

# Basics of Family Law

The makeup and dynamics of family life in our society today are becoming more complex. If you are facing a possible divorce, or legal issues relating to children, it is important to seek counsel regarding your rights and obligations, so that stress and disruptions in your life – and more importantly, in a child's life – are minimized.

## 1. Divorce

In Texas, divorce can be granted only by a district court, upon the filing of a legal petition. In order to file for a divorce, one of the spouses must be a resident of Texas for at least six months and a resident of the county where the petition is filed for at least 90 days prior to filing. If one of the spouses is in the military and stationed outside of Texas or the United States, that spouse may still be a Texas resident.

Texas typically has a 60-day waiting period from the date the petition is filed until a judge can sign off on the divorce decree. There are some situations where the 60-day waiting period can be waived, such as when the other party has been convicted of family violence against the petitioner or a member of the petitioner's household. This does not mean that a divorce will be completed by the 60-day waiting period, just that the 61st day is the first day a judge could sign off on your decree. There are multiple different factors that often hold up a divorce past the 60-day mark.

One of the downsides with having a 60-day waiting period is that often a family needs to have orders in place to operate during the 60-day period. A spouse can ask the court to enter temporary injunctions, a temporary restraining order, and other temporary orders, after a hearing. These temporary orders will help the family operate until the final decree is put into place and signed off by the judge.

Texas is a community property state, which is defined in the Texas Family Code as property, other than separate property, which was acquired by either spouse during the marriage. The Texas Family Code defines separate property as: that property owned prior to marriage; property acquired by a spouse by gift or inheritance during the marriage; and compensation for personal injuries sustained by a spouse during the marriage, excepting compensation for a loss of earning capacity during the marriage. Although these rules seem straightforward, there are many twists and turns for different types of property.

In many divorce cases, if the parties cannot reach an agreement through informal negotiation regarding property or children, then mediation or some type of alternative dispute resolution is the next best step. Going through a mediator allows the parties to customize their divorce decree to their circumstances, and the parties usually come to an agreement they feel is more fair and equitable. These types of negotiations are confidential and the majority of them are successful. If settlement negotiations do not result in any type of agreement, then the next step would be to set the case for trial in front of a judge or jury.

Even after a judge signs the order granting a divorce, there is usually still work to be done. It is important to make sure all documents affecting property rights are executed and sent off to the right places. Examples of some of the property awarded that would require additional documents would be: a house, land, a car, any recreational vehicles, a retirement account, and health insurance.

Divorce will take a toll on the family emotionally and financially. It is important to be ready to go through the ups and downs that will undoubtedly come. Our attorneys have the experience and dedication to get you through this difficult time. We will provide you with advice and information so you can understand all your options and make informed decisions regarding your divorce.

## **2. Issues Affecting Children**

### **Child Custody**

Texas has a presumption that the parents should be named joint managing conservators. Conservatorship describes the responsibilities and legal rights of a parent. As joint managing conservator each parent shares the same rights and duties of a parent, but one parent can be granted the exclusive right to make certain decisions regarding the child. It is important to note that just being named joint managing conservators does not mean that each parent will have equal possession and access to the child.

If the parents cannot agree on a visitation schedule, Texas has a standard possession order that the judge will typically put into place. Under the standard possession order when the non-custodial parent lives within 100 miles of the child's residence, the non-custodial parent's visitation would look similar to the following:

1. The first, third and (if there is one) fifth weekend of each month (pickup can be after school Friday or at 6:00 p.m. Return can be at 8:00 p.m. Sunday or on Monday morning.). If there is a Thursday or Monday school holiday or teacher in-service day, the weekend expands to include that day.
2. Every Thursday night during the regular school term (pickup can be after school or at 6:00 p.m. Return can be at 8:00 p.m. or the next morning.)
3. If the parent with whom the child lives has the child on the child's birthday, the noncustodial parent has possession of the child from 6:00 to 8:00 p.m. on the child's birthday.

### **Holiday Visitation**

Holiday visitation supersedes regular visitation. These are the holiday rules:

1. The parents alternate Thanksgiving. The non-custodial parent has possession of the child for Thanksgiving in odd-numbered years.

2. Christmas visitation is divided into two halves: The first half is the date school ends for the holiday until noon on December 28. The second half is from noon on December 28 until school resumes. The noncustodial parent has the child for the first half in even-numbered years and the second half in odd-numbered years.
3. The parents alternate Spring Break. The non-custodial parent gets even-numbered years.

### **Summer Visitation**

Weekend visitation continues during the summer, subject to the summer rules:

1. By default, the noncustodial parent has the child for the month of July.
2. Depending on notice being given in April, visitation can be other than the month of July.
3. The custodial parent gets one weekend during the noncustodial parent's summer visitation.

### **3. Child Support**

The Texas Family Code provides guidelines on the amount of child support awarded to the custodial parent. The guidelines are set according to the net resources of the non-custodial parent (NCP) and the number of children before the court. The court presumptively applies the following guidelines:

- 1 child - 20% of NCP's Net Resources
- 2 children - 25% of NCP's Net Resources
- 3 children - 30% of NCP's Net Resources
- 4 children - 35% of NCP's Net Resources
- 5 children - 40% of NCP's Net Resources
- 6 or more children - Not less than 40%

If the NCP has a duty to support other children not before the court, then the guideline percentages listed above may be decreased. The parties can also agree to a child support amount, which can be confirmed with the court if it is shown to be in the best interest of the child.

Texas has a presumption that a NCP has the ability to earn minimum wage and work at least 40 hours a week. Absent any evidence to rebut this presumption, the court may set child support based off the net income of a minimum wage job at 40 hours a week, even though the NCP is not working.

The child support obligation typically continues until the child reaches the age of 18 or graduates high school, whichever occurs later. If the child is disabled, it is possible to petition the court to have child support indefinitely.

#### **4. *Modification***

Any order involving a child is allowed to be modified if the circumstances of the child or a person affected by the order have materially and substantially changed. Some examples of a material and substantial change would include: a parent's marriage to another person; a change in residence; a medical condition; new employment or unemployment; new criminal charges; or just that the current relationship between the parents have made the orders unworkable.

The requested modification must be in the best interest of the child. Either parent can petition the court to modify child support, custody and/or visitation at any time until the child becomes an adult.

It is important to note that informal custody and/or child support agreements are not enforceable through the court. In order to change any part of a previous order, and for it to be enforceable, a modification will need to be filed.

#### **5. *Contempt and Enforcement***

An enforcement regarding child custody and child support is a legal proceeding to force the other parent to obey the court order. The court will enforce orders by contempt proceedings. This means the court can order fines and jail time for each violation of the order.

If you have a court order allowing you to see your children and the other parent is not following the order, then an enforcement proceeding may need to be filed to force the other parent to follow the visitation schedule. It is important to document the visitation times missed, what contact was made with the other parent regarding the missed visits, any efforts to reschedule the visits, and anything else showing interference with the visitation schedule. Typically courts will order make-up visitation time for the parent who was denied their visits. If the problem persists and the affected parent is still not receiving scheduled visitation, then stronger measures can be petitioned for.

Each person's family dynamic is unique, but there are multiple ways to set and enforce a legal plan that works with your family and your needs.

This information is not intended to be a substitute for the legal advice of a licensed attorney. If you have any questions regarding a particular issue or topic we suggest you seek legal counsel.