or as the property of both, in accordance with state laws.
- Under USFSPA, former spouses can receive full medical, commissary and exchange privileges, if the marriage lasted at least 20 years, the serviceman performed 20 years of service and there was at least a 20 year overlap of marriage and military service.
- If the military spouse remarries, his/her ex is no longer eligible for benefits.

- Child support may not exceed 60% of a military member's pay/allowances.

If you or your spouse serves in the military and you are seeking a divorce, you should be aware that this circumstance greatly affects where your divorce will be filed, custody and visitation, how child/spousal support is calculated and pension rights and benefits. While divorce is already a complicated process, having to comply with unique laws and lots of "fine print" guidelines can make this season especially overwhelming and confusing.

Issues such as child custody and visitation can be complicated if a serviceman is consistently moving around or facing deployment. There are also unique laws surrounding enforcing support orders when a service member is deployed and modifying agreements.

Your military benefits could be subject to division after a divorce. While states can treat retirement and pension plans like any other marital asset, USFSPA allows states to classify military retired pay as property (the spouse must have been married to the service member at least 10 years to be eligible to receive retirement payments however). Once an order has been filed with the Defense Finance and Accounting Service, payments will begin 90 days after the retired military member receives their first payment. You should keep in mind that the divorce process could take longer if you or your spouse is deployed overseas.

Soldier & Sailors Civil Relief

For Military Members & Spouses Filing for Divorce

If you or your spouse is in the military, some unique issues must be taken into account when considering filing for divorce. While you may be in agreement and generally amicable and able to file an uncontested divorce, in which case there is very little difference between it and a non-military divorce, a provision in the Soldiers' and Sailors' Civil Relief Act (SSCRA) may make the process of getting a military divorce more complicated.

The SSCRA was passed in 1940 to give certain legal protections to members of the armed forces currently on active duty. For our purposes, what matters is that an on-duty member of the armed services has the right to delay civil proceedings, including divorce, if it can be shown that the service member's duties prevent him or her from attaining adequate representation in court. This Act also applies to members of the Reserves and National Guard, if they are on active duty.

Experienced Austin Divorce Attorney

If you are attempting to secure a military divorce, it would be in your best interest to consult your lawyer for more information on this subject ahead of time. If your spouse is already claiming that the SSCRA provision applies to him or her, ask your attorney if he or she actually has the right to do so. If they cannot prove that their situation meets the condition of the provision, that they are serving on active duty and consequently

prevented from adequate legal representation, then proceedings actually cannot be delayed as it would not apply.

Splitting a Survivor Benefits Plan (SBP)

The Defense Finance and Accounting Service (DFAS) is a government agency through the Department of Defense that provides financial services for military and former military members. This department offers many different services, just like any normal financial institution would. The only difference is that this institution specifically focuses on military members and families of military members. The Survivor Benefits Plan (SBP) is an annuity, which is a monthly payment that is made for a lifetime. This sum will then go back to the beneficiary or beneficiaries elected. There are many advantages and disadvantages to this type of financial plan, which is why the DFAS suggests that military members carefully consider all of their options before enrolling.

Upon death, there is a guaranteed income for whoever is selected as a beneficiary. Unlike some forms of annuity, this type of coverage and the amount paid do not ebb and flow with illness and age. For active service members, there is no cost for SBP. Upon retirement though, a monthly deduction will be taken in order to pay for the coverage. This amount cannot exceed 6.5 percent of your retirement pay total.

Who is eligible for SBP benefits?

An SBP plan can greatly benefit those elected as beneficiaries. One type of plan you can elect for is a "spouse only" plan, and this is actually one of the most common. You can have both your spouse and your children covered if the children are your legal children, under the age of 18 (can be older if enrolled in college) or unmarried. These benefits can even go toward a former spouse. This is where an attorney who knows not just divorce, but military divorce, will be helpful.

If at the point when you retire you have a former spouse, you can have them covered. If you are married at the time but you also wish to provide benefits to a former spouse, then you have the right to do so even without your current spouse's signature of approval. If you have already retired but you want to change your election to cover a former spouse then you must make a former spouse election at least one year before you obtain the divorce. If there is any major event that takes place such as a divorce or remarriage, this will change your beneficiary status. In order for your change to be valid, you will have to notify your beneficiary. It may also be difficult to get refunded for overpaid premiums, therefore causing you to suffer financially.

What is the USFSPA?

