

THE LAW OFFICE OF BRYAN FAGAN PRESENTS

ON YOUR SIDE

MAGAZINE

March 2018
ISSUE 9

The Dirty Trick of the
Spousal Spying
Pg 2

EXCLUSIVE
SEX, LIES, ROCK AND
ROLL Pg 12



THE LAW OFFICE OF BRYAN FAGAN PRESENTS **ON YOUR SIDE**

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We are always trying to find ways to reach out to individuals who would like to know about family law, their rights, and their options!



Filing for divorce

Child custody

Property Division

Visitation rights

Child support

Spousal support





WHO WE ARE

AND WHAT WE DO

We are a family law firm. We believe in helping our clients transition through family law cases, as smoothly as possible.

As a family law firm, we understand clients are handing over a very personal piece of their lives to us. Not only does our firm work professionally, diligently and efficiently but we believe in having great communication with our clients.

Our clients are able to speak to their attorney, as well as have access to a wonderful client support team who can help answer all questions regarding their case, status updates, billing inquiries, and other concerns that may arise during the process.

Not only does our client support team reply back to our inquisitive clients in a timely manner, but the client can count on someone reaching out to them to check-in several times throughout the duration of their case. We believe in putting our clients first!

Our firm offers free consultations and accept consults daily!

We believe every person should be informed of their rights and the process pertaining to their case, this is why we offer free consultations.

During your free consultation with a family law attorney, you will learn your rights, have all of your questions answered, discuss the process, and your best avenues.

In addition to our free consultations, we are one of the few firms who have Finance Specialists to help you discuss a lower down payment, and payment plans

OUR FIRM HANDLES THE FOLLOWING CASES:

- Filing Divorce Papers
- Arranging Child Custody
- Obtaining Protective Orders
- Property Division Matters
- Visitation Rights
- Establishing Child Support
- Establishing Spousal Support
- High Net Divorce

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THE DIRTY TRICK OF THE SPOUSAL SPYING

Our office has had to deal with cases where one party suspects their spouse, rightly or wrongly, of having an affair. They have seen signs: staying out late at night, giving vague information about their whereabouts, coming home later than usual or when their spouse is leaving for work, being secretive about their text messages. This often leads to a spouse trying to be a private investigator and gather information.

In today's world of technology, it is very easy for a spouse to become an amateur sleuth and bug telephone conversations, break into computers, and track where their soon-to-be ex is going.

In some of our articles, we have discussed the legality of spousal spying. It is legal in some circumstances, depending on the way it was done; but in others, it may not just be offensive but illegal, and possibly a marital tort. When our client is contemplating doing such things, we caution them from engaging in activity that is reckless or illegal.



From The 13 Dirty Tricks E-Book written by Bryan Fagan, Esq

WHY WOULD MY SPOUSE SPY ON ME?

There may be a number of reasons your spouse may be spying on you including:

1. to see if you are drinking or using drugs
2. to see if you are having an affair
3. your spouse may be afraid you are gambling or have a spending problem
4. your spouse may think you are only pretending to go to work

You may also be leaving a relationship where your ex is abusive, controlling, and has little regard for what is legal.

The focus of this blog will delve more into what is possible and steps that can be taken to help protect you against legal and illegal spying by your ex.

TRYING TO GET AN ADVANTAGE IN THE DIVORCE

Your spouse may also be trying to get an advantage for the divorce.

Although it is no longer necessary to plead fault in a divorce in Texas, you can still state specific grounds under section 6 of the Texas Family Code for ending your marriage, including:

1. Living apart
2. Confinement in a mental hospital
3. Cruelty
4. Abandonment
5. Conviction of a felony
6. Adultery

A court may give more of the community property to the "innocent" spouse if fault is proven in divorce.

HOW CAN I TELL IF MY SPOUSE IS SPYING ON ME?

There are many ways your spouse may be spying on you including:

1. Monitoring your use of social media (such as Facebook)
2. Cellphone Tracking
3. Recording or having you “bugged”
4. Spyware - monitoring your mail, email, phone calls, and text messages
5. Tracking you or your vehicle using EZ-Tag or GPS
6. Watching you via video surveillance such as a “nanny cam”
7. Having you followed by a private investigator
8. Following you personally

SOCIAL MEDIA ACCOUNTS

We have discussed this topic before. However, I bring it up again because you and your social media account can be your own worst enemy in a divorce.

Your social media account such as Facebook can be a goldmine for your spouse to know about:

1. Where you are
2. What you are doing
3. Who you are hanging out with and
4. Much more

Even if you unfriend your spouse and change the security settings on your account, that will not prevent someone you are friends with supplying your ex with information.

CELL PHONES

One of the first things you may need to do is get a new cell phone. If you are on a shared plan with your ex, it may be very easy for them to track your whereabouts. Many cellphone carriers make it easy for people sharing the same plan to stalk each other.

