

# 10 things you didn't know about Texas divorces

Most people's expectations of divorce are influenced by cases covered by the media or from family and friends who often describe their individual cases with a personal bias. However, divorce can be a very complex issue and every case will be different. While laws regarding divorce are similar across much of the United States, there are variations in divorce law that apply specifically to Texas divorce cases. Here are 10 Texas Divorce Laws that you may not know about.

## 1. Alimony is not a sure thing.

If you were counting on getting alimony in your divorce settlement, you should look again at the requirements. Alimony will only be considered in your case if any of the following situations are relevant to your divorce:

- 1) Your spouse committed, and was convicted of, a crime of family violence within the two years leading up to your filing for divorce or during your divorce.
- 2) Your marriage lasted 10 or more years and you don't have the resources to meet your minimum living requirements after attempting to find suitable employment or developing the necessary skills to become self-supporting during a period of separation.
- 3) You are unable to support yourself due to a physical or mental disability.
- 4) You are parent to a child or children who have physical or mental disabilities.
- 5) You lack the ability to hold a job and earn a living to support your minimum needs.

If you meet any of these requirements, the court will determine the nature, amount, duration, and manner of periodic payments by considering all relevant factors in your case.

## 2. Joint custody does not necessarily mean equal time with both parents.

Unless a court decides a parent is fully or partially restricted from seeing their child, many child custody cases today result in joint custody. Joint physical custody is shared according to a court ordered schedule. In most states, joint physical custody creates an obligation to provide each parent with "significant periods" of physical custody so as to assure the child "frequent and continuing contact" with both parents.

In Texas, joint custody orders do not necessarily result in substantially equal parenting time. Courts have not clearly defined the meanings of "significant periods" and "frequent and continuous contact," therefore, parents need to talk to their divorce attorneys and possibly litigate the issue.

## 3. Your child has a say.

Children who are at least 12 years of age may file a written request with the court to be allowed to choose the parent who will be awarded the exclusive right to decide the primary residence of the child. However, the child's request for a specific managing conservator is still subject to the court determining what is in the child's best interest.

## **4. There is no legal separation in Texas.**

Texas does not recognize **legal** separations but the State does allow temporary orders to be filed at the time the divorce is filed. Temporary orders define the rights and responsibilities of both parties for the duration of the divorce proceedings. Typically the temporary terms include:

- Child support
- Measures to assign payment of certain debts and obligations
- Orders permitting temporary use and possession of personal property and/or real estate
- Attorney's fees
- Temporary Restraining Orders

## **5. You won't get custody if you can't be nice... among other factors.**

The court will use the following guidelines when deciding how to award child custody:

- Whether the physical, psychological, or emotional needs and development of the child will benefit from the appointment of joint managing conservators (two people, usually the parents, who are a child's legal decision makers).
- The ability of the parents to give top priority to the welfare of the child and reach shared decisions in the child's best interests.
- Whether each parent can encourage and accept a positive relationship between the child and the other parent.
- Whether both parents participated in child rearing before the filing of the suit. The geographical proximity of the parents' residences.
- If the child is 12 years of age or older, the child can request which adult has the exclusive right to designate their primary residence.
- Whether a parent is a flight risk. A parent that lacks financial reason to stay in the US and has strong familial, emotional, or cultural ties to another country, or if the parent lacks strong US ties, regardless of having citizenship or permanent residency status in the US, may be denied custody.

## **6. Don't worry; you're not to blame... Oh, and neither is your spouse.**

Texas is a "no-fault" divorce state, which means you will be granted a divorce, without having to lay blame on your spouse. Your divorce can be based simply on the grounds that the marriage has become insufferable because of irreparable conflict or disparity between your personalities which prevent reconciliation.

However, if you wish, your lawyer can prepare a fault-based divorce case for you. You must present evidence to prove fault which the court may take into consideration when determining what an equitable division of property is. Filing a fault-based case may be beneficial in your case and will be considered grounds for divorce if any of the following occurred in your marriage:

- Cruelty
- Adultery
- Conviction of a felony
- Abandonment
- Living apart for at least three years
- Confinement in a mental hospital

## 7. There is a simple calculation to work out your child support payments.

The guidelines for the support of a child after divorce in the Texas legal code are specifically designed to apply to situations in which the obligor (the person who is obligated to pay) has monthly net resources of \$6,000 or less. In these cases, the following schedule applies in rendering the child support order:

# of children	Percentage of obligor's net resources
1	20%
2	25%
3	30%
4	35%
5	40%
6 +	Not less than the amount for 5 children

If the obligor's net resources exceed \$6,000 per month, the court shall presumptively apply the percentage guidelines to the first \$6,000 of the obligor's net resources. The court may order additional support, depending on the child's needs.

## 8. You need to live here to get divorced here.

In order to file for divorce in Texas, either the petitioner or respondent must live in the state of Texas for at least six months, and reside in the county where the divorce is being filed for at least 90 days before filing the divorce petition. Members of the military who are Texas residents but have spent time outside Texas while serving have more relaxed residency requirements.

## 9. Being intoxicated at the wedding may grant you an annulment.

Courts in Texas may grant an annulment if at the time of the marriage the petitioner (spouse applying for the annulment) was under the influence of alcoholic beverages or narcotics and as a result did not have the capacity to consent to the marriage; and the petitioner has not voluntarily cohabited with the other party since the effects of the alcoholic beverages or narcotics ended.

## 10. You can't immediately take the plunge again.

Except as otherwise provided for in the Texas family law code, (see your divorce lawyer for these exceptions), neither party to a divorce may marry a third party before the 31st day after the date the divorce is decreed. However, the former spouses involved in the current divorce may marry each other at any time.

Nichols Law is a highly experienced team of professional family law attorneys located in Houston, Texas, proudly serving the Family Law needs of the greater Houston area and its surrounding communities.

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