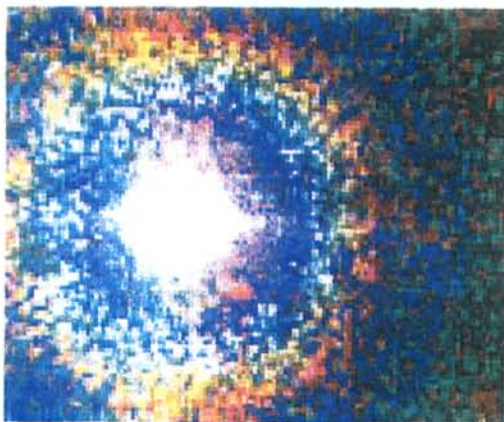


# ARE YOU THINKING ABOUT DIVORCE?



## A Guide Through the Process

Divorce is usually a difficult and emotionally stressful, as well as financially stressful, time for the couple involved in the divorce, as well as for their children (whether grown or not), and also other family members. Emotions often run high, leading some individuals to behave in ways they would not normally act. Because of this, it is important for you to have an advocate — your attorney — to help you weigh your options and help guide you through the divorce process.

This brochure is a brief overview of the divorce process based upon the current Texas Family Code. The Texas Statutes may be changed by the State Legislature and are subject to interpretation by the Courts.

**Do not rely on this brochure as a substitute for legal advice. Consult an attorney of your choosing about the legal effect of the law on your particular case.**

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## SELECTING AN ATTORNEY

There are many fine Family Law attorneys in the San Antonio area. You may wish to interview several before selecting an attorney to represent you. You will want to determine what sort of attorney will fit your needs based upon your particular circumstances.

Questions you will want to ask the attorney:

- What is the hourly rate?
- What is the amount of the retainer required?
- Is the retainer refundable or non-refundable?
- Is there a minimum Retainer balance required?
- Are monthly, itemized statements provided?
- How many years has the attorney been in practice?
- What percentage of the attorney's practice is devoted to Family Law?

## WHAT IS A RETAINER?

Your attorney will probably ask you for a Retainer, which should be deposited into a separate trust account and not co-mingled with your attorney's other monies. A Retainer can be thought of as a deposit for your legal work: your attorney will keep track of the time spent on your matter and the Court costs and other fees paid on your behalf, and bill the time and costs against the Retainer. The Retainer is your attorney's "best guess" (based upon her/his experience in previous cases similar to yours) of what it will cost to prosecute or defend your case. The actual cost may be more or less than the Retainer amount. If the cost is higher than anticipated, you will probably be asked to replenish the Retainer periodically. If the costs of your case are less than the Retainer (and the Retainer is refundable), your attorney should refund any unused Retainer to you once all work on your case has been completed.

## WHAT TO TAKE WITH YOU ON THE FIRST VISIT WITH YOUR ATTORNEY

- Originals or copies of paperwork relating to your home or apartment (Deed, Deed of Trust, Promissory Note, Mortgage, Lease, insurance/escrow statements, etc.)
- Originals or copies of current statements for all: checking, savings, money market accounts, etc.; monthly household bills (mortgage/rent, car insurance, car and other loans, electric, water, cable/satellite TV, etc.); credit card/store credit card statements; paycheck stubs; IRAs or other retirement account statements; medical bills, etc.

## RESIDENCY REQUIREMENTS

Before you are able to file a petition for a divorce, you must be a resident of the State of Texas for six (6) months and a resident of the County where you want to file for three (3) months.

## ORIGINAL PETITION FOR DIVORCE

The Original Petition for Divorce initiates the divorce process. The Petition will set forth to the Court the relief you are requesting, and may be amended as necessary as the divorce progresses. Depending upon your individual circumstances, your attorney may also file a Temporary Restraining Order to maintain and/or preserve the parties' community and separate property (See "Definitions", below) and to prohibit unlawful behavior.

In Texas, a minimum of sixty (60) days' waiting time (from the date of filing of the Original Petition) is required before a divorce will be granted by the Courts.

