

# Divorcing in Travis County, Texas

This guide is written to explain the ***Uncontested Divorce*** process in Travis County, Texas. *The process for a contested divorce is different.*

Your divorce is considered “***uncontested***” when you and your spouse ***agree*** on how to divide the property and debts you built up during your marriage. *If you have children, it also means that you agree about custody, visitation, and child support.*

If you are thinking about handling your divorce by yourself, ***pro se***, without an attorney, make sure you fully understand all of the steps involved in getting divorced. Make sure you understand all of your legal rights.

## **You will be responsible for protecting yourself.**

Only a ***licensed attorney*** is allowed to give you legal advice. Some attorneys will require you to hire them as your personal attorney before they advise you. Other attorneys may allow you to pay for their advice as you need it. Librarians and courthouse staff want to help you get the information you need, but they are not lawyers, and they cannot give you legal advice. Judges are also prohibited from giving you legal advice.

## **If you choose to begin to represent yourself, but later:**

- You find the process too difficult,
- You realize that you and your spouse can't agree,
- Your spouse has hired an attorney, or
- You fear for your safety,

**You need to find an attorney to complete your divorce for you.**

## **Residency Requirements**

To get divorced in Travis County, either **you or your spouse must have lived in Travis County for at least 90 days**, and in Texas for at least 6 months.

*If you or your spouse haven't lived here long enough, and you want to get divorced in Travis County, you must wait until you or your spouse has lived in Texas for at least six months and in Travis County for at least 90 days, before you can file for divorce in Travis County.*

## **Remarriage**

Although your divorce is final at the time the judge signs your Final Decree of Divorce, **you cannot remarry for 30 days** after the Final Decree is signed by the judge, unless you remarry the spouse you have just divorced, or the judge who **granted your divorce waives the waiting period for good cause.**

## **Think about Your Decision**

When you and your spouse decide that you want to divorce, think long and hard about your decision. Ending your marriage is a big decision, especially if you have children together.

If you do have children, you are inviting the Court into your family life until the day your youngest child reaches 18 and graduates from high school. Think about how your decisions will affect your family. If you have any doubts, seek marriage counseling.

If your spouse decides that he or she wants a divorce, and you do not want to be divorced, you will not be able to stop your spouse from divorcing you. If you can convince a judge that there is a chance that you and your spouse can work things out, you may be able to get the judge to order the two of you to attend marriage counseling. But if your spouse is determined to get divorced, you will not be able to stop it.

## **Suggestions for the Courtroom**

In order to feel comfortable before the judge at the Uncontested Docket, treat the courtroom with the same type of respect that you would for a church or religious sanctuary.

- ◆ You should leave all food, drinks, gum, and candy outside of the courtroom.
- ◆ Address the judge as “Your Honor,” and answer his or her questions in a truthful and courteous manner.
- ◆ It is best to remember not to lean on any furniture when you are standing before the judge.
- ◆ If you need to speak with someone while you are in the courtroom, speak quietly. The judge wants to be able to give his or her full attention to the people who appear before the bench.

## **REMEMBER!**

**Judges, judicial aides, librarians, and courthouse clerks CANNOT:**

- ◆ Give you legal **ADVICE**,
- ◆ Tell you what you should do, or
- ◆ Interpret the law for you.

### Steps in the Uncontested Divorce Process:

1. Write your Original Petition for Divorce
2. File your Petition with the District Clerk's Office. Pay the filing fee.
3. Give your spouse legal notice of the divorce, using either:
  - A) Service of Citation; or
  - B) Waiver of Citation; or
  - C) Service by Publication/Posting.
4. Wait the mandatory 61 days after your Petition is filed.
5. Write your Final Decree of Divorce.
6. Finalize your Divorce at the Uncontested Docket.
7. File the Final Decree in the District Clerk's Office, Room 103. *If your decree includes child support, set up your child support account while you are in the District Clerk's Office.*

#### Step 1. Start with the Petition

To start your divorce, you will need to file an **Original Petition for Divorce**.

The **Petition** tells the judge and your spouse that you want to be divorced.

You can have an attorney write your Petition for you. It is wise to at least talk to an attorney about your case before you decide to handle it yourself. Only an attorney is trained to advise you about your legal rights. Your legal rights become especially important when it comes time to divide up the property and debts that you and your spouse acquired during your marriage. Your legal rights are even more important if you have children together.

If you decide to write your own Petition for Divorce, you will be representing yourself in your divorce, without an attorney. You may use the forms that are provided in the law library or write your own Petition. The forms available in the law library have been reviewed by several attorneys, and have been approved for use by the Travis County District Judges. They are updated regularly so that they comply with current Texas law.

