

THE LEGAL ASSISTANCE OFFICES OF
III CORPS, 1ST CAVALRY DIVISION, 4TH INFANTRY DIVISION
(MECHANIZED)
FORT HOOD, TEXAS 76544

DIVORCE

I. QUALIFICATIONS FOR A TEXAS DIVORCE

A. Residency Requirements

1. You or your spouse must live in Texas for at least 6 months.
2. You or your spouse must live in the county where you file suit for at least 3 months.
3. If you are a Texas resident but have been absent from Texas because of military orders **OVERSEAS CHECK**, State law deems that the residency requirement is met.
4. It does not matter if your home of record is not Texas. You just need to physically reside in Texas.

B. Grounds for Divorce

1. Texas will grant a divorce based on the following “no-fault” grounds:
 - a. Insupportability of the marriage based on irreconcilable differences.
 - b. Living apart for three (3) years.
 - c. Confinement in a mental hospital.
2. Texas also grants “fault” divorces on the grounds of:
 - a. Cruelty.
 - b. Adultery.
 - c. Felony conviction.
 - d. Abandonment for one year.
3. If the wife is pregnant, you must wait for the child to be born and at least five days old before you can get divorced. It does not matter if the husband is not the father of the child.

C. Types of Divorces

1. Uncontested - This is when both parties agree to the divorce, the property division, separation of debts, child custody and visitation issues, and other miscellaneous issues. Uncontested divorces are substantially cheaper and quicker than when the parties can not agree to the terms.

2. Contested - This is when the parties can NOT agree to the terms of the divorce. A contested divorce consists of an actual trial with testimony and witnesses which can take months or even years to complete.

D. Timing of the Divorce

1. There is a minimum waiting period of 60 days before a divorce is final. The 60 days begin to count from the day you file the petition.

2. In Texas, you may NOT remarry within thirty (30) days of your divorce, unless you are remarrying the same spouse, without the court's permission. This limitation on remarriage may not apply in other states.

E. Legal Separation

Texas requires neither a legal separation nor that the parties live separate and apart before obtaining a divorce. In fact, Texas does not have a legal separation. You are either married or divorced in Texas.

II. PRO SE PROGRAM

The legal assistance offices provide Pro Se divorce assistance for qualified clients. A Pro Se divorce is a divorce in which the court allows you to represent yourself without hiring an attorney.

A. Qualifications for the Pro Se program

1. You must be in the rank of Sergeant (E-5) or below.
2. You must not have any children born of the marriage.
3. Both parties must agree to an uncontested divorce.
4. Both parties must agree to the division of property.
5. Both parties must agree to the division of debt responsibility.
6. Neither party can own real property.

B. Legal Assistance Role

The legal assistance attorney assists the client with the paperwork necessary for the divorce and advises you of the specific procedures associated with the divorce. You will be advised on the entire procedure, from filing the petition to what to say when you are at court. Each office has its own procedure of how it runs its divorce program. Your legal assistance office can advise you of its process.

C. Filing Fees

The petitioner must pay the court a filing fee when you initially file your petition. Currently, the filing fee in Bell County is \$160.00 and the filing fee in Coryell County is \$145.00. You must pay in cash, money order, or certified check. You can not pay the filing fee with a personal check. You do not have to pay any attorney's fees.

III. CIVILIAN ATTORNEY ASSISTED DIVORCE

A. While the state laws do not specifically require that you have an attorney, it is strongly recommended that you retain an attorney to represent your rights in a divorce action. You want the divorce action that you are undertaking to be final, and do not want to have problems arise in the future. The best way to insure that your divorce is correctly done is to have an attorney represent your interests. There are several topics that you should consider when meeting a civilian attorney. You can obtain a civilian attorney by looking at a referral list in each of the offices. There is also an information sheet available on "How to pick a civilian attorney".

B. Alimony - Texas grants alimony in two limited circumstances. First, if the marriage is longer than ten years and secondly if there is a conviction of spousal abuse within two years of the filing of the divorce.

C. Child Custody - If you have minor children of the marriage, the court will determine which parent will obtain custody of each child, based on what is in the best interest of the child. There is no presumption that the wife should automatically be awarded custody. The terms used for the person having custody in Texas are conservators. The Managing Conservator is the person who will be responsible for the decisions regarding the child's care and well-being. The details of this authority should generally be described in the decree. The Possessory Conservator is the person who will be allowed custody of the child during periods of visitation. The decision-making authority and responsibilities of the Possessory Conservator should be described in the decree. It is possible to have Joint Managing Conservators, where both parents will have input into the raising of the children. This does not mean that each parent will have equal periods of custody. The courts will also require that one parent be the Primary Joint Managing Conservator. If a Joint Managing Conservatorship is used, the terms describing the responsibilities for this arrangement must be included in the decree.

D. Visitation - Visitation terms should be included in the decree. Attempts should be made to arrange visitation schedules that are not only acceptable today, but will be acceptable for the life of the child. The provisions should contain a clause that allows visitation when mutually agreed to by both parents. It should discuss visitation on holidays, weekends, birthdays, and during the summer. The decree should also address how, when, and by whom the children will be transported to visitation, and who will pay the expenses of the transportation.

