

**ERIC GRUETZNER, P.C.**  
ATTORNEY AT LAW

**DIVORCE IN TEXAS**

Texas has a "no fault" divorce where the ground for divorce is the "insupportability" of the marriage. A divorce will be granted if one, or both, parties, asserts that the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marriage relationship, and there is no reasonable expectation of reconciliation.

Texas still has several "fault" grounds, however it is NOT necessary to allege one of these grounds to obtain a divorce, and is often recommended that a client NOT pursue fault depending on the circumstances of the case. It is noteworthy that the Court can consider fault in dividing the community estate, and in deciding conservatorship and visitation provisions. If applicable, you need to discuss this with your attorney in detail.

**PREREQUISITES TO FILING FOR A DIVORCE IN TEXAS**

One spouse must be a domiciliary of the State of Texas for at least six months and a resident of the county in which the divorce is filed for ninety days prior to filing.

After the divorce is filed, there is a minimum 60-day waiting period before the divorce can be granted. Most cases take more than this sixty day period to determine the positions and needs of the parties and child(-ren) and in order to finalize the documents if there is to be an agreed divorce.

If a trial will be required to resolve your case, the date of trial will depend on the congestion of the court's calendar, the attorney's schedules, your schedule, the time your case is expected to take, and whether the judge or a jury will hear your case. The time varies from court to court, and from county to county, but six months to one year from the time a case is placed on the trial calendar is not unusual.

The least time-consuming, least expensive, least draining divorces typically come as a result of an agreed settlement. If you are able to reach an agreement with your spouse on all issues, the agreement can be written up in the appropriate legal paperwork and submitted to the Court for entry after all parties have signed it and the sixty day period has elapsed. In most cases, at least one party will need to go to Court for a "prove-up" of the case. This represents a court's review of your pleadings and basis for a divorce and

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2750 VIRGINIA PARKWAY, SUITE 101  
MCKINNEY, TEXAS 75071  
(972) 346-6501 VOICE (972) 347-4150 FAX  
[www.ericgruetzner.com](http://www.ericgruetzner.com)

allows the judge to sign the necessary paperwork to make your divorce legal and binding.

## **CHILD CUSTODY ISSUES**

In Texas, there is a rebuttable presumption that parents should serve as the Joint Managing Conservators of their children. A rebuttable presumption is an inference that courts use to determine that a Joint Managing Conservatorship is best for your child(-ren) unless you provide the court with sufficient evidence to the contrary. In Texas, "Conservatorship" is "Custody" of the children, and is spelled out in the Decree of Divorce, now known as the Parenting Plan.

Joint Managing Conservatorship does **NOT** mean that each party will have the children one-half of the time. It also does not mean that child support will not be awarded to one parent. Joint Managing Conservatorship does mean that the parents will either share, allocate, or apportion parental rights and duties. These are the same parental rights and duties that the parents have prior to a divorce being filed; they just may be allocated differently in the divorce. But there are new requirements, as in most cases, the child's domicile must be established in the final Court orders.

In the absence of extreme circumstances (such as a history of family violence), it is advisable for parents to work out appropriate custody arrangements rather than have strangers do it for them. A custody fight involves a great deal of time, commitment, and emotional and financial expense. In some instances, the child can be damaged more by the court action than the worst trait of the other parent. Further, you need to remember that your child's other parent will be a continuing part of your child's life and activities. It will be easier for your child if the child is kept out of the parents' conflict. This is not possible if a trial occurs. At a trial each side tries to demonstrate to the court why that side is right and should prevail and why the other side is wrong and should be defeated. Just think about the worst things your spouse has said and can say about, and then multiply it in public. That is oftentimes what a trial is like.

If you are able to reach an agreement, and make a commitment to work together to resolve disputes that may arise in the future, it is very probable that the child will be able to have both parents at the important events in the child's life, for example, birthdays, graduations, and weddings. Your child(-ren) will continue to grow and will most likely want both parents to play an integral part in their life. To emphasize the importance of parental cooperation, many courts are now requiring all parents to attend

parenting or divorce education classes before the court action can be finalized. My office highly recommends that all parents take such a class, and more importantly, take that information to heart.

Sometimes there will be situations where a custody fight is the only option. However, it is very important that you thoroughly discuss your concerns, options, and position with your attorney before making the decision to take this issue to trial. Mediation services are available to assist the parties in formulating appropriate custody arrangements. The Court will usually also order mediation. As a general rule, mediation proceedings are confidential and privileged. The mediation itself is often the last, best opportunity you will have to resolve your case amicably before investing the most serious time, money and efforts into a trial.

**NOTE:** Communications with counselors are **NOT** privileged and confidential if the information is relevant to issues concerning the parent-child relationship.