Protection for Former Military Spouses

The Uniformed Services Former Spouses Protection Act (USFSPA) is a part of United States code (§ 1408) that details the benefits that qualifying former spouses of military members can obtain. Congress enacted it in 1982 for the purpose of protecting ex-spouses of military and former military members. Upon divorce, this provision will allow for things like alimony and child support to be taken out of the service member's

retirement pay. This may include retirement pay, medical care and eligibility for the Survivor Benefit Plan. The USFSPA doesn't mean that every single former spouse can receive these benefits, only those who qualify and petition for it. In the state of Texas, property is divided by the community property principle. This means that military retirement benefits can be considered divisible property in military divorce. This is up to the court's decision. This amount is also subject to change, as it can be split evenly or unevenly.

What is the DFAS?

The "DFAS" stands for the Defense Finance and Accounting Service which is a branch of the U. S. Department of Defense. This department provides financial and accounting services to those who are members of the military, former members of the military as well as spouses and former spouses of military members. A former spouse of a military member may be able to receive benefits through the DFAS if the court awarded a portion of the retirement pay to go to that individual, the military member served for at least ten years and the marriage lasted for at least ten years. Those who wish to petition for this type of benefit must complete an application and send it to the DFAS. Payments can then be received within 90 days. The survivor benefits plan (SBP) differs in principle from DFAS benefits. This is a type of annuity plan that is provided so that retired service members can offer an income to their spouse if the former military member dies. A spouse can no longer be covered under SBP upon divorce.

Military Benefits After Remarriage

Many people wonder if they are entitled to their military benefits if they remarry. The answer is yes and no. When a former spouse of a military member remarries, they should still be able to receive retirement pay unless the court makes an order or the court has previously made an order to revoke this particular entitlement post-marriage. If a spouse remarries after divorcing a service member who served for at least 20 years and was married to for at least 20 years, then the free medical care service as well as commissary and post-exchange service will cease. There is one exception to this rule. If a divorcee of a military member remarries, but then terminates that marriage, they may be able to get some of their benefits back.

These benefits, however, will not include medical benefits. SBP coverage can actually be changed from former spouse coverage to new spouse or child coverage. These benefits change hands, so to speak, and may be able to cover not only a former spouse, but that former spouse's children and spouse that they remarried. One exception to this is if the former spouse remarries before the age of 55. If you are concerned because you know that you do not meet these requirements, do not worry. You may still be entitled to benefits under a different Department of Defense plan. It is called the Continued Health Care Benefit Program, and it is a type of premium program that can last up to 36 months.

Modification of Court Orders

Does your existing court order need to be modified?

Has there been a change in circumstances from the last Order issued by the Court? Countless individuals face in the change in their situation that causes an original court order to no longer fit the situation and needs. Modifications of an existing Court order may be appropriate in the following situations:

- The Court has ordered you to pay child support but you have lost your job.
- The court has ordered your spouse or ex to pay child support, and they are making significantly more money a month.
- Your spouse or ex is the primary residential conservator of the child, but you both have agreed to switch roles

Petitioning the Court

The above situations are only a few examples of when modifications may be appropriate. When circumstances change, the rules governing your family may need to reflect those changes. A petition can be made to the court, stating the changes you would like to be made and the reasons for doing so. The court will not completely reopen the case but will review the past trial and events of the case, along with the present day situation to decide if they find it reasonable and beneficial to make the change. Modifications can be sought for child custody, child support, spousal support and more.

Parental Alienation Cases

Parental alienation is the term used to refer to a phenomenon that may occur during a divorce or afterwards. It can happen as the result of one parent using the child as a tool in order to cause the other parent harm, "get revenge" or otherwise cause the parent to suffer through the manipulation of the child's feelings. When facing a divorce, a number of difficult and delicate matters may surface. It is important to have an attorney at your side that you can trust and that pursues your best interests at all times.

How Children are Affected

It is not only dangerous to use a child against another parent, it is wrong. It can be done speaking in a condescending manner about one parent while the child is present or similar conditions. It is not always done on purpose but usually involves one parent allowing the child to be exposed to ill-will towards the other parent which causes the child to feel confused. His or her loyalty may cause problems between the other parent and the child. Children can be easily impressed by anything a parent does. In addition, they may want to protect their parent from harm by fighting back at the source of what they believe the problem is.

Signs of Parent Alienation

When looking to determine if a child is being influenced by the other parent, there are a number of signs that can be noted. These include some of the following:

- Disrespectful behavior from a child
- A parent controlling communication between the other parent and the child
- The child's mood or demeanor changes noticeably
- The child accuses the parent of lying
- A spouse that speaks about negatively about the other parent around the child

If you are a parent that believes your child's feelings are being manipulated, you are not alone. We understand the hardship you are going through and have helped many other parents through similar circumstances successfully. If you and your child are the victim of parental alienation, there are many solutions available to you. Sadly, some people will prey upon a child's tendency to want to make others proud, and to want to be liked by his or her parents. If your child has begun to treat you disparagingly or has stopped speaking to you, parental alienation may be behind it.

