

We're
passionate
about our work
because we
have families,
too.

Please review this booklet to review frequently asked questions about family law in Texas. This booklet mostly focuses on custody and divorce, however, family law in Texas is a topic which encompasses other topics such as grandparent's access, enforcement of child support, protective orders, and so on.

If you have any questions about any of the topics you read about in this booklet, feel free to give our office a call. We look forward to helping you with your family law needs.

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Where can I file for divorce?

Under Texas law, to file a divorce in Texas, either you or your spouse has to have lived in Texas continuously for six or more months, and you would file in the county where you or your spouse would have lived in for the last 90 days. It does not matter where you were actually married.

Where do I file for custody?

Under Texas law, assuming that no prior orders exist for the child in any court, the custody case is opened in filed in the county where the child has last lived continuously for six months.

However, a Texas court can assume temporary emergency jurisdiction if the child faces a danger of abuse or neglect, or, has been abandoned.

We're a gay couple. Does divorce work the same?

Yes. Gay marriages are recognized as a matter of federal law, and divorce between gay couples in Texas are subject to the same laws as heterosexual couples.

Who can file for custody in Texas?

In Texas, the following parties can file for custody on behalf of a child: either parent, an alleged father, the Department of Family and Protective Services (CPS), an individual who has had custody of the child for six or more months, a grandparent, a sibling, or a person related to the child within third degree of consanguinity. However, grandparents, siblings, and relatives face additional hurdles and limitations to file for custody.

In addition, foster parents and adoptive parents may sometimes file for custody, but like grandparents, siblings, and relatives, they face some additional hurdles and limitations.

In addition, grandparents and siblings can request simply visitation in Texas.

How is custody decided in Texas?

Simply speaking, custody for a child in Texas is decided in the “best interest of the child.” The Court gauges the best interest of the child using subjective factors listed in Texas Family Code § 263.307, but this list is not exhaustive.

In truth, every case is different. Some cases may focus heavily on domestic violence, and some cases may focus on an ability of each parent to provide for a child financially. Often, the Court will review as to who else is living in a household with the child aside from the parent seeking custody.

If the custody suit is between two parents, the Court will often agree to whatever agreement the parties reach privately and will “sign off” on this agreement, assuming the Judge feels it is in the best interest of the child. If no agreement is reached, the Court will make its own decision based on evidence before it.

Does Texas have common law marriage?

Yes, it does. In Texas, a common law marriage is called an “informal marriage.” An informal marriage can occur one of two ways. First, the parties can file a “Declaration And Registration Of Informal Marriage” with the county district clerk where they live. The second way is to allege an informal marriage when filing a divorce. If this allegation is made, the person claiming common law marriage may be challenged by the other spouse who would in turn claim that no informal marriage exists. If this is the case, the party claiming common law marriage would have to prove to the Court that (i) the parties agreed to be married, (ii) lived together, and, (iii) held themselves out to others as being married. Surprisingly, there is no minimal time that the parties have to live together before an informal marriage can be claimed.

Is there legal separation in Texas?

There is no legal separation in Texas. However, a party can request temporary orders while a divorce is pending, which works much the same way.

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How are assets divided in a Texas divorce?

First, the Court will separate all the assets the parties had before the marriage and will award it to the party that indeed had it before the marriage. In addition, assets received as a gift by a party while married, inheritance, and injury settlements/awards (not counting any money towards “earning capacity”) are considered separate property of a spouse and are also not divisible. All of these assets are called Separate Property, and they remain the property of the party which it belongs.

All other assets, which by default are the assets accumulated and earned during the divorce, are collectively called Communal Property. Communal property is divided by the Court “in a manner that the court deems just and right.” In practice, Texas courts have generally utilized a 50/50 approach, attempting to divide the assets as evenly as possible. Sometimes, creative solutions are required, since some assets cannot be “split.” For example, if a party gets the family home, then it may be equitable to them receiving the cash value of the home’s equity.

The 50/50 default may be modified by allegations of fault by a spouse, reimbursement claims, and torts.

Can I get spousal alimony in Texas?

The short answer is yes, but only in some cases. Alimony in Texas is called Spousal Maintenance. Spousal Maintenance is available to a spouse if the spouse can show that they would need it to avoid a financial ruin, and, can also show one of the following: the parties have been married at least ten years, the requesting spouse is a victim of family violence, the requesting spouse is disabled, or, the requesting spouse’s child of the marriage is disabled.

Even then, Spousal Maintenance is limited by statute as to length of time, and Texas courts have been traditionally reluctant to award it.

A different answer applies to Temporary Spousal Maintenance. Temporary Spousal Maintenance is spousal support paid temporarily while the divorce is pending. Temporary Spousal Maintenance is awarded based simply on need, and Texas courts have traditionally been open to such requests if a party can prove the money is needed.

In every case for Spousal Maintenance or Temporary Spousal Maintenance, if and how much money is awarded depends on the evidence presented to the Court.



How is child support calculated?

Roughly speaking, the following table of net monthly resources illustrates how child support is calculated in Texas:

One Child	20% of net resources
Two Children	25% of net resources
Three Children	30% of net resources
Four Children	35% of net resources
Five Children	40% of net resources
Six Children	Not less than 40% of net resources

It is important to note that if the parties agree on child support, very often, the Court will “sign off” on their agreement. The formula above is only imposed if the parties cannot come to an agreement.

Does Texas allow prenups?

Yes. Prenuptial agreements in Texas are called “Premarital Agreements.” Agreements entered into after the marriage has already begun are called “Marital Property Agreements,” and they are also recognized. However, both have to satisfy aspects of Texas law to be recognized as binding.

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