THE PHONE BILL

There is the obvious factor of being able to look at your bill and see who your spouse is calling and texting.

This was how a wife I met with told me she found out that her husband was hiring hookers. Her husband traveled a lot for work. She got a feeling he was being unfaithful to her so she decided to get online and look the phone bill. She noticed a lot of weird calls / text messages late at night.

The wife started calling the numbers and they were all women. One woman she talked to confessed what she did. When she confronted her husband, at first he denied it but then when she told him what she had done he admitted that he had been having sex with hookers.



AT&T - PARENTAL CONTROLS / FAMILY MAP

If you are on AT&T, the account owner can add things to the plan such as parental controls or family map.

With the family map, your spouse can know where you are at all times. Your spouse can also block you from calling certain numbers or those numbers from being able to call you.

This happened in one of the cases we handled. Our client was in a relationship with a very controlling husband. This husband kept her from being able to go anywhere without his permission

THE DIRTY TRICK OF THE SPOUSAL SPYING

continued...

VERIZON - PARENTAL CONTROLS – FAMILYBASE / FAMILY LOCATOR

Verizon's versions of these is same technology is FamilyBase and Family Locator.

FamilyBase can be used to control who a family member is allowed to call or receive calls from. Family Locator can be used to according to the website:

1. locate your family anytime
2. Receive arrival and departure updates
3. Get an estimate on how fast they are driving

SPRINT - FAMILY LOCATOR

Sprint family locator can be used to:

1. real-time interactive satellite maps with street addresses and landmarks for family members.
2. Restrict phone use

CHANGE YOUR PASSWORDS

You are going to want to change all your passwords. It is not going to help you if you get a new phone that is not on your spouse's plan if they can guess your password and still get into your account.

You will need to spend sometimes changing your passwords on ALL your accounts to something they will not be able to guess. Some important accounts to change your passwords on include:

1. Phone carrier
2. Bank and other Financial Accounts
3. Apple / iPhone

IPHONES & OTHER SMART PHONES

I mention iPhones and Apple because there are larger concerns than your spouse purchasing movies or music and charging them to your iTunes account.

Find My iPhone

Apple devices are also set up so that you can use apple's "Find My iPhone" feature.

This can be done by either getting online or downloading an app. This happened in a case where a wife took her daughter and ran away to a woman's shelter. The husband showed up and demanded to see his wife and daughter.

The people at the shelter tried telling him that they were not there. The husband made such a scene that the cops had to be called. The cops later found out that the way he tracked them was by using Apple's "Find My iPhone" feature.

Find Friends

Another thing you may want to check for is what apps are on your phone. There are various apps that can be downloaded on your phone to stalk you. Including an app that comes with most iPhones "Find Friends."

TAPE RECORDING YOUR SPOUSE

We frequently get questions regarding using tape recorders or voice-activated recorders to catch their spouse. More and more, what we have been seeing is spouses who will use their phone to:

1. Record their conversation with their spouse, using the phone as a tape recorder or
2. Record their phone calls
3. or even take videos of their interactions with their spouse

In a case that closed not too long ago, a wife had recordings on her phone of the husband admitting to all kinds of behavior from drug use to misusing the marital finances.

In another case, the wife had managed to catch her husband hitting her on video using her cellphone.

The basic rule in Texas regarding recordings is that you can record any conversation in which you are a participant. This means you do not need your spouse's permission if you are taking part in the conversation.

BUGGING YOUR SPOUSE

The converse to the rule about being allowed to record conversations that you are a participant in is that you are not allowed to record conversation where you are not a participant.

This means it is illegal to bug your spouse to catch them talking to other people.

However, just because it is illegal does not mean that it does not happen. One spouse that we represented was convinced her husband was doing just that. He always seems to know things that he should not know.

Eventually she found all kinds of weird listening devices around her home.

SPYWARE

The recording devices do not even have to be a physical device. It can be your cellphone or computer. As mentioned earlier, various apps can be downloaded and used to stalk your location. There are also apps that can be used to:

1. Monitor texting
2. Monitor internet browsing
3. Record phone calls
4. Record location
5. Track pictures taken
6. Read emails

Most if not all of this would be illegal, but is possible.

If you suspect that your spouse may be spying on you, it would be a good idea to get your cellphone and computer looked for spyware.

WATCHING YOU VIA VIDEO SURVEILLANCE SUCH AS A “NANNY CAM”

Many families use nanny cams to monitor nannies, maids, or other domestic workers. However, sometimes in a divorce, it can be used to snoop on their spouse.

Many spouses give into the temptation to try and catch your spouse fooling around with a Paramore and one tool they use is the nanny cam.

Are Nanny Cams Legal??