Paternity Testing

A paternity investigation is intended to verify whether or not a particular man is a child's father. It usually occurs when someone, usually the child's mother, requests a DNA test for proof that the supposed father of the child is the actual father. This has significant bearing on the father's rights.

Reasons for Requesting a Paternity Test

A woman may choose to request a paternity test if she is in need of monetary assistance in raising a child. Proving the paternity of the father may ensure that the mother receives financial assistance in raising the child. These needs could be anything, from medical bills to daily life needs. Proving paternity could also result in joint custody of the child, in which case the parents have equal authority and participation in the legal and physical upbringing of the child.

A father may also request a paternity test to settle issues regarding child custody and visitation rights. If a father's paternity is questionable, the court may not give him custody or visitation rights. Once the father's paternity has been confirmed (if it was in question), the court can move forward in cementing a parenting plan. A father who requests a paternity test should also realize that once his paternity is confirmed, he will be responsible to financially assist the child's mother with the child's expenses.

What Establishing Paternity Will Change

If you would like to file for a paternity test, you should be aware of the options available to you, as well as the responsibilities which will ensue from the test. For divorce situations, the husband is the assumed father of the child. However, if this is questionable, either party may request a paternity test. If the father's paternity is proven, it is possible that he and the mother may receive equal child custody entitlements, even if the parents were never married. Establishing parenting plans can be a stressful situation, and adding paternity testing to the mix may help solve some pertinent issues.

Prenuptial Agreements

About Prenuptial and Postnuptial Agreements

Prenuptial and postnuptial agreements allow couples to decide on how their property and valuables will be divided if they decide to end their marriage at a later date. Prenuptial agreements are decided before a couple is married and postnuptial agreements can be drafted after the couple has already married. In order to ensure that prenuptial and postnuptial agreements are enforceable it is important that it is drafted by an experienced divorce attorney.

What an Agreement Can Include

Under Texas Family Code § 4.003 an agreement can pertain to issues such as:

- Division of property
- Modification of spousal support
- Life insurance policies
- Using a will or trust to carry out the arraignment
- Choice of law regulating the formation of the agreement
- The right to control property
- The obligations of each party in regards to property
- Other issues that do not violate the law

Many times a poorly drafted prenuptial or postnuptial agreement can make a divorce more difficult than if one had not been drafted at all.

Once you have formally retained an attorney, they will draft a prenuptial or postnuptial agreement on your behalf and give you specialized advice on your postnuptial or prenuptial agreement. Discussing your agreements with an attorney can help you to avoid problems and costly legal processes later on in the divorce process.

Property Division

The financial security of both parties depends on the proper distribution of both debts and assets, causing the division of property can be a matter of extreme contention between those getting divorced. Much depends on the proper designation and distribution of shared property, so hiring a knowledgeable divorce attorney with a firm grasp of the laws surrounding property division can be the most essential of decisions. If you are going through the process of a divorce, speaking with an attorney should be one of your biggest priorities. Texas Family Code § 7.001- 7.009 covers the grounds of dividing separate and community property when a marriage is ending.

Separate and Community Property

The process of going through a legal separation can be exasperating and exceedingly complicated, especially when with regard to dividing property. The first step in dividing property is to determine whether a given property is a separate (belonging to a single individual) or community (belonging to both) property. Once designated, dividing up community property and any debts accumulated during the marriage becomes the most important objective of the divorce process. State law designates that most property acquired during the marriage is considered community, or marital, property. Texas law also states that this community/marital property must be divided on a fair and equitable, though not necessarily equal basis.

When property is divided in this manner, both spouses may come out with different awards. The court will consider each parties contribution to the marriage, their financial standing, their part in acquiring property and more when making their decision. Typically the items that a person owned prior to marriage will be considered theirs in the event of divorce. Property that was gained before the marriage or during through means such as inheritance, a gift or through a personal injury settlement will often be used as separate property that is kept by the individual spouse it belongs to.

Complex Property Division

If you are involved in a divorce in which you believe your spouse is withholding undisclosed assets, hire an attorney without delay. An experienced divorce attorney will expertly assist you in the division of complex properties by tracing hidden assets and discovering any money your spouse may be trying to keep from you. Under Texas law you are rightfully entitled to a fair and equitable amount of your spouse's full financial holdings. Do not take chances that could adversely affect your financial independence.

How is property divided?

