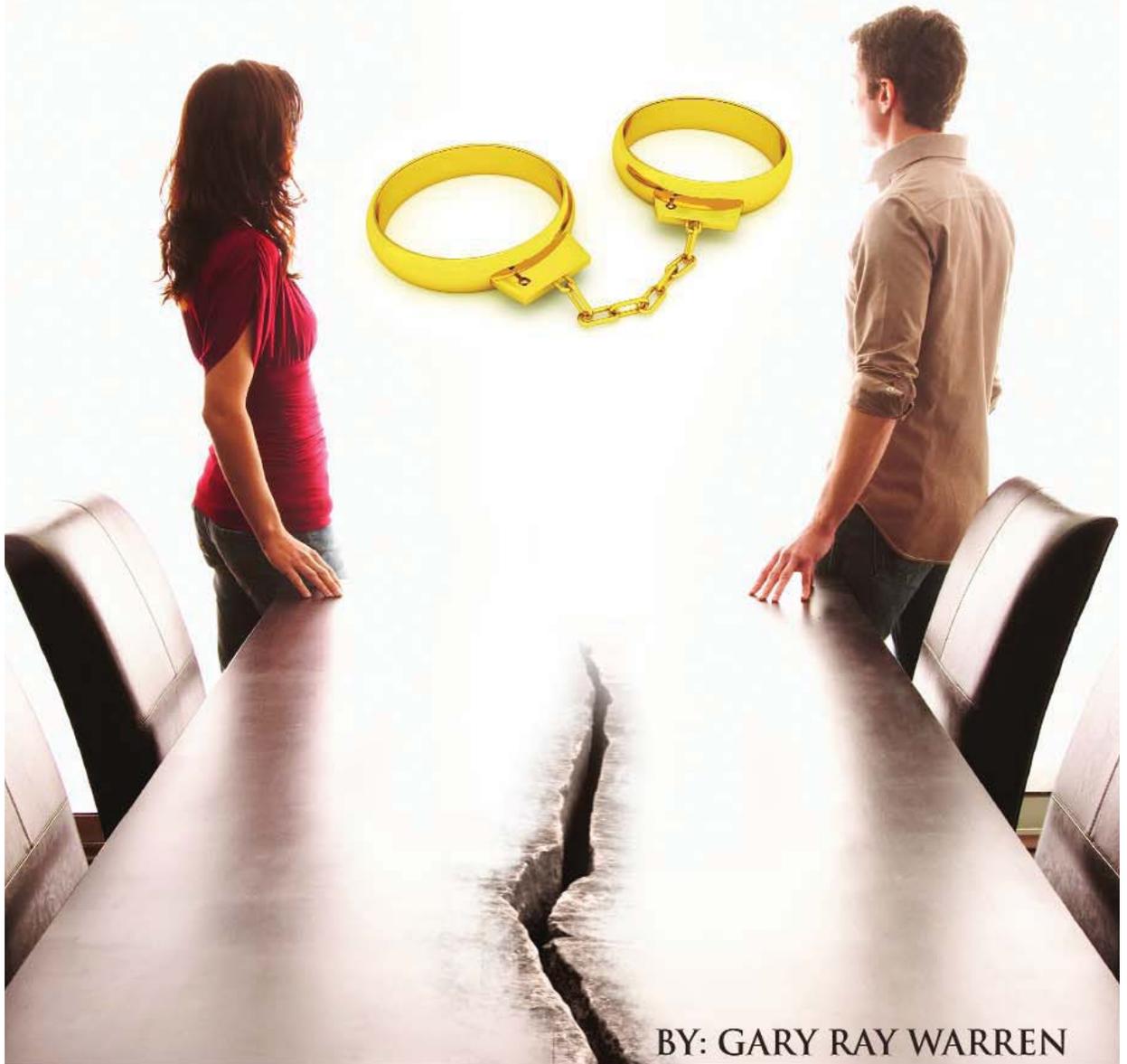


UNTYING THE KNOT

YOUR GUIDE TO GETTING DIVORCED IN TEXAS



BY: GARY RAY WARREN

WARREN & MIGLIACCIO, L.L.P.

Untying the Knot: Your Guide to Getting Divorced in Texas

Legal Disclaimer

While the information in this publication is about legal issues, **it is not legal advice**. Moreover, due to the rapidly changing nature of the law and our reliance on information provided by outside sources, we make no warranty or guarantee concerning the accuracy or reliability of the content of this publication.

No Attorney-Client Relationship

Use of this publication does not create an attorney-client relationship.

Disclaimer

THE MATERIALS IN THIS PUBLICATION ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED.

Untying the Knot: Your Guide to Getting Divorced in Texas

Table of Contents

Legal Disclaimer	2
Introduction	4
Chapter 1: Why You May or May Not Need a Texas Divorce Attorney	5
Chapter 2: Choosing an Attorney and Preparing for Your First Meeting.....	7
Chapter 3: Your First Meeting With Your Divorce Attorney	10
Chapter 4: The Steps of Divorce in Texas – Understanding the Process	12
Chapter 5: Pre and Post Marital Agreements (aka. Pre- and Post-Nuptial Agreements/Contracts).....	17
Chapter 6: How Property is Divided in a Texas Divorce.....	19
Chapter 7: Spousal Maintenance/Alimony in a Texas Divorce	21
Chapter 8: Child Custody Concerns: Conservatorship and Parenting Plans in Texas	24
Chapter 9: Child Support after a Texas Divorce	28

Untying the Knot: Your Guide to Getting Divorced in Texas

Introduction

This book will not tell you everything you will need to know about divorce in Texas, so it stands to reason that it won't tell you everything you need to know about *your* divorce. It is my sole intention that this free Texas divorce guide will give you a basic understanding of the critical concerns you will most likely face in your divorce – division of property, child custody, child support, alimony and visitation – so that you can establish an effective plan for your future.