Read more about the Dirty Trick of Spousal Spying and many more Dirty Tricks in our new e-book:



13 DIRTY TRICKS To Watch Out For in Your Texas Divorce

LAW OFFICE OF BRYAN FAGAN

When you work with our firm, you will see that we are committed to tenaciously representing clients in every scope of the Texas court system. We believe the cornerstone of our success is the trust we are able to build with clients, while still maintaining the highest caliber of legal services.

We acknowledge that each client has individual needs, which is why we provide personalized representation. Our founding lawyer strives to honor the objectives and desires of each case he takes on. The legal team at our firm is dedicated to carefully listening and effectively communicating with our clients during each level of their case.



Bryan Fagan
Attorney | Mediator



**Kimberly Player-
Washington**
Attorney



Brittney Inman
Marketing Director

MEET YOUR LEGAL TEAM



Mollie Levar
Office Manager



Tina Favorito
Paralegal



Courtney Porter
Attorney



Cecilia Charlton
Attorney



William Moriarty
Intake Specialist



Darnell Moore
Receptionist



Chad Zubi
Attorney

THIS TEAM IS ON YOUR SIDE



Tiffany Ceburn
Law Clerk



Alicia Palmer
Attorney



Paola Morales
Paralegal



Samuel Roberson
Legal Assistant



Chris Ervin
Attorney



David Brummett
Customer Service



Cristina Cazares
Legal Assistant



The Law
Office of
Bryan Fagan
has appeared
several times
in the Top 10
Blog Posts
from Texas
Bar Today!

Frequently Asked Questions

Regarding Common Law Marriage and Divorce



By Bryan Fagan
Attorney | Mediator

The following are answers to some of the most frequently asked questions about Texas common law marriage and divorce. The answers are general in nature and are designed to help you better understand common law marriage and divorce law.

The law in the individual circumstances of your case may vary and may affect the results in your case. Frequently asked questions regarding divorce, child custody, child support, property division, and alimony will be covered in subsequent blogs.

WHAT IS AN INFORMAL MARRIAGE OR "COMMON-LAW MARRIAGE"?

An informal marriage or “common law marriage” has the same legal effect as a ceremonial marriage. The way its defined in the Texas Family Code Section 2.401 is by giving examples of proof of a common law marriage including:

(a) In a judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that:

(1) a declaration of their marriage has been signed as provided by this subchapter; or

(2) the man and woman agreed to be married and after the agreement they lived together in this state as husband and wife and there represented to others that they were married.

In law school my law professor in family law class referred to marriages with a license as a ceremonial marriage and those without as either a “common law or informal marriage.”

Under Texas Law a “common law or informal marriage” is created only if certain factual and legal requirements are met.

ARE WE COMMON LAW MARRIED BECAUSE WE LIVE TOGETHER?

No, you are not common law married solely because you live together. In Texas three elements must be present to form a Common Law Marriage:

1. First, you must have “agreed to be married.”
2. Second, you must have “held yourselves out” as husband and wife.
3. Third, you must have lived together in this state as husband and wife.

HOW DO I PROVE THAT WE ARE INFORMALLY MARRIED?

As mentioned above an informal or common-law marriage is a marriage between two people who have not obtained a marriage license and participated in a marriage ceremony and under Texas Family Code Section 2.401:

1. Agree to be married
2. Live together in Texas as husband and wife
3. Hold themselves out to others in Texas as husband and wife and

Agreement to be Married

One of the elements to establish a common-law marriage the parties must agree to be married.

This means that in an evidentiary hearing the spouse alleging a common-law marriage will need to put on evidence that the parties intended to have a present, immediate, and permanent marital relationship wherein they both agreed to be husband and wife.

An agreement to get married at some later time in the future is not sufficient to establish an agreement to be married. If there is no written agreement to be married, your actions and the actions of the other party can be used to prove that there was an agreement to be married.

Living Together

The next element need to establish a common-law marriage, is that the parties must have lived together in Texas as husband and wife.

Texas case law states that to meet the element of living together as husband and wife, you must demonstrate that you maintained a household and did things that are commonly done by a husband and a wife.

There is no minimal number of days you must have resided together in Texas to meet this requirement.

There is no minimal number of days you must have resided together in Texas to meet this requirement."

Holding Out

The final element needed to establish a common-law marriage is that parties must have told other people in Texas that they were married.

This can be accomplished either by:

1. Spoken words or
2. Actions and conduct by each person may be enough to fulfill the requirement of holding out.

In other words, there can be no secret common-law marriage.

HOW LONG DO WE HAVE TO LIVE TOGETHER TO BE COMMON LAW MARRIED?

There is no minimal number of days you must have resided together in Texas to meet this requirement.

IS THERE A STATUTE OF LIMITATIONS ON ESTABLISHING A COMMON-LAW MARRIAGE?

No. Contrary to what some people believe, there is not statute of limitations for establishing a common-law marriage. Provided that the elements are met that :

1. there's an agreement to be married
2. that the couple tells other people about it and
3. The couple could live together for even one day

**We
SUPPORT
OUR
COMMUNITY!**



We are proud
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Cudas!