In dividing property in the event of a divorce, the first step of the process is to differentiate between property that is separate, as in owned exclusively by one individual, and community property, or property owned jointly by both individuals. Separate property includes any property given to an individual as a gift, inherited, or obtained before the marriage. Community property pertains to anything obtained during the marriage. In some instances, untangling separate property from community

property can be exceedingly difficult, especially if one party does not fully disclose the full extent of their assets. It can also be challenging to determine separate property when it was used to pay for community property, such as a home and became further entwined.

When assets and debts get divided as a result of a divorce, this division does not always translate into a 50/50 split. Many factors are considered by the court when looking to divide property in a fair manner. Therefore it is of the utmost importance that you receive your fair share of any property accumulated during your marriage. The division of property in most divorces can be hotly contentious. One party in the divorce may decide to hide assets and property from the other party, such as undisclosed property such as stock options, bonds, business holdings, and even pensions, retirement plans, and 401ks.

What is Community Property?

Community property, as specified in Texas Family Code §3.002 are those assets or property you and your spouse obtained or accumulated throughout the course of your marriage together. Given this definition, community property is often and extensively referred to as marital property. Land holdings, houses, jointly held monetary savings, and vehicles are all examples of assets that may be considered community property. Even if you purchased the property with money you earned individually or if your spouse was the primary money earner in the marriage, under the tenants of marriage, both spouses contribute equally to the marriage; therefore any property acquired during the marriage is considered community property.

Separate Property

Just as community property belongs to both spouses and must be divided equitably, separate property belongs to only one spouse individually and must be separated from the community property. The commingling of funds in marriage can make the process complex in determining the division of assets in a divorce. Separate property entails any property given specifically to a single spouse in the form of a gift, an inheritance, or if the property was obtained before the marriage. It can also be gained through an injury case, excluding any compensation that was given to cover lost wages.

Information on Relocation

More and more families have to deal with the delicate issue of parental relocation. The parent with primary residential custody may choose to move to another state or country for a job or other reason, and when he or she does, it may be difficult to get both parents to agree to circumstances. Whether you are a parent that wishes to relocate, or a parent that would like to stop relocation, speak with an attorney immediately. Due to the fact that the parents involved are rarely able to come to a clear-cut decision on the relocation, it is often decided by a judge in a family law court.

Relocating a Child

In the state of Texas, child custody and visitation regulations are almost always tied to a particular geographic area. The parent of the child wishing to relocate is restricted from doing so due to these regulations. A parent considering relocation must file a motion in order to modify the geographic restriction on the order. In the case of parental relocation, a judge is often left with the decision of whether or not the relocation is in the child's best interests.

- The factors that a Texas family law judge will consider before granting the relocation include:
- The parent's motivation for moving
- The age of the children
- How the move will affect the child
- The needs of the child and whether or not they can be met in the new geographic area
- Whether or not the child has special needs

If your family is being affected by relocation issues, we may be able to help. Speaking with an attorney can help you to improve your chances of receiving the case outcome you desire. We will provide clients with a thorough consultation and inform them of their best course of action immediately.

Spousal Support Cases

When a couple has been together for a long time and decides to divorce, there are always issues to address. The two major areas of consideration are providing for both the children and the divorcing spouses. In most instances, the spouse who is the higher income earner is responsible for support of the other spouse. The amount of spousal support or alimony becomes part of the marital settlement agreement. The settlement agreement, upon approval by the courts, becomes legal and binding. If for some reason a spouse falls behind in payments the terms of the agreement are enforceable by law.

Spousal Support Information

Each family is different with their own unique circumstances and needs. A spouse who spent a marriage unemployed and devoted to child rearing may require and depend on spousal support because of lack of workplace experience and skill. A couple where both spouses are high-income earners may require smaller amounts of spousal support.

The courts consider different factors when deciding the amount of spousal support and that may include the following:

- Length of the marriage
- Physical health and mental stability of each spouse
- Income and assets of each spouse
- Earning potential of each spouse
- The contribution of each spouse to the marriage

It is important to spend the time necessary to come to workable spousal support arrangements that become part of a sound marital settlement agreement. If the times have changed and an adjustment needs to be made to the terms of support, a modification can be sought.

House Bill 901

How it Affects You

In 2001, House Bill 901 amended Texas' laws regarding spousal support. The law provides more relief to spouses who are disabled, victims of domestic violence or who have been out of the work force.

Spousal support has been increased to 20% of the payer's gross income; the amount that can be awarded was raised from \$2,500 to \$5,000 per month. The duration in which spousal support can be supplied also increased from 3 years to anywhere from 5, 7 or 10 years, depending on the length of the marriage.

In order to receive support, however, you must prove that you lack sufficient property to pay for your "minimum reasonable needs" and that you are unable to earn sufficient income, your marriage lasted for at least 10 years, you are the custodian of a child who needs substantial care due to disability, or that your ex-spouse was responsible for domestic violence against you.

