

Family Law



What You **NEED** to Know About:

DIVORCE

CUSTODY

CHILD SUPPORT

CPS

ADOPTION

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Texas Divorce Basics

Before making a decision on proceeding with a Texas divorce, it is a good idea to take time to understand the basic process and the key issues that must be addressed.

For most people, divorce is new and uncharted territory. For many people it can be a frightening process. Obtaining information about the process can ease this anxiety considerably. This blog article on Texas Divorce Basics is the best place to start.

In this article, we introduce and discuss the following concepts:

- Divorce and legal separation in Texas;
- The difference between a no-fault divorce, Divorce with Fault, and divorce from a covenant marriage;
- The difference between an uncontested divorce and contested divorce;
- The special characteristics of a military divorce;
- The availability of divorce self-help; and

Continuing health insurance coverage under COBRA.

Divorce Terminates the Marriage Contract

From a legal standpoint, divorce is the method of terminating a marriage contract between two individuals (the parties). A divorce ends a valid marriage. It is the legal procedure that returns both parties to single status with the ability to remarry.

In Texas a divorce takes care of three issues:

- **Children** – it gives both spouses the right to determine the future care and conservatorship of their children,
- **Property and Debts** – it divides property and debts in a “just and right manor”.

Divorce - Once the divorce is final, either is free to marry someone new.

Legal Separation in Texas / Suit Affecting Parent Child Relationship

Some spouses may conclude that continuing to live in the marital home together is impossible. But they are unwilling to go so far as to dissolve their marriage. Instead, they would rather legally separate.

Legal separation is a concept that provides a middle ground between marriage and divorce. Some states have enacted statutes and enforce laws that allow or even require spouses to legally separate before divorcing. However, Texas does not recognize legal separation. In short, persons in Texas are either married or they are divorced.

Although Texas does not have a statute regarding legal separation when a couple has minor children Texas does have a law allowing people to seek court orders regarding the children even when the couple is still married.

A parent can file a “Suit Affecting the Parent Child Relationship” (SAPCR) asking a Court to establish provisions regarding:

- Child Support
- Visitation
- Rights and Duties

Unlike a divorce the parents will not be free to marry other people and none of the couple's property or debt issues will have been resolved. If the couple decides to divorce later having done the SAPCR will probably not save the couple any money if they decide they need to make changes to the prior arrangement.

Divorce that's No One's Fault

A majority of states have at least one form of "no fault" grounds for divorce. Texas is no exception and allows people to plead for divorce on "no-fault" grounds. This means a spouse can file for divorce under the ground that the marriage has become insupportable.

This means a standard clause is placed in the Original Petition for Divorce that "the marriage has become insupportable because of a discord or conflict of personalities that destroys the legitimate ends of the marriage relationship". In other words the spouse asking for the divorce wants a divorce.

What every spouse needs to know when pleading "no-fault" in Texas divorce is that a divorce will be granted without either spouse alleging or having to prove marital fault, or guilt.

Meaning that for the purpose of the divorce itself it is not necessary to prove fault under Section 6 of the Texas Family Code such as:

- living apart
- confinement in a mental hospital
- cruelty
- Abandonment
- Conviction of a felony and
- adultery

Instead, one of the spouses must state under oath that "the marriage has become insupportable because of a discord or conflict of personalities that destroys the legitimate ends of the marriage relationship" with "no reasonable prospect of reconciliation".

Additionally, either spouse may obtain a divorce despite the other's objection. Mutual consent is not required for a no-fault divorce in Texas.

Divorce on Fault Grounds

As discussed above Texas grants divorces based on the following fault grounds: adultery, cruelty, felony conviction and abandonment.

In Texas, you can ask the court to give you the divorce because it was somebody's fault. If fault is proven then when a court gives a divorce for "grounds," a court may give more of the community property to the "innocent" spouse.

Divorce from a Covenant Marriage

As discussed above Texas does have fault grounds for a divorce that can be plead such as a spouse committing adultery. Usually this is done to try and get more property out of the divorce.

Under some states there is a type of marriage called a "Covenant Marriage" where similar legal grounds must be alleged to support a request for divorce from a covenant marriage.

Compared to a standard marriage, there are additional requirements for entering into a covenant marriage, such as premarital counseling. There are also specific statutory grounds for divorce from a covenant marriage.

Currently Texas does not have a covenant marriage statute. Every legislative session a bill is introduced but as of this writing has not passed.