Whether you are initiating a divorce or on the receiving end of a divorce that you hadn't anticipated (or wanted), you need to be prepared for what lies ahead. This book is meant to serve as a starting point, a handy reference that will give you a very basic understanding of the processes involved in dissolving a marriage in Texas. Part of that process may mean finding a Texas divorce attorney to handle your case from start to finish. This guide includes several chapters devoted to the task of choosing an attorney and the types of questions you need to ask yourself and the potential attorney in order to find the attorney best suited for your case.

This book is not intended as a universal resource. Hopefully, it is only the start of your process in educating yourself on the topic of divorce. It's my hope that it will encourage you to seek further information and to explore what others have to say on the topic.

You should know that like your fingerprint, your divorce is unique. While it may possess certain traits that are like other divorces, your divorce is truly different. Do not make the mistake of comparing your divorce and your experience with that of another; this will only create complexity, confusion and likely, disappointment. While you may take solace in talking about your divorce with a friend who has been through a similar experience, don't make any assumptions about what his or her outcome may signify in your own case. Every factor in your life and marriage can impact your case's outcome, and no one can predict the final result. Take everything statement made by others -- excepting your attorney -- with a grain of salt and make an effort to learn as much as you can so that you will be prepared to handle what comes at you. This guide is a good start to protecting your rights.

Untying the Knot: Your Guide to Getting Divorced in Texas

Chapter 1: Why You May or May Not Need a Texas Divorce Attorney

Every relationship comes with its own intimacies and idiosyncrasies, so it makes sense that no two relationships can really end in the same way. What does this have to do with the question of whether or not you need to hire a Texas divorce attorney? Well, it means that just because your friend got a divorce a few years ago and did it without the help of an attorney doesn't mean you should count on the same scenario working out for you. Nor does it mean that you can look at what happened in someone else's divorce and apply it to your own situation and expect similar results.

Many people who decide to go it alone and seek a divorce in Texas without the assistance of an attorney will say they are doing it to save money. This makes sense, to a point. Hiring a divorce attorney can be a costly venture, yes, but going without professional advice during a time like this may cost you immeasurably more.

If you're newly married, have absolutely no shared assets, no children, no finances that have comingled in any way, agree on *everything* and you can trust your soon-to-be-ex to be 100% fair in the process, you might be able to handle the proceedings on your own, provided, of course, you have a lot of time to devote to the mountains of paperwork involved and a good understanding of Texas legal codes and divorce statutes.

3 Questions to Help You Decide If You Need to Hire an Attorney

When deciding whether to hire an attorney **it helps to ask yourself a series of questions, including:**

1. *How much is my own time worth to me?*

You know the old adage that time is your most valuable resource -- it's become a cliché because it is true. If you have been served with divorce papers or are thinking of initiating a divorce action yourself, understand that the process will take time and patience. **With a Texas divorce attorney on your side, patience is still a necessity, but the amount of man-hours you personally will have to devote to the divorce drops significantly.**

If you decide to forgo an attorney, **count on devoting at least 40 to 50 hours of your own time to your divorce, provided you have no kids, no property and you are not changing your name.** Can you devote an entire work week or more to the paperwork involved in your divorce? **If you have children, a house or the divorce is contested, the time you are required to devote to the divorce can top 250 hours.**

Untying the Knot: Your Guide to Getting Divorced in Texas

If you factor what you earn in one hour and multiply it by the estimated time you'll have to spend on your divorce you'll get an idea of how much not hiring an attorney can actually cost you.

2. Do I understand all of the Texas divorce statutes?

You are very likely a smart, proactive person. After all, you took the initiative to request this book in order to learn more about the divorce process in Texas. So don't take it as an insult when I say that you probably don't know enough about Texas divorce statutes or the division of property, not to mention the ins and outs of child custody, to protect your interests during your divorce. For people who don't deal with this stuff on a day-to-day basis, it becomes really easy to misinterpret a complicated rule about how to divide a retirement account or to overlook a detail relating to the mortgage and 401K. Unless you've got a talent for deciphering legalese—which is written, by the way, in a manner to make it difficult for non-lawyers to understand—you could set yourself up for disaster in the long run.

3. Who will get the kids/house/property/assets after our divorce?

Stop right there and consider this: If you've got children and/or shared assets of any kind with your spouse, you have much to lose in a divorce. If you are dead-set on doing this without a Texas divorce attorney, and any of these very important factors are part of the equation—children, especially—be prepared for potential heartache down the line. **Only you can decide what is most important to you.** While having an attorney on your side certainly won't guarantee that you'll get your way in a divorce, it improves the odds that you won't be left without a fair co-parenting plan.

Untying the Knot: Your Guide to Getting Divorced in Texas

Chapter 2: Choosing an Attorney and Preparing for Your First Meeting

If, after taking everything into consideration, you decide that it is indeed in your best interest to secure the services of a divorce attorney in Texas, you'll need to begin the process of finding the right person for the job.

Depending on your personality, you may be inclined to hire the first person you see in the phone book or the first name that pops up in a Google search for "best divorce attorney in Texas." Or you may want to take months to come to a final decision, setting up as many consultations as you can in order to find the "perfect" person for the job.

Perhaps the most desirable approach lies somewhere in the middle. This is an extremely important decision that needs to be made thoughtfully and only after careful consideration of the lawyer's credentials, personality and any applicable specializations, but it also needn't take you months to decide.

Scheduling too many consultations – the term commonly used to refer to the first meeting between a potential client and a divorce attorney – **can be a costly endeavor**. Not only will it mean hours of your precious time, but it's also relevant to note that while most personal injury attorneys will offer a free consultation, not every divorce attorney can afford to extend the same offer.