Proud supporter



Frequently Asked Questions

Regarding Common Law Marriage and Divorce

Continued

This could be enough to establish a common-law marriage

DO I STILL NEED TO GET A DIVORCE IF WE ARE COMMON LAW MARRIED?

An “informal or common law marriage” is treated the same as ceremonial marriage.

One difference is that if one of the spouses contest its existence than an additional step will need to be taken during a divorce to prove the existence of the common law marriage.

IS THERE A “COMMON-LAW DIVORCE?”

There is no such thing as a common law divorce. If there is a valid marriage in order to be divorced, you must go through the same divorce process as everyone else.

Some confusion about this matter is created by Section 2.401(b) of the Texas Family Code which states:

“If a proceeding in which a marriage is to be proved as provided by Subsection (a)(2) is not commenced before the second anniversary of the date on which the parties separated and ceased living together, it is rebuttably presumed that the parties did not enter into an agreement to be married.”

However, all this means is that there is a presumption against an informal marriage. Not that there is a divorce or that an informal marriage does not exist. However, with evidence the presumption can be overcome.

Note this section of the family code does not apply to couples who have registered their informal marriage.

HOW LONG DO I HAVE TO PROVE WE WERE MARRIED AT COMMON LAW AFTER WE SEPARATE?

As mentioned above there is no mandatory amount of time to prove an “informal or common law marriage after separation.”

Section 2.401(b) of the Texas Family Code which creates a presumption that no marriage exists after two years of separation. Meaning sooner is better than later.

Also, if someone marries during that separation another presumption is created under Section 1.102 of the Texas Family Code that:

“When two or more marriages of a person to different spouses are alleged, the most recent marriage is presumed to be valid as against each marriage that precedes the most recent marriage until one who asserts the validity of a prior marriage proves the validity of the prior marriage.”

As mentioned above this does not mean that there is no informal marriage it only means that it may be more difficult to prove that there was an informal marriage.

CAN SAME-SEX COUPLES BE MARRIED AT COMMON LAW?

Yes. On June 26, 2015 the United States Supreme Court issued its ruling in Obergefell v. Hodges, legalizing same-sex marriage in every state of the Union.

As a result, informal and common law marriage rules apply to same-sex couples.

CAN SOMEONE YOUNGER THAN 18 ENTER INTO A COMMON LAW OR INFORMAL OR COMMON LAW MARRIAGE?

No. Under Texas Family Code Section 2.401(c):

“A person under 18 years of age may not:

1. be a party to an informal marriage; or
2. execute a declaration of informal marriage under Section 2.402.”

CAN I ENTER A COMMON LAW MARRIAGE OR INFORMAL MARRIAGE IF I AM ALREADY MARRIED?

No. Under Texas Family Code Section 2.401(d):

“A person may not be a party to an informal marriage or execute a declaration of an informal marriage if the person is presently married to a person who is not the other party to the informal marriage or declaration of an informal marriage, as applicable.”

WHAT IS A DECLARATION OF INFORMAL MARRIAGE

A couple can file a “declaration of informal marriage” under Texas Family Code Section 2.401(a)(1) with the county clerk as prima facie evidence that the parties have entered an informal marriage.

If you and your spouse agree a ‘Declaration of Informal Marriage’ can be signed and filed with the county clerk.

WHEN IS IT IMPORTANT TO PROVE A COMMON LAW MARRIAGE?

An informal or common law marriage is generally most important when it comes to property. Two such situations include:

1. Divorce or
2. Inheritance

Divorce

If a relationship ends and a couple is married. Then one of or both spouses can file for a divorce. Under Texas community property law, all property acquired during a marriage is property of the marriage.

This is true except for a few circumstances and whether the marriage is informal or ceremonial. As long as common law marriage is proved, community property is divided the same as if the parties were formally married.

Inheritance

Another circumstance where an informal marriage can matter is just like a ceremonial marriage, a spouse is entitled to inherit from the other spouse if the other spouse dies without a will.

If the marriage is proven they may be able to claim a share of the decedent’s estate.





Bryan Fagan

Attorney | Mediator

Born in Denver, Colorado, and raised here in the Houston area, Bryan has always had the inclination to be someone who can help others and he always put forth all efforts in everything he has set out to do. Coming from a Real Estate background, Bryan felt he his real passion was helping families and through practicing family law, he does just that. Bryan is a member the Texas Bar College, which is an honor that is bestowed on less than 10% of lawyers in the state of Texas. This honorary society is devoted to pursuing the greatest amount of legal knowledge through actively furthering their education. Bryan's desire is to better represent his clients with a deeper understanding of the law. As Partner Attorney, Bryan makes sure every Associate Attorney is actively involved in each individual case to ensure conscientious work and attentiveness. When Bryan is away from the office, he enjoys spending time with his wife, Camille, family, and friends.