Difference Between Contested and Uncontested Divorce

Before a divorce will be granted, there needs to be a clean slate. Matters of spousal maintenance, assignment of separate assets, division of community property and pensions, legal decision-making custody, parenting plans, and child support obligations must all be resolved.

In uncontested divorce in Texas both spouses have reached an agreement on all divorce issues which include:

- Both spouse agree to be divorced
- Parental decision making responsibility for thing such as medical decisions, educational decision, psychological decision for the children, etc.
- parental visitation
- the amount and duration of child support
- the amount and duration of any spousal support (alimony)
- the division of property, and debts.
- If spouses are able to reach an agreement all issues then it is a matter of drafting the necessary paperwork, waiting the required time period according to Texas law, proving up the divorce decree in Court and then the parties are divorced.

If spouses do not reach agreement on all the basic issues, then then divorce is contested. If Respondent disputes any family matter raised in the petition, then the divorce is contested.

Military Divorce in Texas

The term “military divorce” is simply used to describe a Texas divorce wherein one or both spouses is or was a member of the uniformed services. Military divorce is a descriptive term, not a legal one.

Military service member or retired military personnel have many family and property issues that are unique. These include:

- the division of military pensions
- health insurance for former civilian spouses and dependents
- long-distance visitation during deployment
- devising a parenting plan, and
- managing court appearances when stationed overseas, among other important matters.

Self-Help: TexasLawHelp.org

TexasLawHelp.org is a website dedicated to providing free, reliable legal information to low-income Texans. It is part of a broader effort within the national legal aid community to use technology, specifically the Internet, to enhance and expand the delivery of legal aid.

The website provides do-it-yourself court forms for divorce and many other civil matters. Every spouse should consult with an attorney before making important decisions about child custody, property division, and financial support.

But if you would prefer to handle your divorce without legal representation, you can utilize these forms.

If you want a little more help the Law Office of Bryan Fagan, PLLC offers Texas Divorce & Child Custody coaching. This is another do-it-yourself alternative. Every subscription includes help with Texas divorce forms and instructions, checklists, and unlimited email access to an Texas attorney.

Continuing Health Insurance Coverage Under Cobra

Texas divorce often has an impact on employer-provided group health or dental insurance coverage for dependents. Therefore, insurance availability, terms of coverage, and replacement costs should be factored into the parties' divorce just like assets and debts are.

For example, health insurance coverage should be discussed when parties negotiate spousal maintenance or a parenting plan for their children.

Unless ordered otherwise by the court or agreed by the parties as part of a spousal support package, the individual premiums on the COBRA coverage will be billed to and paid by the non-employee spouse postdivorce.

The granting of a divorce makes the non-employee spouse ineligible for group health insurance coverage that may have been available previously to all of the family members.

If a spouse's employer is subject to the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) provisions (not all employers are), then after the divorce is final health insurance coverage may be continued for dependents as qualified beneficiaries the children or a former spouse.

Both divorce and legal separation are qualifying events that trigger COBRA. As a qualified beneficiary under COBRA, the nonemployee-spouse has the right to pay the premiums and continue under his or her former spouse's employer-provided group health insurance.

While the non-employee spouse is not guaranteed the same group premium rates he or she enjoyed previously, the non-employee spouse will have uninterrupted health insurance coverage for a specified time so that he or she can obtain other coverage through that party's own employment or private carrier and can terminate the COBRA coverage.

Insurance coverage can continue under COBRA for 18 months, 29 months, even 36 months after the divorce, depending upon the facts. COBRA requires proper notice of the divorce or legal separation followed by an election period.

The employee-spouse, non-employee spouse, or qualifying dependent must notify the group health benefit plan administrator. Thereafter, the qualified beneficiary must be given an election period of at least 60 days to choose continued health care coverage under the group plan or not.

The health benefit provisions in COBRA amended the Employee Retirement Income Security Act (ERISA), the Internal Revenue Code, and the Public Health Service Act.

While state laws vary in how they address these issues, the basic principles followed by the courts when considering requests for divorce are relatively uniform. If you are thinking about filing for divorce in Texas, then speak to a divorce attorney with the Law Office of Bryan Fagan, PLLC. We can help.



Child Custody Basics in Texas



I often have potential clients that come into my office wanting “custody.” Custody is a term that means different things to different people. In my experience, child custody matters can be one of the most contentious types of family law. In this blog post, I will discuss how custody is determined in Texas.

Issues Related to Children

When parents cannot agree their case will go to court for a custody determination. Every custody battle will be examined by a Judge on a case-by-case basis.