A good method is to choose a small group of attorneys – between 2 to 5 names – and narrow down your choice from there. You know what they say – "time is money" -- and there are few realms where this is more applicable than in law. Come prepared to your consultation with a list of questions in order to help you choose your ideal divorce attorney.

What to Ask Before You Hire a Divorce Attorney

Below are 10 questions to ask when you are in the process of choosing your Austin divorce attorney:

- How many cases do you take at a time, and who exactly will handle each aspect of my case?
- Do you have experience with divorce/child custody/child support/property dispute cases that are similar to mine?
- What is your payment structure and schedule, and what are your rates?
- What is your policy for responding to phone calls or emailed questions from your clients?
- What sort of approach do you take to a contested divorce?
- Do you have any bar disciplinary actions against you in Texas or elsewhere in the U.S.?
- Do you use data collected from social media in building a case, and do you have a suggested policy for me to follow when communicating online?

Untying the Knot: Your Guide to Getting Divorced in Texas

- How hands-on/hands-off should I expect to be in my divorce case?
- Do you offer any free educational materials to potential clients to give them an understanding of Texas divorce law?
- Do you participate in Texas Bar Continuing Legal Education courses? If so, what have been some of your more recent endeavors?

You may, of course, also choose to ask questions that are more specific to your own case, but these 10 questions give you a good start in deciding whether the attorney you are talking to is a good fit for your case.

When you are preparing to make that final decision, and assuming the attorney you want to hire meets all of the “experience” requirements, be sure he or she meets your desires in each of the following areas:

- **Compatible personalities** – You aren’t looking for a new best friend here, and in fact, you need to keep a professional relationship at all times with your divorce attorney. But you will be working closely with this person for weeks, months and possibly years. It’s important that you are able to keep a cordial relationship and easily communicate with one another.
- **Demeanor and appearance** – This certainly doesn’t mean you’re supposed to look for the person you find most attractive but rather, hire a divorce attorney whose professional demeanor, speaking patterns, mannerisms, carriage and grooming habits project a level of professionalism and confidence that will underscore his or her skills in the courtroom.
- **Negotiation method and/or courtroom style** – If the idea of your soon-to-be-ex and co-parent to your children being subjected to an intense grilling from your divorce attorney makes you feel sick to your stomach, you probably don’t want to work with someone whose reputation is for being a knock-em-out, no-holds-barred courtroom attack artist. Perhaps you’d feel more comfortable teaming with an attorney whose approach is more focused on compromise than “winning at all costs.” Conversely, you may feel most comfortable working with an attorney who favors a more aggressive approach – the choice is yours. Just be sure you are satisfied with your decision.

Untying the Knot: Your Guide to Getting Divorced in Texas

While recommendations from friends and family members are always a welcome resource, in the end, you must decide for yourself who to entrust with this important task in your life. By asking yourself and your potential attorney a few pointed questions, you can rest assured that you have made the best choice for yourself and your family.

Untying the Knot: Your Guide to Getting Divorced in Texas

Chapter 3: Your First Meeting With Your Divorce Attorney

So you've made the decision and hired an attorney. Where do you go from here? You know that cliché about time being equal to money? Well, it's true. And in the interest of saving you time, money and headaches -- and making your Austin divorce attorney's job easier in the process -- **it pays to be organized.**

This means that you should come armed with a wealth of information for your first official meeting with your attorney. It also means that you should strive to keep all of your divorce-related materials organized throughout the entire divorce process, whether that means keeping documents in file folders, a filing cabinet or any system that will be easy for you to use and also simplify the process for your legal team.

Arrive for the first meeting ready to fill out the law firm's intake sheet.

This is a form that will ask you basic information like your Social Security number, driver's license number and other identifying info. If you don't know all this off the top of your head, be sure to bring along the relevant cards and documents for easy reference.

You'll also be asked questions about the makeup of your family -- how many kids you have, where they were born, their ages and possibly questions about the paternity of the children in your household (i.e., any stepchildren involved, etc.). You'll also need to come equipped to answer questions about your estate, such as any shared or marital property including houses, land, businesses, retirement plans, 401Ks, and other liquid or physical assets.

It's possible that you will receive this intake form prior to your initial meeting. If so, be sure to fill it out completely and accurately before you head into the meeting. **Your divorce attorney will base his or her advice and legal counsel on the answers you provide.** It is important that you are honest and thorough, lest your attorney misguide you through no fault of his or her own.

When you head into the meeting, **try to bring as many of the actual relevant documents as possible, such as:**

- **deeds to property;**
- **stock records;**
- **tax records;** and
- **pay stubs.**

Untying the Knot: Your Guide to Getting Divorced in Texas

You'll also want to bring along other legal documents that could impact your case, such as criminal histories of either you or your spouse, or anything else that might impact the direction of your case.

Your divorce attorney will go over your rights and responsibilities and will likely ask you many questions about the information you have provided. **It is important that you are candid during this interview.** Remember that if you have hired someone to be your attorney, *what you say to that person is held in complete confidence and is governed by the attorney-client privilege.*

Untying the Knot: Your Guide to Getting Divorced in Texas

Chapter 4: The Steps of Divorce in Texas – Understanding the Process

The process of a Texas divorce typically begins long before the official filing of paperwork or even the first visit with a divorce lawyer. In most cases, the breakdown of the relationship has taken place over months and sometimes years. Perhaps you and your estranged spouse gave counseling a shot and decided it wasn't enough to save the marriage. Or maybe you just know it's time to move on with your life.

