

# The Woodlands Divorce Guide

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*Answers to common questions about getting divorced in Montgomery County*

TheWoodlandsDivorce.com

## ***What is a Divorce?***

Divorce is a legal procedure to end a legal marriage relationship. It is available in traditional marriages as well as in common-law marriages.

## ***Where does my divorce case get filed?***

Your divorce must be filed in a court that has jurisdiction over all the parties. Usually, this will be a court in the County where both of you live. If you live in different counties, your attorney can determine where to file the case.

You must be a resident of Texas for the last 6 months and a resident of the county where you want to file your case for the last 90 days.

*\*If you live in different counties most of the people I work with prefer to file their case first, before the other spouse does so you can attempt to avoid having your case handled in another county far away.*

## ***What do I file to begin my divorce case?***

Every divorce case begins with a formal pleading titled "Original Petition for Divorce." The initial pleading must contain enough information to establish that the court where you file it has jurisdiction over the case and the parties involved.

In addition it must include a request for the relief that you are asking from the court as well as the basis for that relief. If you leave something out on the Original Petition and need to correct it later on you may be forced to re-serve the petition on the other party.

## ***What if there are mistakes in my Original Petition?***

The Original Petition for Divorce is a very important pleading because it puts the other party on notice concerning which claims you are making and the relief you are seeking. If you leave something out of the Original Petition then the judge may not allow you to argue a specific claim or present evidence on an issue. Do it right the first time.

## ***What are the filing and other fees?***

The filing fee in Montgomery County for a divorce lawsuit is currently \$292. The District Clerk charges an additional \$8.38 in electronic filing fees. In addition you will have to pay the process servers fee to complete service of process which varies with the person you choose, but is generally \$75.

## ***Do I need an Attorney?***

You are not required to have an attorney protect your rights and interests in a divorce case. Many people end up finding some of the advantages to having an attorney are:

- 1) getting on the court's docket faster while pro se trials are currently set about 1 year from filing according to Judge Gilbert of the 418<sup>th</sup> District Court;
- 2) having everything in acceptable form when you do need the court to rule on the divorce or a pre-trial motion – Judge Gilbert recently revealed he refuses approximately 50% of the self-represented divorce decrees that people ask him to grant because they do not meet the legal requirements of enforceability;
- 3) protecting rights you may not even know you had (Does the language in your document give away more than you think it does? Is the child support figure accurate? Are you able to enforce a breach of the divorce settlement? Are you walking away from property that you have a legal right to? Is all the community property divided in the decree? Is Alimony correctly determined?)

## ***Can One Attorney Represent Both of Us, if we Agree?***

No. One Attorney can ***never*** represent both parties to a divorce, even if you agree. A divorce is litigation where one spouse is suing the other spouse to divide property and determine legal rights and responsibilities towards each other and children. An Attorney representing both sides in a divorce would be the same as representing Coke and Pepsi in a lawsuit between the two companies.

## ***I've Been Served With Divorce Papers, What Now?***

If your spouse had you served with his or her divorce petition it is critical that you and your attorney file a written Answer to the petition within the deadline, usually 20 days after you are served. If you do not file a valid Answer before the deadline, then your spouse may obtain a default judgment against you and the judge may decide on your case without ever hearing your side. The clock is ticking once you are served; contact The Shea Law Firm immediately so we can begin to prepare your case.

## ***We Are Already Separated***

That is great, but it does not mean much in a Texas divorce court. You may be living separately for 2 months or 20 years but the State of Texas does not recognize legal separation in any form unless you have a valid property agreement. All the property and income you've accumulated during the time you believed you were separated can be brought into the final property division as presumed community property.

## ***How long will it take before my divorce is final?***

There is a minimum 60 day waiting period before a divorce can be finalized in Texas. In a very simple divorce where there are absolutely no disputed issues or unusual circumstances that need to be addressed a divorce can be finalized on the 61<sup>st</sup> day if the court has room on its docket.

Very few divorces are finalized on the 61<sup>st</sup> day however. If children are involved, or as the amount of property that must be divided increases it generally takes longer to reach a settlement agreement.

If you intend to go to trial, you will generally not receive a trial date until 6 months after your case was filed. In addition, there may be delays due to discovery or other issues that develop during the course of your case.

## ***What is an Uncontested Divorce?***

An uncontested divorce is generally used when the parties have already maintained separate residences for some time and have already divided property. If there is any negotiation remaining that you need your attorney to be involved in then your case probably does not qualify as uncontested.

## ***What is a Collaborative Divorce?***

A [Collaborative Divorce](#) is not the same as an Uncontested Divorce and is generally only used when the parties need to maintain a parenting relationship with each other after the divorce is final, there are complicated business assets that need to be divided, or both parties want to maintain their families' privacy.

