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TEXAS LEGAL ZONE

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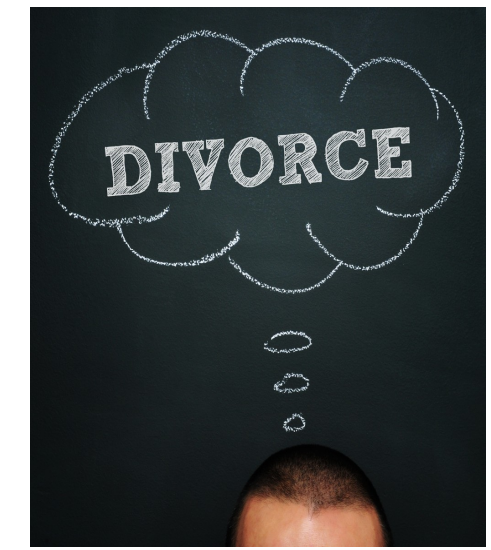
SO YOU'RE GETTING DIVORCED... NOW WHAT?

The Divorce Process

Whether you made the difficult decision to divorce your spouse or your spouse made the decision for you, getting a divorce is almost always stressful. While it is possible to reach an agreement about property and children without the need of an attorney, many find it difficult to resolve the emotional and financial issues without the assistance of a skilled lawyer. Before starting down the path leading to divorce, it is helpful to understand the process.

Many people do not know what to expect during the divorce process or how to protect what matters most to them. Often times, people worry, "Will my spouse prevent me from seeing my children?" Others fear their spouse will cut them off finan-

cially. To address these concerns, it is imperative that you familiarize yourself with the divorce process and formulate a plan to protect your interests.



What To Expect

The formal legal divorce process begins as soon as a document entitled "Original Petition for Divorce" is filed with the Court. This document informs the Court that a divorce is sought, identifies the grounds for it, and usually addresses how the party seeking divorce would like the Court to address issues regarding the property and children.

After a petition is filed, the waiting game begins. There is a sixty day waiting period before the divorce can be finalized. However, in most cases, the waiting period is not a concern because the parties often fail to reach an agreement within sixty days. In the event that

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CHILD CUSTODY IN TEXAS: WHAT YOU NEED TO KNOW

Child Custody in Texas

The word "custody" is no longer used by the Texas Family Code as the legal term for possession and access to your children. Instead, Texas law now uses the word "conservatorship," or "conservator" to refer to a parent who has possession, control, and decision-making rights over their children. In Texas, there are two different ways a Court may award conservatorship. First, a parent may be appointed sole managing conservator, which means that only one parent is awarded the rights

associated with being a parent. The other parent, known as the possessory conservator, may be awarded visitation but does not necessarily have the ability to make legal decisions for the child. This type of conservatorship is rarely ordered unless there exists circumstances that render awarding joint managing conservatorship problematic. Normally, the circumstances referred to here, consist primarily of those that endanger or threaten the welfare of the children.

The most common conservator-

ship arrangement ordered in Texas is known as joint managing conservatorship. Absent a finding of family violence, Texas Courts presume that parents should be appointed joint managing conservators of their children. Contrary to common belief, joint managing conservatorship does not require that parents have equal or near equal possession of their children. Joint managing conservatorship only requires that the parties share the rights and duties normally associated with being

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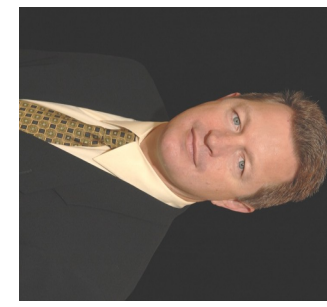
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the parties are unable to come to an agreement, typically, one or both of the parties request a temporary orders hearing. It is during this hearing that the Court addresses the parties' immediate concerns regarding possession of the children, use of property, and support.

Most of the Courts will require the parties to attempt mediation to resolve their differences. Mediation is a process by which a neutral third party facilitates the negotiation process to help the parties reach an agreement. The parties and their attorneys usually remain in separate rooms throughout the mediation process. It is important that the parties attend mediation with their attorneys because the mediator only acts as a neutral third party and does not look out for either party's interests. In the event the parties reach an agreement, they will sign a document entitled "Mediated Settlement Agreement," which can seldom be overturned. After this document is signed by the parties, one of the attorneys is tasked with drafting a final decree of divorce based on the mediated settlement agreement.

