

A. Doing Your Own Divorce

You might not know it, but you are going through two divorces at the same time—your Real Divorce and your Legal Divorce.

This book is about getting through the legal divorce with minimum involvement with courts and lawyers. It explains Texas divorce laws, with practical advice to help you make decisions, and shows you exactly how to do the paperwork to get your divorce or find someone to do it for you inexpensively.

The real divorce is your life, your relationships with your Ex, family, friends, children, and—most of all—yourself. It's what you go through in practical, emotional, and spiritual terms. The real divorce is about breaking old patterns, finding a new center for your life and doing your best with the hand you've been dealt. These matters are not assisted or addressed in any way by the legal divorce.

The legal divorce cares only about how you will divide marital property and debts, whether there will be spousal support, and how you will arrange parenting and child support if you have minor children. If you can settle these matters out of court, there's nothing left but paperwork and red tape to get your Decree of Divorce.

If you have trouble agreeing on terms, the problem is almost never legal, but almost always about personalities and emotional upset, for which there is absolutely no help and no solutions—zip, zero, nothing—in court or in a lawyer's office. In fact, getting involved with lawyers and courts almost always makes things worse—much worse. If you follow my advice, you'll avoid the traps and pitfalls of the legal system, and things will get much better much sooner.

1. Can you do your own divorce? Should you?

Yes! You can! Since this book was first published in 1980, hundreds of thousands of Texans just like you have used it to do their divorces without retaining lawyers, so you can almost certainly do it, too. This book can save you thousands of dollars!

Yes! You should do your own divorce! Taking charge of your own case leads to a smoother, faster, less painful, and less expensive experience. Most people would be better off if they reduced or eliminated their use of attorneys, because the legal process—and the way attorneys work in it—tends to cause trouble, raise the level of conflict,

and greatly increase the cost. While you might decide to get advice from a family law attorney who primarily practices mediation or collaborative law, you should not *retain* an attorney to “take your case” unless you have an unavoidable need for doing so. In section 7 below I explain when you should get help and, in section 8, how to get the right kind of help from an attorney without *retaining* him/her to take over your case.

What if things don’t go smoothly—easy and difficult cases. If your spouse will not oppose you in court because he/she is gone, doesn’t care, or you expect no trouble agreeing on terms, then you only need some paperwork to get your divorce done, and this is the only book you’ll need. However, if you have trouble agreeing on divorce terms (or think you will), or if you prefer to have a professional stand with you and take an active role in negotiating for you, or if your case seems headed for court, you can still do your own divorce, and this book is an important place to start, but you will need more help. Solving divorce problems is discussed below in section 6 and getting the right help is discussed in section 8.

2. What “do your own divorce” means

Doing your own paperwork is not the important thing—the essence of it is thinking things through and making informed decisions. It means that you take responsibility for your case, your decisions, your life. You find out what the rules are and how they apply to your case. You explore all options, then decide what you want and how you want to go about it. If you use an attorney, *you* make all the decisions and control how your case is run. If your spouse is in the picture and cares what happens, doing your own divorce means having detailed discussions—perhaps with help—to reach a thoroughly negotiated agreement.

Above all, doing your own divorce means that you do not *retain* an attorney (more on this below). No one should *retain* an attorney unless they have an emergency situation like those discussed below in section 7, but that doesn’t mean you can’t get advice and help from an attorney if you feel the need (section 8).

Many people find it difficult to think things through carefully and make decisions about their divorce, and they are *extremely* nervous about discussing divorce details with their Ex. This is completely understandable, but it is something you need to do if you don’t want to become a victim of divorce. If you want it, you can get help from an attorney-mediator or a collaborative law attorney (section 8) to help you think things through, talk to your spouse, and work out an agreement.

a) What it means to “retain” an attorney (and why you don’t want to)

It’s okay to use an attorney, but most people should not *retain* one in their divorce unless there is a clear reason for doing so (see section 7 below). Here’s why. When you *retain* an attorney, you sign a “retainer agreement” where the attorney takes responsibility for acting in your behalf—to represent you. You are *literally* handing over your power and authority to act. Standards of professional conduct require any attorney who represents you—even one with good intentions—to act in ways that will complicate your case and make it worse instead of better. Attorneys typically start cases in court quickly, even when that is likely to cause upset and make settlement more difficult.

