

INSTRUCTIONS TO **PRO SE** LITIGANTS IN DIVORCE CASES
PLEASE READ COMPLETELY

**Court Administrators, Court Coordinators, nor any personnel of the District Clerk's Office can practice law or give you any type of legal advice.
Please do not ask them to do so.**

If you chose to represent yourself in a divorce, you **MUST** comply with the following Court rules before asking the Court to grant a divorce:

1. ALL pleadings and Court orders **MUST** appear neat, clean, with no smudges or strike-overs.
2. ALL fill in the blank pleadings and decrees must be FULLY filled in. **NO BLANKS.**
3. If anything contained in the forms you are using do not apply to you and your spouse, **DO NOT** include them in your petition or your decree.
4. All pleadings and decrees must be printed on 8 ½ by 11 inch paper.
5. All pleadings must be originals. If you use preprinted forms, do not photocopy.
6. If the divorce/decreed involves property, you **MUST** include the proper legal description and information concerning the bank or lienholder.
7. If children were born during the marriage, the decree **MUST** include the following:
 - a. Provision for custody of the children and with whom they will live.
 - b. A schedule of visitation.
 - c. Provision for the children to be covered by health insurance.
 - d. Provision for child support in accordance with the guidelines in the Texas Family Code. **CHILD SUPPORT CANNOT BE WAIVED** without the approval of the Court which will rarely be given.
 - e. If a child is not the child of the spouse but was born during the marriage, the child **MUST** be listed in the decree and paternity **MUST** be established.
 - f. Both parents **MUST** complete a parenting class, minimum four (4) hours, that will provide you with a certificate of completion. This certificate **MUST** be on file with the District Clerk's Office before a court date for the final divorce will be given.

8. Obtain the Bureau of Vital Statistics form from the District Clerk's Office and have it completely filled out before you come to court for you divorce.
9. ALL Decrees of Divorce MUST be submitted to the Judge hearing the case at least seven (7) days prior to your scheduled final hearing date.
10. All Court settings shall be obtained by contacting the court administrator/coordinator to which your case has been assigned.

If your case number ends with the following:

An EVEN NUMBER Contact Lynn Bothe lynnb@co.guadalupe.tx.us 830-303-8852 x1

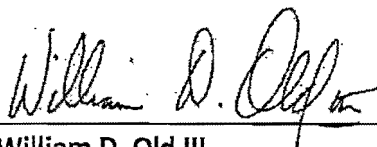
An ODD NUMBER Contact-Rachel Luna rachel.luna@co.guadalupe.tx.us 830-303-8852 x2

The District Clerk's Office has a copy of a publication that was published by the Texas Young Lawyers Association to assist pro se litigants called PRO SE DIVORCE HANDBOOK.


You may exam it in the District Clerk's office or obtain a free copy at www.tyla.org/family_law.html
Additional information may also be obtained from www.texaslawhelp.org or the Travis County Website: www.co.travis.tx.us\records_communication/law_library/forms.asp

The District Clerk's Office shall provide a copy of these instructions to all parties filing a pro se divorce.

SIGNED AND ORDERED THIS THE 11TH DAY OF JANUARY, 2017



William D. Old III
District Judge, 25th Judicial District



Jessica Richard Crawford
District Judge, 2nd 25th Judicial District

How to File an Uncontested Divorce

These instructions explain the steps in a simple, uncontested Texas divorce. Use them with the **FREE** do-it-yourself divorce forms at www.TexasLawHelp.org.

These instructions are written for people who are "pro se." Pro se means you don't have a lawyer.

These instructions are not a substitute for the advice and help of a lawyer. It's a good idea to talk to a lawyer about your particular situation *before* filing or responding to a divorce.

Is Your Divorce Uncontested?

Your divorce is uncontested when it is:

- ✓ **agreed** – you and your spouse agree about all the issues in your case **OR**
- ✓ **default** – your spouse is given legal notice of your divorce by Official Service of Process, Publication or Posting and does not file an *Answer* or *Waiver of Service* with the Court or otherwise appear in the case.

If your divorce is **contested**, it is best to talk to a lawyer before filing any forms with the Court.

Steps for an Uncontested Texas Divorce

A full description of each step follows. Carefully read all the steps before you begin.

