# Divorce in Texas: Taking the First Step


Merritt Law

# About Merritt Law

With over 25 total years of practicing family law in Austin, Texas, Merritt Law has the experience you need and a reputation you can trust. Your peace of mind, financial future and your children's well-being are our top priority during these trying times. We know it's tough, which is why Merritt Law is here to help.

We achieve results with a combination of listening to our client, client communication, case management, timely responses at every stage of a case and vigorous representation of our client's wishes.

Whether you are in a divorce, seeking modification of your current orders or enforcement of a child support or visitation orders, we are prepared to be your Austin family lawyers. We can assist you in formalizing agreements, in mediation and, if necessary, in contested litigation. Allow us to discuss your case in person and begin preparing whatever action is necessary to give you and your family a new beginning.

To learn more about what we do, please visit our website, follow us on Twitter, like us on Facebook, add us on Google+, send us an e-mail, or contact us by telephone at (512) 320-8188.

**Merritt Law**
609 W 10TH ST.
AUSTIN, TX 78701
PHONE: (512) 320-8188
E-mail: info@divorceinaustintx.com
Website: www.divorceinaustintx.com

# Table of Contents

# Divorce Preparation – Initial Consultation with an Austin Divorce Lawyer

A common concern we encounter is people contacting our office, not sure if they should schedule a consultation or of they are even ready to be divorced. I firmly believe that if you even have the inkling to call an Austin divorce lawyer or feel that divorce is a possibility, you owe it to yourself and your children, if you have any, to sit down with a lawyer for a consultation.

So why schedule a consultation? Simply put, all too often one party gets an advantage in a divorce by being more prepared. Don't let that be your spouse. A consultation lets you be prepared should it be time to file for divorce.

At a consultation, you are free to discuss your situation and home life with the attorney. This discussion is normally protected by attorney client privilege, unless child or adult abuse is discussed or there is an ongoing commission of a crime. This discussion of your specific situation allows the lawyer to give you advice tailored to you.

During a consultation, you can discuss with the attorney if you have children, what the specifics of their care are, and what you would like to happen if a divorce is ever filed. The attorney can then explain how child issues are dealt with in a final decree of divorce. These issues generally deal with three areas: conservatorship (which is decision making), possession (when they are with you and when they will be with the other parent), and finally support (both regular child support and also medical support in the form of insurance and payment of uninsured expenses).

In addition to child issues, an attorney can discuss with you community property and separate property. Community property is property acquired during the marriage, exclusive of an inheritance or a gift. Separate property is everything else. You can discuss how your house can be handled or accounts that may have only one of the spouse's names on them, such as retirement accounts.

The attorney can also discuss alimony, or as Texas calls it, “spousal maintenance.”

This is your chance to learn about the process: what documents have to be filed and when, if court is a possibility, what the timeline is for being divorced, and whether temporary orders are a possibility or necessity. This is also when you and your attorney should form a game plan if you are going to file. In some cases it is very helpful to file first. You and your attorney can discuss this. At this beginning stage, it is important that you and your attorney are on the same page.

Finally, this is a time when you can learn what information you need or should gather.

Unfortunately, things often change after a divorce is filed. Information that may be damning to a spouse may disappear, accounts may be changed, and social media posts may be deleted. By having a consultation, you can get an idea what information may be valuable to you should you go through a divorce so that you can begin to accumulate that information.

My last bit of advice about consultations is if you are really worried about the other party being upset, consider paying for the consultation in cash. This prevents the other spouse from finding out that you visited with an attorney and the questions associated with that information.

So, in the end, does this mean that you will go to court? No. But you will be knowledgeable about the process and your rights. And in this case, knowledge is power. So, in the end, does this mean that you will go to court? No. But you will be knowledgeable about the process and your rights. And in this case, knowledge is power.

Schedule an initial consultation with our Board Certified Family Law Attorney to learn your options.

# 10 Tips When Hiring a Divorce or Child Custody Lawyer

What to look for when hiring a divorce or child custody lawyer in Austin:

**1. Experience.** For most people, this is quite simply one of the biggest events in their lives. You want someone with experience to help guide you through this time. You do not want this to be your attorney's first case or be part of your attorney's learning curve when it comes to preparing the best strategy and evidence in your case.