SEX LIES ROCK-AND-ROLL

AND ADULTERY IN A TEXAS DIVORCE

By Bryan Fagan

Attorney | Mediator

As a Houston, Texas divorce lawyer many of I get to hear about adultery frequently as topic from our clients. This despite Texas being a no fault divorce state which means if a spouse wants a divorce, the other spouse is not required to have committed a bad act or "fault."

WHY DOES ADULTERY MATTER IN A TEXAS DIVORCE?

Sometimes my clients want to know, "is it necessary to plead a fault in a divorce if they can be granted a divorce on the ground of insupportability?" The answer it is not necessary to plead fault in order to be granted a divorce.

The next question is then, "why would someone wanted to plead adultery under section 6.003 of the Texas Family Code in a divorce?" Generally, the big reason for pleading fault in a Texas Divorce is that if a party to a divorce is able to prove fault on a ground such as adultery is it may have an impact on dividing the marital estate. In other words, the divorce court may give the party who is not at fault more of the marital property. In most cases that is why a party will plead adultery in a divorce case is to ask the Court to divide the marital estate disproportionately.

Many of my clients are surprised that the divorce courts often take a "so what" approach regarding adultery and it generally has a minor impact on the remainder of the divorce proceeding. Courts will pay closer attention if there have been adulterous acts committed in front of children of the marriage.

AMOUNT AND DURATION OF SPOUSAL SUPPORT

However, if a spouse is eligible under the law to receive spousal support under Texas Law and a Judge is inclined to award spousal support then a Judge may consider marital fault when awarding the amount and duration of spousal support in the divorce.

PROVING ADULTERY IN A TEXAS DIVORCE

The Texas Family Code Under the adultery fault ground found in the Texas Family Code Section 6.003. In order to prove Adultery in divorce direct or circumstantial evidence. However, the burden of proving adultery is clear and convincing which is less then beyond a reasonable doubt in criminal case.

IT IS STILL ADULTERY EVEN IF YOU ARE SEPARATED

Acts of adultery committed after a separation are still relevant and can be used to prove adultery under Family Code Section 6.003.



LIES LIES LIES

MY SPOUSE HAS WRONGFULLY ACCUSED ME OF ADULTERY

By Bryan Fagan
Attorney | Mediator

Recently I had a consult with a man who had going through a divorce in which his wife has accused him of committing adultery. During the consult, he informed me that yes during the marriage he did have sex with some individuals other than his wife. However, he only participated in the swinger's parties because it had been her idea.

It is not uncommon during a relationship for spouses even when innocent to be accused of having an affair. Sometimes those accusations will land you in a Texas divorce lawyer's office. You may find unfairness of the accusations and emotions you are experiencing tough to deal with.

Sometimes the accusations are a result of:

1. Your spouse's insecurities or
2. a diversion tactic by your spouse designed through you off guard of their bad behavior

Some of the things I have observed as a divorce lawyer regarding accusations of cheating is not uncommon for the accuser to be engaging in cheating themselves.

Alternatively, if someone is very insecure in the relationship they will start to accuse their partner of cheating. This insecurity can lead to other bad behavior such as stalking, snooping, listening in on phone calls, or hacking into emails. Behavior that ultimately drives a wedge in the relationship that causes a spouse to walk through my office door seeking a divorce.

DISPUTING THE ACCUSATIONS WILL NOT MAKE IT BETTER

Another woman I met with recently is going through much of what I described. Her husband has placed a tracking device on her vehicle, listening devices all over her home, cameras all over the home, and has hacked her email account. She feels like a prisoner in her own home. When she was telling me, this I was thinking "no wonder she is here." However, that bad behavior was not what brought her through my door it was the fact that he kept accusing her of cheating on him and she wasn't.

She told me if she thought it would do any good she would try and prove to him that she wasn't cheating. However, arguing her point had never helped it only made his behavior crazier.

NEWS AND EVENTS

Divorce Seminars

Girl's Night Out

Workshops



SINGLE MOM'S WORKSHOP

OUR
GOAL IS
TO
PROVIDE
AS
MANY
RESOURCES
POSSIBLE!

Learn divorce from beginning to end by the Partner Attorney and author of "The Texas Divorce Handbook", Bryan Fagan. This 2 hour workshop will walk you through the process, provide resources to help you get through this process, and answer any questions you have).

When:

Saturday, March 17th
10am-12pm

Where:

3707 FM 1960 W,
Suite 400
Houston, Texas 77068

Cost: \$35.00

Time and time again, our female clients mention not having a free spot on their schedules to just hang out, enjoy themselves, and temporarily take their mind off their divorce. Even if they do have the time, organizing an event is too much trouble. To help out our clients, we have decided to host Girls' Night Out events. To keep things interesting we choose venues throughout the greater Houston region that could be selected as the party spot, like the Foundation Room Houston.