- Step 1: **Get help** if there has been family violence or you feel unsafe.
- Step 2: **Talk to a lawyer** about your particular situation.
- Step 3: **Determine** where to file.
- Step 4: **Choose** a divorce form set at www.TexasLawHelp.org.
- Step 5: **Fill out** the *Original Petition for Divorce*.
- Step 6: **File** (turn in) your *Original Petition for Divorce*.
- Step 7: **Give** "legal notice" to your spouse
- Step 8: **Fill out** the *Final Decree of Divorce*.
- Step 9: **Wait** the required waiting periods.
- Step 10: **Confirm** that your case is uncontested and get ready for court.
- Step 11: **Go to court** to finish your divorce.

Step 1: Get help if there has been violence or you feel unsafe.

- It's not a good idea to do your own divorce, without a lawyer, when there has been family violence. Family violence includes physical violence and sexual assault. It can also include threats of violence. You do not need to have called the police or sought medical care to be the victim of family violence.
- If you or your children have been the victim of family violence or if at any time you feel unsafe, get help by calling the:
 - National Domestic Violence Hotline at 1-800-799-SAFE (7233) *or*
 - Texas Family Violence Legal Line at 1-800-374-HOPE (4673) *or*
 - Advocates for Victims of Crime (AVOICE): at 1-888-343-4414

Step 2: Talk to a lawyer about your particular situation.

- Divorce cases can be complicated and your property, your money and your rights as a parent may be at risk. Even if you decide to represent yourself, you should see a lawyer for legal advice about your particular situation *before* filing anything,
- It's really important to talk to a lawyer if:
 - you're afraid for your or your children's safety, *or*
 - your case is contested, *or*
 - your spouse has a lawyer, *or*
 - you or your spouse has a house, retirement, business, other valuable property or a lot of debt.
 - You are in a same sex marriage and you and your spouse have a child but there is no adoption or other court order stating that you are both legal parents.

Talking to a lawyer now can save you time and money in the long run.

- **Need help finding a lawyer?** For referral to a lawyer, call your local lawyer referral service or the State Bar Lawyer Referral Information Service at 1-800-252-9690.
- **Can't afford a lawyer?** For information about free and low-cost legal help in your county go to www.texasbar.com/ReferralDirectory or call the Legal Aid organization serving your area:
 - Legal Aid of Northwest Texas 1-888-529-5277 (*Dallas / Ft. Worth area & Northwest Texas*)
 - Lone Star Legal Aid 1-800-733-8394 (*Houston area & East Texas*)
 - Texas Rio Grande Legal Aid 1-888-988-9996 (*Austin / San Antonio area, El Paso & South Texas*)
- **Just want advice?** You can hire a lawyer *just* to give you advice, review your forms, draft a document or help you prepare for a hearing. This is called **limited scope representation**. You may then be able to handle the other parts of your divorce yourself.



Do Not Use the TexasLawHelp Divorce Forms if:

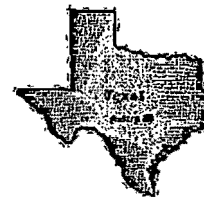
- You or your spouse have an ongoing bankruptcy case.
- You want to file specific grounds for divorce, such as cruelty or adultery.
- You want spousal maintenance, referred to as "alimony" in some states.
- You and your spouse have a disabled child.

Step 3: Determine where to file.


**Residency
Requirements
for Divorce**

You can file for divorce in Texas as long as you or your spouse has lived:

- in Texas for *at least* the last **6 months**, **and**
- in the county where you want to file for divorce for *at least* the last **90 days**. See *Texas Family Code Section 6.301*.



- **Information for Military Families:** If you are serving in the armed forces outside of Texas or other government service outside of Texas or you have accompanied your spouse who is serving in the armed forces or other government service outside of Texas, you may still file for divorce in Texas if Texas has been the home state of either you or spouse for at least 6 months and the county where you plan to file the divorce has been the home county of either spouse for at least 90 days. Time spent away while serving in the armed forces or other government service counts as time spent in Texas and your home county. See *Texas Family Code Section 6.303*.
- **Information for Immigrants:** You may file for divorce in Texas even if you do not have legal status in the United States, as long as you or your spouse has lived in Texas for at least the last 6 months and in the county where you want to file for divorce for at least the last 90 days.

Things to consider...

- **if your children don't live in Texas or haven't lived in Texas very long.**
A Texas Court cannot make initial custody and visitation orders about a child unless:
 - 1) the child has lived in Texas for at least the last 6 months (or since birth), or
 - 2) Texas was the child's home state and the child has been gone for fewer than 6 months.