**2. Expertise.** All lawyers in the state of Texas are legally able to do divorce work, but you should look for someone who does only family law or for whom family law makes up most of their practice. An easy way to determine this is to look for a board-certified lawyer, one who is certified in family law. This title is similar to a board-certified surgeon in that the lawyer has exhibited expertise in a special area. Specifically, a board-certified family law attorney in Texas has passed an additional exam related to divorce and child custody laws and continues to receive education in that specialty area annually for more hours than required by a lawyer without certification. A lawyer board certified in family law is an expert in Texas family law.

**3. Responsiveness.** Do you feel like the lawyer will be responsive to your needs and able to respond to your questions in a timely manner? Will he or she give you a cellular phone number to call after office hours? The reality is that your attorney may not always be available. He or she may be in court on another person's case and focused on that case. That is fine, because when it is your turn in court or mediation or some other time you will want the attorney devoted to your case. But does the attorney respond within a day of your communication? Does the attorney not respond at all? You deserve a family law attorney who will respond to you when you have questions about matters involving your divorce and child custody case.

**4. Who will be handling your case?** All too often at some firms, you have an initial consultation with the lawyer and that may be the last time you talk to him or her until you go to court. I believe it is important that you are not passed off to a legal assistant. A legal assistant can be a valuable part of your team, but you are hiring the lawyer for his or her advice. You should be able to get what you are paying for.

**5. Billable time**. In the area of family law, most attorneys charge an hourly rate. For board-certified attorneys in the Austin, Texas area, this usually runs from $325 per hour up to $500 per hour or more. When you are being charged these amounts, how the time is calculated can have a huge impact. Are you being charged by the quarter hour or by the tenth of an hour? At Merritt Law, we charge by the tenth of an hour or in six-minute increments. So if you call on the phone and have a five-minute phone call, at Merritt Law you are charged for a tenth of an hour versus firms that bill in quarter-hour increments and would charge you 15 minutes for the same phone call. Paying by the quarter hour makes this phone call cost over two times more than when it is billed by the tenth of an hour. Using the rates above, this means an extra cost for that phone call of $48 – $125. You can see how that can increase your costs over the course of your entire case.

**6. Expenses and fees.** A normal case may have expenses and fees, such as filing fees service fees, expert fees, or even document copying charges when documents are sent to a copier service. But what else are you being charged for? In-office copies? Faxes? Some attorneys try to pass these incidental fees on to clients, which can add up over the course of your case. I believe that these expenses are part of the business, and we do not charge them to our clients.

**7. Technology.** Is the firm leveraging technology to help you in your case? In the past, when we received a letter from opposing counsel about your case, we had to mail that letter to you for review. Now, the same document can be scanned and sent almost immediately. This is but one way we have learned to leverage technology to our clients' advantage.

**8. Information.** Does the attorney provide you with information to make the decisions or does he or she drive the case? At Merritt Law, we believe it is important for clients to have as much information as we can give them to make educated and informed decisions with attorney guidance. Once the client makes the decision, it is the attorney's job to advocate for that decision. Some attorneys believe that they should make the decisions. It's your case and your life – you should make the decisions.

**9. Reviews.** Look online at the attorney's website or Google the firm's name. There should be client testimonials about the attorney from actual clients. This can give you bits of insight on the attorney. If there are only bad reviews, do you think your case will be different?

**10. Comfort level.** This is simply one of the most important facts for you to consider. You need to feel comfortable with the lawyer you choose. You need to believe in him or her and believe in the advice he or she gives you. The reality is that this person will know your deepest, darkest secrets and know more about you, both good and bad, than only a handful of people. If it takes several consultations to find that comfort level, then so be it. It is better to spend time up front finding a lawyer with whom you click than getting into court and not feeling like the person sitting next to you cares about you or your children.

This list of criteria is not exhaustive; however, these are things you should look at when considering hiring a divorce or child custody lawyer.