Assuming you have made the final decision that a divorce in Texas is the best choice for you – or your spouse has made it clear that a divorce is imminent – and you have hired a divorce attorney, there are certain steps in the Texas divorce process that can be expected. Below is a simplified look at the step-by-step process of a divorce in Texas. Please keep in mind that your divorce can vary depending on the circumstances of the marriage, so be sure to ask your attorney what to expect from your particular case:

1. The filing of the original petition

You will work closely with your attorney to create the original petition for divorce. This document could be anywhere from a few pages to more than several dozen pages, depending on the factors in your divorce (shared property, children, etc.). In the petition, you will outline how you believe the division of marital property should be handled, as well as separate property, spousal support, child custody or child visitation.

If there are any applicable pre-marital agreements, be sure that your attorney has that information in hand before the petition is drawn up. This information will have to be brought to the court's attention during the initial pleading.

Another important aspect to consider is that **you must file for divorce in a court in Texas that actually has jurisdiction over your case.** This will be based on where you and your estranged spouse reside. A military divorce presents a unique set of challenges, so you'll want to ask your divorce attorney how that will impact your impending divorce.

The petition will be delivered – also sometimes referred to as being “served” – to your spouse. It will give your spouse a timeline in which he or she must respond to the divorce suit. **It's in your best interest to let a professional deliver the petition/summons on your behalf so that there will be an official document that these legal papers were delivered and received.**

Untying the Knot: Your Guide to Getting Divorced in Texas

If you were on the receiving end of the divorce petition, this is likely the point when you will initiate the search for a divorce lawyer who can help you to assess the fairness of the petition.

2. The issuing of temporary orders

In marriages that involved shared property or children, you will likely need to seek temporary orders. This will typically happen within a few days of the initial filing. One type of order is the temporary restraining order, which is initiated to prevent the transfer of property or to stop harassment of one spouse by the other or other actions.

Temporary orders may dictate:

- **which spouse will get to stay in the marital home;**
- **who will get temporary conservatorship** (known as child custody in other states);
- **child support;**
- **where the kids will live;**
- **spousal support;** and
- **many other aspects of the divorce.**

If you and your spouse can't come to an agreement on these matters, the court will set a date for a hearing, and you will need to appear before the Court for a court date. Your Austin divorce attorney will help you to prepare for this court appearance.

The Court will likely set a series of requirements for you and your spouse as to what you must accomplish before the Court will grant a divorce. This may include things like a social study, counseling or interviews with the children, as well as appraisals of the marital property.

Stay in contact with your attorney about any responsibilities you have in this process and be sure to adhere to any deadlines. **You'll need to demonstrate that you can stick to the court's rules and meet your responsibilities.**

IMPORTANT SIDE NOTE: During this time, you should be very careful regarding your communications with your estranged spouse. As difficult as this may sound, you need to remain as calm when talking to your spouse. Don't advise him or her to get an attorney, but you can be honest and say that you have secured the services of a lawyer. Keep conversations brief and act as though everything you say to one another is being recorded, because it most likely is. Your divorce attorney can give you specific guidelines on how to communicate properly with one another during the divorce process.

Untying the Knot: Your Guide to Getting Divorced in Texas

3. The discovery phase

The discovery process may come around the time of the initial filing of your divorce papers or soon thereafter. In short, **discovery is as it sounds; a time when attorneys from either side gather evidence to support their case.** You should be honest in your response to any questions that are part of the discovery process.

Failure to answer and respond honestly to discovery can result in a loss of credibility before the Court. In extreme cases, it can result in the Court taking actions against you to correct the inequities created by your dishonesty. This can involve sanctions like requiring the payment of attorney's fees to the opposing party and possibly unilateral determinations by the Court deciding critical issues of your case against you.

One of the primary concerns in the discovery process is determining the value of marital property. The determination of the value of marital property is critical in accessing your case. This is true with regard to the amount and detrimental value of debts owed by the marital estate. At this stage, each side of the divorce should get a firm grasp of the real value of assets versus the impact of shared debts. As always, it's important that you are honest with your attorney at the start of the process and that you offer as complete information as possible. Failure to be honest with your attorney could lead him or her to base their strategy on flawed information and your case could be seriously impacted in a negative way.

4. Pre-trial and Trial (Not applicable in all cases)

If both sides cannot agree on critical issues in the divorce, your case may proceed to trial. If your case is proceeds to trial it is likely the Court will schedule a pre-trial conference/hearing to examine the case and the issues the Court will be asked to consider. The pre-trial conference/hearing is typically fairly brief and involves a discussion of the issues that will be presented to the Court, the witnesses who will be called, the probable time required for trial, and any potential considerations involving the law or the evidence that will be presented.

You should be involved in the preparation for the pre-trial conference/hearing with your divorce attorney because it is likely that the trial itself will follow shortly thereafter and you will need to be as prepared as possible.

Prepare for the final hearing (trial) with your divorce attorney to discuss what (if any) witnesses you want to include in your case, the results of the social study, counseling or any other interviews. You will also want to carefully go over the legal issues in your case to determine how you will fare with regard to your goals.

Untying the Knot: Your Guide to Getting Divorced in Texas

This is a time of self-reflection and self-examination. You should be brutally honest and understand that you are asking a stranger to decide some very personal and intimate issues. It is an old adage in law that you try to control as much of your case as possible. In other words, it is always preferable to decide your fate versus allowing a stranger to decide your fate for you.

Part of that brutal honesty includes asking yourself how things got to this stage. When a case goes to trial someone is probably making a mistake in how they are analyzing the case and you don't want that someone to be you. Remove emotion and ego from the equation. Look at things from the worst-case scenario and determine if you can survive such a situation, then build your case from there. Trial is a venue of last resort and you should be going to trial only when everything else has failed, or when you are being pushed into the trial by the other party acting unreasonably.