If 12 years of age or older, a child can sign an affidavit stating whom the child would prefer to live with. If requested by a party, the Court will interview a child 10 years of age or older. Neither the affidavit nor the information from the interview is binding on the court. It is some evidence, just like all the other evidence. However, the court realizes the problems in ordering a sixteen year old child to stay with a parent with whom he does not want to reside. If younger than 10, the child might have the opportunity to speak with the judge. There is no guarantee of this.

### **GRANDPARENTS & DIVORCE – GRANDPARENTS RIGHTS?**

Texas recognizes the rights of grandparents and can award them custody or visitation rights.

Once a decision is made concerning conservatorship, provisions for periods of possession are generally determined by guidelines enacted by the Texas Legislature commonly called the “Standard Possession Order.”

### **NAME CHANGE**

Absent agreement of the parties, it is generally not possible to change the names of the children.

## CHILD SUPPORT

The Texas Family Code contains guidelines for the computation of child support. The guidelines are specifically designed to apply to situations in which the obligor's monthly net resources are \$7,500.00 or less. In such cases, the court presumptively applies the following schedule:

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

If the Obligor has children from another relationship(s), the percentages listed above may be reduced.

If the obligor's net resources exceed \$7,500.00 per month, the Court shall presumptively apply the above percentages to the first \$7,500.00 of net resources. Without further reference to the percentage, the court may order additional amounts of child support. The court may not order the obligor to pay more child support than the presumptive amount (as calculated by multiplying the above applicable percentage times \$7,500.00) or an amount equal to 100% of the proven needs of the child, whichever is greater.

'Net resources' is defined very broadly, and income can also be imputed to a party.

In addition to monthly child support payments, the payor is required to maintain the children on the payor's employment health insurance policy. If insurance is not available through the payor's employment, but is available through the payee's employment, the payor will be ordered to pay the premium costs. If insurance is not available through either parties' employment, the payor will be ordered to provide insurance coverage to the extent available and affordable. Additionally, the Court usually makes orders regarding the payment of deductibles and other uninsured expenses. All Orders dealing with child support **must** now be accompanied by an Order of Withholding. Medical Support Orders are now commonplace. The

Withholding order, after presented to the payor's employer, has the Court-ordered child support deducted directly from the payor's paychecks.

Absent marriage or other acts which would emancipate the child, child support orders continue until the child reaches age 18. If the child is in high school at age 18, support continues until high school graduation. If the child is disabled, it may be possible to continue child support for an indefinite period. Texas law makes no provision for support during college, or the payment of college expenses. However, this can be done by a contract between the parties if an agreement can be reached on this issue.

### **MODIFICATION OF CHILD SUPPORT AND CONSERVATORSHIP**

All orders concerning the children are modifiable in the future. Either parent can petition the Court to change conservatorship (child custody), periods of possession, or child support at any time until the child is emancipated. The burden of proof is different in each case, and sometimes is very onerous. You should not enter into an agreement based on the assumption that it can always be modified later. You also should not enter into an agreement that you will pay no or a minimal amount of child support based on the assumption that a request for full child support will not be made later.

**CAUTION:** Informal agreements between the parties are **not binding** on the Court. If you rely on the agreement of your former spouse that you can pay a lesser amount of child support, you are likely to find yourself in contempt of court, as you have violated the Court's Order. If your former spouse agrees to give you primary possession of the children, and then demands return of the children several days later, you have no enforceable right to retain possession. If such agreements are reached, contact an attorney to have them reduced to the form of a court order.

### **ENFORCEMENT OF CHILD SUPPORT AND CONSERVATORSHIP**

Orders relating to support and conservatorship of the children are enforceable by the Court. Sanctions for non-payment of child support or failure to comply with periods of possession include imprisonment.

**CAUTION:** Please remember that the **duty to pay child support** and the **right to periods of possession with the child** are **independent concepts**. If your spouse or former spouse does not allow you to see the children, you cannot refuse to pay child

support. If your spouse or former spouse is not paying child support, you cannot refuse visitation rights with the children. **Your remedy is to seek enforcement of the court order.** If you violate the court order, your spouse can file an enforcement action against you. If you do not pay child support, the Court can order jail time, garnishment of wages, and other onerous punishments. If you refuse to allow visitation, there are civil and criminal remedies available to the other parent. Additionally, the child's parent could seek modification of the child custody arrangement to decrease your rights. Before you take the law into your own hands and start placing the child(-ren) in the middle of your dispute with your ex-spouse, please call our office and discuss your ENFORCEMENT or your MODIFICATION options. Your child's best interests should prevail even when your ex-spouse is not acting like a responsible adult.

In most instances, the Court orders that the child support be paid to the universal collection agency known as the Texas State Disbursement Unit in San Antonio. They collect the child support and then distribute the payments received. This is the case even with Orders of Withholding. The Texas SDU tracks payments over the period of time that payments are ordered to be made by the parent paying child support, and their records are often the key exhibit in a case asking the court to enforce a prior order where all child support has not been paid.

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