An attorney who represents you must go to great lengths to protect himself against later malpractice claims by his own client—you. This means doing things for the attorney’s benefit instead of yours. Doing the maximum may or may not help you, but it will certainly raise the level of conflict, and it will cost plenty.

Never forget that when you *retain* an attorney, the more trouble you have, the more money the attorney makes. That’s hardly an incentive to keep things simple.

Our legal system is known as “the adversary system,” which means that attorneys work as combatants, fighting to “win.” This is not the best way to go about solving family and personal problems.

It would be nice if you could get help from an experienced attorney with a good attitude who does not want to be retained, but few attorneys will take an interest in your case unless you retain them. That’s why we created Divorce Helpline, operated by Sherman, Naraghi, Woodcock & Pipersky. This is the only law firm we know of that works exclusively on divorce settlement. Instead of “taking” your case, we serve as your guide and assistant. When you use Divorce Helpline, you are still doing your own divorce because the responsibility and control of the case stays in your hands. We guide you, help resolve problems, and handle the red tape and paperwork, but your case doesn’t get out of control because *you* are in charge.

b) Making decisions

Part of the service you are supposed to get from a lawyer is help with making decisions. Lawyers know what has to be decided and the general standards and rules by which things are done in courts in your community. This is what the first part of this book is all about. It tells you what needs to be decided and how things are done in cases where there is no fight. It gives you information and help with making your own decisions.

If, after reading this book, you can make your own decisions based on your own knowledge, then you probably do not need a lawyer. If you read this book and still have doubts or questions, then you probably should have professional advice. It may be that you can find an attorney who will help you settle your mind, then you can go on to do the rest on your own. Section 8 below tells you how to find such a person.

Things that must be decided

- that the marriage should be ended forever, and
- how to divide any property and bills that you may have accumulated during the marriage, and
- whether there will be alimony and, if so, how much.

If you have no minor children, that's all there is to it. If you do have minor children, you must also decide:

- who is to have custody of the children,
- how care time (visitation) will be arranged, and
- how much is to be paid for support.

As far as the law is concerned, this is what a divorce is all about—settling the practical affairs of the couple and watching out for the well-being of the children. These are the things you must decide about in order to get a divorce. If your spouse is in the picture and cares about what happens in the divorce, then either you must be able to talk things over and agree on these things, or you must be sure that your spouse will not get a lawyer and oppose you legally.

c) Advantages to doing your own divorce

Getting a good divorce

Studies show that active participation in your divorce is the single most important factor in getting a good divorce. “Good divorce” means such things as better compliance with agreements and orders after the divorce, less post-divorce conflict, less post-divorce litigation, more good will, and better co-parenting.

People who take an active role generally do much better emotionally and legally than those who try to avoid the responsibility for solving their divorce problems. This doesn't mean you shouldn't get help from an attorney or mediator—it means you should be actively involved, become informed about the rules, and make your own decisions. Be in charge of your case and your life. Don't be a victim; be a participant in your divorce.

It's much cheaper

A huge advantage to doing your own divorce, even with the help of Divorce Helpline, is the savings in cost. When an attorney takes your case, the initial retainer could be anywhere from \$750 to \$5,000, but the retainer is only the beginning. The average cost of a divorce is about \$20,000 *for each party*, but that's only because the average couple has no more than that to spend. If you have more, it will cost more—much more. Depending on the size of your estate, a contested case can cost many tens or hundreds of thousands of dollars *on each side!*

Keeping it simple

Most people start off with a case that is either fairly simple or that could probably become simple if handled right. Such cases don't usually stay simple after an attorney is retained. Divorces are sensitive, so it doesn't take much to stir them up, but lawyers and the legal system tend to make things more complicated, stirred up, worse instead of better. This is because of the way the system works and the way lawyers work in it.