I always tell my clients that there are five people involved in a divorce: the husband, wife, their respective attorneys and the Judge. In some cases, there are juries also but they would only be involved in the same role as the Judge. I explain that if just one of these five people is unreasonable, they will cause the rest of us to follow their lead. Ultimately, the reasonable parties will have to follow a path of mutually assured destruction. Keep this in mind when you are thinking about pushing a case to trial. You may be the unreasonable party and as such, are creating a very unstable situation with unpredictable results.

5. Decree of Divorce

Though the various paths you take in a divorce in Texas can lead in different directions -- some couples can resolve every issue amicably in a lawyer's office vs. other couples who have to hash out every detail in a courtroom -- the end goal is to achieve a judge's final decree granting your divorce. The time period to get to this point may be a few months to many, *many* months. Your Texas divorce attorney can't predict how long it will take to reach this point, but he or she will be your best resource when it comes to navigating the entire process.

Always remember that regardless of whether the final decree is the result of a negotiation process or a trial the actual wording of key issues is something which cannot be overlooked. Regardless of the outcome of your case, whether the issues were decided for you or against you in a contested hearing, or whether you received what you wanted in a negotiation, the way things are phrased is important. A good example of this was in a case where one of my clients was granted 50% possession of the child involved in the case. The opposing attorney drafted a decree wherein my client was identified as exercising visitation 50% of the time. From a cursory review, this should have been no big deal.

Untying the Knot: Your Guide to Getting Divorced in Texas

From a legal analysis, this would have been catastrophic because it involved the identification of the other party as the party with predominate possession, and could have had an effect down the road in any modification proceedings. Of course I objected to this move by the opposing attorney and eventually things got worked out, but it demonstrates how important the wording of rights and duties is in a Final Decree of Divorce.

Untying the Knot: Your Guide to Getting Divorced in Texas

Chapter 5: Pre and Post Marital Agreements (aka. Pre- and Post-Nuptial Agreements/Contracts)

Pre- and post-marital agreements/contracts have the ability to change the course of your divorce proceedings completely. **These contracts lay out the guidelines on who gets what in the event of a divorce in Texas**, and they're common in marriages where one or both partners entering into the marriage have significant assets. You'll also commonly see them when one of the partners is quite wealthy – say, an oil tycoon or Silicon Valley CEO – while the other spouse has a considerably lower net worth.

The State of Texas requires that a pre-nuptial agreement may only be entered into if both parties had the benefit of the counsel of a family law attorney at the time of the signing. This means each party had his or her *own* representation; not one Texas family law attorney who represented *both* clients.

Some complain that the concept of a pre-nuptial agreement is terribly unromantic. But given how common divorce has become – even in states like Texas, where family values are a source of pride – **a pre-nuptial agreement is a very practical consideration for many couples**. Depending on your personal financial circumstances, a pre-nuptial agreement may be a help or a hindrance to you in your Texas divorce proceedings.

No matter what side you are on in the divorce – at a financial advantage vs. disadvantage – **you need to secure the help of a Texas divorce attorney anytime a pre-nuptial agreement is involved**. Be certain that the attorney you hire has experience with pre-nuptial agreements, both in terms of challenging unenforceable contracts and in advocating the upholding of legally sound contracts. This kind of knowledge is really important in cases where a pre-nuptial agreement exists.

Your Texas divorce attorney will examine your situation and help determine if the pre-nuptial agreement was legally entered into and whether it is enforceable. This is an emotionally charged aspect of divorce, but it's important that you are realistic in your expectations, particularly if you are trying to have a pre-nuptial agreement overruled. **Most pre-nuptial agreements are written from language that many courts have upheld, so there is a good chance the contract is sound**.

Untying the Knot: Your Guide to Getting Divorced in Texas

Give your attorney as specific details about the signing of the document as possible. Your attorney will need to know the circumstances of the pre-marital contract in order to best protect your rights. Factors such as your mental state, medications you might have been on, and whether you had adequate time to consider the full ramifications of the effect of the pre-marital agreement are important considerations.

You will also need to consider whether there was full disclosure. This is relevant to the way the pre-marital agreement will be enforced. In most cases it is unlikely the Court will enforce the pre-marital agreement with regard to property not fully disclosed at the time of the signing of the pre-marital agreement. However, this does not require that once signed, the party who uses separate funds under the pre-marital agreement to acquire other property to give notice of such acquisitions.

Post-marital agreements can present their own set of problems. Many times, spouses will try to protect or shield assets from third parties by entering into an agreement between themselves to change the character of an asset to make it harder for a third party to reach it in litigation.

Untying the Knot: Your Guide to Getting Divorced in Texas

Chapter 6: How Property is Divided in a Texas Divorce

Everything about divorce law is specific to the state in which you seek a divorce, and Texas is certainly no different, particularly when it comes to issues of property division. Your divorce will be governed by the Texas Property Law, which, incidentally, is a remnant of Spanish colonial law.

Texas Property Law categorizes property with regard to whether it is real property (real estate) or personal property (possessions). Under Texas Property Law each type of property is treated differently.

Texas Property Law also recognizes what is known as community property. What this means is that all property regardless of whether it is real property or personal property is further categorized as either separate property (property acquired before marriage or inherited) and community property (property acquired after the date of marriage).

The law presumes all property is community property unless proven otherwise. What this means is that once property is identified, it will be considered community property until one of the parties proves that it is their separate property by showing the property was acquired before marriage or through inheritance and maintained separate from other property in the marriage.

This is not small fete and can become a very complicated analysis, involving the tracing of the manifestations of the property throughout the life of the marriage. The end result is that if you possess separate property and you do not want to split the property with your spouse you will need a divorce attorney well versed in the laws used to determine the character of property and how to trace the property back to its acquisition. On the other hand, if you know or suspect that your spouse had separate property or will claim separate property you will want to avail yourself of an attorney who is versed in rooting out the origination of property and who understands the doctrine of comingling assets. Comingling involves the placement of separate property into funds or accounts associated with the community estate.