For more information about Girls' Night Out events, direct all inquiries to Brittney Inman at Brittney@bryanfagan.com

This event was created on the book "Single Mom Takes On The World" by Brittney Inman. It was intended to help single moms navigate through the challenges of single-momhood and will address how to successfully balance working full-time, raising children, and taking care of yourself, too. You'll learn time-management techniques, tips on excelling in your career, and boosting your self-confidence.

Contact us at

281.810.9760 for more details or email Brittney@bryanfagan.com



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Contact the A.T. Law Office for a Free Consultation

If you have questions regarding whether you have a criminal record and eligible to expunge or seal your records, it's important to speak to an attorney right away.



I LOVE MY MIMOSAS

But I Don't Love My Criminal Record...

What can I do?

By Amir Tavakkoli | VIP Contributor

Many of us love drinking our alcohol. Whether it's a nice cup of wine after a long day at work, mimosas during a Sunday brunch with the nice breezy wind blowing in our face, or the tequila/vodka shots at a party, alcohol is something that gets consumed by many individuals on a daily/weekly basis. With that consumption of alcohol also comes the risks involved, which leads to laws implemented to prevent people from consuming too much alcohol in public places. It is no surprise that the most common crime in 2016, according to the Department of Public Safety Texas Arrest Data, was driving under the influence and drunkenness (or public intoxication). These crimes combined to account for 126,681 arrests in 2016. With those 126,681 arrests also come criminal convictions which case criminal records. Some cases get dismissed while the majority of DWI convictions lead to a conviction or probation. If your case was dismissed, great news, that means you can expunge your records (meaning you can apply to get the records off your case and destroyed completely as if it never happened; in fact, you can legally deny having ever been arrested.) But what if you had a DWI conviction or went on probation?

Prior to September 1, 2017, individuals having been convicted (conviction includes if the individual served probation for the offense) of a DWI had no hope of ever having a clean criminal background record. Many

crimes can be sealed (but not expunged, unless it was a regular dismissal, for which the difference was explained in a previous blog) if an individual successfully completed probation on a deferred adjudication plea. However, DWI has been an exception to the deferred adjudication plea. One could not be placed under deferred adjudication probation for a DWI offense. Therefore, prior to September 2017, the only way for an individual to get a DWI off his/her record would be if the case was dismissed. If any probation was ordered or the person was convicted, he/she was out of luck.

In September 2017, HB 3016 (codified in chapter 411 of the Texas Government Code) became effective law which allows certain DWI convictions to be eligible for nondisclosure (or more commonly known as “sealed”). This prevent most employers and entities, except for government agencies, from being able to see the records.

What Are the Requirement of HB 3016?

A person may petition to have a DWI sealed only if he/she:

- has never been convicted of or placed on deferred adjudication community supervision (probation) for another offense—this does not include a traffic offense (punishable by fine only);
- did not have blood alcohol content or breath BAC of 0.15 or above.
- has successfully completed any imposed community supervision and any term of confinement;
- has paid all fines, costs, and restitution imposed; and
- the waiting period has elapsed; and
- The DWI did not result in a motor vehicle accident involving another person (including and passengers of the defendant.)

How Long Is the Waiting Period?

2 years if the person successfully completed a period of at least six months of driving restricted to a motor vehicle equipped with an ignition interlock device as a part of the sentence; or

5 years if there was no interlock requirement as part of the sentence.

My Conviction Occurred Prior to September 2017, Am I Still Eligible?

Yes, the new law applies retroactively regardless of the date of conviction. This means it does not matter when the conviction occurred as long as the above reference waiting period has elapsed.

What Now?

Contact A.T. Law Office for a Free Consult If you are wondering whether you can seal or expunge any records, including a DWI, it's important to speak to a criminal defense attorney right away. If you need an attorney in North Houston, Woodlands, Klein, Tomball, Cypress, FM 1960, Galveston, and surrounding areas, call the A.T. Law Firm for a free consultation. We also travel to different counties including but not limited to Harris County, Montgomery County, Liberty County, Chambers County, Galveston County, Ford Bend County, Waller County, and Brazoria County. Contact the A.T. Law Firm by calling (832) 800-5590 for a free consultation.

MY SPOUSE HAS WRONGFULLY ACCUSED ME OF ADULTERY CONTINUED

IT IS NATURAL TO FEEL GUILTY EVEN WHEN YOU ARE NOT

Despite the fact that she was not a cheater, she still felt guilty on some level. The woman I met with felt guilt that you could not do more to convince her spouse of her innocence and that her husband thought she was cheating.

She also felt guilt that she was in my office preparing to leave a marriage over something that never happened. However, his behavior was scarring her so that she no longer felt safe when he was around her or her children.

FREE YOURSELF FROM NEGATIVITY

An important step to take to free yourself from these negative emotions is to realize it is your spouse is responsible they are the ones who created this situation and not you.

