

“It’s Going to Be Okay”

Divorce Guide:
A starting place for your friends who are starting over



Family Law

We understand. This is an intensely important time in your life, and you undoubtedly have a lot of questions. From the basics like how to select a lawyer, to issues often faced by couples with complex financial and business dealings, the list keeps growing. In addition to concerns about child custody and alimony, you may be looking for answers regarding:

- What happens to stock and other assets that may increase in value over time?
- How will our property be valued and divided?
- What if my spouse and I own a business together?

This guide is your starting place, a source to answer some of your pressing questions. Please remember that this is only an overview and is not meant to serve as legal advice. For more information on how we can help in your specific situation, please call Orsinger, Nelson, Downing & Anderson and speak to one of our attorneys. **It will get better.**

Who can get divorced in Texas?

The short answer is anyone. Texas is a “no fault” state, which means that, while a spouse can file for a divorce based on fault grounds, it is not required. No fault grounds include irreconcilable differences or living apart without cohabitation for at least three years. Divorces based on fault grounds are grouped into four main categories.

Adultery: Adultery is one of the most common reasons for divorce, and can greatly impact the course of the proceedings.

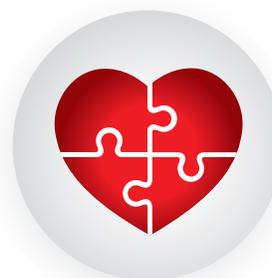
Cruelty: This means that one spouse is treating the other in such a way that living together has become insupportable. Cruelty can include physical and mental abuse, as well as inhumane circumstances.

Felony conviction: If your spouse was convicted of a felony and imprisoned for at least one year, you may ask for a fault-based divorce.

Abandonment: In order to prove abandonment you must show that your spouse voluntarily left

with no intention of returning, and remained away for at least one year.

Proving fault in a divorce can have a large impact on who takes custody of a child, the amount of alimony one spouse is paid by the other, as well as other issues, such as the division of assets between two spouses.



What Are The Issues?

Child Custody: For parents, this is often the most important and contentious aspect of a divorce. Emotions, expectations and attitudes are all in play. While several factors are taken into account when determining the custody, none are taken more seriously than what’s in the best interests of the child. Texas courts assume that both parents will have input in decisions affecting their child’s wellbeing. However, it’s possible that one parent will be given more say regarding things like education or medical care. This may be due to the parent’s profession, or several other factors.

One of the most important determinations to be made is deciding which parent will have the right to designate the child’s primary residence. This decision is informed through evidence and testimony presented to the court. While this can sometimes be an easy determination to make, it isn’t always. If things become contested, the court may expand the circle of those it hears from to include teachers, friends of the family, and others. Although judges always prefer to place a child with their natural parents, there are always exceptions. If circumstances warrant, children can be placed with aunts, uncles, or grandparents.

Property Division: Property can come in the form of businesses, trust funds, stocks, 401Ks, real

estate or even retirement packages. Texas courts differentiate between community property, which is owned by both spouses, and separate property, which is owned by one or the other. Community property is divided in a “just and right” manner, but “just and right” doesn’t always mean equal. Many factors are considered when making this determination. These include fault (if one party is at fault), how the property was acquired, the age and earning power of the spouses, the nature of the property, and many others.

Similar factors are taken into account when determining what is separate property, and what both of these categories are worth. Obviously this process can be time-consuming and its complicated nature demands a special expertise and financial acumen.

Grandparents’ Rights: While grandparents are sometimes given custody over their grandchildren, this isn’t always an easy thing to do. In order for this to happen, grandparents must not only show that they are more fit to hold custody than the child’s parents, but also that lack of access to the grandparents would harm the child’s physical and emotion wellbeing. The Texas Family Code allows for situations where a grandparent would have standing to file for custody. In its own words, a custody suit may be filed by anyone who “has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition.” This refers specifically to instances in which a child has been living with the grandparents.