What Gross Income Includes

While "gross income" excludes benefit programs (veteran's benefits, some welfare payments and workers compensation), it covers all wages and salary income, interest and dividends, net rental income and unemployment benefits, gifts and prizes, retirement benefits, pensions, trust income, and so forth.

The spouse receiving support should keep in mind, however, that if they choose to move in with another person they will be ineligible for spousal support. The only thing that can free up someone from paying spousal support is:

- Termination of an order by the court
- Death
- Remarriage

Modifications of Spousal Support

However, if a significant change or circumstances occurs, an order can be modified. In order for the court to modify the order, however, they must use the 11 factors that originally determined that spousal support should be awarded in the first place:

- The financial resources of the spouse seeking support
- The education and job skills of the spouses
- The length of the marriage
- The age, employment history, earning ability and health condition of the spouse seeking support
- The spouse's ability to provide spousal support
- The dissipation of marital assets
- The financial resources of the spouses
- The contribution of one spouse to the education/earning capacity of the other
- Pre-marital property
- The contribution of a spouse as homemaker
- Any marital misconduct of the spouse seeking support

Before House Bill 901 was enacted, Texas was known to have some of the most restrictive spousal support laws in the nation. While Texas' laws now allow more spousal support to be given, these court decisions still largely depend on case by case circumstances.

Since House Bill 901 passed, employment counseling is no longer required, but if a spouse is seeking support, he/she must be unable to earn sufficient income, rather than possess sufficient property. Spousal support is one of the most important issues in the event of a divorce, but also one of the most complicated subjects.

Because there is now a "rebuttable presumption" that spousal support is not needed, you will need the aid of an experienced divorce attorney on your side to determine that you receive the financial support you need, in the aftermath of a divorce.

Keep in mind that if any cheating can be alleged, you could lose your chance of obtaining spousal support. Also, remember that it's not what you earn but what you could earn that determines the support you will receive. Finally, if you move in with another person or begin a romantic relationship, you could also be ineligible for spousal support.

There are many "fine print" guidelines and confusing aspects concerning spousal support- in order to understand House Bill 901 and how it affects your divorce proceeding.

Spousal Support Enforcement

Spousal support or spousal maintenance may be ordered in a divorce when one party is deemed dependent. There can be various terms made for how much and how long payment continues on for. A spouse can fall behind and have difficulty in keeping up with spousal support and alimony payments following a divorce. If the parties cannot reach new agreements then the proper actions through the family courts can enforce the payments of spousal support.

A spouse may have changing circumstances in life that affect the ability to make timely spousal support payments per the terms of a marital settlement agreement. Financial difficulties can result from lost employment or a decrease in income. An illness or medical emergency can affect the income producing ability of a spouse responsible for support payments. A spouse may remarry and take on new obligations making it hard to keep prior financial agreements to pay spousal support.

Enforcement of Payments

In some instances, a spouse may refuse to make spousal support payments making that individual in contempt of court and in violation of the law. Governmental agencies have the ability to track the location of a spouse in arrears on spousal support payments. A garnishment of wages of the spouse responsible for support payments may be the required action to enforce payments.

It is best to have legal representation in a delicate or possibly explosive situation between divorced spouses. We represent the best interests of our clients and protect their rights to receive spousal support payments per the court approved marital settlement agreements. Make an appointment today for a consultation with one of our qualified spousal support enforcement attorneys

Uncontested Divorce

When couples decide to marry, generally they would like to believe that their marriage will truly last "until death do us part", but the unfortunate truth is that a large percentage of marriages will end in divorce. While divorce is one of the most emotionally trying experiences in one's life, that's not to say that the process cannot be amicable, if the terms of it have been agreed upon by both parties involved.

In an uncontested divorce, the process requires that both parties have already agreed upon most items such as:

- Property division and asset division
- Child custody
- Visitation

- Child support
- Spousal support

A final Decree of Divorce can be drafted by an attorney that will outline all of the decisions that both parties have come to an agreement on in advance. If there are children involved in the divorce, a child custody and visitation agreement will need to be completed, as well as an outline for child support, if an amicable decision is reached regarding these issues. If you have been married long enough, and spousal support may be an option, those amounts, as well as the length of the payments, must be included as well in the final decree.

Uncontested Divorce & Mediation

It is highly recommended, even in the case of an uncontested divorce, that both parties retain their own legal counsel. This ensures that each person is fully aware of what terms they are agreeing to in the documents being drafted and also provides both parties with legal advice regarding documents created by the opposite party's representation. Even in amicable situations where the terms of the divorce have been agreed upon in advance, proper legal counsel and representation is vital to ensuring that both parties are being treated fairly and receive the opportunity to fully discuss any entitlements that may have been overlooked.