You might other consider seeking counseling for you and your children to help you with what you are feeling while going through the divorce. There many groups available for people such as you going through a divorce. My own church Second Baptist such a program “Divorce Recovery.”

“Divorce Recovery is a program designed to help individuals work through the issues associated with divorce. Each seminar is taught by licensed counselors and covers topics such as anger, self-esteem and boundaries. Whether you are separated, newly divorced, or have been divorced for many years, this program will meet you where you are in life.

For more information, please contact Lynn Roberts, lroberts@second.org or 713-365-2335.”

WHAT IS ADULTERY IN TEXAS?

Under Texas Family Code section 6.003 adultery is a legal term in Texas that means the voluntary sexual intercourse of a married person with one not the spouse.

DISPROPORTIONATE SHARE OF PROPERTY

Although, Texas is a no-fault divorce state which essentially means that neither party necessarily has to prove the other spouse did anything wrong in order to get a divorce.

However, fault grounds can be relevant in divorce when dividing the community property.

AMOUNT AND DURATION OF SPOUSAL SUPPORT

However, if a spouse is eligible under the law to receive spousal support under Texas Law and a Judge is inclined to award spousal support then a Judge may consider marital fault when awarding the amount and duration of spousal support in the divorce.

CONDONATION OF ADULTERY SECTION 6.008 – DEFENSES

Texas Family Code 6.008 states that “Condonation is a defense to a suit for divorce only if the court finds that there is a reasonable expectation of reconciliation.”

Various family law courts have also held that:

1. Condonation is the act of forgiving another party for committing an offense that would constitute a ground for divorce, legally, it is as if the act had never been committed.
2. In suites for divorce condonation has been used to forgive acts such as cruelty and adultery.
3. To establish condonation the court must find that there is a reasonable chance of reconciliation requiring forgiveness by the offending party and repentance by the offender.



DIVORCE 101

Whether you are thinking about divorce, filing for divorce, are in the process of your divorce, or already divorced...our new DIVORCE 101 is an excellent resource with the answers to your questions!

Many times when we consult with people considering divorce, we see many emotions; scared, stressed, hurt, overwhelmed, resentful, hurt...they range from one end of the spectrum to the other.

The Law Office of Bryan Fagan created Divorce 101 as a tool to help those considering divorce find the answers to the many questions they may have.

We find when people are informed and understand the process, they tend to feel a little less scared and intimidated about what's to come.

We hope Divorce 101 will help you and if you have any additional questions or concerns, we encourage you to book a free consultation with one of our family law attorneys by calling *281-810-9760* or visiting **bryanfagan.com**.

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FIRST IMPRESSIONS

MY FIRST YEAR AT THE LAW OFFICE OF BRYAN FAGAN

By William Moriarty

Intake Specialist / Legal Assistant



I've been with The Law Office of Bryan Fagan for eight months now. It's no exaggeration to say that the educational experience at work since last summer has been like none I've undergone in years. In fact, an exhaustive review of all I've learned at work here in a fairly short time would take up several editions of this magazine. Let's...not do that. Instead, here are some quick-hit observations from the better part of a year in family law:

- My mother, who unfortunately is no longer with us, was a family law judge here in Houston for many years. Growing up, I always knew that she took her work extremely seriously, but now that I've worked in the same field she did, I have a different and quite enhanced appreciation of **why** that was. Our clients frequently entrust us to help them through some of the most pivotal challenges they will ever face in their personal life. It's humbling, honestly.

- One of the more heartbreaking, and heartbreakingly frequent, stories I hear about when I speak to potential clients of ours on the phone is of the person who tried to solve their whole family law situation by himself or herself. I speak as someone who's learned the hard way that there are some obstacles in life you can't deal with by yourself. Unfortunately, most family law-related cases, from what I have observed, are far more complicated than a speeding ticket. After eight months working in family law, I would **never** let a friend or relative go through a divorce, custody, or child support matter without (at the very least) getting the professional opinion of a trained and dedicated family law attorney.

- You get a reminder of the importance of kindness working in this business. When I help make arrangements for a potential client to come in for a visit with one of our attorneys, typically that conversation includes an abbreviated version of their story that is soon to be shared in greater detail with Bryan, Kim, Chris, or one of our fine junior attorneys. Sometimes, yes, that story is difficult - but just as often, it is inspiring as well. I have found myself amazed at the strength with which some of our clients and potential clients have dealt with life's curveballs. It's a good reminder to give some breaks to that driver who's going too slow in front of you on I-45, the person at the gym with their headphones set to Surround Sound, or the store clerk who's wearing a rough Tuesday on their sleeve a little bit. You really, **really** don't know what the guy ahead of you and the girl behind you in the Starbucks line are dealing with that day, week, month, or even year.

