



FAMILY LAW

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THE DIVORCE PROCESS IN TEXAS

A divorce and the events leading to it are, without a doubt, emotionally exhausting to anyone. Likewise, legal requirements, paperwork, spousal support needs, asset division and decisions about children’s visitation, custody and support generate a high degree of frustration and confusion. Thus, if possible, you should consult an attorney even before discussing with your spouse the prospect of a divorce. On the other hand, if caught off guard, consult an attorney immediately because you will need advice in dealing with the legal intricacies involved. Some of the matters that require attention in the process are summarized below.

Jurisdiction and venue

In order to file for a divorce in Texas, at least one of the spouses must have continuously resided in the state for six months before filing. Further, in order to file the action in a given county, the spouse must have resided in that county for 90 continuous days prior to filing.

Initiation of Action

The first step in the divorce process is to file the petition for divorce. The petitioner, the spouse who filed the petition, must serve the notice of divorce on the respondent, the other spouse. The respondent should file an answer to the petition not later than the Monday after the expiration of the 20th day of the date of service of process or assume the risk of a default judgment. If the spouses have reached an agreement before filing and/or are on cordial terms, the respondent may waive service thereby saving time and expense. Note, however, that Texas requires a kind of cool off period; this means that even if both spouses agree on everything, they must wait 60 days from filing until the divorce becomes final.

Temporary Restraining Orders

Given that the process in a divorce case may take a significant amount of time, particularly in complex cases, it may be necessary to seek a temporary restraining order (TRO). Essentially, a TRO is an order issued by the court outlining the spouses’ behavior towards each other, their progeny, and/or the marital estate. The order may specify, among other things, the following:

- That assets should not be transferred, sold, hidden and/or moved.
- That parties must not aggravate the each other and/or act in hostile manner.
- The manner in which the parties will relate to the children, among others.

- Temporary measures for spousal maintenance, child support and attorney's fees.

The respondent has 20 days to file a response to the TRO request if the court does not issue an order upon request by the petitioner. The court will then hold a hearing to determine if the TRO should become a temporary injunction, which shall remain in place until the divorce process comes to an end.

Discovery

As a general rule, once the aforementioned temporary and initial matters have been addressed, the parties will commence the discovery process. The main purposes of this phase is to gather and share information via the exchange of documents, the notification and answer of interrogatories, the request for documents, depositions and other mechanisms. The intervention of an attorney and/or professional with a high degree of financial know how is essential in this process to help you identify and address financial issues.

Settlement

Upon completion or partial completion of the discovery phase, the parties generally attempt to reach an agreement that specifies the terms of the divorce including but not necessarily limited to child custody and visitation, child support, spousal maintenance and the asset / debt division. The agreement would then be submitted to the judge, who shall then issue a judgement based on the settlement provisions and end the divorce proceedings.

Trial

If the spouses are not able to reach an agreement, the judge will then decide how the case will be handled. Judges have the power to order mediation (a third neutral party gets involved to help the parties reach an agreement). However, if mediation does not result in a settlement, then the court will hold a trial where the judge receives evidence offered by each side. Once the trial has been completed, the judge will decide the issues based on the evidence and the Law.

This document is merely an informative summary. There are numerous other considerations in a divorce case. Thus, it seems fairly apparent that the intervention of an attorney to ascertain that your rights are safeguarded is of utmost importance. As such, feel free to contact JP Navarro, an attorney with a keen financial understanding, at jpnavarro@nacpr.net for a consultation.

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