See *Texas Family Code Section 152.201*.

There are a few exceptions to this rule. Talk with a lawyer if this is an issue.

- **if your spouse lives outside of Texas.**

As long as you meet the residency requirements for divorce, you can get divorced in Texas even if your spouse lives in another state. However, the Court must have **personal jurisdiction** over your out-of-state spouse to include orders in your divorce that impose a personal obligation on your spouse — such as ordering your spouse to pay a debt or pay child support.

See *Texas Family Code Sections 6.305, 6.308, 102.011 and 102.012*.

The *Original Petition for Divorce* form includes a list of situations that give the Court personal jurisdiction over an out-of-state spouse. Check any that apply to your case. Talk to a lawyer if none apply or you have questions about personal jurisdiction.

Step 4: Choose a divorce form set.

- Choose one of the following divorce form sets at www.TexasLawHelp.org. Each set includes multiple forms that you or your spouse will need to fill out and file with (*turn in to*) the Court. The forms are described on the following page.
 - **Texas Supreme Court Divorce Form SET 1** (*Opposite-Sex Spouses, no children and no house or land*)
Use these forms if there are:
 - no minor children *and*
 - no real property (house or land).These forms are approved for use throughout Texas by the Texas Supreme Court.
These forms come with different instructions.
 - **TexasLawHelp Divorce Form SET A** (*Opposite-Sex Spouses, no children together*)
Use these forms if:
 - you and your spouse do not have children who are under 18 or still in high school.
 - **TexasLawHelp Divorce Form SET B** (*Opposite-Sex Spouses, children together*)
Use these forms if:
 - you and your spouse have children who are under 18 or still in high school *and*
 - there are no court orders regarding the children. *Note: If you have a family violence protective order that includes orders regarding the children, you should still use SET B.*
 - **TexasLawHelp Divorce Form SET C** (*Opposite-Sex Spouses, children together with final court order already in place*)
Use these forms if:
 - you and your spouse have children together who are under 18 or still in high school *and*
 - there is a final court order for custody and support of all your children in place and you do not want to change that order.
 - **TexasLawHelp Divorce Form SET D** (*Same-Sex Spouses, no children together*)
Use these forms if:
 - you and your same-sex spouse do not have children together who are under 18 or still in high school.

Things to consider...

- if you and your spouse don't agree on child support.

If you and your spouse don't agree on child support, the **Office of the Attorney General (OAG)** may be able to help. Although the OAG cannot represent either parent, they can ask the court to make an order for child support, medical support, custody and visitation.

Once there is a final court order for custody and support of your children, you may use the **TexasLawHelp Divorce SET C** for your divorce.

For information about opening a case with the OAG, call 1-800-255-8014 or go to their website at www.oag.state.tx.us/cs.

- Each divorce form set includes a version of the following forms. Additional forms are available at www.TexasLawHelp.org.

Name of Form	What It Is and How to Use It
Unsworn Declaration of Indigency	If you cannot afford to pay the fee to file your case and other court fees, you may fill out this form to ask the Court to waive those fees. You must give complete information about your income and expenses on the form. You must also sign the form under penalty of perjury. The Court may ask you to present evidence of your income and expenses at a hearing. The Court may or may not decide to let you file without paying.
Original Petition for Divorce	One spouse (the Petitioner) fills out and files (turns in) this form at the courthouse to start the divorce. It tells the Court and your spouse that you want a divorce and states what you want the Court to order in the Final Decree of Divorce. Note: This form must be turned in first, <u>before</u> the other spouse signs anything.
Waiver of Service Only (Specific Waiver)	The other spouse (the Respondent) may fill out this form if she or he does not want to be served by a constable, sheriff, or private process server with a copy of the <i>Original Petition for Divorce</i> . The <i>Waiver</i> must be signed <u>in front of a notary</u> at least one day <u>after</u> the <i>Original Petition for Divorce</i> is filed at the courthouse. This form allows the judge to finish the divorce as long as both spouses have signed the <i>Final Decree of Divorce</i> . Note: The TexasLawHelp <i>Waiver of Service Only (Specific Waiver)</i> form only waives the right to be formally served with a copy of the <i>Petition</i> . Other <i>Waiver</i> forms may also waive the right to know anything else about the case. If someone asks you to sign a <i>Waiver</i> , read it carefully. You may want to sign an <i>Answer</i> instead.
Respondent's Original Answer	This form may be used <u>two</u> ways: (1) <u>If the divorce is agreed</u> , the other spouse (the Respondent) may fill out and sign this form instead of the <i>Waiver of Service Only</i> form. The <i>Respondent's Original Answer</i> form also allows the judge to finish the divorce as long as both spouses have signed the <i>Final Decree of Divorce</i> . The <i>Respondent's Original Answer</i> form does <u>not</u> need to be signed in front of a notary. (2) <u>If the divorce is not agreed</u> , the other spouse (the Respondent) may fill out and file the <i>Respondent's Original Answer</i> form to contest the divorce.
Final Decree of Divorce	The Judge signs this form to grant your divorce and make orders regarding your property, debts and children (if applicable). Fill it out ahead of time and bring it with you to the final divorce hearing.
Notice of Current of Address	This form <u>must</u> be filed if you or your spouse moves. It tells the Court your new address so that the Court can contact you about hearings, etc.