Collaborative divorce is a process through which you and your spouse, and each of your attorneys, commit themselves to resolving all issues of the divorce by negotiated agreement without resorting, or threatening to resort, to costly court proceedings. Collaborative divorce uses informal methods such as voluntary production of financial documents, four-way conferences, negotiation, and where needed, outside professionals such as accountants, financial planners and family counselors.

While some lawyers may refer to themselves as being collaborative in style, true collaborative lawyering requires commitment to the "no court" aspect of the process and a written contract to that effect. If you do not have a written contract you do not have a genuine Collaborative Divorce. One way or another you and your spouse are going through this divorce together and the Collaborative divorce process can make it easier when used appropriately.

The Shea Law Firm focuses on Collaborative Law as a positive and productive method of resolving disputes so that you can get on with your life rather than wage war for the next 12-18 months. If you think this is right for you, speak with us about your options. Do not get fooled into thinking every lawyer is properly trained to represent you in a Collaborative Divorce (many attorneys do not even understand the requirements of a Collaborative Divorce and some use it as a marketing tactic).

[Listen to 2 couples](#) that went through the Collaborative process and how it preserved their ability to be effective parents.

## ***What is a Contested or Litigated Divorce?***

A contested divorce does not mean one party objects to getting the divorce. In almost all contested divorces both parties want a divorce, but they have not resolved the vital issues of custody, support, and property division. One quick way to tell if your case is contested is if your spouse had you served with a divorce complaint then odds are your divorce is contested.

## ***What is Community Property?***

Community property consists of the property, other than separate property, acquired by either spouse during marriage.

## ***When Does Community Property End?***

Texas is one of the few states left that continues to presume all property acquired up until the day the judge orders the divorce as community property. That means even after one of you has filed divorce and your case is proceeding the court still presumes any property you acquire is community property and subject to division in the final divorce. Spouses may also set aside all or part of their community property as separate property by partition or exchange agreement.

## ***What is Waste of Community Property?***

One common area of dispute during a divorce is if one spouse “wasted” community property and should therefore be penalized for that waste in the final property division. The legal requirement for “waste” requires disposal of community assets for non-community purposes or transfer of assets outside of the community. For example, gifts to a new girlfriend or boyfriend or even family member. Those are transfers of assets that remove community property from the estate. A court recently confirmed that it is not “waste” when one party to a divorce makes large purchases during the divorce because the purchases remain community property and subject to division as part of the divorce. A party making such purchases may be guilty of other things, but “waste” is likely not one of them.

## ***What is Separate Property?***

Separate property consists of (1) the property owned or claimed by a spouse before marriage; (2) the property acquired by the spouse during marriage by gift, devise, or descent; and (3) the recovery for personal injuries sustained by the spouse during the marriage, except any recovery for loss of earning capacity during marriage.

This is it for separate property. If you have an item that does not fit into one of those categories then you probably cannot protect it as separate property. Depending on the facts, there may be other strategies available to protect the value of the property however.

## ***How much child support is required?***

Child Support is determined by first discovering what the parent paying child support's "net resources" are. "Net resources" is a legal term with a very specific meaning and is generally the center point of disputes concerning child support. Once the net resources are determined, the statutory guidelines set the following percentages as presumed reasonable:

1 child = 20%

2 children = 25%

3 children = 30%

4 children = 35%

5 children = 40%

## ***Child Support for High Income Parents***

The guidelines above only apply to the first \$8,550 of monthly net resources in the case of a high income parent. The amount of child support applied on the amount above \$8,550 is based on many different factors and the evidence available in your case.

## ***Child Support for Disabled Children***

Child support usually ends when the child reaches 18 or finishes high school. However, if a child is disabled and meets certain legal and factual criteria the court can order child support for as long as is necessary, and even indefinitely.

## ***Am I eligible for Spousal Maintenance?***

In order to be eligible for spousal maintenance the marriage must have lasted at least ten years. If your marriage did not last ten years the court does not have authority to grant spousal maintenance.

Although a judge may not be able to award spousal maintenance if certain legal requirements are not satisfied, both parties are free to agree to some form of spousal maintenance as part of a final divorce settlement. If you include alimony, make sure you don't get caught in [the IRS recapture tax](#).

Even if your marriage did not last ten years you may be eligible for temporary spousal maintenance while the case is pending.

### ***What are Temporary Orders?***

Temporary Orders are the rules for what each spouse can and cannot do while the case is pending. Temporary orders may include a restraining order, child support, spousal support, payment of legal fees, and other court orders designed to protect property and maintain the status quo. Montgomery County has standing orders that automatically go into effect when a case is filed. You can read about them here:

<http://thewoodlandsdivorce.com/2009/05/29/montgomery-county-standing-orders-part-1/>

### ***What is the Standard Possession Order?***

The Standard Possession Order is visitation every other weekend from 6pm Friday through 6pm Sunday. The Standard Possession Order only applies to children age 3 or older.