Community property is basically any real or personal property that was acquired or accumulated after the marriage took place.

Examples: If you and your spouse purchased a house together on your 3rd wedding anniversary, this counts as community property. Same goes for that sports car you bought to celebrate your 50th birthday, or the vacation cottage at Lake Texhoma your spouse bought as a pre-retirement gift.

Untying the Knot: Your Guide to Getting Divorced in Texas

Separate property is any real or personal property that either you and/or your spouse acquired or accumulated before the date of the marriage.

Examples: The watch your grandfather gifted to you when you turned 13, or the pearl necklace your mother bought you for high school graduation. Note that the court will presume that all of your property is community, so you'll bear the burden of having to prove that your separate property was acquired before the date of your wedding.

Complications arise in the property realm when assets are comingled, such as the comingling of separate and community properties. When this happens, everything becomes viewed as community property. Comingling typically occurs with funds. An example may be a pre-marriage savings account that you started after college graduation and later merged with your joint checking account after the wedding. This phenomenon can also impact real property, such as a house or land, or even a business.

Because the issue of property division is so complicated, it is important to work with your divorce attorney early in the process to establish the bounds of community property and to set to work proving what is and is not separate property.

Note that **it is illegal to attempt to hide property during the course of a divorce in Texas.** If you suspect your spouse is hiding assets from you, instead of leveling accusations at your spouse, immediately inform your attorney of these suspicions and provide him or her with explicit proof to back up your suspicions.

Untying the Knot: Your Guide to Getting Divorced in Texas

Chapter 7: Spousal Maintenance/Alimony in a Texas Divorce

Texas spousal maintenance – otherwise known as alimony or spousal support – isn't automatic in Texas, but it is becoming more common. According to the Texas Family Code, **alimony is only available under a certain set of circumstances, including:**

- **in marriages that lasted at least 10 years;** and
- **the spouse seeking maintenance lacks sufficient income or property to maintain a reasonable standard of living.**

Further, the court will also require that **the spouse seeking maintenance falls under at least one of the following:**

- The spouse seeking maintenance must be able to prove **he or she is unable to support himself or herself through employment** because of a disability;
- The spouse is **unable to work because he or she must stay home to care for a child from the marriage who has special needs;** and/or
- There is **compelling evidence that the spouse doesn't have an earning capacity to succeed in the labor market** (this might be the case for a spouse who left the workplace at the start of the marriage to act as a caretaker for children, etc.).

Spousal maintenance is also available in cases where spousal abuse has been proven, regardless of how long the marriage lasted or the spouse's financial needs.

How Spousal Maintenance in Texas is Determined

Once it is determined that a former spouse is eligible for spousal maintenance after a divorce, **the court will use a number of factors to calculate the amount and duration of support, including:**

- **age, employment history and financial resources (including all property) of the spouse seeking maintenance;**
- **length of the marriage;**
- **a comparison of both spouses' educational levels, marketable skills and financial resources;**
- **financial behaviors of either spouse during the marriage and divorce** (e.g., did one spouse hide records of excessive spending during the marriage, or did one of the spouses attempt to hide community property during the divorce?);

Untying the Knot: Your Guide to Getting Divorced in Texas

- **the ability of the spouse who would provide maintenance to meet those needs;**
- **pre-marital assets of both spouses;**
- **marital contributions, such as homemaking and child rearing;** and
- **marital “misconduct” (financial fraud, infidelity) by the spouse seeking maintenance.**

This is not a complete list, but it covers many of the main criteria used by courts to put a number on the amount of spousal maintenance available after a divorce in Texas.

To address some common questions about Texas spousal maintenance, here are 3 FAQs about the topic and their answers:

Question #1 - How much is monthly spousal maintenance in Texas?

Answer: In most cases, spousal maintenance will be **the lesser of;**

- **\$2,500;** or
- **20% of the paying spouse’s average monthly gross income.**

Of course, like any matter in the legal world, this is subject to change based on the specific needs and circumstances of the people involved. Your Texas divorce attorney will be able to provide you a more personalized opinion.

Question #2 - Can spousal maintenance last forever?

Answer: No. Spousal maintenance is intended to be a temporary remedy designed to assist the recipient spouse to get to a place where he or she can become self-sufficient. The stated goal is that the spouse would use the time and money to receive training or education in order to secure reliable income. While things do not always progress in this manner, the court’s intention is not for spousal support to be an unending resource.

The duration of spousal maintenance is generally tied to the length of the marriage. A couple who was married for 30 years may mean a spouse is eligible for support for as long as 10 years. A couple who was married 20 years may be eligible for support for a lesser period, like 7 years, and a couple who was married 10 years (the minimum length of a marriage required to obtain post-divorce spousal support) may only involve spousal maintenance for a period of 5 years.

Untying the Knot: Your Guide to Getting Divorced in Texas

Question #3 – Under what circumstances will spousal maintenance end before the pre-determined time?

Answer: The obligation for spousal maintenance ceases upon the death of either party. So if the recipient dies, a child or named beneficiary in a will cannot demand continued payments. If the recipient remarries, the obligation ceases. The court also may reassess the requirement for spousal maintenance if the recipient cohabitates with another person on a continued basis.

Untying the Knot: Your Guide to Getting Divorced in Texas

Chapter 8: Child Custody Concerns: Conservatorship and Parenting Plans in Texas

Child custody in Texas is known as conservatorship. In making any decisions about conservatorship in Texas, **the court first and foremost will seek to protect the best interests of the child.** This includes the enacting of a parenting plan – the all-encompassing term used to describe the process involved in the appointment of conservators (either joint or otherwise) . The parenting plan will also include the establishment of a schedule for possession of the child. In most cases the parents will be appointed “joint managing conservators,” this means both parents share parenting rights, duties and responsibilities.