You may find examples of Petitions in form books or do-it yourself legal kits. If you choose to use these forms you are responsible for making sure that they comply with current Texas law. *No matter which forms you choose to use, you must understand that they are no substitute for seeking the advice and counsel of a lawyer trained to protect your legal rights.*

**Petition:** The form that begins the divorce process by telling the court that you want a divorce.

### Step 2. File the Petition

Once you have written your Original Petition for Divorce, you will need to file it in the **District Clerk's Office**, located in room 305 (3<sup>rd</sup> floor) of the Courthouse.

#### **When you go to file your Petition:**

- ◆ Be prepared to pay the filing fee (around \$230).
- ◆ Take at least two extra copies of the Petition with you. (The District Clerk's Office will not provide you with free copies.)
- ◆ Tell the Clerk that you are there to file a Petition for Divorce, and hand them your original and two copies.
- ◆ The clerk will "**file stamp**" your papers, showing the date and time that you filed your Petition.
- ◆ Then, the clerk will send you back to see another clerk, who will enter your Petition into the computer system.
- ◆ At this time, your Petition will be assigned to a judicial district and will be given a Cause Number.
- ◆ Finally, the clerk will ask you to pay your filing fee.
- ◆ The clerk will give you your copies, but will keep the original for the Court's file. You should keep one copy for yourself. Save the other copy to give to your spouse.

A copy of the *Travis County Standing Order Regarding Children, Property and Conduct of Parties* must be attached to the Petition. This order is required by the district judges and applies to both spouses. **READ IT CAREFULLY** to learn what behavior, financial transactions, etc., are prohibited during the divorce. You can get a copy of the order from the Law Library or online at [www.TCforms.org](http://www.TCforms.org).

If you are unable to pay the filing fee, you may also file an **Affidavit of Inability to Pay**, which states, under oath, that you are unable to pay the filing fee. The District Clerk's Office will review your Affidavit, and determine whether or not to waive the fee for you.

#### Step 3. Give Your Spouse Legal Notice

You must tell your spouse that you intend to get a divorce. This is called "**giving notice**." There are three ways to do this.

##### **A) Service of Citation**

You may have your spouse served with the **Petition** by contacting a private process server or the Constable's Office. There is a fee to have your spouse served. If your spouse is served, he or she has until 10am on the Monday following 20 days after he or she was served to file an Answer. (To calculate this time period, count the day

your spouse was served on a calendar, and count out 21 days. Go to the next Monday on the calendar, and this is your spouse's deadline to answer.)

After your spouse is served, the process server will file a proof of service (called a Return of Service) with the District Clerk. Before you can get your divorce finalized, this Return of Service must be on file for at least ten days, and your spouse's answer deadline must have passed, as well as the required 61 day waiting period. Sometimes having your spouse served with divorce papers may make him or her uncomfortable.

**IMPORTANT NOTES ABOUT  
WAIVERS OF CITATION!!**

For the Waiver of Citation to be valid, you must file the Original Petition for Divorce *before* the Waiver is signed, and the Waiver must be filed in the District Clerk's Office, before you finalize your divorce

If you have been asked to sign a Waiver of Citation, read it over very carefully before you sign it. *Make sure you understand what legal rights you are giving up by signing the Waiver.* If you don't understand the Waiver, or you are uncomfortable about signing it, *get an attorney's advice.*

**OR**

**B) Waiver of Citation**

You may also "give notice" to your spouse if you give him or her a file stamped copy of your Original Petition for Divorce and he or she signs a Waiver of Citation in front of a notary. The **Waiver of Citation** waives your spouse's right to have a process server give him or her a copy of the Petition. In some cases, a Waiver of Citation may also waive your spouse's right to know when the case will be heard by the judge. This would mean that your spouse would waive his or her right to tell the judge his or her side of the case. You should file the signed Waiver in the District Clerk's Office or take it with you to court.

**OR**

**C) Citation by Publication or Posting**

If you are unable to locate your spouse, you may have him or her served by placing a public notice in the newspaper.

If you do not have any children with your spouse who are under 18 years of age, then this notice can be posted for seven days at the courthouse door.

If you serve your spouse by publication, he or she may be entitled to have an attorney appointed to represent his or her interests. You would be responsible for paying for the attorney's services, unless an attorney agrees to work for free.

**Step 4. Wait**

You must wait at least 61 days from the day you filed your Original Petition for Divorce, before you can go before the judge to finalize your divorce. You can always wait longer than 61 days, but you *cannot be granted your divorce in less than 61 days*. This is Texas law.

**Step 5 Write your Final Decree**

While you are waiting for the 61 days to pass, you can begin working on your **Final Decree of Divorce**.

The **Final Decree of Divorce** is the document that the judge will sign, granting your divorce. The Final Decree divides your marital property and states who will be responsible for paying which debts. The Final Decree will state which parent the children will live with most of the time, how major decisions concerning the children will be made, who pays child support (and how much), and will describe the visitation schedule.

An attorney can draft the Final Decree of Divorce for you or you can write it yourself. It is always wise to at least talk to an attorney about your legal rights before you try to write your Final Decree yourself. If you have children or property, there is a lot at stake.