The judge will then make a ruling based on your family’s unique circumstances and Texas Law.

In Texas when parents can no longer co-parent and seek court intervention there are four areas that must be addressed child custody cases handled by a court:

- Conservatorship
- Rights and Duties
- Parenting time / Visitation (Possession and Access)
- Child Support

Whenever children are involved in a Texas court case “Best Interest of the Child” is standard that judicial decisions must be made including the above four issues.

Texas Family Code Section 153.002 makes it clear that, "the best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child."

The Best Interest of the Child

One of the most cited case regarding best interest is the Texas Supreme Court's 1976 decision *Holley v. Adams*. The Court wrote that certain factors to consider in ascertaining the best interest of a child include the following:

- the desires of the child
- the emotional and physical needs of the child now and in the future
- the emotional and physical danger to the child now and in the future
- the parenting abilities of the individuals seeking custody
- the programs available to assist those individuals to promote the best interest of the child
- the plans for the child by these individuals or by the agency seeking custody
- the stability of the home or proposed placement
- the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one
- any excuse for the acts or omissions of the parent

These are not the only factors a court can consider when making a “best interest” determination. Nevertheless, the *Holley Factors* provide a framework for analyzing “best interest.”

- **Desires of the child**

One of the holly factors includes the desires of the child. Texas Family Code 153.009 provides on the motion of either party a Judge must interview a child who is age 12 or older in the Judge's chambers to determine the child's wishes.

It is a common misconception that a child age 12 or older gets to decide which parent they get to live with. If the child tells the Judge that they want to live with a specific parent, the court can consider that into its decision but it is not necessarily the deciding factor.

- **Emotional and physical needs of the child now and in the future**

The court may consider the development of the child and how they are likely to benefit from being placed with either parent as a conservator. A child's emotional and physical needs should ideally be satisfied to as near as possible to the child's state prior to divorce.

- **Emotional and physical dangers to a child, now and in the future;**

Danger to a child can be short-term and potentially ongoing, and the court must weigh evidence supporting concerns of either physical or emotionally dangerous conditions surrounding parents seeking conservatorship and possession and access to the child.

A criminal record, and abuse in particular, can be a major factor in custody determinations. If one parent has a history of abusing the children, they are unlikely to be granted any sort of custody, and may even be required to have their visitation with the children be supervised, if they are granted visitation rights at all.

- **Parenting abilities of the parent or individual seeking custody;**

If one of the parents has consistently taken care of the child's daily physical and emotional needs, and the other parent would not likely perform the same parenting duties to the extent to which the child is accustom, the court will weigh those abilities accordingly. Work and travel schedules can be a factor in assessing which parent has the best parenting abilities.

How each parent interacted with the child in the past, and the degree to which they were involved in the child's life usually has a strong impact on the custody decision. If parental involvement in the child's life was split equally before, the courts will likely want to maintain such a split. If one parent clearly handled all aspects of raising the child before, they may be more likely to grant sole custody to that parent.

- **Programs to help custodial parents foster the best interest of the child;**

Being an active part of the community where a child lives is important to their sense of self and healthy development. If a child actively participates in local civic, church and sports programs, a court may weigh the evidence of the child's activities in evaluating their best interests, to decide conservatorship and possession and access.

- **Plans for the child by the parents, individuals or agency seeking custody;**

When custody and visitation issues are contested, the parties meet with mediators, court-appointed attorneys, and parenting facilitators, to try to work out a parenting plan in the child's best interests. In this process, which could go to hearing and trial in family court, parents identify and write their proposed plans to manage and provide for the mental, emotional and physical needs of the child.

Parents who are unwilling to cooperate with the other parent or consistently try to undermine and badmouth the other parent in front of the children are less likely to receive custody rights. A parent that shows a willingness to cooperate with the other parent when it comes to visitation and coparenting will have a stronger case for their custody wishes.

- **Stability in the home and proposed placement location;**

Generally, if a child is well adjusted in the home where the family resided before the court, and the parent to continue residing in that location is the better parent to be the conservator with sole possession and access, the court will favor a decision that least disrupts the child's daily life. If however, the current situation is detrimental, and one of the parents seeking custody is moving to a much better living situation with plenty of benefits to the child, the court may consider the evidence of such claims.

The stability of the environment in which each parent lives can have a major impact on custody decisions. If one parent has a fluid or unstable living situation, they are not likely to be granted primary custody.

