



LAW OFFICE OF
BRYAN FAGAN
— PLLC —



PROPERTY DIVISION ENFORCEMENT IN HOUSTON, TX

WORK WITH A HOUSTON ATTORNEY

CALL US FOR ALL YOUR FAMILY LAW NEEDS (281) 810-9760

INTRODUCTION

Thank you for downloading our special report: about Property Division Enforcement, with information that will help you protect your assets and secure your future. For more insider divorce tips, please download our other special reports about Dirty Divorce Tricks, How to Plan and Prepare for Divorce, and Divorce after 50. We understand that you have a lot of questions and concerns about your divorce and we want to help you feel as comfortable with the process as we can. If you would like to speak to one of our highly skilled Law Office of Bryan Fagan, PLLC attorneys, we encourage you to contact us to schedule a free confidential consultation. We're here for you, always. Sincerely, Bryan Fagan, Law Office of Bryan Fagan

PROPERTY DIVISION ENFORCEMENT IN TEXAS

LET OUR HOUSTON FAMILY LAW ATTORNEY PROTECT YOUR RIGHTS & ENFORCE YOUR DIVORCE DECREE

Once a judge orders a final decree of divorce, you were either ordered to surrender specific assets to your ex-spouse or receive them. If your ex-spouse violates the divorce decree's provisions in relation to the division of the community estate, you may be able to file for an enforcement motion.

At the Law Office of Bryan Fagan, PLLC, we are committed to ensuring the provisions of your final divorce decree are fulfilled. Our Houston family lawyer can thoroughly evaluate your case and determine all of the available legal options to help you obtain the outcome you desire. Prior to getting a court order, we can determine whether mediation or binding arbitration may be a better option if you anticipate issues with enforcing property division.

HOW TO FILE FOR ENFORCEMENT OF PROPERTY DIVISION?

A person must file an "enforcement motion" with the court where you originally filed for divorce. However, if you and your ex-spouse both live in another state, it is possible to file an order in the new state.

You have two years after the final decree was signed to file an enforcement motion.

- Texas Divorce Property Division Enforcement
- Enforcement Suits in Texas Family Law: An Overview
- Enforcement Suits in Texas Family Law, Part Two

A Texas court may enforce the division of property in one of the following ways:

- If a spouse fails to adhere to the decree, the court may award a judgment for money to the wronged party.
- The violating spouse may be ordered to give the disputed property, or an equivalent sum of money, to the wronged party.
- If a spouse failed to make a payment that was ordered, the court may order to pay the unpaid amount to the wronged party.
- The violating party could be held in contempt, which may result in incarceration or probation.
- The court may award attorney fees and costs to the wronged party.

READY TO EVALUATE YOUR CASE TODAY!

Keep in mind, a Texas court may not change the division of property provision in the final divorce decree. A motion for enforcement of property is only limited to enforcing what is stated in the decree and clarify the parts that are considered vague. However, if the court's division of that property is not specific enough to enforce by contempt or otherwise, the judge can clarify the order to make it more specific and, in turn, enforceable.

TEXAS DIVORCE PROPERTY DIVISION ENFORCEMENT

Many people feel relief when their divorce proceedings end and they get the chance to start their lives over. Your new beginning can be frustrated when your ex-spouse refuses to comply with the court's property division. Our attorneys are available to help you ensure that the court's order is followed, and your property is protected, as you go into this new phase in your life.



HOUSTON PROPERTY DIVISION ENFORCEMENT ATTORNEYS

We at the Law Office of Bryan Fagan, PLLC are dedicated to the service of our clients' best interests in matters of property division enforcement. Dealing with the laws regarding property division in Texas can be a difficult matter, so we provide our services to clients throughout the greater Houston area, including the surrounding areas of Harris, Waller, Fort Bend, Montgomery, Washington, and Grimes counties. Let us work to ensure that you keep the property you are entitled to own after your divorce.

JUST AND RIGHT DIVISION

Texas property law is unique, in that most of the property acquired by the couple during the marriage becomes "community property." This property does not belong to either of the spouses individually, but instead belongs to the marriage. When the marriage ends, the court divides up this property in a "Just and Right Division."

What is "Just and Right" is a question for the court. Who gets what is based on a lot of factors, including the history, income, and behavior of the spouses.