- Divorce form Set B (*with children together*) also includes the following forms.

Out-of-State Party Declaration	Fill out and file this form if either spouse lives outside of Texas.
Income Withholding for Support Order	The Court signs this form to order an employer to withhold child support from an employee's paycheck. Fill it out and bring it with you to the final divorce hearing if child support will be ordered.

Step 5: Fill out the Original Petition for Divorce.



- After you choose a divorce form set, fill out the *Original Petition for Divorce* form.
 - You are the "Petitioner." Your spouse is the "Respondent."
 - Fill out all the spaces unless instructed otherwise. Print clearly in blue or black ink.

Note: The *Petition* asks for your address. Your spouse will get a copy of this form. If you are concerned about your spouse knowing your address, call the Family Violence Legal Line at 1-800-374-4673 for free advice.
- Fill out the *Information on Suit Affecting the Family Relationship* form.
- Fill out these additional beginning forms only if they apply to your case:
 - **Unsworn Declaration of Indigency** – only if you can't pay the filing fee for your divorce. Call the clerk's office to learn the fee for your case.

Note: Do not sign this form until you are in front of a notary. Or, if you don't have the necessary picture identification to get this form notarized attach a completed **Unsworn Declaration** form. If you receive public benefits (such as foodstamps) attach proof.
 - **Exhibit: Out-of-State Party Declaration** – only if 1) you are filing a Divorce SET B and 2) you or your spouse live outside of Texas.
 - **Affidavit for Service by Posting or Publication** – only if you can't find your spouse after looking really hard. Read Step 7C for more information.
- Make 2 copies of each form you filled out.

Things to consider...

- **if the spouses are husband and wife and the wife is pregnant.**

If the wife is pregnant, you will not be able to finish your divorce until after the child is born. If the husband **is not** the biological father, paternity of the child must be established before you can finish your divorce. Get information about establishing paternity at www.TexasLawHelp.org. If the husband **is** the biological father, orders for custody and support of the child must be included in the *Final Decree of Divorce*.
- **if the wife had a child with another man while married to the husband.**

If the wife had a child with another man while married to the husband, paternity of the child must be established before you can finish your divorce. This is true even if you have been separated for a long time. Get information about establishing paternity at www.TexasLawHelp.org.
- **if the wife in a same-sex marriage is pregnant or gave birth to a child during the marriage.**

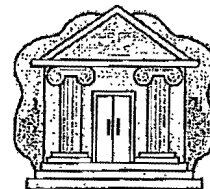
It's a good idea to talk with a LGBT family law lawyer if the wife in a same-sex marriage is pregnant or gave birth to a child during the marriage. Parentage of the child may need to be established by court order before you can finish your divorce.
- **if you need orders right away.**

If you need orders right away, you may ask the Court to make *temporary orders* after notice to your spouse and a hearing. Temporary orders typically last until the divorce is finished. Talk to a lawyer if you need temporary orders. Your county law library may also have information about temporary orders.

If you need a *protective order* because of family violence call the Texas Family Violence Legal Line at 1-800-374-HOPE or the National Domestic Violence Hotline at 1-800-799-SAFE.

Step 6: File (turn in) your Original Petition for Divorce.