Courts often lean towards achieving as much continuity for the child as possible. They recognize that change can be incredibly difficult for children to cope with, and they want to keep as many aspects of the child's life the same. Thus, if the child has already been living with one parent full time, or one parent is getting the family home, the court may rule in favor of granting that parent primary custody so the child can maintain continuity.

- **Acts or omissions by a parent indicating an improper parent-child relationship; and**

Abuse and neglect of a child, in any discernible format, is certainly considered by the court, as it would help predict circumstances in the best interest of the child. The failure of a parent to meet a child's mental, emotional and physical needs, on a temporary or other basis, can be the basis upon which the court determines conservatorship.

- **Excuses for the acts or omissions of a parent seeking custody.**

There may be temporary conditions a court considers when evaluating options for the placement and custody of a child. If the parent, most likely to be the better conservator, has a temporary condition or issue affecting their ability to carry out parental duties, the court may consider evidence of the temporary nature of such a condition, and information relative to the likelihood of such a condition to reoccur.

Please keep in mind that, with the possible exception of the "best interests of the child" factor, none of the aforementioned factors on their own will be the sole determining reason a court rules one way or another in your custody case. They will always look at all the evidence and make a decision based on the big picture. If you are faced with a child custody dispute and you need legal guidance, please contact the Law Office of Bryan Fagan, PLLC today to learn how we can help.

Factors that Courts Won't Care About

Previously, it was common in family law to prefer mothers on custody issues. On November 7, 1972, Texas voters approved the Equal Rights Amendment to the Texas Constitution.

As a result the following issues are no longer considered when deciding custody issues:

- Infidelity
- Marital Status
- Gender
- Racial Issues
- Religion

Conservatorship

In Texas what most people think of as custody is called conservatorship. Chapter 153 of the Texas Family Code sets forth the framework for appointing individuals as conservators and granting rights of possession and access to a child.

There are two types of conservators:

- managing conservator and
- possessory conservator

Managing Conservators

Managing conservators are then further divided into sub-categories:

- sole managing conservator and
- joint managing conservator

Under the Texas Family Code it is presumed that the parents should be named joint managing conservators.

Sole Managing Conservator

A sole managing conservator is a person that is granted exclusive right to make decisions for the child. In order to avoid joint conservatorship, a must prove that it is not in the “best interest of the child.”

This is usually seen in situations where a parent:

- has committed domestic violence against a member of the family
- substance abuse problems or
- engaged in behavior that endangers the child

Joint Managing Conservator

A joint managing conservator is one of two people who share the rights and duties of a parent, even if the exclusive right to make certain decisions is awarded to only one person.

Possessory Conservator

A possessory conservator is a person who is designated by the court as having a right to possession of a child under specified conditions, and who is authorized during their periods of possession to exercise certain rights of a parent.

It is a common misconception regarding joint managing conservators is that each parent must have equal periods of possession.

For many people getting a divorce is can be difficult. However when children are involved things can become even more complex. This can be because parents may disagree regarding a parenting plan, decision making, or care of the children. When this happens the case may have to go to court and a judge will make the decision.

Rights and Duties

In most family cases a parent of a child whether sole, joint, or a possessory conservator, has the following rights and duties at all times:

- the right to receive information from any other conservator of the children concerning the health, education, and welfare of the children;
- the right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the children;
- the right of access to medical, dental, psychological, and educational records of the children;
- the right to consult with a physician, dentist, or psychologist of the children;
- the right to consult with school officials concerning the children's welfare and educational status, including school activities;
- the right to attend school activities;
- the right to be designated on the children's records as a person to be notified in case of an emergency;
- the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the children; and

- the right to manage the estates of the children to the extent the estates have been created by the parent or the parent's family.
- the duty to inform the other conservator of the children in a timely manner of significant information concerning the health, education, and welfare of the children; and
- the duty to inform the other conservator of the children if the conservator resides with for at least thirty days, marries, or intends to marry a person who the conservator knows is registered as a sex offender under chapter 62 of the Code of Criminal Procedure or is currently charged with an offense for which on conviction the person would be required to register under that chapter.

In most family cases a parent also has the the following rights and duties:

- the duty of care, control, protection, and reasonable discipline of the children;
- the duty to support the children, including providing the children with clothing, food, shelter, and medical and dental care not involving an invasive procedure;
- the right to consent for the children to medical and dental care not involving an invasive procedure; and
- the right to direct the moral and religious training of the children.