If you choose to write the Final Decree of Divorce yourself, you may use the forms available in the law library. These forms have been reviewed by several attorneys, and have been approved for use by the Travis County District Judges. They are reviewed regularly to insure that they comply with current Texas law. Form books will have other examples, as well. *Just remember, these forms cannot replace the advice that only an attorney can give you regarding your legal rights.*

It is best to try to reach agreements with your spouse about your property, debts, and children, if you plan to complete your divorce without an attorney. If you are having trouble reaching an agreement, you might consider going to mediation. In mediation, an unbiased person tries to help two sides reach an agreement. The judge must approve any agreement that is reached in mediation.

Once you and your spouse have reached an agreement, you will need to write the terms of your agreement into the Final Decree of Divorce.

After you have written your Final Decree, both you and your spouse should sign it to show that you agree to its terms. Having your spouse's signature on the Final Decree will really simplify things when it is time to finalize your divorce in front of the judge.

## ***Step 6. Finalizing your Divorce***

After you have:

- ◆ FILED your Petition, **and**
- ◆ SERVED your spouse or obtained a Waiver of Citation, **and**
- ◆ WAITED at least 61 days from the time you filed, **and**
- ◆ WRITTEN your Final Decree of Divorce,  
You are ready to finalize your divorce.

You will need to make two copies of your Final Decree of Divorce. Take the original and two copies to the ***Uncontested Docket court.***

### ***The Uncontested Docket Court***

The Uncontested Docket is held Monday through Friday, from 8:30 to 9:20 a.m. and from 1:30 to 2:20 p.m.

In Travis County, if you and your spouse have agreed to the Final Decree of Divorce, or if your spouse has waived his or her right to tell the judge his or her side of the case, you can complete your divorce at the Uncontested Docket.

On the day you choose to finalize your divorce, go to the **District Clerk's Office**, on the 1st Floor of the Courthouse, in Room 103 Tell the clerk that you are going to the Uncontested Docket, and ask them for the court file and docket sheet.

You will need to know the Cause Number (found at the top of your Petition, Waiver, and Decree), so that the clerk can pull the file for you. Be prepared to leave your driver's license when you check out the court file.

Once you get the file, look inside to make sure your spouse was given proper notice. You should have either the original, signed Waiver of Citation, or if your spouse was served, the completed Citation (which would be completed by the process server), in the file. ***If your spouse was served, the completed Citation must be file stamped with a date that is at least 10 days before the day you go to finalize your divorce.***

While you are in the clerk's office, pick up a copy of the ***Vital Statistics Form.*** You will need to fill this out before seeing the judge. If you have children, and there will be child support in your case, you will also need to fill out a ***yellow Domestic Relations Office (DRO) form to set up your child support account.***

Ask the clerk where the Uncontested Docket is being held (it changes every week), and go to that courtroom.

Once you arrive in the courtroom, you should GIVE to the clerk seated next to the judge's bench:

1. the court file with the docket sheet,
2. your Final Decree of Divorce,
3. the completed Vital Statistics Form, and
4. the completed yellow Domestic Relations Office Child Support Form (if you have child support in your case)

Then, sit down and wait for the judge to call your case.

When it is your turn, the judge will call your case by its ***Cause Number*** (the number at the top of your paperwork), and maybe by the parties' names. At this time, stand up, and walk to the front of the judge's bench.

- ◆ The judge will ***swear you in*** (ask you to be truthful).
- ◆ The judge may ask you to ***"proceed,"*** in which case, you should be prepared to give your testimony. Some judges might choose to ask you questions.
- ◆ Be prepared to answer the judge in a courteous, respectful, and honest manner.

After the judge has finished hearing your testimony and reviewing your paperwork, he or she will sign your Final Decree of Divorce, and grant your divorce.

*The judge will return to you all of your paperwork, along with the court file. **You must return them to the District Clerk's Office, in Room 308.***

## ***Step 7. File the Decree***

Once you are in the clerk's office:

- ◆ Return the file and pick up your driver's license.
- ◆ Fill out the copies of the Final Decree of Divorce with the judge's name and date in the blanks.
- ◆ The clerk will file stamp the original and two copies of the Final Decree of Divorce. The original will remain in the court file, one copy will be sent to your spouse, and you will be able to keep the other copy.
- ◆ You might consider asking the clerk to print a certified copy of your Final Decree of Divorce for you. The certified copy may be needed to prove that you are divorced, or to reflect your name change, or to record the transfer of real property. The clerk charges a fee for certified copies, approximately \$1.50 per page.
- ◆ If you have **child support ordered**, you will be required to set up a child support account with the Domestic Relations Office (DRO). Your payments will be mailed to the State Disbursement Unit, PO Box 659791, San Antonio, Texas 78265-9791. Both state law and local rules require payments to be made through the child support registry. You can set up this account in the District Clerk's Office. There is a \$15 fee to set up the account.