Visitation Rights

Divorce can be a tedious and painful process, and when children are involved, it is an even more serious matter. Establishing child custody and visitation rights is required. These decisions are always based on the best interests of the child. Those interests, while not clearly defined, usually follow a general list of guidelines. Some of the factors affecting custody and visitation decisions are which parent the child is closer to, the child's education, the parent's stability and health and which environment is better for the child. The age of the child also may factor into custody and visitation decisions. It is important to note that the parents' lifestyles affect the final parenting plan. However, the ruling of the court is never in the parents' best interest; on the contrary, it is always in favor of the child's best interests.

Custody and Visitation Rights

The two subdivisions of custody are legal custody and physical custody. A parent who is given legal custody has the authority to make all the major decisions of the child's life, including medical and educational choices. A parent who is given physical custody lives with the child and is the child's caregiver from day to day. Sometimes, one parent is given sole custody; total rights of both legal and physical custody. When parents share custody, a practice called joint custody, they are equally involved in both the major decisions and the daily life of the child.

This is important because the parent that does not have physical custody of the child generally receives visitation rights. This means that the parent has set times when the child can come and visit the parent, or vice versa. A child may even be permitted to

spend the night or weekends with a parent. However, the guidelines for the visits must be clearly spelled out, and the child may not under any circumstances move in with the parent unless the visitation laws are modified. While visitation laws may be changed, it is generally a long and time-consuming process. The court is not hasty in making changes and must see an objective reason for why the change is desired. In some situations, such as if a parent moves a considerable distance away or is harming the child, the court may not be as reluctant to alter the rights.

Coming up With a Parenting Plan

The parents may come up with their own parenting plan if they are willing and able to work together to accomplish the goal. If not, they may need to hire a mediator to assist them. Professional mediators are not allowed to show any bias toward one of the parents; instead, they help the parents talk through the situation and decide which parent (or both, in some cases) should have custody of the child and which should have visitation rights. Coming up with a parenting plan during a divorce adds another level of stress to the already tense situation. It is important to be thoughtful and careful when developing a parenting plan because its effects are far-reaching and significant. In addition, should the parents ever seek to modify the orders, it generally takes a long time to finalize those changes.

How Much Does a Divorce Cost?

For many people, the most pressing question they will face when seeking a divorce is the cost. Just how much will it cost to split from a spouse? In all honesty, there are several different factors that will play into the cost of a divorce, but the number one factor will be you. The price will fluctuate on several different things, but you can keep this under control by ensuring that you expedite the process as much as possible. For example, it is much costlier to litigate and contest a divorce. If you are able to come to an amiable agreement with your ex-spouse regarding issues such as custody and alimony, you will find that the process will move much quicker than should you dig in your heels and fight over every detail. This will spill over into the attorney fees.

The more time that your divorce lawyer works on the case, the more that it is going to cost. The more paperwork and hours that they invest, the higher the bill will be you. You, however, can control this by working with your ex-spouse as much as possible. By mediating the divorce or seeking an uncontested divorce, you can move through it quicker, requiring less time and hours of your attorney and therefore lightening the bill considerably. The same goes with how much property you are going to need divide. The more property, assets and debts that need to be dealt with, the more experts will need to be involved, the more hours of your attorney will be needed and the more it will cost you in the end.

Seeking an Affordable Divorce

Statistics show that divorces typically cost around \$15,000 throughout the United States. That, however, does not need to be your final price tag. There are several steps that you can take to lower this number considerably.

- Below we have created a list of five tips for a cheaper divorce:
- Seek mediation, if possible, to avoid costly litigation.
- If not, consider the possibility of a divorce using collaborative law.
- Do everything you can to avoid arguments.
- Work with your lawyer to keep the process moving forward.
- Start discussing cancelling joint accounts and opening separate ones.

By focusing on what you can do to help the divorce process, you will be able to have a more affordable process. Remember, this may not slash the price entirely, but it will help keep the financial aspect under control and can help to make sure that you are as protected as possible. There are steps that you can take, such as seeking mediation or a collaborative divorce, which can help financially, as well as emotionally and should be a viable solution.

Preparing a Child for Divorce

Divorce can be frightening. As family law attorneys, we understand the stress and uncertainty of facing a marital crisis. If you have children, you face an even more complex issue: how to navigate a divorce with children. Some parents are afraid that their kids will get "caught in the middle" of the divorce; others are concerned that their child may become angry or depressed when his/her parents separate. These are legitimate fears, but with the right information and a gentle strategy, you can effectively prepare your child for the reality of divorce.