E. Child Support - The decree should describe the amount of child support that is to be paid, and where it is to be paid. In some cases, the support will be paid directly to the spouse with custody, and in others the support will be paid directly to a governmental agency that will distribute it to the spouse. The terms should state how long the support is to be paid, and when it should terminate (ie., age, death, marriage, etc.). The support provisions should also cover topics such as college education, emancipation, life insurance for the paying spouse, and medical care for the children, to include who makes elective medical care decisions. In Texas, there are guidelines for the amount of support the court will order. In most cases, the amount of support will be a percentage of the earnings of the paying spouse. The percentage required to be paid depends on the number of children being supported. The guidelines are 20% for one child, 25% for two children, 30% for three children and 35% for four or more children. Other states have similar guidelines and may take into account various considerations.

F. Property Division - The decree will divide up the property owned by the couple. As a general rule, all property acquired during the marriage is "community property," and each spouse owns one-half of all that property. The court will divide all community property. Any property owned by a person prior to the marriage, inherited during the marriage or received as a gift is "deemed" separate property. Separate property

is generally not subject to division by the court. If the spouses enter into a property settlement, the court can approve that agreement, if the court believes that the agreement is fair. A soldier's retirement benefits may also be considered community property subject to division by the court.

G. Debts: Just as there is property to divide, there often are debts to divide. Debts can be separate debts or community debts, and generally receive the same division rules as separate or community property (see above). Insist that your attorney obtain releases of liability from the creditors for any loans or credit cards that your spouse says he or she will pay. Unless the credit card company releases you from liability in writing, they can still collect from you if your spouse does not pay the debt. A release is important, because even if your divorce decree says your spouse will pay a particular debt, the creditor may still be able to seek collection from you. Your recourse would then be to sue your ex-spouse. Be sure the decree contains language that indemnifies each spouse against the debts of the other.

H. Taxes - The decree should address tax issues such as filing of the return during the final year of the marriage, cashing any refund received, and issues regarding deductions and credits for expenses incurred on behalf of the children.

I. Military Benefits - Under the Uniformed Former Spouses Protection Act, a spouse will not be entitled to retain an identification card, nor medical benefits unless he or she has been married to the soldier for at least 20 years, and during this marriage the soldier was also on active duty for at least 20 years. If you have been married for at least 10 years during which the soldier was on active duty for 10 years or more, you may qualify for help in collecting support payments from the finance center. If you fall into either of these categories, be sure to inform your attorney. In all other cases, once a divorce is final, the non-soldier spouse loses all military benefits. Continued use of an identification card or military facilities is a crime.

IV. IMPORTANT MISCELLANEOUS INFORMATION

A. Wills - Existing wills should be reviewed when you decide to get divorced. Although divorce nullified the portion of a will leaving property to your spouse, this nullification occurs only when the divorce is finalized, not when the petition is filed.

B. SGLI - Even after the divorce is final, the former spouse will still collect the SGLI proceeds if he or she is named as a beneficiary on the SGLI form. You must delete your former spouses name from the SGLI if you do not want him or her to collect the money.

C. Joint Accounts - Either party should close all joint accounts and cancel joint credit cards when he or she knows that the couple is divorcing. You each should set up individual accounts and notify your spouse that the joint accounts are closed.

D. Check-cashing - Each spouse is liable for the other spouse's returned checks if it is written on an open, joint account. Therefore, you should close joint checking accounts immediately but leave enough funds to cover all outstanding checks. Tell your spouse that you have closed the account and recover any blank checks.

E. Powers of attorney - You should retrieve any POA's from your spouse. If that is impossible, you can contact the legal assistance attorney to get a Revocation of Power of Attorney. The legal assistance office can advise you how to use these.

F. ID Cards - ID cards are valid for the non-soldier spouse until the day the divorce is final. At that time, the soldier should bring a copy of the divorce decree to the ID section in order to correct the ex-spouses status.

G. Divorce Decree - The divorce decree is a very important document and should be kept in a safe place. The decree describes your rights and obligations and may be needed for various reasons throughout your life.

V. ANNULMENT IN TEXAS

Grounds for annulment

Married under the age 14 or between 14 and 18 without consent of a parent or guardian.

Married under the influence of alcohol or narcotics.

Permanent impotency.

Mental incompetence.

Married within thirty days of divorce (unless marriage to previous spouse or you have permission from the court).

Married due to fraud, duress or force to induce the marriage.

If you think you meet any of these requirements and prefer annulment over a divorce, please contact a civilian attorney.

Even though the legal assistance attorney can not represent you in court, they can review divorce documents and advise you on divorce topics. Do not hesitate to contact your legal assistance office for advise on these issues.

FOR ADDITIONAL INFORMATION CONTACT THE LEGAL ASSISTANCE OFFICES ON FORT HOOD: III Corps, Building 1001, Room C224, 287-7901/3199; 1st Cavalry Division, Building 28000, Room 1155, 287-6060; 4th Infantry Division (Mech), Building 410, Room 175, 287-1850.