PROTECTING PROPERTY DURING THE DIVORCE

During the divorce proceedings, the court can issue a Temporary Restraining Order to prevent one spouse from removing, tampering with, or damaging property. These restraining orders can also be issued to prevent other harassing behaviors by either spouse.

The court may also issue a Temporary Injunction allowing one spouse to occupy the home and/or run the family business during the divorce.

If you have questions regarding protecting property during a divorce, you should speak with one of our Houston Divorce Attorneys about your options.

FURTHER COURT ORDERS TO CLARIFY

In some cases, the original court order may not be entirely clear regarding who gets what property, or how they can use it. In those cases, our attorneys can work with you to obtain further court orders to clarify the original order.

These orders will not change the original division of property, but they can help protect you from acting unlawfully without realizing it, as well as protect your property from your ex-spouse.

ENFORCEMENT SUITS IN TEXAS FAMILY LAW: AN OVERVIEW

If you have ever been involved in family lawcase in Texas it is likely that you either settled your case or ended your case in a trial before a judge.

The result of either of those situations is that a Final Order of some sort was signed off on by you, the opposing party and the judge. That order now stands as the ground-rules for governing the relationship between you and your child whether you like it or not.

In some instances people don't like what the order says in many regards and decide that not abiding by its terms will be an alright thing to do. If you find yourself in a situation where your ex-spouse or child's other parent has violated the court's order then you have the ability to hold them responsible, potentially, for their actions.

I say potentially because, as I often remind clients, you cannot simply contact the police or constable and inform them of a violation of your order. You must file what is known as an Enforcement in the same court that issued your prior order and present evidence as to the specifics of each violation. Today's blog post will discuss this process in some detail.



Potential remedies under a family law Enforcement suit.

Enforcement actions have many different parts to them that encompass not only Texas Family Law matters, but criminal law and case law that appellate judges have handed down over the years.

You and your attorney must be able to find the correct “blend” of these sets of laws in order to arrive at a remedy that is suitable for your situation. Let’s go over some of those remedies to begin our discussion.

CONTEMPT OF COURT

Having a court determine that your opposing party is in contempt of court is a very serious matter. Our state law defines contempt of court as the failure of a person to obey an order of the court, disrespectful actions towards a judge or a disruption of courtroom proceedings through negative behavior.

There are dual penalties that a judge in Texas may assess against a person for being found in contempt of court. The first is a civil fine that is often assessed against every violation the court determines is applicable.

An even more serious remedy available is jail time for violations of a court’s order. This is obviously a criminal penalty that is made available even in a civil case like an enforcement. The maximum amount of time a person is able to serve in prison for violation of a court’s order is 180 days. \$500 per violation may be doled out by a judge as a penalty.

Beyond the types of contempt of court penalties that can be handed down by a judge, there are two types of contempt.

A MOTION TO ENFORCE: WHAT IT MEANS AND HOW TO BEGIN THE PROCESS

To understand an enforcement suit it is critical to understand just why a court’s order must be followed in the first place. The fact of the matter is that while you and your child’s other parent probably agree that you both want what is best for your child, neither of you can agree on how to go about arriving at “what is best”.

You’ve already gone to court because you couldn’t agree and now have a court order that plays tie breaker for you two.

That order contains the specific rules of engagement for you two to follow. The order’s language must be specific and clear for a court to enforce it potentially. Assuming that your order is, then there is the potential for an enforcement action should you or your child’s other parent violate that order.

Just as the order itself must be clear and concise, so must your motion for enforcement. The motion must include the specific provisions that were violated as well as the relief you are requesting from the court. You can attempt to enforce issues related to custody, possession, conservatorship, visitation, child support, spousal support or property division among others.

The penalties you are seeking must be requested correctly. For example, I noted earlier that a person can only be made to serve up to 180 days in jail for violations of a court’s order. If you ask for more than 180 days a penalty, the opposing party can request a trial by jury and even have an attorney appointed to represent him or her. This follows the law from the United States Constitution.

A real world example of this can be seen in a enforcement case that I defended last year. The opposing party made a mistake in her motion and asked the court to assess far more than 180 days of jail time as a penalty for violating the court’s order. With that said, I made sure to file a motion with the court request a jury trial based on this mistake.