First, remember that **you are not alone. Thousands of families face divorce every year.** Your child's reaction will depend on their age, personality, and the specific circumstances surround you and your spouse's separation. Every divorce is different, but in most cases children are surprised when their parents part ways. They may become angry, frustrated, worried and sad - this is normal. The key is to help your children cope with divorce in a way that will benefit them in the future. Facing a divorce now can help your child learn to deal with stress, become more flexible and become more tolerant as adults.

Things to Avoid

When you and your spouse are in the middle of a divorce, there are specific discussions, arguments and events that should be conducted away from your children:

- Heated discussions
- Visible Conflict
- Legal Discussions

Avoid arguing in front of your children. When your children see you and your spouse arguing about the separation, they will begin to attach extremely negative feelings and emotions to the divorce. Also, disrupting children's' daily routines will upset them unnecessarily - keep their lives feeling as normal as possible.

Telling Your Children About the Divorce

Do not discuss divorce with your children until you are absolutely certain about your plans. Once you and your spouse have decided to part ways as a married couple, you can begin talking to your kids about it. There is no formula or easy way to tell your children that you are getting divorced; come up with a plan to tell your children and practice it, carefully eliminating feelings of anger, bitterness, and blame from the conversation.

Everyone is different; your child's reaction will depend on his/her general temperament and personality. Find a way to talk to your child that best suits their demeanor. The most important thing is that your children understand that the divorce is not their fault. Provide reassurance that anything happening between you and your spouse is not their fault; many children blame themselves even after their parents tell them they are not at fault.

Once your child knows that you are getting a divorce, prepare them for any significant changes in their lives. Answer their questions honestly and simply. The younger your child is, the simpler your explanation of the divorce should be. Young children are more concerned with their daily routines; be sure that the child understands what will change and reassure them of the things that will remain the same.

Older children may be able to understand your divorce more easily. They have probably overheard conversations or noticed that you and your spouse are struggling in your marriage. Older children will probably ask more questions than young children, such as:

- Where will I live after the divorce?
- Do I have to change schools?
- Where will you live?
- Will I still see my friends?
- Can I still participate in my favorite sports/activities?
- Do I have to move, too?

These questions, as well as others, will likely come up when you tell your children you and your spouse are getting a divorce. Be honest and plain when you answer these questions. If your child asks you a question that you don't have the answer to, that's okay, too. Let them know and tell them in the future.

Preparing Financially for Divorce

If you are considering divorce, you probably have a lot of questions about the future. Where will I live? How will I tell my children? What about my finances? In many divorces, one spouse takes on most of the financial responsibility during the divorce. Traditionally, the other spouse is responsible for maintaining the household. This may leave each spouse painfully unaware of what the other is doing with income, expenses, credit cards, loans, etc. If you are facing a divorce, take the first step towards securing your financial future by collecting all of your financial documents and making copies of them for yourself and your spouse. This includes:

- Credit card statements
- Investment account statements
- Retirement account statements
- Loan applications
- Tax returns
- W2 forms
- Property tax bills

Divorce can be expensive. Between attorney's fees and other costs, you may end up spending a sizable amount of money during the divorce process. Once you are sure that you will get a divorce, begin accumulating liquid funds.

What type of divorce will you have?

On average, about 5% of divorces go to court. Some divorces are executed without any form of legal representation. Before you begin the divorce process, determine what type of divorce you will be going through and prepare for it mentally. Sometimes, people need more help with legally in regards to their finances than with mediation, but this is not always the case. The more assistance you hire, the more expensive your divorce will become. If you have children, you may need to hire a children specialist to decide where your children will live, etc. There are several types of divorce; your financial plan for the future depends on the type of divorce you and your spouse choose.

Legal Separation does not actually meet the legal definition of "divorce." While each spouse has certain legal responsibilities and will live apart, their marriage remains technically intact. Some couples choose to remain legally separated instead of divorced for legal reasons, health insurance benefits, or because of child support. Legal separation may be financially beneficial.

Pro-Se refers to couples who do not seek legal assistance when filing for divorce - each spouse represents themselves. Pro-Se divorces are most acceptable when the couple has few disputes to settle, no children, and very few assets.

Mediation is helpful when couples have disputes to settle but no real reason to go to court. A legal mediator can help you and your spouse settle financial issues, child custody issues, child placement issues, etc.

Traditional divorce refers to couples with extremely volatile relationships - financially and emotionally. If spouses are arguing about finances, children, assets, etc., they should probably seek legal representation and a traditional divorce. Traditional divorces can be very expensive.