# The Benefits of Hiring a Board-Certified Divorce Attorney

While all attorneys licensed to practice law in Texas are able to handle family law cases, a board-certified divorce attorney devotes a substantial percentage of their practice to custody and child support and has significant experience in dealing with family law cases in the courtroom. Also, in order to qualify to be a board-certified divorce attorney, one must have successfully undergone rigorous testing in the area of family law.

Board certification is a voluntary designation program regulated by the Texas Board of Legal Specialization for attorneys and legal assistants. Initial certification is valid for a period of five years. To remain board certified, attorneys and legal assistants must apply for re-certification every five years and meet substantial involvement, peer review, and continuing legal education requirements for the specialty area.

To become a board-certified divorce attorney in Texas, an attorney must have:

- Been licensed to practice law for at least five years
- Devoted a required percentage of practice to family law for at least three years
- Handled a wide variety of family law matters to demonstrate experience and involvement
- Attended family law education seminars regularly to keep legal training current
- Been evaluated by fellow lawyers and judges
- Passed a six-hour written examination concerning family law

Since your case involves issues that are most important to you, your family, and/or property, hiring a board-certified divorce attorney gives you the peace of mind of knowing that you have a lawyer that is experienced in family law and knowledgeable about any issues that may arise in your case. You can be

assured your divorce, custody, and/or child support lawsuit will be handled by a lawyer who is more than capable of representing your interests zealously in all stages – from filing the lawsuit, conducting discovery to obtain evidence, handling depositions, negotiating with the other party's attorney, conducting mediation, and, if need be, appearing in court before a judge.

Approximately one percent of all of attorneys in Texas are board certified. Board-certified divorce attorney Christopher Merritt has been certified since 2001 and was re-certified for this classification in 2006 and 2011.

# Steps for Filing for Divorce in Texas

**1. Petition:**
After you hire a divorce attorney, the first step taken to initiate a divorce in Texas is the filing of an original petition for divorce. This petition is a simple document that names the husband and wife and any children of the marriage and states that one of the parties (the petitioner), is seeking a divorce and the reason for the divorce (the grounds). The petition may also state some of the things that the petitioner may ask the court to decide, such as division of property, orders providing for the children, and attorney's fees. When the petition is filed, the petitioner must pay a filing fee to the court, usually around $300. The filing of the petition begins the 60-day waiting period, but it is not a court order and does not establish anything legally. It is merely a statement by the petitioner that he or she wishes to have the marriage dissolved.

**2. Grounds:**
The most common ground for divorce in Texas is "insupportability." This is also known as a no-fault divorce allegation and is specifically stated in the petition as, "the marriage has become insupportable because of personality conflicts which have destroyed the legitimate ends of the marriage relationship." In some states, this is referred to as "irreconcilable differences." Texas law also provides as possible grounds incurable insanity, living apart for three years, adultery, cruelty, abandonment, and conviction of a felony. These other grounds are rarely used, but if they apply to your case, you should let your attorney know.

**3. Residency:**
In order to file for divorce in Texas, you or your spouse must have lived in the state for a period of at least six months and lived in the county where you are filing (i.e., Travis, Williamson, or Hays County) for at least ninety consecutive days immediately prior to filing the petition.

**4. Service on the respondent:**
The court must have some evidence that the other spouse (the respondent) has received a copy of the petition and knows that a divorce lawsuit is actively pending. One way to provide this evidence is for the respondent to file a waiver or an answer. The waiver states that the respondent has received a copy of the petition. It is voluntarily signed by the respondent in front of a notary public and then filed with the court. If you are asked to sign a waiver by your spouse or your spouse's lawyer, do not do so without first consulting your own attorney. It may contain additional language that can negatively affect your rights in the divorce. The respondent may instead file an answer, usually prepared by his or her attorney, then thereby enter their appearance in the case.

If the respondent does not file a waiver or an answer, the petitioner must arrange for a constable or private process server to hand a copy of the petition to the spouse. This method is called "service of process" or "service of citation." After serving the petition, the constable or private process server returns the citation to the courthouse, where it is filed and establishes proof that the respondent has received a copy of the petition. This method costs the petitioner a service fee of approximately $70 and may potentially embarrass the respondent. Once served, the respondent will be obligated to file an answer with the court within a set period of time.