Joint managing conservatorship doesn’t mean the parents each get to have the child with them 50% of the time. Nor does joint managing conservatorship mean that child support will not be awarded. The existence of the doctrines of parenting plans and joint managing conservatorship does not mean that issues surrounding child conservatorship and visitation will resolve itself in a fair way. **You’ll want to work with your child custody attorney to advocate for a fair resolution to the issue of child custody and visitation.**

To help prepare yourself for the conversation with your attorney about parenting plans, here is a look at the **two types of conservatorship in Texas:**

- **Joint managing conservatorship** – parents share the rights and parental duties, but one parent may be given the latitude to make important decisions for the child, such as schooling or medical care. Typically, one parent serves as the primary day-to-day caregiver, gaining the right to determine where the primary residence of the child will be, but both parents share most of the rights and duties of raising the child(ren).
- **Sole managing /Possessory conservatorship** – one parent gets the power to make all parenting decisions for the child and act as the primary caregiver while the other parent will have some form of visitation with the child and will most likely be able to exercise some parenting authority while the child is in their possession. In some instances involving abuse or neglect the court can order that the State of Texas be appointed Managing Conservator and both parents be appointed possessory conservators. In these cases, the State of Texas will place the child into some form of foster care either with another family member or within the foster care system. These cases require

Untying the Knot: Your Guide to Getting Divorced in Texas

special attention and attorneys with experience in dealing with CPS. An attorney who is versed in criminal and juvenile law should be consulted.

As stated, **the courts favor joint managing conservatorship**, assuming both parents are fit to act as the natural guardians of the child and there is no history of abuse, it is likely that this will be the outcome for your case. The details of your parenting plan – deciding how much time the child spends with each parent, who gets to act as the key decision maker – are factors that you and the other parent will need to work out. Sometimes, mediation is an option in developing a parenting plan, though this certainly doesn't work in every situation. **To protect your rights to custody and visitation, it's best to work with your child custody attorney as early in the process as possible.**

Factors in Determining Conservatorship in Texas

When possible, it's always preferable to work with your ex-spouse – and your respective divorce attorneys – to draw up a suitable parenting plan instead of leaving this to the court. If this simply cannot happen, the court will use several factors to determine child custody. **Here are a few of the factors the court will consider:**

- **the child's age and gender;**
- **the child's physical and mental health;**
- **any history of abuse;**
- **the resources and lifestyle of each parent;**
- **the child's established lifestyle and routine;**
- **the potential impact of a change on the child's well being;** and
- **in cases where the child is older than 12, his or her preference may be considered.**

Because the child's best interests are always at the forefront of the court's stated goals, it is important for you to demonstrate that your desired parenting plan is most advantageous for your child. A child custody attorney who has handled child custody disputes in Texas is indispensable. He or she can will ensure that you are properly advised with regard to what is required on your part to demonstrate to the court that you understand what is in the best interest of your child and how best to implement your parenting plan. Your child custody attorney will also be needed to help demonstrate to the court that you are qualified to provide reasonable care and parenting to your children, and if there are allegations of abuse or neglect that these are dispelled by evidence presented to the Court.

Untying the Knot: Your Guide to Getting Divorced in Texas

Child custody orders – or parenting plans – can be altered, but you should realize when negotiating with the other parent involved that the agreement you enter will have to be reviewed by the Court. The Court will ensure your initial agreement is in the best interest of your children. Once approved by the Court, the agreement will be binding and like any legally binding contract, the courts are loath to alter it without compelling reason. With that in mind, *never enter into a legally binding agreement without first having your child custody attorney or Texas divorce lawyer review the documents with you.*

A Lawyer's Perspective on the Difficult Reality of Child Custody

I always tell people that everything you need to know about understanding the negotiation of a child custody order -- or presenting the evidence to the court to get your parenting plan approved -- is demonstrated in the story in the Bible about the two women who both claimed to be the mother of a baby. This is clearly a child custody case, and one of the oldest on record.

In those days, the King was also the chief Judge and we always remember Solomon for his wisdom largely because of this story. The standard then was as it is now: "the best interest of the child." In this case, Solomon knew the best interest of the child was to be with its rightful mother. He accomplished this by exercising the laws of equity, thus "splitting" the child in two and proposing to give each mother one of the two halves of the child. At this time, the true mother stepped forward and said she would relinquish her rights to save the baby.

Solomon knew then who the real mother was and presented the child to the mother who offered to relinquish her rights. Your Judge may not necessarily demonstrate the wisdom of Solomon but it does not change the fact that sometimes, **what is in the best interest of your child may not be what is in your best interest.**

This is a difficult thing to implement even if it is easy to ascertain. Be prepared to look at things objectively, and do what is truly in your child's best interest, even if this means allowing the other parent to have custody when they truly are in a better position to execute a parenting plan more in line with the best interest of your child.

Untying the Knot: Your Guide to Getting Divorced in Texas

I also remind my clients in these situations that General Norman Schwarzkopf said it best when he said “we all know what to do, the hard part is doing it.” Doing the right thing isn’t always easy but it can really be hard when it means abdicating custody of your child. It is at these times that you should remember that while child custody orders are not altered without serious deliberation by a Court, they are not always permanent and if your circumstances change you can go before the court on another day when your case may be stronger and the best interest of your children mitigates to your favor.

Untying the Knot: Your Guide to Getting Divorced in Texas

Chapter 9: Child Support after a Texas Divorce

Child support in Texas is one of the more straightforward aspects because a standard formula is used to determine the amount of child support. This isn't to say that disagreements don't arise, or that every spouse fulfills his or her parental duty, but on the surface, the calculation of child support is clear cut.