Visitation & Access: Once conservatorship and primary custody over a child have been decided, the next step is to determine visitation and access rights for each parent. The Texas Family Code lays out a standard possession order detailing when both parents will have possession of a child. However, this schedule is presumed and can be amended depending on specific circumstances, as well as the needs and best interests of the child. Keep in mind that, before children reach the age of three, a standard possession order is not presumed. Rather, the

court will tailor a visitation schedule unique to the child’s needs based on specific criteria laid out in the Texas Family Code.

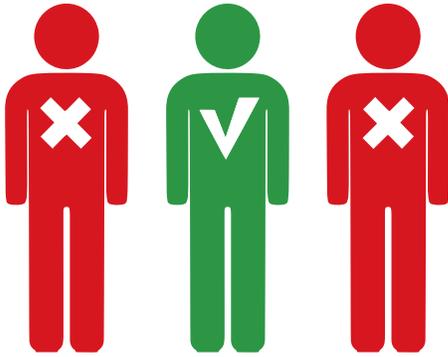


Dividing Business in a Divorce

While a court can easily determine the value of a car or home and divide those assets between two spouses, determining the value of a business can be much more difficult. In these instances, the court will try and categorize the business just as it does any other assets: as community or separate property. Whether it’s one or the other or a mixture of both depends on several factors. These can include the business’ profitability, its level of debt, how much it’s appreciated since the beginning of the marriage, and how it was started.

If a business predates a marriage, then it’s often considered separate property and given to the spouse who started it. Conversely, if the business was started during the marriage, it’s considered community property and divided accordingly. Generally speaking, the court will try and reach an agreement in which two spouses aren’t forced to continue working with one another (although some couples make that decision on their own). This means the business is either given to one spouse or the other, it’s sold and the profits are divided, or one spouse buys the other out.

The preceding examples are somewhat oversimplified. A range of other factors can make determining the value of a business surprisingly complex. A thorough assessment by an attorney with strong business skills will be required to know for sure.



How do I choose the right attorney?

In today's world it's common to seek sound legal advice at some point in one's life. The goal is to find the attorney who's best equipped to help. This isn't a one-size-fits-all proposition. An attorney who handles environmental law may not be the best choice to handle a divorce. Just as you seek a medical specialist for serious healthcare issues, you should turn to an attorney who specializes in Family Law.

When searching for the best family law attorney, consider some key questions:

Do they have the resources to effectively advocate for you?

You want to make sure the firm you hire has the ability to handle anything that comes its way. When dealing with complex issues such as property division, reaching a settlement can take many unexpected twists and turns. Your attorney should be ready to handle any eventuality.

Are they certified in family law by the Texas Board of Legal Specialization?

Board certification is a years-long process that requires an attorney to participate in continuing education courses, be involved in a whole host of family law specific issues, such as marriage, divorce, child custody, and adoption, and pass a comprehensive, daylong, specialty area examination. It's something that only the most experienced and seasoned attorneys are able to achieve.

Are they right for you?

It's always a good idea to take the time to get to know the attorneys who will be representing you. A good relationship outside the courtroom will make it easier for them to fight for you inside the courtroom.

In short, these things matter, and they'll have a big impact on you, your children, and the settlement you ultimately reach with your spouse.

About Our Firm

For 25 years, the attorneys at Orsinger, Nelson, Downing & Anderson have offered unmatched legal services by keeping you, your children, and your finances at the center of our strategy. We have vast experience both litigating and mediating custody matters, marital agreements, visitation rights, property division and a host of other complex issues.

All of our partners are certified in family law by the Texas Board of Legal Specialization. With offices in Dallas, Frisco, and San Antonio, ONDA is ready to help you today. Contact us to learn more about what we can do to make your future better.

Richard R. Orsinger, Keith M. Nelson, R. Scott Downing, Jeffrey O. Anderson, William M. Reppeto, Brad M. LaMorgese, Amber Liddell Alwais, Lon M. Loveless, Marilea Lewis, Paula A. Bennett, Hunter Lewis and Paul Hewett are Board Certified in Family Law by the Texas Board of Legal Specialization. Richard Orsinger is also Board Certified in Civil Appellate Law by the Texas Board of Legal Specialization. Chris Oldner is Board Certified in Criminal Law by the Texas Board of Legal Specialization.



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