If a parent is named sole managing conservator under Texas Family Code Section 153.074 the parent will have the following rights and duties exclusively (unless limited by the court):

- the right to designate the primary residence of the child;
- the right to consent to medical, dental, and surgical treatment involving invasive procedures;
- the right to consent to psychiatric and psychological treatment;
- the right to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child;
- the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
- the right to consent to marriage and to enlistment in the armed forces of the United States;
- the right to make decisions concerning the child's education;
- the right to the services and earnings of the child; and
- except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right to act as agent of the child in relation to the child's estate if the child's action is required by the state, the United States, or a foreign government.

However, when parents are appointed Joint Managing Conservators, the court is mandated to allocate these rights duties either:

- jointly,
- exclusively, or
- Independently

Joint Rights

A joint right is when you can exercise subject to the consent of the other parent.

The following right are almost always made joint rights:

- consent to marriage or
- enlistment in the armed services

Independent Rights

An independent right is when either you or the other parent can exercise the right without conferring with each other and neither of you need the other's consent.

The following rights are almost always made independent:

The right to receive information about the children,

- consult with physicians and teachers, and
- direct the moral and religious training of the children.

Exclusive Rights

Exclusive rights are when you can exercise the right without conferring with the other parent, do not need the other parent's consent, and the other parent cannot exercise this right at all.

The following rights generally given exclusively to one parent:

- to receive child support and
- the right to designate the primary residence of the children.

Parenting time / Visitation

Part of settling the children issues involves establishing a schedule when the children will spend time with each parent. Under the Texas Family Code, it is presumed to be in the best interest of the child that this schedule be the Texas Standard Possession Schedule. However, parents can agree to do something different.

Standard Possession Order (Parents within 100 Miles of Each Other)

During the Regular School Year:

Weekend:

-1st, 3rd, and 5th Weekends

-Pick up on Friday at 6 PM and Return on Sunday at 6 PM

Midweek:

-Every Thursday from 6 PM – 8 PM

Elections During the Regular School Year

Weekend:

-1st, 3rd, and 5th Weekends

-picking up the children from school on Friday and return to school on Monday.

Midweek:

-Every Thursday pick up from school and return to school on Friday.

Some parents make this election because they can have more time with their child. It also allows them to have less interaction with the other parent.

Spring Vacation

In even numbered years, the non-primary parent has the right to possession of the child during spring vacation.

Summer Visitation

The non-primary parent receives the right to have the child for 30 days during summer vacation.

Holidays

Holidays alternate. For example, if the father had the children for thanksgiving then the mother would have the children for Christmas. In the next year, it would be the revers.

Odd Number Years:

Thanksgiving	Christmas	New Years
Mother has the right to possession of children from time school is dismissed for the thanksgiving holidays	Father has children from time school is dismissed until noon on December 28	Mother has the children from December 28 at noon until 6 p.m. on the day before school resumes after the Christmas vacation.

Even Number Years:

Thanksgiving	Christmas	New Years
Father has the right to possession of children from time school is dismissed for the thanksgiving holidays	Mother has children from time school is dismissed until noon on December 28	Father has the children from December 28 at noon until 6 p.m. on the day before school resumes after the Christmas vacation.

Standard Possession Order (Parents over 100 Miles of Each Other)**During the Regular School Year**

- At the option of the non-primary parent they can have regular visitation as described above or
- Or 1 weekend a month of that parents choosing
- No Thursday visitation

Spring Vacation

The non-primary parent gets every spring vacation.

Summer visitation

The non-primary parent receives the right to have the child for 42 days during summer vacation.

Holidays

Same as above.

Child Support

Custody includes financial support of the child. The Texas Family Code contains a rebuttable presumption that application of the statutory child support guidelines is in the best interest of children. Under Texas Family Code Section 154.122 guidelines child support is rebuttably presumed to be in the “best interest of the child.”

Child Support usually includes one parent paying:

- child support and
- providing health insurance for the child

Child support is determined in Texas based on a percentage of the paying parent's net income up to the first \$8550/month of income. The parents usually share the uninsured medical expenses between them.

The exact formula for calculating guideline child support is very involved but your estimate as follows:

Net Resources =

- Monthly Gross Income
- Less Federal Income Taxes (single, one deduction)
- Less Union Dues
- Less Medicare and Social Security Taxes
- Less Insurance Premiums paid for Children

Support Percentage:

Number of Children	Support Percentage
1	20%
2	25%
3	30%
4	35%

If the parent paying child support has no net resources, the court can impute income equal to minimum wage under Texas Family Code Section 154.068.