# How Long Will My Divorce in Austin, Texas Take?

"How soon can I be divorced?" This is one of the most commonly asked questions once a person has decided to file for divorce in Austin, Texas. After the filing of the original petition for divorce with the court, the court cannot grant the divorce for at least 60 days. These 60 days are often referred to as a "cooling off" period in the Texas laws. Lawmakers in the Texas legislature want to ensure that parties have had time to think it through and are not dissolving a marriage based on a momentary idea. Thus, 60 days is the shortest amount of time your divorce case can last and typically occurs when the parties reach an agreement. This notion may seem antiquated in the 21st Century, but it remains the law.

However, the divorce in Austin may take longer than 60 days if the parties are trying to work out the terms, such as property division, custody of children, child support, etc. If the spouses are not able to reach an agreement, either party may schedule a trial at any time after the 60-day waiting period. At this final hearing, the judge or jury will hear from each side and decide the issues that are not agreed to. It is our experience that an average divorce in Austin takes between six and nine months.

Generally speaking, the more property or "stuff" you have and the more people, such as children, whose lives are affected, the longer the divorce will last. Again, parties are always able to agree on how to resolve these issues with each other, thereby expediting the divorce process. Oftentimes, your divorce lawyer will need to obtain information from your spouse and his or her lawyer before recommending a course of action for your case or settlement terms, which by necessity requires additional time.

The next question often asked by parties is, "How soon after the divorce can I get married again in Texas?" Due to the complex emotions involved in divorce cases, we strongly urge you to not immediately re-marry. However, a person in Texas is free to marry again 30 days after the judge signs their final divorce order, called a "decree." The exception to this impediment is if the judge states in court that the parties are officially divorced and this requirement is waived. Again, we caution against immediately entering into a new marriage so soon after divorce.

# Can I Get a "Legal Separation"?

This is a question that is often asked by people in Austin, Texas who are having marriage difficulties and trying to figure out what their options might be. People may have heard of the term "legal separation" from well-meaning family and friends and wonder if this should be something they consider before deciding to file for divorce.

In the state of Texas, we do not recognize a legal separation. Unlike some other states, most notably California, Texas recognizes you as being either married or single. Much like the saying, "you can't be just a little bit pregnant," in the eyes of the law in Texas you can't be "just a little bit married." Regardless of whether you live in separate homes or live completely independent from your spouse, the law considers you to be husband and wife until a court dissolves the marriage. This means that during the entire divorce process, you are still legally married and the community estate is still in existence. Thus, any assets or debts acquired during this time are considered community assets or debts.

If you cash your paycheck and buy the winning lottery ticket on the day after your temporary orders hearing, despite probably being in separate homes, it is likely that those lottery winnings are community property. (Most people would assume that there would then be enough money for everyone; however, you might be surprised.) Likewise, if on the day after the divorce is granted and signed you go out and buy the winning lottery ticket, those proceeds are likely your separate property.

But you may ask, "Why does my spouse say that his income is his separate property after temporary orders?" Is this true?

Income earned while married is generally considered community property. Until you are actually divorced, not just living apart, the income of both parties remains community property. And like all community property, such income is subject to a "just and right division."

When the divorce is granted, the community estate ceases to be in existence, and each of you will have your own separate estates.

# Divorce Temporary Orders

**What occurs between filing and finalizing a divorce case in Austin, Texas?**
One of the biggest concerns spouses have after filing for divorce is, "What happens now?" It is vital for you to fully understand all the stages of the divorce process so that there won't be surprises during the pendency of your case. Knowledge and preparation are key to positive outcomes for you and your family.

**Divorce Temporary Orders**
Immediately after filing for divorce in Austin, Texas, one or both of the spouses may need court orders to determine how the parties' relationship with the children and/or finances will be handled until the divorce can be finalized. These court orders are called "temporary orders" and can include temporary provisions ordering the payment of alimony and child support, as well as arranging child custody and visitation. The court may also set forth provisions as to which spouse pays specific debts during the divorce process and/or who has the right to temporary use of the house and other community property, such as vehicles, until final orders are entered.

The court may also prevent a party from substantially changing accounts and policies so that the community estate and the parties are protected financially. Examples of this are provisions requiring a party to maintain health insurance on his or her spouse and the children and provisions preventing a party from changing the beneficiary on life insurance policies or retirement accounts.