### ***What is Visitation for Children Younger than 3?***

In the case of a child younger than 3 years old, the judge is responsible for entering a visitation order that is appropriate based on:

1. the age, developmental status, circumstances, needs, and best interest of the child;
2. the circumstances of the managing conservator and of the parent named as a possessory conservator; and
3. any other relevant factor.

### ***Can we modify the Standard Possession Order?***

Yes you can, however it is your responsibility to convince the judge that the modifications are in the child's best interests. It may seem logical that splitting time between both parents is in the child's best interests but the judges are very familiar and very comfortable with the Standard Order. Generally the only time you can obtain a modified possession order is by agreement of the parties through mediation or the collaborative law process.

## ***What is Discovery?***

Discovery is a pre-trial process used to gather information from the other spouse and 3<sup>rd</sup> parties. Usually this is focused on obtaining information about assets but it can also be used to pursue information on other issues such as adultery.

Discovery is expensive because each side is forced to compile their own huge set of responses to requests for production and then sort through the documents provided by the other side. A Collaborative Divorce can help you avoid the increased legal fees from formal discovery.

## ***Will You Get 50% of Community Property?***

Maybe, but Texas is not a 50/50 state. The standard for property division is whatever the judge thinks is "[just and right](#)" given the facts of your case. So if there is some wrongdoing on your part, be prepared to receive less than 50% of the Community Property. The more severe the wrongdoing, then the less property you may receive.

## ***How are Retirement Accounts like 401(k)s handled?***

Retirement accounts such as 401(k)s are subject to the community property and separate property rules just like any other asset. Just because it is in one spouse's name does not mean they own 100% of it and it is not community property. Dividing retirement accounts and 401(k)s are generally done through a Qualified Domestic Relations Order (QDRO).

You have to be extra careful with the divorce decree language dividing retirement accounts. In a recent case out of San Antonio one person lost a [lot more of their retirement benefits](#) than they thought they agreed to. That was some expensive sloppy divorce decree language.

## ***How are Stock Options and Restricted Stock handled?***

This would take more time to cover than I have here, but for additional information on stock options and restricted stock you can read:

[Pre-Marriage Stock Options and Restricted Stock](#)

[Post Marriage Stock Options and Community Property](#)

[Exercising Stock Options After Divorce](#)

## ***How Is a Business Owned By Either Of You Handled?***

Business owners face some very serious issues when going through a divorce. Valuation of closely held businesses is almost always an issue, especially in litigation. On top of that, if the business is being used in a way that the judge does not like he can [appoint a Receiver](#) to take over control of the business during the divorce.

[Goodwill and Closely Held Businesses](#)

[5 Rules for Your Sole Proprietorship and Divorce](#)

## ***How are Student Loans handled?***

Student loan debt is generally treated the same way as property. This means that if the loans were incurred before marriage it is likely, not guaranteed, that the judge will treat the debt as separate debt. If the loans were incurred during the marriage, then it is likely the judge will treat the [debt as community debt](#) and it is subject to allocation between both parties.

## ***Will I have to go to court?***

In the end everyone has to go to court at least once for the final hearing at a minimum. If you end up in a litigated divorce then you will have to go to court many more times than that.

## ***What about my privacy?***

Divorces are heard in a public courtroom and are part of public record. If you want to protect your privacy, consider a collaborative divorce.

## ***Is Counseling Required?***

The Montgomery County judges do require parental counseling before a divorce is granted when children are involved. This is not marriage counseling to try to reconcile the marriage relationship. It is a short course taught by professionals that addresses some of the common issues with how divorce affects children.

If you do not have any children involved in your divorce then no counseling is automatically required, although the judge does have authority to order counseling if they choose to.

## ***What Information or Documents Will I Need?***

Each case requires different documents. At a minimum you will need:

- Your 2 most recent paystubs;
- Your 2 most recent income tax returns;
- The most recent statements for all accounts you own;
- The deeds for any real estate outside of Montgomery County;
- The most recent statements for any debts that you owe;
- A list of your monthly expenses that is as accurate as possible.

You do not have to have this information ready to begin your case, but you will need to provide it within the first 30 days after your case is filed.

## ***How much does it cost?***

The Shea Law Firm currently uses the following fee schedule, however rates are subject to change in the future:

Uncontested Divorce with no property*, no debt, and no children	\$995
Uncontested Divorce with property, debt, or children	\$1,995
Collaborative Divorce (\$3,500 retainer required)	\$300/hour

***\*Please note this does not mean there is no property or debt changing names, it means no property or debt at all in the case. If either of you have property or debt it needs to be addressed in the case even if the ownership is not changing names.***

## ***Additional Information***

This Guide is only to cover some of the most basic information about getting divorce in The Woodlands and Montgomery County. For additional information visit the growing library of free articles at [TheWoodlandsDivorce.com](http://TheWoodlandsDivorce.com). If you need a local and experienced divorce attorney that represents people throughout all of Montgomery County call or text Attorney Richard Shea at (832) 592-7913.

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