- “In the absence of evidence of a party's resources, as defined by Section 154.062(b), the court shall presume that the party has income equal to the federal minimum wage for a 40-hour week to which the support guidelines may be applied.”

How Long is Child Support Paid?

Child support is paid until the minor child turns 18 or still in high school, whichever is longer.

Step Down Provisions

If you have more than one child, the amount of child support will change over time. For example, if you have two children, the parent paying child support will most likely be paying 25% of their net resources as child support. When the first child graduates from high school the parent would start paying 20% of their net resources as child support.

Sole Discretion of Primary Parent

Child support can be used at the discretion of primary parent. The parent who pays child support has no say on how that money is used.

What if Child Support Payments are not made?

Violation of a child support court order can be dealt with through child support enforcement options which can include:

- Jail Time
- Fines and
- Garnishment

Some of the options that are used to help insure court ordered child support is paid include:

- **Wage withholding** – A notice is sent to the parent's employer directing the employer to automatically deduct the amount of support from the parents wages. The money is then sent to the child support office who distributes it to the child.
- **Contempt** – If a parent violates a court order to pay child support the court can hold that parent in contempt. This means the parent can be jailed and placed on community supervision for up to five years. In addition, the parent can be ordered to pay the attorney fees associated with the enforcement.
- **Money Judgment** – If child support is not timely paid the unpaid child support can be reduced to a money judgment that starts to accumulate interest.
- **License Suspension** – If a parent fails to pay child support for more than 90 days b a court can order the suspension of any license that has been issued to that parent.



The Basics of Child Support



The amount of time that you are in possession of your child after a divorce determines whether or not you will be responsible for paying or receiving child support. Should you be named the primary conservator of your child this means that you have the right to determine the primary residence of him or her.

With this right your child will live with you and by default give to your ex-spouse .visitation rights Your ex-spouse will become a possessory conservator who will have the right and responsibility to pay child support to you.

The reason you will be receiving child support is that by virtue of the fact that your child will be in your possession more often than your spouse, you will shoulder more of the financial burden of caring for your child on a day to day basis. For child support purposes you are known as the custodial parent and your ex-spouse will become the noncustodial parent.

How is child support calculated?

The amount of child support that your ex-spouse would pay you in our above example is based on a percentage of their net monthly income.

The Texas Family Code contains guidelines for child support that will allow you and your ex-spouse to calculate just how much will be owed to you on a monthly basis. Keep in mind that it will need to be determined what exactly your ex-spouse's net monthly income is so that you have an accurate number, to begin with.

Income in Texas for a noncustodial parent means all salary, wages, commissions, bonuses, tips, and overtime earned. Unemployment payments count for income purposes as well as social security benefits and worker's compensation awards.

If your ex-spouse received a home from an inheritance income can be imputed from this source even if the home is not generating any income. A judge could argue that if your particular circumstances merit such as finding, that the home could be sold and the funds utilized to pay child support. This is not common, but it can happen in our state.

Underemployment or Unemployment- how do these issues factor into paying child support?

In some situations, parents will under-employ themselves purposefully in order to pay less in child support. I have seen mothers and fathers step back from highly compensated positions at businesses to take lesser positions where they will not be earning as much money.

Especially if a job change occurred recently before a divorce or child support modification case, a judge can look back to see what the parent used to earn and use that income rather than their current income to assign a child support obligation.

Credit received for being financially responsible for children not involved in this court case

It could be that your ex-spouse has responsibility for children that are not yours and are not involved in this particular case. In that type of situation, your ex-spouse would receive credit for these children.

Typically a 2.5% credit is assigned per child, up to a limit of five. For example, if your ex-spouse and you have one child together and your ex-spouse is already paying child support for another child, your child support percentage would decrease from 20% of your ex-spouse's net monthly income to 17.5%.

What if your ex-spouse chooses to pay more or less than the ordered amount of child support?

Another aspect of child support cases that people often have questions about is whether a parent can decide to pay more or less than the ordered amount on a monthly basis.

The answer to that question is that while a parent can pay more than their ordered amount of support on a monthly basis it is not allowed under the law for that parent to pay less. This means that if you are the parent who receives child support from an ex-spouse it is not in your best interest to agree to allow him or her to underpay you for any period of time. A court must first approve any change in the child support obligation in a case called a Modification.

What if the guideline amount of child support does not work for your family?

The guidelines as set forth in the Texas Family Code are just that- guidelines. They have been made into law because it was determined that they are applicable to a wide range of people, but they do not necessarily work equally well for all persons.

