

## session 13: **teacher resource** DIVORCE IN TEXAS

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- WHAT IS THE CURRENT DIVORCE RATE IN TEXAS?

The number of divorces reported to the Vital Statistics Unit of the Texas Department of State Health Services has decreased. For 2004, the divorce rate of 3.6 divorces per 1,000 residents is slightly lower than the rate of 3.8 divorces per 1,000 residents that was reported in 2003. (VSU,Tx. Dept. of State Health Services)

- WHERE DO YOU GO TO FILE FOR DIVORCE?

One spouse must have resided in the state for the last six months and have resided in the county for the last 90 days. A spouse who lives in a different state or nation may file in the Texas county where the other lives, if the other spouse has lived there for at least six months. (adapted from Texas Family Code - §: 6.301)

- WHAT ARE GROUNDS FOR FILING FOR DIVORCE?

The appropriate lawful ground will be that which the parties agree upon and can substantiate or that which the filing spouse desires to prove to the court. The divorce grounds are as follows:

**NO FAULT (Insupportability).** The court may grant a divorce without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroys the...marital relationship and prevents...any expectation of reconciliation.

**CRUELTY.** The court may grant a divorce in favor of one spouse if the other spouse is guilty of cruel treatment toward the complaining spouse that makes it impossible to live together anymore.

**ADULTERY.** The court may grant a divorce in favor of one spouse if the other spouse has committed adultery.

**CONVICTION OF FELONY.** (a) The court may grant a divorce in favor of one spouse if during the marriage the other spouse: (1) has been convicted of a felony; (2) has been imprisoned for at least one year in the state penitentiary, a federal penitentiary, or the penitentiary of another state; and (3) has not been pardoned. (b) The court may not grant a divorce under this section against a spouse who was convicted on the testimony of the other spouse.

ABANDONMENT. The court may grant a divorce in favor of one spouse if the other spouse: (1) left the complaining spouse with the intention of abandonment; and (2) remained away for at least one year.

LIVING APART. The court may grant a divorce in favor of either spouse if the spouses have lived apart without cohabitation for at least three years.

CONFINEMENT IN MENTAL HOSPITAL. The court may grant a divorce in favor of one spouse if at the time the suit is filed: (1) the other spouse has been confined in a state mental hospital or private mental hospital... in this state or another state for at least three years; and (2) it appears that the hospitalized spouse's mental disorder is of such a degree and nature that adjustment is unlikely or that, if adjustment occurs, a relapse is probable. (adapted from Texas Family Code - §: 6.001-6.007)

- HOW DOES A PERSON BEGIN THE DIVORCE PROCESS?

The most common scenario is when one party (petitioner) retains a lawyer to file for divorce against the other party. The attorney prepares an Original Petition for Divorce and files the divorce in the District Court in the County in which the husband or the wife resides. There is a filing fee charged by the County. The spouse (Respondent) is then served with the divorce papers by a private process server or Constable. The Respondent then may file an Answer within a specified period of time and/or hire an attorney to represent his/her interests.

- HOW LONG DOES IT TAKE TO GET DIVORCED?

There is a sixty-day waiting period from the date the divorce suit is filed with the county clerk until a court will grant the divorce. Of course, if the parties are not in agreement on the terms of the divorce, it probably will take longer to get the divorce finalized.

- CAN PEOPLE GET DIVORCED WITHOUT HIRING AN ATTORNEY?

There are a few ways, but ...if you go into court on your own (pro se) then you are still required to know and follow all the laws and rules, such as the Rules of Civil Procedure and Evidence. Many law libraries are open to the public and have resources for do-it-yourself divorces. They may also maintain a list of free and low cost legal clinics that may be available to you if you qualify (usually the client must be indigent). Many Web sites offer the appropriate forms and information.

- WHAT IS MEDIATION?

Mediation is a settlement conference which is run by a person whose only job is to help the parties reach an agreement. The mediator cannot simply announce the terms of divorce, as an arbitrator could. The mediator cannot force anyone to do anything, and all proceedings are confidential.

Because judges generally view mediation as a “good thing,” and because cases that settle do not clog up the court dockets with trials, you should expect your case to be ordered to mediation. If you reach an agreement before the mediation date, you will not have to pay for the mediator or for attorney’s fees for attending mediation.

- WHAT HAPPENS TO THE ASSETS THE COUPLE HAS ACQUIRED DURING THE MARRIAGE?

Texas is a “Community Property” state. Community property is all property that was acquired during the marriage. The court orders division of the estate of the parties in a manner that the court deems just and right. This property will be divided equally (50-50) by the court if the parties are not able to come to an agreement...having due regard for the rights of each party and any children of the marriage. (Family Code §7.001)

- HOW DOES AN ANNULMENT WORK?

Texas law does provide some basis for an annulment instead of a divorce, but cases in which the facts fit the law are extremely rare, so these cases almost always wind up as divorces. Annulment statutes are based on some sort of trick or deception at the time of marriage and also require that the parties have not lived together since the trick or deception was discovered. An annulment may be had:

- if one of the spouses is under 18 years of age and no parental consent or court order was obtained before the marriage
- if the person asking for annulment was under the influence of alcohol or narcotics at the time of marriage and has not voluntarily cohabited with the other party since the effects of alcohol or narcotics have ended
- if one of the spouses was permanently impotent at the time of the marriage, the person asking for annulment didn’t know about the impotence at the time of marriage, and the person asking for the annulment has not voluntarily cohabited with the other party since learning of the impotence
- the other party used fraud, duress, or force to induce the petitioner to enter into the marriage, and the petitioner has not voluntarily cohabited with the other party
- lack of mental capacity
- concealed divorce less than 30 days before the marriage sought to be annulled (and no cohabitation since)
- if the parties married less than 72 hours after the marriage license was granted and an annulment suit is filed less than 30 days after the marriage

*Except where otherwise noted, the answers for the above questions are adapted from [www.divorcehq.com](http://www.divorcehq.com)*