



**One Team, One Mission: Your Success!**



# 502d ISG/JA

## Legal Assistance - Divorce FAQ's



***JBSA Vision: The Premier Installation in the Department of Defense!***



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# How To Start



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- Be professional and courteous to spouse
- Save any evidence (text messages, photos, bank data)
- Decide if you want a lawyer or if you want to do the divorce *Pro Se* (by yourself)



# Things To Consider



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- Do you have kids?
- Do you have employment/marketability?
- Where will you live?
- Insurance



# Can I Get Divorced In Texas?



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- One spouse needs to be a legal resident of the state for at least six months (or stationed in the state for at least six months)
- One spouse also needs to be a county resident where the divorce will be filed for at least 90 days
- If you are serving in the military or other government service outside of Texas you may still file for divorce in Texas if:
  - Texas has been the home state of either you or your spouse for at least 6 months and
  - the county where you plan to file the divorce has been the home county of either spouse for at least 90 days.



# Alimony (Spousal Support)



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- Called “spousal maintenance” in Texas
- Spouse requesting it must not be able to meet his/her reasonable needs without it
- Four Ways (generally) to get it:
  1. The spouse from whom spousal maintenance is sought has been convicted or received deferred adjudication for a family violence offense against the other spouse or the other spouse’s child within two years of the filing of the divorce or while the divorce is pending. The duration of the marriage is irrelevant.
  2. The marriage has lasted for at least 10 years AND the spouse seeking alimony is either disabled, the primary caretaker of a disabled child, OR lacks earning ability to provide for his or her minimum reasonable needs.
  3. The parties can agree that spousal maintenance be payable for a certain time period
  4. If a spouse is a sponsored immigrant, he or she could enforce the Affidavit of Support executed by the other spouse and request that the Court order the sponsor to provide the immigrant spouse 125 percent of the Federal Poverty Guidelines until the immigrant spouse becomes a U.S. citizen or until he or she has earned 40 credits of work history.



# Alimony (Spousal Support)

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- Spousal support typically will last 5-10 years, depending on length of the marriage
- Will not be more than \$5,000 per month -OR- 20% of paying spouse's monthly gross income, whichever is less
  - VA disability payments are not included in gross income
- Alimony is considered taxable income generally
  - And if so, the paying spouse gets a deduction
- **ALIMONY IS NOT AUTOMATIC**



# Child Support



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- Court determines who pays child support, typically the parent with least amount of time with the child (non-custodial parent)
- Amount is based on a percentage of net resources and the number of children the payor has:
  - 1 child-20% of net resources
  - 2 children-25%
  - 3 children-30 %
  - 4 children-35%
  - 5 children-40%
  - 6 or more children, at least 40\$
- For example- monthly net resources of \$10,000 multiplied by 2 children is  $10,000 * .25$ , which is \$2,500 in child support monthly
- Calculator online at: <https://csapps.oag.texas.gov/monthly-child-support-calculator>





# Community Property



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- All property obtained during marriage presumed to belong to both spouses
- Texas requires that the property be divided “justly and rightly”
- That means that the court may consider who is to blame for divorce, earning power, health, and who has custody.
- Typical Divisions
  - House-One spouse, but the other spouse will receive compensation
  - Investments-Growth considered community property and is divided between both spouses
  - Car-Judge will decide, largely based on need



# Custody



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- Physical Custody-Who the child stays with (one parent)
- Legal Custody- Who makes significant decisions for the child (usually “Joint” or both parents make decisions together)
- Who gets custody? “Best Interests of Child” which includes:
  - Home environment, physical/emotional needs of the child, parent’s ability to serve as caretaker, parent employment hours, and child’s preference if child is 12+
  - TX prefers Joint Custody



# Military Factors, Pt 1



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- 20-20-20 rule
  - Spouses must be married for 20 years
  - The 20 years of marriage must overlap with 20 years of military service
  - Spouse of member retains Tricare and commissary access until re-marriage
  - If awarded a portion of the military retirement, can receive direct payment from DFAS

Children remain on Tricare regardless of 20/20/20 status



# Military Factors, Pt 2



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- 20-20-15 rule: Service and marriage only overlap for 15+ years
  - Ex-spouse of member entitled to one year of Tricare, and then can purchase at reduced cost.
  - If awarded a portion of the military retirement, can receive direct payment from DFAS
- The 10 Year Rule: Service and marriage overlap for 10+ years
  - If awarded a portion of the military retirement, can receive direct payment from DFAS



# Spousal Support For Separated Members



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- Until a divorce and child support/alimony are finalized, the following formula governs how much money the military member owes the spouse (absent an agreement or court order to the contrary)

$$\text{Pro-rata share} = \frac{1}{\text{Total number of supported family members}} \times \text{Applicable basic allowance for housing} - \text{w/dependent (non-locality) rate}$$



# How To Do It

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- “Contested” vs “Uncontested”
- Uncontested – you and spouse agree on topics
- Contested- Spouses disagree over topics, you most likely will need to hire a private attorney
  - Attorney billing-Typically hourly rate, with an up-front “retainer” or advance payment (Most attorneys provide free consult, estimate hourly cost and price. “I predict 10 hours of work, at \$200/hour, \$2000 total with a \$500 advance payment.”) Some attorneys bill flat fees, e.g. divorce costs \$3,000.

“Pro Se” – Latin for “By Yourself”

- Live in Bexar County for 90 days and TX for 6 months
- Print out forms found Texas Law Help.org or pay for the forms at the Bexar County Courthouse
- File forms with Bexar County Courthouse, pay processing fee ~ \$300



# Resources



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- No Federal Endorsement of any website or resource
- <https://texaslawhelp.org/family-divorce-children/divorce> - contains templates and forms for “Pro Se” divorces
- Find a Lawyer (Texas Bar Directory)  
[https://www.texasbar.com/AM/Template.cfm?Section=Find\\_A\\_Lawyer&Template=/CustomSource/MemberDirectory/Search\\_Form\\_Client\\_Main.cfm&Find=0](https://www.texasbar.com/AM/Template.cfm?Section=Find_A_Lawyer&Template=/CustomSource/MemberDirectory/Search_Form_Client_Main.cfm&Find=0)