



Questions About Divorce

Navigating your way through a divorce case can be confusing during what is often a stressful and emotional time in your life. Not knowing what to expect can make it even harder. This information is intended to help you understand what you can expect when you are thinking about divorcing or when you are getting a divorce.

Can I get a legal separation?

No. Although a legal separation is available and sometimes required in many states, there is no legal separation in Texas. If you need to protect your interests regarding your property or your children while separated from your spouse, you must file for divorce and obtain temporary orders.

What if one spouse does not want the divorce?

In Texas, if one spouse wants to be divorced, the divorce will be granted. Texas is a no-fault divorce state, meaning fault does not have to be proven to obtain a divorce.

What if I am in a common law marriage?

Common law marriage is when there has been no marriage license issued, but the law considers you married. Texas will find that you are “common law” married if you have lived together in the State of Texas, had a proven intent to be married, and held yourselves out to others as husband and wife. There is no minimum time that you have to live together.

Living together and having children together does not automatically mean you are common law married under Texas law. The facts and circumstances of each case must be considered to determine whether a common law marriage exists.

If I am common law married, do I need to get divorced?

If you have been separated more than two years, then you do not need a divorce. Once you have been separated two years, the law presumes you were not common law married. If you have property to divide, you may want to get divorced so the divorce court can divide the property.

How long does it take to get divorced?

Texas has a minimum 60-day waiting period before a divorce can be finalized. The 60 days start running at the time the original petition for divorce is filed with the court. However, most divorces take longer than 60 days. The time frame for divorce may take anywhere from three to six months if it is agreed, and up to several years in a highly contested matter. The more agreements reached between you and your spouse as to the terms of the divorce, the sooner your divorce will be final.

What is considered community property and community debt?

Texas is a “community property” state. In other words, all property owned by married persons on the dissolution of a marriage, whether by death or divorce, is presumed to be the property of both the husband and the wife. Likewise, any debts incurred during marriage are presumed to be community debt. This means that the debts are presumed to be owed by both the husband and the wife. Like community property, community



The information in this article is taken from “What To Expect in Texas Family Law Court,” printed by the State Bar of Texas as a public service of the Texas Young Lawyers Association. Copies of the guide can be downloaded at www.tyla.org or ordered by writing to State Bar of Texas, Public Information Department, P.O. Box 12487, Austin 78711, by calling (800)204-2222, Ext. 1706, or visiting www.texasbar.com.



debt must also be divided in a divorce. However, since the creditor is not a party to the divorce action, the creditor may still pursue either spouse for collection of the debt, as creditors are not bound by the terms of the divorce decree and the divorce court's allocation of responsibility for joint debts. If the divorce court orders a spouse to pay a community debt and he or she does not, the other spouse may file an enforcement action against the non-paying spouse.

What is considered separate property?

Generally speaking, separate property is property acquired before a marriage and property acquired during marriage through gift or inheritance, or with funds that qualify as separate property.

Also, married persons may agree in a properly drafted written agreement to "partition" community property, in which case that property becomes each spouse's separate property.

How does the court divide the property and debts?

Community property and community debts are supposed to be divided in a manner the court "deems just and right, having due regard for the rights of each party and any children of the marriage."

This does not mean that community property or debt must necessarily be equally divided. The judge dividing community property and debt may consider many factors, such as the size of your and your spouse's separate estates and any fault causing the divorce.

What happens at the trial?

A trial is the final court hearing. All issues that are in disagreement are presented to a judge or jury that will make a final decision. The issues are presented through testimony of the parties, witnesses, and evidence presented to the court.

When is my divorce officially final?

Your divorce is considered final on the specific day the judge signs the final decree of divorce.

How soon can I remarry?

Since one of the parties may appeal a divorce within 30 days after the date it was final, you must wait a minimum of 30 days after your divorce decree is signed by the judge before you may get married again to someone else. ❖

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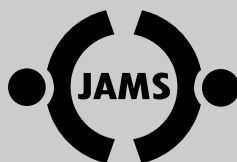
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 Hon. Robert Faulkner (Ret.)
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