If the parties cannot reach an agreement in mediation, the case will proceed to trial. Sometimes the parties will come to an agreement prior to trial or even at the courthouse immediately before the trial is set to begin. If the case proceeds to trial, all issues that have not been agreed upon by the parties will be decided by the Court.



Formulating Your Strategy

The divorce process can be very intimidating to most people. The idea of separating when you have spent years together accumulating property and raising children can't help but invoke a deep feeling of sadness and, more than likely, hostility in most people. Unfortunately, it is at this time of high emotions that many people make mistakes that are detrimental to their case, thus making it more difficult to achieve the desired result. The importance of consulting with a skilled lawyer before you make a mistake in your case, either for lack of knowledge or lack of control, cannot be overemphasized. It is during the planning stages that a lawyer can assist you in developing a strategy that can assist you in accomplishing your goals.



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a parent. However, one parent may be awarded the exclusive right to make certain decisions, such as the exclusive right to designate the child's primary residence and the exclusive right to make decisions concerning the child's education. The parent who is awarded the exclusive right to designate the child's primary residence is commonly referred to as the primary managing conservator.

Unless the Court finds that one parent has a history of family violence, neglect, drug use, alcohol abuse, or that a parent has been absent from the child's life, joint managing conservatorship will likely be ordered.

Now that you understand the difference between sole managing conservatorship and joint managing conservatorship, you are probably wondering how the Court determines the conservatorship arrangement in



each case. First, it is important to understand that the court can rarely overturn the parenting plan agreed to in mediation, as long as the parties signed a valid mediated settlement agreement.

If the parties are unable to agree on a parenting plan, however, the best interest of the child shall always be the primary consideration for the court in determining the issues of conservatorship and possession of and access to the

child. In determining the best interest of the child, the court may consider factors such as the desires of the child, the emotional and physical needs of the child, the emotional and physical danger to the child, the parenting abilities of each person seeking custody, the stability of the home, the current routine concerning possession and child rearing, and the acts of a parent that may indicate that the parent-child relationship is not a proper one.

For most parents, protecting their relationship with their children is the primary goal during the divorce process. In the event that the issue of conservatorship goes to trial, it is imperative that you hire an experienced family law attorney who will help you develop a strategy to protect your relationship with your child.

THE TRUTH ABOUT ALIMONY IN TEXAS

Texas courts will not order alimony unless it is agreed to by the parties. However, in limited circumstances, courts will award spousal maintenance. The difference between alimony and spousal maintenance is that alimony is a contractual agreement between the parties that will be paid for a specific term. On the other hand, spousal maintenance is governed by Chapter 8 of the Texas Family Code and is subject to termination and modification according to its provisions.

According to the Texas Family Code, the court may only order spousal maintenance if the spouse seeking maintenance will lack sufficient property, including the spouse's separate property, on dissolution of the marriage to provide for the spouse's minimum reasonable needs. In addition, one of the following must be true of the spouse seeking maintenance: (1) the spouse from whom maintenance is requested must have committed an offense that also constitutes family violence within two years before the date on which a suit for dissolution of the marriage is filed or while the suit is pending against the other spouse or the other spouse's child; or (2) must not be able to

provide for their minimum reasonable needs due to an incapacitating physical or mental disability; or (3) has been married to the other spouse for at least ten years or more; or (4) is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because of a physical or mental disability that prevents the spouse from earning sufficient income to provide for the spouse's minimum reasonable needs.

In Texas, the courts assume that spousal maintenance is not warranted unless the spouse seeking maintenance has been diligent in efforts to earn sufficient income to provide for their minimum reasonable needs or, alternatively, develop the necessary skills to provide for the spouse's minimum reasonable needs during a period of separation and during the time the suit for dissolution of the marriage is pending.

In determining the nature, amount, duration, and manner of periodic payments, courts will consider many factors, including but not limited to each spouse's ability to provide for their

minimum reasonable needs independently; the education and employment skills of the spouses; the duration of the marriage; the age, employment history, and physical and emotional condition of the spouse seeking maintenance; acts by either spouse resulting in the waste of community property; the contribution of one spouse to the education, training, or increased earning potential of the other spouse; the contribution of a spouse as a homemaker; any marital misconduct, including adultery and cruel treatment by either spouse during the marriage; and any history or pattern of family violence.

As you can see, there are many factors that the court may consider when determining whether to order spousal maintenance. If you are unsure of whether you qualify for spousal maintenance or you may be required to pay spousal maintenance, consult with an experienced family law attorney today.