It is important to note that not every case requires temporary orders. Some parties are able to work out informal arrangements to take care of the issues related to property and children during the period between filing and finalizing a divorce. Also, some parties are able to negotiate formal temporary orders outside of court.

But if an informal or negotiated agreement cannot be reached and disputes arise, a party can request a hearing before a judge to obtain temporary orders that will stay in place until the final divorce decree is entered or the court makes other orders. A temporary orders hearing is often like a mini-trial; the attorneys present arguments, examine witnesses, and present evidence before the judge so that he or she has an idea of the temporary issues at hand that need to be decided.

While these orders are temporary in nature and often designed to maintain the parties' status quo until the case is over, tactical advantages can be gained during this stage with respect to final child custody or property division. Thus, it is vital to discuss your particular circumstances with a divorce attorney.

# Visitation During Temporary Orders in Austin, Texas Divorce Cases

Parents often ask what visitation will look like during temporary orders, the time between when a divorce case is filed and the divorce is finalized. At temporary orders, parties can establish any schedule for each parent's periods of possession of the children that fits their needs and those of the children. In fact, courts in Austin, Texas divorce cases prefer for parents to arrange periods of possession by agreement. However, all temporary orders must include a visitation schedule for the children that will control if the parties cannot agree in the future. If the parties are unable to agree to a possession schedule, the presumption in Texas is that a court should order what is called the "standard possession order."

In Texas, the standard possession schedule is based on the law. There is a presumption that the court will order a standard possession schedule in all cases involving a child over the age of three. Under the age of three, there is no set possession schedule, and the court is ordered to make a possession schedule for the child considering numerous factors.

For the purpose of this discussion, we will look into the standard possession schedule in further depth. The standard possession schedule is broken down into two schedules: one when the parents live within 100 miles of each other and another if they live more than 100 miles apart.

If the divorcing parties live within 100 miles of each other, the standard possession schedule provides for possession by the parent with whom the children do not primarily reside beginning at 6:00 p.m. or when school is dismissed on the first, third, and fifth weekends of each month and ending at 6:00 p.m. on the following Sunday or when school resumes the following Monday; a mid-week visit on Thursdays during the school year each week from 6:00 p.m. to 8:00 p.m. (or from the time school lets out until the time school resumes on the following day); alternating Thanksgiving and spring break holidays; part of the Christmas break, depending on the year, using

noon on December 28th as the exchange time, and thirty days during the summer break.

If the parents live farther than 100 miles away, the weekend and weekday periods may be modified to include one weekend visit per month or keep the first, third, and fifth weekends at the election of the person receiving the visitation. Due to the distance, the mid-week periods are no longer practical and are therefore not included. Also, the parent who does not have primary possession of the child has visitation during all spring breaks and forty-two days during the summer.

Occasionally, one parent believes that the other's time with the children should be reduced to less than the standard possession order either because the children are very young or because one parent doesn't trust the other to take proper care of the children. Additionally, parents often believe that each parent should have more time with the child than may be set out in a standard possession schedule.

It is the burden of the parent seeking any variance from the standard possession schedule to present evidence to the court to convince the judge why his or her version of a possession schedule is in the child's best interest.

# Alternate Possession Schedules

In general, courts will usually defer to parents when it comes to deciding a possession schedule for their children. Usually, the courts feel that a parent knows their children best and will put the interest of the children first when fashioning a possession schedule. The courts understand that this does not always mean the use of a standard possession schedule.

If you are considering asking for a possession schedule that is different from a standard possession schedule, there are important things for you to consider. The first thing to understand is that the standard possession schedule is the presumption in Texas. That means when you walk into court, without any evidence, this schedule is the starting point. The next thing to understand is what it takes for the court to vary from the standard possession schedule.

When the court considers varying from a standard possession schedule, there are certain factors that a court is required to look at. These factors are set out in the Texas Family Code as follows:

Section 153.256. Factors for Court to Consider
In ordering the terms of possession of a child under an order other than a standard possession order, the court shall be guided by the guidelines established by the standard possession order and may consider:
(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.