- File (turn in) your completed *Original Petition for Divorce* and additional beginning forms to the Court either in person or electronically.
 - To file your forms in person, take the original and 2 copies of your forms to the courthouse and turn them in at the clerk's office. You may use the Texas Civil Courts Guide at www.TexasLawHelp.org to find the address and phone number for the clerk's office in the county where you plan to file your divorce.
 - To file your forms electronically go to <http://www.efiletexas.gov>.
- Pay the filing fee (or file your Unsworn Declaration of Indigency form if you cannot afford the fee).
- Ask the clerk if there are local rules or procedures you need to know about for your divorce.
- The clerk will:
 - write your "Cause Number" and "Court Number" at the top of the first page of your *Petition*. (You should write these numbers at the top of any document you file in your divorce.)
 - "file-stamp" your papers with the date and time.
 - ask if you want to have your spouse "served." Served is when your spouse is given legal notice of your divorce by **Official Service of Process** or by **Posting** or **Publication**.
 - If your spouse **will agree** to sign a *Waiver of Service* or *Answer*, you do not need to have your spouse served. Follow the instructions set out in **Step 7A**.
 - If your spouse **will not agree** to sign a *Waiver of Service* or *Answer*, you must have your spouse served by Official Service of Process. Follow the instructions set out in **Step 7B**.
 - If you can't find your spouse, you must have your spouse served by *Posting* or *Publication*. Follow the instructions set out in **Step 7C**.



Things to consider...

- if your children get Medicaid or TANF or got it in the past.

You **MUST** send a file-stamped copy of your *Original Petition for Divorce* to the Office of the Attorney General Child Support Division by commercial delivery, fax, email, personal delivery or through the electronic filing manager if:

 - 1) you and your spouse have children together **and**
 - 2) the children get Medicaid or TANF or got it in the past. See *Texas Family Code Section 6.301*.

Get contact information for the Attorney General child support office in your area at www.oag.state.tx.us/cs/fieldoffices.php. Bring proof of delivery when you go to court.
- if you and your spouse don't agree.

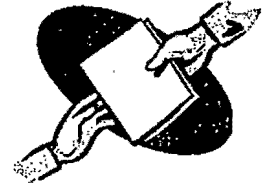
If you and your spouse don't agree on the terms of your divorce, you may want to consider mediation. In mediation, an independent person (the mediator) will try to help you reach an agreement. The divorce process is usually easier when you have an agreement. Be sure to talk to a lawyer first. A lawyer can help you understand your options and negotiate a fair agreement.

Step 7: Give “legal notice” to your spouse.

- Your spouse has the right to know that you have filed for divorce. You cannot simply tell your spouse or send your spouse a letter. You must use a legally acceptable way to give your spouse notice and prove to the Court that you did so.
- Here are 3 ways to give “legal notice” to your spouse:
 - 7A - Waiver of Service or Answer (Use this way if your divorce is **AGREED**.)
 - 7B - Official Service of Process (Use this way if your divorce is **NOT AGREED**.)
 - 7C - Posting or Publication (Use this way if you can't find your spouse.)
- Each way to give legal notice is described below. Choose the way that best fits your situation.

7A. Waiver of Service or Answer (Use this way if your divorce is **AGREED**.)

- You may give your spouse legal notice by *Waiver of Service* or *Answer* if your spouse agrees to sign the *Waiver of Service Only (Specific Waiver)* form or the *Respondent's Original Answer* form.
- Follow these steps:
 1. Mail or hand-deliver to your spouse:
 - a) a file-stamped copy of your *Original Petition for Divorce*, and
 - b) a blank *Waiver of Service Only (Specific Waiver)* or *Respondent's Original Answer* form.
 2. If your spouse plans to sign the *Waiver of Service Only (Specific Waiver)* form, tell him or her to sign it in front of a notary at least one day after you filed the *Petition*. Otherwise your spouse will have to redo it.
 3. File the completed *Waiver of Service* form or *Answer* form at the courthouse.



TIP: If your divorce is agreed, your spouse must also sign a completed *Final Decree of Divorce (Decree)* form. It may save you time to fill out the *Decree* now and send it to your spouse with the *Waiver of Service Only (Specific Waiver)* or *Respondent's Original Answer* form. You may also wait until later in the process to fill-out the *Decree*.

Warning: Do not hand-deliver any papers to your spouse if there has been violence during your relationship, especially if a judge has signed a Protective Order ordering you or your spouse to stay away from the other. Mail or give legal notice by Official Service of Process instead.