Know Your Assets, Income and Debt

Once you know what type of divorce you face, you can begin to practically assess your financial situation. Have a clear understanding of your assets, income, and outstanding debts before meeting with legal representation or a financial assistant. If you decide to hire a divorce financial analyst, you can save money by having a firm grasp on your current financial situation before actually meeting with a professional. Make sure you know your spouse's income, assets, and debts as well. Because numbers are concrete and specific, documentation of your bank accounts, credit card statements, etc., are extremely important.

Things To Do Before Divorce

Thinking about filing? Make sure you're prepared!

Below, we have created a checklist of some of the most important things for you to do before filing for a divorce to ensure that you are set up for success and to avoid some of the most common pitfalls.

- Make sure that you hire a good lawyer. This should be your number one priority when looking to file for a divorce. Sure, you could use a form online or another DIY alternative, but when it is your family, finances and future on the line, do you really want to do a hack job? Make sure that you are legally covered and work with an experienced attorney to help settle all issues.
- Take a look at your finances and be prepared. Don't walk into a divorce blind. Get a copy of your credit report, determine what you own and what is owned by your spouse. Know about all debts, and who owns what. You will then have a solid foundation to stand on as you enter into all divorce negotiations. However, be careful. You don't want to overstep legal boundaries. For example, it is against federal law to request your spouse's credit report without their consent.

- Get documentation to prove your income. In your divorce, you are going to need show an accurate snapshot of your income to decide financial issues - such as alimony and child support. This could be as easy as getting copies of your recent pay stubs and your income tax return. In other cases, it may be more difficult; for example, the self-employed may need bank account statements.
- Figure out what your spouse earns annually. This can be a little difficult without their cooperation, but it is important to know what your spouse's income is. Work to get copies of their W2, pay stubs and the like - as well as knowing about bonuses and other fringe benefits. Knowing what their salary is on paper is important, but so is knowing who is responsible for health insurance, 401(k) accounts and other retirement accounts. Get as much information as possible for your attorney.
- Have a clear budget for life after divorce. Sit down and map out what your life will be like after your divorce is final. Knowing what you are going to have to pay and how much you are going to need will be a serious help should you enter into a divorce. Having this will allow you to better negotiate as you won't be fighting for an unclear number, but will know exactly what you need and why.
- Start building your own credit. By closing all joint accounts and opening separate ones, you can start building your own credit. In many cases, credit was gained jointly and after the divorce, people can begin themselves starting from the bottom. Avoid this by getting a head start. Get your own credit card and making smart financial decisions with it to start building credit slowly and surely.
- Do everything you can to decrease your debt. If you and your spouse have debt, remember that this is only going to get worse as you enter into divorce. This can be a costly procedure and you do not want to do anything else that will cause financial strain. Start working on your debt. Work with your ex-spouse if possible to delegate debts and pay it off before filing.
- Make immediate changes to your will. It is not unlikely that you have named your ex-spouse in your will. Work with an attorney to ensure that the document is adapted to your current situation. Update it to reflect your present situation. You can change it at anytime, but why wait? Make sure that your estate is in order to prevent post-mortem lawsuits.

- Go through and make copies of all important documentation. Having copies of important documents can be crucial during the divorce process. This will include tax returns, bank statements, life insurance policies, mortgage documents, real estate appraisals, automobile titles, wills, investment statements, credit card statements and the like. Work with your spouse to have the clearest idea of the family finances if possible - keep records of everything.
- Always put the needs of your child(ren) first. Divorce is never simple, but remember that this is going to be much more difficult for your child(ren) than it is for you. Do everything that you can to put their needs first. Make sure you sit down with them to discuss everything that is going on. Make it clear that they are not the cause and that they are still loved. Do as much as you can to keep their routine normal and stay involved in their lives. Do not fight in front of them and drag them into the divorce. Maintain a healthy, loving environment to protect them against the worst of the divorce.

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About Zinda Law GroupRepresenting All Types of
Clients in Family Law Matters.

Our firm provides marital and family law representation to men, women, parents, and couples without children. Our family law practice includes legal advice and representation in a range of family law matters, including divorce, child custody, visitation, child support, equitable distribution, spousal support, modifications, enforcements and adoptions.

While negotiation can be an effective tool in resolving family law issues, there are times when going to court is the only way to achieve your goals. Zinda Law Group, PLLC is a firm that is made up of trial lawyers. We have the experience and knowledge to effectively represent your interests in court. If negotiations are proving to be fruitless, we are prepared to take your case before a judge, and will work to achieve the best possible outcome on your behalf.

If you would like more
information:

About the various aspects of divorce and family law, visit our Resources.

We can help you put your life back together. If you are considering a divorce or are facing family law issues Contact us today.