ENFORCEMENT SUITS IN TEXAS FAMILY LAW, PART TWO

CHILD SUPPORT ENFORCEMENT ESSENTIALS

If your ex-spouse is not paying his or her child support on time or isn't paying at all then your enforcement suit would likely center around evidence showing these missed or failed payments. To begin, you will need to quote or reference the specific portion of the order that states how much is to be paid on a monthly basis.

The next section should give a specific statement as to how much (if any) child support has actually been paid and the amount still owed based on the two numbers being subtracted. The judge will not "do the math" for you. You must provide the specific numbers for the court to review and consider.

ENFORCEMENT ESSENTIALS IN ANY AREA BESIDES CHILD SUPPORT

Child support is based largely on math- what should have been paid by a certain date minus what actually has been paid by that same date. Other areas of the court's order can obviously be violated as well but require less in the way of arithmetic but an equal amount of attention to detail.

To satisfy the law in regard to non child support enforcement suits, you must:

- ☑ Specifically identify the provision from the court's prior order that has been violated. Most of the time it is most sensible to "cut and paste" the section from the order and insert it into your enforcement suit. That way there is no question as to what section you are referring to in the enforcement.
- ☑ You will need to specify as to how the noncompliance with the order has occurred. If your ex spouse did not pick up your child on his weekends for two straight months this would need to be specified in your motion.
- ☑ You need to be specific as to what sort of relief you want from the court. Whether it is additional time with your child to compensate you for missed opportunities to be with him or her, or jail time for failing to pay child support you must make it crystal clear to the opposing party and the court what relief is being asked for
- ☑ Your attorney must sign the enforcement suit prior to its being filed with the clerk and served upon the opposing party

FILING DEADLINES ON ENFORCEMENT SUITS

There are different deadlines to file different sorts of enforcement actions in Texas family courts. If you are attempting to enforce provisions related to child support then your lawsuit must be filed no later than six months after:

- ☑ The child becomes an adult
- ☑ The child support obligation ends under the order by operation of law. In most orders this means at the age of eighteen or the child's graduation from an accredited secondary school (high school).

A key to understand, no matter if you are the parent who pays child support or receives child support, is that if the enforcement suit involves child support that is due but has not yet been received there is no deadline to file. This means that you can be long past the age where your child is a minor and still be on the hook for failing to pay child support.

We discussed yesterday the possibility of you serving time in jail for failing to pay child support but this is not the only penalty available under state law. Fines, an award of attorney's fees to your opposing party as well as the loss of your driver's license may result if a child support decision is made against you.

The court can go after your paychecks and also your tax refunds until the arrearage in child support is paid.



PROPERTY DIVISION IN THE CONTEXT OF AN ENFORCEMENT SUIT

If your enforcement lawsuit is based on your spouse failing to abide by the terms of your divorce decree's orders related to property division then you have until two years after the divorce decree was signed in order to bring an enforcement suit.

If the property in question was not in existence at the time the order was signed but is now, the enforcement must be brought within two years of that property coming to fruition.

HOW IS SPOUSAL MAINTENANCE COVERED IN AN ENFORCEMENT SUIT IN TEXAS?

State law provides no rules as far as when an enforcement for spousal maintenance is concerned.

This means that, like child support arrearages, you can bring or have a suit brought against you any time after the order is signed. I have seen personally a handful of spousal maintenance claims that need to be brought for clients who have been put in bad situations because of the failure of a person to pay spousal maintenance correctly or at all.

If your ex spouse decides out of the blue to just stop paying your spousal maintenance each month you can bring an enforcement suit no matter how long ago your final decree was signed.

PART THREE OF THE LAW OFFICE OF BRYAN FAGAN, PLLC'S SERIES ON ENFORCEMENT SUITS TO BE POSTED TOMORROW

Enforcements are a serious matter and as a result we will need more time to discuss these issues. Please come on back tomorrow to read our third post this week on this subject.

The Law Office of Bryan Fagan, PLLC represents clients across Texas and would be honored to do the same for you and your family. Please contact us today to set up a free of charge consultation to discuss your questions and to ask one of our licensed family law attorneys to tell you more about our office and the services we provide to clients.





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WE'RE HERE FOR YOU

When it comes to your financial future, your peace of mind matters. No matter where you are in the divorce process, we are always available to help you protect your assets and safeguard your future. As a Texas law firm exclusively devoted to divorce and family law, our experienced divorce attorneys will explain your options and support you throughout the process. Please contact us at (281) 810-9760 if you would like to schedule a free confidential consultation

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