For example, if your child suffers from a disability that requires medical attention around the clock or will require you to stay at home to care for him or her after age 18, the standard amount of child support will likely be insufficient to provide for your child's proven needs.

If this is the case for you and your child you and your attorney will need to address this issue with the divorce court or if the issue arises subsequent to your initial child support order being introduced a modification suit may need to be filed. You will be able to present evidence of the increased needs of your child in hopes of getting the child support modified. You and your ex-spouse would have an opportunity to settle your case outside of court by negotiating in mediation or on an informal basis. Otherwise, you will both present evidence to a judge to have him or her decide whether or not your circumstances merit an increase in the monthly support level.

Factors that a court will consider when deciding whether to deviate from the guideline levels of support include the age and needs of your child, your financial resources, each parent's ability to support your child, child care expenses, medical expenses as well as the costs associated with travel to allow your child to see each parent. If your circumstances demand a greater or lesser amount of child support it will likely be due to one of the aforementioned factors.

What are your responsibilities after receiving child support from your ex-spouse?

If you receive child support you have a responsibility to utilize that money for the care and maintenance of your child, whatever the circumstances you find yourself in. For most people, the costs of raising a child are well beyond what the monthly child support figure is.

You can look at the child support check as a way to offset your use of your own income to provide monthly for your child. The law in Texas assumes that you spend this money directly on your child. Your "child support" payments are whatever you end up spending on your child for school supplies, food, rent, etc.

Health Insurance costs and child support

Either you or your ex-spouse will be responsible for providing your child with health insurance. It is presumed under the law that your ex-spouse will provide health insurance if he or she is also providing child support. This is not necessarily how it always turns out, however.

If you are able to provide health insurance more readily or more inexpensively through your employer you could be ordered to do so and your ex-spouse would then be ordered to pay you monthly for the costs of doing so.

What To Know About Child Protective Services



Unfortunately children suffer from abuse and neglect at the hands of caregivers or other adults all too often. With this in mind Child Protective Services (CPS) functions within the Texas Department of Family and Protective Services (DFPS) as a means to help ensure that the children of Texas are safe and that Texas families are educated about how to promote loving and safe homes.

It's possible that if you're reading this blog that you were at one time a part of a CPS investigation. Maybe you are part of an active CPS investigation that is currently ongoing.

If either of these situations are true, then you know that CPS encourages the participation of the parents of a child against whom abuse or neglect has been allegedly committed. The remainder of this blog post will discuss the purpose of a CPS investigation as well as the goals CPS aspires to achieve in each investigation it commences.

The goals associated with a CPS Investigation

When a report of abuse or neglect of your child comes in to CPS, an investigation begins in which a case worker will likely contact you to set up an interview. The overarching goal of CPS associated with your investigation is to ensure that your child is safe from abuse or neglect and then to return your child to your home as soon as possible.

Until your home is determined to be safe, however, it is likely that your child will be removed from the home and placed in the care of another family- perhaps a relative of yours or your spouse if one is available.

What does CPS do during the actual investigation? A CPS investigation will typically follow one of the three paths that I am about to list:

- Take steps to create a safe environment for the child, hopefully allowing your child to remain in your home. Removing your child from your home is actually the last option that CPS will take advantage of and will not occur until and unless your home is determined to be unsafe for your child to continue to reside in. Family members or a temporary home with persons outside your family are potential landing spots for your child.
- Help to find a substitute home for your child to live in while CPS works with you and your spouse to help ensure that your home is going to be a safe environment for your child to reside.
- If necessary, CPS will seek legal recourse to ensure the safety of your child. This can range from filing a family lawcase to place your child with another family on a temporary or permanent basis. The most extreme example of a mechanism that CPS can use to ensure the safety of your child is to file a petition to terminate your parental rights.

A CPS Investigation does not mean that your child will have to live apart from you

Just because CPS opens an investigation against you does not mean that your child is going to be removed from your care. The potential risk of harm apparent in your home is what CPS will look to in order to determine whether or not it is appropriate to leave your child in your care.

Even if your child is removed there are steps that you will be asked to take, including attending classes and other training programs that will allow you to regain your child once you complete the coursework and counseling.

What happens if a CPS Investigation results in a finding against you?

In the event that CPS conducts an investigation into alleged abuse or neglect that you committed against your child and the result of the investigation is that they determine that abuse or neglect did occur then your child will certainly be removed from your home.

This may be a confusing time for you since how you define “abuse” and “neglect” may be different than how a CPS investigator does. As a result, knowing how CPS defines these terms can give you a better idea of how you will be judged by a case worker.