7B. Official Service of Process *(Use this way if your divorce is NOT AGREED.)*

- Official Service of Process is when your spouse is formally given legal notice of your divorce by a constable, sheriff, private process server or the clerk.
- Give legal notice by Official Service of Process if your spouse will not sign the *Waiver of Service* or *Answer* form or you do not want to have personal contact with your spouse.
- Follow these steps to give legal notice by Official Service of Process:
 1. Tell the clerk where you filed your *Petition* that you want to have your spouse "served." The clerk will print a form called the "Citation" that tells your spouse you have filed for divorce. The clerk will attach a copy of your *Petition* to the Citation.
 2. Tell the clerk whether you want your spouse served by:
 - a. personal service *(this is the better way)*, or
 - b. certified mail return receipt requested.
 3. If you choose personal service, send the Citation (with a copy of your *Petition* attached) to a constable, sheriff or private process server in the county where your spouse will be served.
 4. The constable, sheriff, private process server or clerk will fill out a *Return of Service* form. Make sure the *Return of Service* form is filed at the courthouse.

Each way is described below.

What is personal service?

Personal service is when a constable, sheriff or private process server gives your spouse the divorce paperwork in person. The constable, sheriff or private process server then completes a *Return of Service* form stating when your spouse was served. The *Return of Service* form is proof to the Court that you gave your spouse legal notice. Your spouse does not have to sign anything.

Note: The *Return of Service* form must be filed at the courthouse at least **12 days** before your final hearing.

What if my spouse is in jail or prison?

Use personal service if your spouse is in jail or prison. **DO NOT** use service by certified mail because your spouse will not be able to sign for the letter.

What is service by certified mail?

Service by certified mail is when the clerk (or constable) sends your spouse the divorce paperwork by certified mail return receipt requested. The return receipt (or "green card") must be signed by your spouse.

Only use service by certified mail if you know that your spouse is the only person who will sign for the letter when the post office delivers it. If someone else signs or your spouse does not sign his or her name exactly as it is written on your *Petition*, you will have to pay another fee and have your spouse served a different way.

The clerk (or constable) will complete a *Return of Service* form stating when your spouse was served. The *Return of Service* form must be filed at the courthouse at least **12 days** before your final hearing.

7C - Posting or Publication *(Use this way if you can't find your spouse.)*

- If you can't find your spouse, you must give your spouse legal notice by posting or publication depending on your case. Find forms and instructions for service by posting and publication at www.TexasLawHelp.org.

Step 8: Fill out the Final Decree of Divorce.

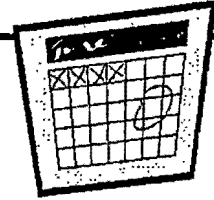
- Fill out the *Final Decree of Divorce* form. Get information about property division, conservatorship (*custody*), possession (*visitation*), child support and medical support at:
 - ✓ www.TexasLawHelp.org,
 - ✓ the *Family Law Handbook* at www.hba.org, and
 - ✓ the *Pro Se Divorce Handbook* at www.tyla.org.
- Fill out the *Income Withholding for Support Order* form if child support will be ordered.
- If possible, have a lawyer review your completed forms. This is really important if you and your spouse have children together, own valuable property, have retirement accounts, a house or land, a business or a lot of debt. Remember, you can hire a lawyer just to review your forms.

Things to consider...

- **if you and your spouse have debts together.** A creditor's right to collect a debt is not affected by a divorce decree. So, if the Court orders your spouse to pay a debt that is in both your names (such as a car loan) but your spouse doesn't pay it, the creditor can still seek payment from you. Ask a lawyer how to protect yourself in this situation.
- **if you and your spouse own (or are purchasing) a house or land.** Not talking to a lawyer when you and your spouse have a house or land can be *VERY* costly. For example:
 - **You could lose ownership of the property and *still* be responsible for the mortgage.** A mortgage company's right to payment is not affected by a divorce decree. So, if you and your spouse are on the mortgage and the divorce decree gives the house or land to your spouse and your spouse does not pay the mortgage, the mortgage company can still seek payment from you. This is true even if the Court ordered your spouse to pay the mortgage. A lawyer can help you figure out how to protect yourself in this situation.
 - **You could be unable to enforce an agreement or order that your spouse pay you part of the value of your house or land.** An order for one spouse to pay the other spouse part of the value (equity) in a house or land should usually be secured by a lien on the property. If it's not, you may not be able to get the money awarded to you. A lawyer can help you with this.
 - **You could be unable to sell the property later.** If you are keeping the property, a *Special Warranty Deed* should usually be signed by your spouse and filed with the property records office. If that doesn't happen, you could have trouble selling the property later.
- **if you or your spouse have a retirement account, such as a 401k account, pension plan, deferred compensation account or IRA account.** Retirement earned by either spouse during the marriage is usually considered to be community property that can be divided by the court. This is true even if you or your spouse has not yet retired. If you want the Court to divide retirement benefits (other than an IRA) as part of your divorce, you must ask the Court to sign an additional form, usually called a *Qualified Domestic Relations Order* or QDRO. You should have the QDRO prepared before you go to court, so the judge can sign it when you finish your divorce.