In every case a judge will determine what amount of the paying parent's available resources will go to child support. Available resources is defined as the amount of money left over from all of the paying parent's monthly income after deducting taxes, health insurance for the children, and union/professional dues. **The basic guidelines used to determine child support in Texas are as follows:**

- **20% of income if there is 1 child;**
- **25% of income if there are 2 children;**
- **30% of income if there are 3 children;**
- **35% of income if there are 4 children;**
- **40% of income if there are 5 children;** and
- **no less than 40% of income if there are 6 children or more.**

These percentages are further reduced if the paying parent has other children to support who are not involved in the instant case. **These numbers are based on the assumption that the paying parent's net resources do not exceed \$7,500 each month.** In cases where the parent's income exceeds \$7,500, the court may choose to award additional Texas child support or allow the support to be topped out based on \$7,500.

Texas Child Support Must be in the Child's Best Interests

It's important to remember that while this standard formula exists, the court is charged with protecting the child's best interests first and foremost. The amount of child support may change based on the needs of the child. **Some of the factors a court may consider in a Texas child support determination include:**

- **the ages of the children;**
- **the resources and income potential of BOTH parents;**
- **the costs of childcare and education;**
- **any spousal maintenance;** and
- **essentially any other point that may be pertinent to protecting the child's best interests.**

Untying the Knot: Your Guide to Getting Divorced in Texas

The court also will give direction on how and when child support should be paid – e.g. monthly, weekly or in a lump sum. When the paying parent fails to fulfill his or her parental obligation, there are remedies available to compel the paying parent to meet their child support obligation. You can work with your divorce attorney to pursue these remedies, which include:

- the imposition of financial sanctions;
- deprivation of privileges like professional licenses and driver licenses; and
- incarceration in the county jail may be imposed.

In some extreme cases, criminal charges can be filed by the district attorney, as it is a felony in Texas not to support your children when ordered to do so by a Judge of competent jurisdiction. The Child Support Division of the Office of the Attorney General of the State of Texas is charged with helping parents obtain the financial support necessary to raise a child, which in some cases may require the Attorney General to intervene in your case.

Parents who are salaried or paid by the hour are usually subject to a withholding order which allows for the withholding of the child support obligation directly from the paycheck of the parent required to pay child support. Also worth noting is that **the court may order retroactive child support payments in addition to the regular child support obligation to address the time period prior to the child support order being put into place.**

Modifying a Texas Child Support Order

Texas Courts require that the child support obligation be reviewed from time to time to ensure that the children subject to the court's jurisdiction receive the proper amount of child support. This is because the compensation received by a parent required to pay child support changes over time and the courts want to ensure that these changes are reflected in the child support obligation. This includes adjustments to the child support obligation in both directions.

It may seem counter intuitive to think that a reduction in the child support obligation could be good for the children receiving the support, but consider this: the biggest reason support is not paid is due to the support obligation extending beyond the amount required by law. If this happens, the paying parent will fall behind more easily and either "give up" or be prevented from paying because of lengthy incarceration (due to an enforcement proceeding brought by the other parent). Therefore making sure the child support obligation is correctly calculated is in the children's best interest.

Untying the Knot: Your Guide to Getting Divorced in Texas

To seek a child support obligation reduction or increase either parent may petition the court anytime they believe the child support obligation varies from that required by law by a factor of 20% or if four years have passed since the court rendered the most recent child support order.

One note of caution: Texas child support should never be viewed as a weapon. For instance, if your former spouse has physical conservatorship of your child, and your ex isn't allowing you to see your child during your allotted times, unilaterally withholding child support until you get your visitation is not an option. The Court will consider you in contempt of court and could impose sanctions on you for failure to meet your child support obligation regardless of the fact that the other parent is in contempt of the visitation provisions of the court order as well. Instead, talk to your divorce attorney about what to do in this case. **Your attorney can look objectively at your situation and act on your behalf to ensure fairness in your Texas child support order and child conservatorship/visitation order.**



When you're Looking for a Dallas Law Firm to Help with Your Family Law Issues, You Need an Attorney Who Handles Divorce and Child Support Cases.

Gary R. Warren's represents North Texas families with divorce and child support issues. A native Texan himself - he graduated from Garland High School in 1983 -

After graduating from Texas Tech University in 1987, Gary attended the Thomas M. Cooley School of Law in Lansing, Michigan, passing the bar in 1992. He then returned home to Texas.

After more than a decade in private practice, Gary formed Warren & Migliaccio with Christopher Migliaccio. Warren & Migliaccio's goals are simple:

- help families that are struggling financially obtain a fresh start.
- help achieve fair resolutions to child custody or property dispute matters so that our client's family can get back on their feet

Gary wrote this book to provide information about the most asked questions regarding divorce and child custody issues including:

- the questions you need to ask Texas divorce lawyers during an initial interview;
- when you need to hire a divorce attorney;
- the formula used to calculate child support;
- how the division of property is handled;
- what to do when a pre-nuptial agreement is involved in your divorce;
- the "ins and outs" of spousal support in Texas;
- how to maintain a positive and professional relationship with your divorce attorney;
- things that you could do to inadvertently harm your case; and
- the types of child custody in Texas.

Gary has spent several years representing families with divorce and child custody issues and considers it his priority to address the concerns that keep them up at night. For families with children, he understands child support payment and visitation worries rank high, and for most spouses involved in divorce, he knows stress and emotions can make daily job performance and tasks a challenge.

When Gary is not practicing divorce and child custody case law, he enjoys reading about American history and politics. An avid sports fan, Gary regularly roots for his hometown teams, the Texas Rangers, Dallas Stars, Mavericks and Cowboys. He and his wife, Gary's high school sweetheart of 19 years, attend and teach Sunday school together each week and spend time with their nieces, nephews and family.