Some factors that the courts look at are the time each parent has been spending with the child, such as involvement in the child's school and education, involvement in the child's extracurricular activities, involvement in the child's medical needs, who wakes up the child, who feeds the child, who takes care of homework, who gets the child ready for bed, etc. Basically, the

court is looking at each parent's total involvement in the child's life. The more involved both parents are in these things, the better the argument is for a modified possession schedule.

When most people think of modifying a possession schedule, it is often to request a possession schedule that equally divides time with the child between the parents. The good news is that courts are receptive to this request if you give the judge evidence to support such a possession schedule.

The two most frequently used equal-time possession schedules are the "week on/week/off" and "2-2-5-5" schedules. The week on/week off schedule is just that: the child spends one week with one parent and then spends the following week with the other parent. Sometimes, parents who use this schedule will modify it to allow dinner with the other parent during the week or even an overnight in the middle of the week so that neither parent goes a week without seeing the children.

The 2-2-5-5 schedule has one parent having the child each Monday and Tuesday and the other parent having each Wednesday and Thursday, and then the parents alternate weekends. One week, a parent will have two days: Monday and Tuesday or Wednesday and Thursday. The next week, your two days will wrap into the weekend, giving you five consecutive days. A benefit of this possession schedule is that the child knows if it is Monday, Tuesday, Wednesday, or Thursday, where he or she will be that night.

The most important thing to remember when considering a request for a modified possession schedule is that it is your burden to provide the court with the evidence that it needs to find such an order to be in the best interest of your child. It is best to work with your attorney and discuss the evidence you plan to present to support such a possession schedule.

# Division of Property

During divorce proceedings in Texas, all marital property is subject to what is known as "just and right division." Community property is commonly divided fairly evenly between the parties, just as are all community debts.

Whenever possible, the community property should be divided during divorce so that each spouse receives a fair share. In an agreed property division, the parties determine what each asset is worth and then divide all the marital property so that each person gets a relatively equal value share. When cash or other liquid assets are involved, it is not a challenge to make such a division. If an asset cannot be divided or the parties do not want to divide it, it can be given to one spouse and something else of similar value given to the other spouse. Parties often get into arguments about who gets the refrigerator and whether the bed is worth more than the lawn mower. Such arguments can cause an increase in attorney's fees by an amount that is more than the actual property is worth, so for the best results, divorcing parties should be prepared to be reasonable and willing to compromise in these situations.

Sometimes there is simply no way to divide an asset evenly. For example, the parties may own a home or a family business that comprises most of their community property assets. If one party is awarded the house, there is not enough community property to compensate the other with something else of equal value. This challenge can be addressed in multiple ways. The other party may be given a lien against the house to be paid off when the house is sold or over a set period of time; alternatively, both parties may continue to own the house together after the divorce with an agreement to sell it and split the loss or proceeds at a later date.

If you do not agree on the division of property out of court, then the judge must decide this issue at trial, and he or she will have some discretion in dividing the property unevenly. If one spouse has considerably less earning capability that the other, the judge will likely take that into account and can reasonably award that spouse more than half of the community property.

The judge may also rule similarly for an innocent spouse who has suffered from the other spouse's abuse, mismanagement of community funds, or adultery. Furthermore, it is possible that other disproportionate distributions of community property may be made in uncommon circumstances, such as the disability of one spouse or of a child.

Another important issue can arise if community assets have been used to make payments on one spouse's separate property. In such instances, the community estate could possibly have the right to be reimbursed for those expenses. For example, if the husband owned before marriage the dwelling that the spouses live in, and during the marriage the spouses together made payments on the dwelling's mortgage from their joint earnings, the wife may be entitled to some reimbursement for those payments at the time of the divorce. Furthermore, if one spouse's separate property has contributed to the community estate or to the other spouse's separate estate, it is possible the contributing spouse could also be entitled to reimbursement of those expenses. Determining whether property is community or separate and whether there is any right to reimbursement can often be complicated. You may be asked a lot of questions about the date on which property was acquired, the source of assets, and the credit used to purchase. The more data you have to support possible separate property or reimbursement claims, the better.