A QDRO form is not included with the TexasLawHelp divorce sets. You may contact the employer or retirement plan administrator to see if they have a sample QDRO form. If not, you should hire a lawyer to draft the QDRO form. If you use the employer or plan administrator's form, you should still have a lawyer review it to make sure you are not giving up important benefits.

Step 9: Wait the required waiting periods.



- Wait the waiting periods that apply to your case.

61 day waiting period In most cases, you must wait at least 61 days from the day you filed your *Original Petition for Divorce* before you can finish your divorce. You can always wait longer than 61 days, but your divorce cannot be finished in fewer than 61 days. When counting the 61 days, find the day you filed your *Original Petition for Divorce* on a calendar, and then count out 61 more days (including weekends). **Note:** Victims of family violence may be able to finish their divorce earlier. Call 1-800-374-4673 to get free advice from a lawyer.

20 + day answer period (*default cases only*) If you gave your spouse legal notice by Official Service of Process or Publication, your spouse must have at least 20 days plus the next Monday at 10 a.m. to file an *Answer*. Find the day your spouse was served on a calendar, count out 20 more days, then go to the next Monday. This is the last day of your spouse's answer period. However, if your spouse files an *Answer* any time before you finish your divorce it will still count. The answer period may or may not fall within the 61 day waiting period. **Note:** If your spouse was served by Posting, he or she must have at least 27 days plus the next Monday at 10 a.m. to file an *Answer*.

10 + day waiting period (*default cases only*) If you gave your spouse legal notice by Official Service of Process, Posting or Publication, the constable, sheriff, private process server or clerk will complete a *Return of Service* form stating when your spouse was served. The *Return of Service* form on file with the court for at least 10 days before you can finish your case. **Important:** When counting the 10 day waiting period, do not count the day the *Return of Service* is filed with the court and do not count the day you go to court to finish your case.

Step 10: Confirm your case is uncontested & get ready for court.

- Your divorce is **UNCONTESTED** when it is:
 - ✓ **AGREED** – you and your spouse agree about all the issues in your case or
 - ✓ **DEFAULT** – you gave your spouse legal notice of the divorce by Official Service of Process, Posting or Publication and your spouse did not file an *Answer* or *Waiver of Service* (or any other written response) with the Court or appear at a hearing.
- If your divorce is **AGREED**:
 - Ask your spouse to review and sign the completed *Final Decree of Divorce*.
 - Make sure the *Decree* is completely filled out *before* your spouse signs it.
 - If your spouse will not sign the *Final Decree of Divorce* your divorce is **CONTESTED**.
- If your divorce is a **DEFAULT**:
 - Your spouse does not need to sign the *Final Decree of Divorce*.
 - Fill out these additional final forms. Get them at www.TexasLawHelp.org.
 - *Certificate of Last Known Address*
 - *Military Status Declaration*
 - *Statement of Evidence* (only if your spouse was served by Posting or Publication.)
- Your divorce is **CONTESTED** if your spouse filed a *Waiver of Service* or *Answer* and will not sign the *Final Decree of Divorce*. To finish your divorce, you must set your case for a contested final hearing and give your spouse at least 45 days' notice of the final hearing. **Remember:** It's always best to have a lawyer if your case is contested.

Step 11: Go to court to finish your divorce.

- If your case is **uncontested** (agreed or default) and the waiting periods have passed, call the clerk to find out when and where the court hears uncontested divorce cases.
- You will need to give testimony to the judge when you go to court. Find sample scripts – called “prove up” testimony – at www.TexasLawHelp.org. Read the script ahead of time. Make sure everything in the script is true for you. If not, don't read it in court. Remember, everything you say in court must be true and correct. You can be prosecuted for lying in court.