## SERVICE OF CITATION/NOTICE

Before any hearing may be held, your spouse (the "Respondent") must be served with a copy of the Original Petition for Divorce and/or other pleadings filed at the same time. This may be accomplished by a private process server, the County Sheriff's Dept., or by the execution and filing of a Waiver of Service. A Waiver of Service is a legal document the Respondent must *voluntarily* swear to and sign in the presence of a Notary Public, acknowledging that he/she has received a copy of the Original Petition for Divorce.

## TEMPORARY ORDERS

You and your attorney may decide that Temporary Orders are needed. This is generally done at the beginning of your divorce in conjunction with a request to the Court for a Temporary Restraining Order.

Temporary Orders may be used to: set forth possession of and access to the children, set temporary child support and/or temporary spousal support; determine the temporary award of the residence, vehicles, etc.; and allocate who will pay certain debts of the marriage.

Temporary Orders may be agreed to by the parties. If contested, a hearing before the Court will be set and you may be required to introduce witnesses and evidence to obtain the relief you have requested from

the Court. Remember: no one can guarantee the outcome of a hearing or trial, so you should not go into Court with the expectation that your every request will be granted.

### DISCOVERY/ STATUTORY INVENTORIES

"Discovery" and "Statutory Inventories" are methods of gathering information to assist the parties (or the Court) in determining the division of the assets and debts of the marriage, and in determining provisions for the children. Discovery usually consists of a series of questions ("Interrogatories") and requests for documents ("Request for Production") that your attorney will send to your spouse or your spouse's attorney. A Statutory Inventory is a listing of all of your assets and debts.



### SOCIAL STUDIES/PARENTING CLASSES

In Bexar County, parenting classes for divorcing parents are required in every case involving children under the age of 18, and the classes must be completed by both parents before a Divorce will be granted.

Social Studies or psychological evaluations may be ordered by the Court where a provision regarding the children of the marriage is contested.

### SETTLEMENT/MEDIATION

After all information has been gathered, the parties should attempt to resolve their case without having to go to trial. This may be done by a settlement agreement between the parties and each of their attorneys, or by mediation. In a mediation, a Certified Mediator will assist the parties in resolving all issues and negotiating a settlement.

### TRIAL

If all attempts to settle or mediate your case fail, it will be set for trial and a Judge or jury will decide your case. Trial preparation can be a lengthy process which may require your attorney to prepare witnesses for testimony and evidence to be presented at the trial.

### THE FINAL PHASE

Once your case has been settled (whether by agreement of the parties, by the Court, or by a jury), your attorney must begin the task of preparing the Final Decree of Divorce, as well as other closing documents which may include: Child Support Withholding Orders; real estate documents to transfer/convey real property; Qualified Domestic Relation Orders ("QDROs") for certain financial accounts, etc.

### DEFINITIONS:

#### Texas Family Code

##### Subtitle B. Property Rights and Liabilities

##### Chapter 3. Marital Property Rights and Liabilities

##### Subchapter A. General Rules for Separate and Community Property

§§ 3.001. SEPARATE PROPERTY. A spouse's separate property consists of: (1) the property owned or claimed by the spouse before marriage; (2) the property acquired by the spouse during marriage by gift, devise, or descent; and (3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage. Added by Acts 1997, 75th Leg., ch. 7, §§ 1, eff. April 17, 1997.

§§ 3.002. COMMUNITY PROPERTY. Community property consists of the property, other than separate property, acquired by either spouse during marriage. Added by Acts 1997, 75th Leg., ch. 7, §§ 1, eff. April 17, 1997.

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### Areas Of Practice:

Family Law

Divorce (Agreed & Contested)

Child/Spousal Support Enforcement & Modification

Custody/Visitation Enforcement & Modification

Name Change (Adult or Child)

Paternity

Adoption/Termination of Parental Rights

Pre-Marital and Post-Marital Agreements

Post-Divorce Enforcement & Modification

Out-of-State Child/Spousal Support Enforcement & Modification

### Bar Admissions:

Texas, 1992

U.S. District Court Western District of Texas, 1996

### Education:

St. Mary's University School of Law, San Antonio, Texas, 1992 — J.D.

Southwest Texas State University, San Marcos, Texas — B.S.

Not Certified by the Texas Board of Legal Specialization