# Separate vs. Community Property in Texas Divorce Cases

All assets you and your spouse have acquired during your marriage because of your earnings and income are commonly referred to as "community property." Examples of community property are homes or other real property, vehicles, retirement accounts (IRA's, 401ks, pensions), stocks, and personal property (furnishings, clothing).

Separate property is any property you owned prior to the marriage or have obtained through inheritance or gifts during the marriage. This includes gifts from one spouse to the other during the marriage. Additionally, certain types of monies recovered independently from lawsuits may be characterized as separate property. The presumption in Texas is that all martial property at the time of divorce is community property; if you want to show something is either entirely or partially your separate property, you have the burden to prove that claim by documenting or tracing the source of those funds and property. If you fail to adequately prove the separate property characterization of an asset, the court will consider it community property and divide it between the divorcing spouses in a Texas divorce case.

Debts incurred by either spouse during marriage are considered community. These liabilities include mortgages, car loans, and credit card debts. Even if only one spouse's name is on the loan document or title to the property, if acquired during the marriage and if the loan or credit was extended taking community earnings/property into account, then the debt is typically considered a joint or community obligation and thus subject to division.

Typically, the party awarded the property at the end of the divorce is also awarded the debt; in other words, the debt follows the property. This is to protect the asset in the future, because the party who owns the property is responsible for making the corresponding debt payments.

Debts that are separate property are those (1) incurred prior to marriage and/or (2) incurred during marriage that were secured solely by the separate property of one spouse with a statement from the lender to look only to that spouse's separate property for security of that obligation. All separate property and separate debts are automatically awarded to the spouse whose name they are in. The other spouse has no claim on the separate property and no legal obligation to pay the separate debts. Again, if you are asserting that property or a debt is separate, you have the burden to demonstrate that.

Texas law also provides that, if you divorce in Texas and have property that you acquired while living outside of Texas and that property would have been community property if it had been acquired in Texas, the court shall treat it as community property. This is often referred to as "quasi-community property."

In Texas, upon divorce all marital property is subject to what is called a "just and right division." Community property is commonly divided fairly evenly between the parties, just as are all community debts. However, there are certain circumstances where a judge may award more of the community estate to one party.

At the beginning of your divorce case in Austin, Texas, you should discuss all of your assets and liabilities and the circumstances around your income so that your attorney has a clear idea of the community estate and can help you protect your separate property.

# Mediation

Most divorce cases at some point go to mediation. In Travis County, if your case will require longer than three hours at final trial, you are required to go to mediation before your final trial. The reality is that even in cases that will last three hours or less, the courts want people to participate in mediation.

Mediation is a form of alternate dispute resolution; in other words, mediation is a way to try to resolve your disputes without having to go before a judge, who would make the final decisions.

Unless the parties to a case have agreed to a resolution on their own, the parties and their attorneys will usually attend mediation with the mediator, who is an unbiased individual that represents neither you nor your spouse.

Additionally, the mediator is not allowed to give either of you any legal advice. The job of the mediator is to see if he or she can work with the parties and resolve the issues in your case by getting both parties to agree to a mediated settlement agreement.

The most important thing to understand about mediation is that the mediator does not make any final decisions. You, the client, have the final say and ability to settle in your case. If you do not agree with the terms, simply do not sign the mediated settlement agreement. This puts the power in your hands. If after discussions with your attorney you believe that the proposed settlement is fair and just and in the best interest of your children, you can sign the agreement.

It is very important for you to understand that most mediated settlement agreements are binding on both parties. This means once the agreement is signed by the parties and the attorneys, it is very difficult, if not impossible, to change. So you should only sign a mediated settlement agreement if you are ready to live with its terms.

At the mediation, it is also important to understand that the mediation process is confidential. This means that offers made at mediation cannot be used in court. You are not allowed to testify at trial, “At mediation she offered me X.” If you do, the other attorney will object, and the court will ignore that information.

Remember that at mediation, the mediator is not able to give you legal advice. It is important for you to attend with your own attorney, who can give you legal advice and help you make a smart, educated decision. Remember, if you do come to an agreement, this agreement will have an effect on you, your assets and debts, and your children for years to come. It is important that you have the information you need to make the best possible decisions.