- Bring the following with you to the courthouse on the day you plan to finish your divorce:

*If your divorce is **AGREED**:*

- ✓ file-stamped copy of your *Original Petition for Divorce*
- ✓ *Waiver of Service (or Answer)* signed by your spouse
- ✓ completed *Final Decree of Divorce* signed by both you & your spouse
- ✓ completed *Income Withholding Order for Support* if child support will be ordered
- ✓ sample prove-up testimony
- ✓ any additional documents needed for your specific case, such as a *QDRO* if you are dividing a retirement account

*If your divorce is a **DEFAULT** bring:*

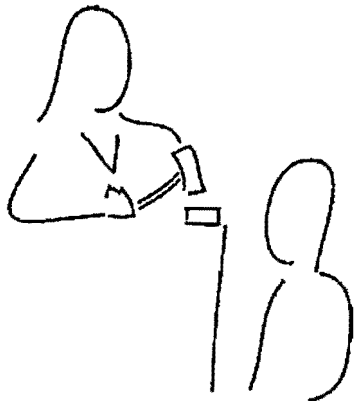
- ✓ file-stamped copy of your *Original Petition for Divorce*
- ✓ file-stamped copy of the *Return of Service*
- ✓ completed *Final Decree of Divorce* signed by you
- ✓ completed *Income Withholding Order for Support* if child support will be ordered
- ✓ completed *Certificate of Last Known Address*
- ✓ completed *Declaration of Military Status*
- ✓ sample prove-up testimony
- ✓ any additional documents needed for your specific case, such as a *QDRO* if you are dividing a retirement account

- Go to the clerk's office.
 - Ask if you need the court file or docket sheet (list of what has been filed).
 - If your case is a default, file the *Certificate of Last Known Address* and the *Declaration of Military Status* in the clerk's office before you go to court. Bring a file-stamped copy of each form with you to court.
- Go to the courtroom.
 - Tell the clerk you are present and give your paperwork to him or her.
 - Read "Tips for the Courtroom" on the next page for more information.
- **After the judge signs your *Final Decree of Divorce*, turn it in to the clerk's office.** Your divorce is NOT final until you do so. Get a certified copy of your *Final Decree of Divorce* from the clerk while you are there. The clerk may charge a fee for the certified copy. If child support was ordered, ask the clerk what you need to do to set up a child support account.
- **NOTES:**
 - You cannot get married to someone else for 30 days after your *Final Decree of Divorce* is signed by the judge.
 - After your divorce is final, remember to sign documents to change car titles, revise your will and life insurance policies, file deeds at the property records office in the county where the property is located, and send a certified copy of any *QDROs* signed by the court to the retirement plan administrator.

Tips for the Courtroom

Be prepared:

- Get to the courthouse at least 30 minutes early to find parking and your courtroom.
- Bring change for the parking meter.
- Dress neatly. Do not wear shorts, tank tops or hats.
- Do not bring children. Most courtrooms do not allow children.



When you are in court:

- When the courtroom opens, go in and tell the clerk or officer you are present. The clerk usually sits next to the judge's bench.
- Be calm and polite to everyone.
- Turn off your cell phone.
- Do not chew gum or bring food or drinks into the courtroom.
- Stand up when the judge enters or exits the courtroom. Stand up when you talk to the judge, unless you're in the witness stand.
- The judge may not call your case right away. Wait patiently. If you have to leave the courtroom, tell the clerk where you are going.
- If friends or relatives come to court with you, ask them to follow these rules, too.

When the judge calls your case:

- The judge will have you raise your right hand and swear to tell the truth.
- You will need to give testimony to finish your divorce. Some judges will ask you questions. Other judges will want you to read a "script" of testimony. You can find sample scripts – called "prove up testimony" – at www.TexasLawHelp.org. Read the script ahead of time. Make sure everything in the script is true for you.
- When talking to a judge, call the judge "Your Honor."
- If the judge asks you questions, wait until she or he finishes speaking before you speak.
- Tell the truth and don't exaggerate. Give complete answers.
- Say "yes" or "no" out loud. It's not enough to nod or shake your head.
- If you do not understand a question, say, "I don't understand." If you do not know an answer, say, "I don't know."
- The judge will listen to what you say and review your papers. If everything is in order the judge will sign your *Final Decree of Divorce*.