- Finally, speaking of curveballs: I'm the resident baseball geek at the Law Office of Bryan Fagan, so as a reminder: the Astros are back. Not sure if you heard (spoiler alert: you probably did), but they won the World Series last year. The team should actually be **even better** in 2018, though. I highly recommend taking the kids out to the ballpark at least a few times this spring and summer if you can, and letting them stay up a little late to watch some games on TV. Sneaking suspicion: there will be plenty of opportunities to cheer.

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SEVEN TIPS FOR DIVORCING AFTER 50

The Wall Street Journal published a very interesting article on March 3, 2012 “The Gray Divorces”, which reported that the divorce rate for people age 50 and over, has doubled in the past two decades. Although the national divorce rates have declined, since spiking in the 1980’s.

If you have been unhappy in your marriage for years, and the thought of spending your remaining years with a person who makes you so unhappy, you may feel a new energy and excitement by the idea of starting a new life without that person.

Not too long ago I had a conversation with an eighty-year old man who confessed that he had never loved his wife and that the only reason he married her was he had felt sorry for her. He told me that he had tried to love her but she never liked to be touched by him and that the only time they were ever together physically is when they made their children.

His wife’s mother had told her was that to do otherwise was dirty. This man had finally met someone who loved him and liked to be touched by him. He said he was the happiest he had been

Couples that divorce later in life usually have more history not only together but with mutual friends and with their families. This mutual history can make going through a divorce and being newly divorced challenging.



in over 50 years.

That is one scenario. However, what about the other side you are settling into your golden years with your spouse, only to be told by your spouse that they want a divorce. you may feel like your world has been turned upside down. In either scenario, a divorce after 50 has its own unique challenges that divorces for younger couples does not share.

WHAT IS DIFFERENT ABOUT DIVORCE AFTER 50?

Some unique challenges for a couple divorcing after 50 include:

1. Decades of history together, with mutual friends, and family members.
2. the Kids
3. Finances after 50

DECADES OF HISTORY

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WHAT IS DIFFERENT ABOUT DIVORCE AFTER 50?

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divorce and being newly divorced challenging.

Even though you may have divorced your spouse does not mean they are going to disappear from your life. One example is that on my wife's side of the family she had an Uncle who got divorced and his Ex still got invited to family events such as Thanksgiving and Christmas. He found this interaction with his Ex awkward and stopped going until they stopped inviting her.

This may seem like common sense but I have observed the same thing in cases I have handled you may be ready to separate from your spouse but your family may love and have bonded with your spouse and not be ready to separate. Remember they have decades together of history together.

Or if you are not the spouse that wanted the divorce and you are now single what are you supposed to do? How are you supposed to act? This was what the Uncle in the above scenario experienced. He had not wanted the divorce and it took him several years to recover.

THE KIDS

Even if your children are grown does not mean the divorce will not impact your kids or make them suffering any less. Just because your children are grown when you divorce does not mean that they will not be hurt.

I had a friend whose father filed for divorce not long after he started college. The divorce rocked his world and he did not talk to his father if he could help it for years. He almost did not invite his father to his own wedding.

As difficult as dealing with all of these emotional issues will be, one of the most significant impact that divorce over 50 will have on your life is the financial strain that divorce inevitably brings with it.

THE FINANCIAL IMPACT OF DIVORCE AFTER 50

Getting a divorce is expensive no matter how old you are. However, generally the older you are, the more complicated your finances are. For example, when you are middle age you may have:

1. a house
2. several vehicles
3. some retirement accounts
4. a mortgage
5. car loans
6. credit card bills
7. student loans either yours or your children's
8. perhaps a family business
9. Less time to recover financially from a divorce

These various assets and debts can make your divorce more financially complicated. These financial complications generally also mean that your divorce will be more expensive as well. Something also to be cognizant of is that divorce after 50 means you have less time to recover financially after you are divorced. There will be less time to:

1. Put away for retirement or
2. Bounce back from bad investments
3. Which means risky higher return investments are even riskier
4. Less time to go back to school to get degree or new to degree in order to switch careers

TIPS FOR DEALING WITH A DIVORCE AFTER 50 TO LESSEN THE IMPACT

1. Seek professional help
2. Consider alternatives to litigation
3. Take the time to understand your finance before and after the divorce
4. Do not ignore tax on retirement funds
5. Do not overvalue alimony or under value social security
6. Accept that your lifestyle after the divorce will be different
7. consider getting a job as soon as possible



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Bryan Fagan, Esq

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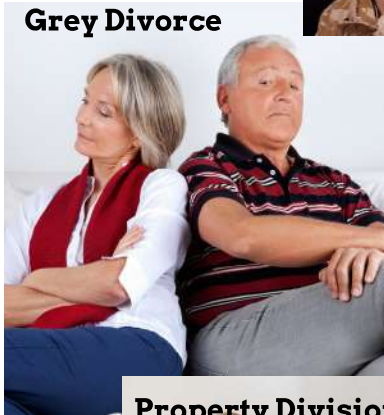
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