Abuse as defined by Child Protective Services means either an act or omission (the failure to act) by a person that causes physical or mental harm. The mental injury must be such that there is an observable and substantial impairment of your child’s development and growth.

An example of how an omission can potentially constitute abuse is when you have permitted your child to be in a situation that causes him or her to sustain a mental or emotional injury as discussed in the previous sentence. Likewise, if your child suffers physical injury due to your failing to have removed him or her from a situation in which the injury was preventable is also a type of abuse.

Physical injuries of course count as abuse under the law in Texas that CPS will apply to your case. The key is that “substantial harm” or the threat of substantial harm must have occurred as a result. An accident or reasonable disciplinary measures are not counted among the kinds of abuse that CPS can remove a child over.

Sexual conduct and abuse related to sex acts are included in the definition of abuse as well. You can consult the Texas Family Code to learn the multiple sexually based offenses that can potentially constitute child abuse in Texas.



Adoption: Essential Information For Texas Families

Although they come with less regularity than questions about child custody or divorce cases, people do come into the Law Office of Bryan Fagan, PLLC with questions about adoption and how our office may be able to assist them with a potential adoption case.

Whereas many family law cases present facts and circumstances that are not particularly “positive”, adoption cases can offer a glimpse into a situation where people come together and do what is in the best interests of a child.

It’s likely that if you are reading this blog post that you may find yourself with your own questions about the adoption procedure in the State of Texas. I would like to walk you through some basic information about adoption so that you may understand the process a little bit better and be able to make educated decisions for yourself and those people in your life.

What must occur for an adoption to take place

There are two circumstances that must first be in place for an adoption to occur in Texas. The first being that the parental rights of at least one parent of the child must be terminated by a Court. This means that of the legal father and mother to the child, one person’s parental rights must be terminated. A child can only have two parents in the eyes of the law, so this all stands to reason.

Circumstance number two that must come into being is that the adoption of the child by you or whomever must actually be approved by a court. This involves the judge looking into your situation as best as he or she can and determining whether or not an adoption of the child is in the child’s best interests.

What exactly does terminating a person’s parental rights mean?

When a judge terminates the parental rights of a person this means that the former parent is not the legal parent of the child any longer and therefore holds no rights or duties to the care and upbringing of the child. Issues like whether or not the child will be able to inherit money or property from the terminated parent upon their death are also determined in this proceeding.

Obviously, this is an extremely important decision for a judge to make and it usually cannot be overridden or appealed. A parent can agree to have their parental rights terminated or a judge can make a ruling after being petitioned to do so by the other parent, or another party with standing to initiate such a proceeding in family court.

An agreement between parents to terminate their rights to a child can occur

If you are the biological parent of a child and you and the other parent would like to terminate your parental rights to a child you may agree to do so. A relinquishment of rights form must be filed with a court wherein you are telling the court of your desire to no longer have any rights, duties or responsibilities for the child. The child will then be put up for adoption in order to locate people who want to take on those same rights and duties that you voluntarily gave up.

A hearing will be had within sixty days of the relinquishment form being filed with the court. It is up to the judge to make a determination as to whether the relinquishment request is in the best interest of the child and if it should be granted.

What does an involuntary termination proceeding look like?

Absent an agreement by the biological parents of the child, a court will appoint someone called an Amicus

Attorney to help him or her determine if termination of the parent's parental rights is in the best interests of the child.

Circumstances that lead to a parent having their parental rights terminated against their will typically involve absenteeism (not being present for the child), not providing support for the child even after being ordered to do so by a court and/or abuse or neglect of the child.

What happens after a parent's parental rights have been terminated?

If you are a person who is interested in adopting a child you would file a petition to adopt the child in the same court that either terminated or will terminate the rights of the biological parent. The judge will order a social study to be administered upon your home, you and your spouse and other persons in your life. That study will help the judge determine if your home environment is conducive to raising and supporting a child. Your criminal history will also be looked into.

If your adoption petition is approved you become the legal parent of the child. I alluded to at the beginning of this blog post that this is a rare "happy" day in family court. Judges have a final hearing in which all of the parties to the case, even the child, come in and speak to the judge about things and the judge makes a final ruling.

Especially in the event that the parents had mutually agreed to terminate their parental rights, this is seen as a day where the child can celebrate a new "birthday" with their adoptive parents. I've even seen judges in Harris County gift Teddy Bears and other tokens of goodwill to the children that are involved in the adoption case.