When one spouse or partner gets an attorney, the other is likely to get one too, and then the fun really begins. Two attorneys start off costing just double, but pretty soon they are writing unpleasant letters, filing motions, and doing attorney-type things as a matter of routine that may not be helpful. Now we have a contested case, more fees and charges, and a couple of very upset and broke spouses.

In the end, you will still have to negotiate a settlement with your Ex. Over 90% of all cases settle without trial, but when attorneys are retained, settlement usually comes after the parties are emotionally depleted and their bank accounts exhausted. Why go through all that?

The moral of this story is this: don't *retain* an attorney unless you absolutely must (section 7 below). If you do it entirely yourself, or with the help of Divorce Helpline, you have a much better chance of keeping a simple case simple and of reaching a settlement much earlier.

3. Divorce basics

a) Grounds for divorce

To get a divorce, you have to have a legally approved reason, known as *grounds*, for your divorce. Uncontested divorces are almost always based on the grounds that the

marriage is *insupportable*—that is, it is no one’s fault, but the marriage has broken down so badly that it can’t be saved. This is called a no-fault divorce and is the most civilized way to go. Unfortunately, Texas law makes it possible for a spouse to get a larger share of the community property by proving that the other spouse was at fault, typically by alleging adultery or cruelty. Attempting a case based on fault will likely lead to lawyers and a long, nasty, and very expensive divorce with an unpredictable outcome. In this book, we assume you will be getting a no-fault divorce.

The grounds of insupportability. You can be divorced if your marriage “. . . has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.” This probably means that you don’t get along in a way that seems both important and permanent. But you can’t just say it this way—that would be too easy. Instead, when you go into court you must tell the judge exactly those words quoted above. If you had an attorney, he or she would say the words for you, then ask you, “Isn’t that true?” while nodding “Yes.” You would then say “Yes,” and that would be that. If you can bear the burden of saying these words on your own, then you don’t need the attorney. It is, by the way, almost unheard of for a divorce not to be granted because of insufficient grounds.

There are six other grounds for divorce, two of which also involve no fault (living apart for more than three years and confinement in a mental hospital), and four of which involve fault (cruelty, adultery, conviction of a felony, and abandonment). Way over 99% of all cases are run on the grounds of “insupportability.” Even if your case falls under one of the other categories, you still call it “insupportability.” It’s easier and it’s the expected thing.

b) Jurisdiction (power of the court)

“Jurisdiction” means the legal right and power to make and enforce orders. In a divorce case, you are asking the court to make orders about your marriage, your property, your kids, and your spouse. The court has power to make orders about matters within the borders of Texas, so if you, your spouse, the kids, and the property are all in Texas, everything is fine. Just show that you satisfy the residency requirement, and you’re on your way. But where would a Texas judge get off making orders about a spouse or kids or property if they were in some other state?

If your spouse resides permanently outside of Texas, then the court cannot have personal jurisdiction over your spouse unless your case satisfies the requirements of

the “long-arm jurisdiction” rules. As a matter of fact, in many cases, you can get along just fine without having personal jurisdiction over your spouse. This is where there are no children, no property outside of Texas that you want to have, and no need to order your spouse to pay debts. But where there is a child, or important property outside of Texas that you want, or a need to order your spouse to pay debts, then you cannot do your own divorce in Texas unless you satisfy the long-arm rules.

“Long-arm jurisdiction” is, just as it sounds, when the court gets the right to make orders that reach out beyond the borders of Texas. There are actually two long-arm rules—the “marital long-arm” and the “parent/child long-arm.”

- 1) **The marital long-arm.** If your spouse permanently resides outside of Texas, then the court can have personal jurisdiction over your spouse only if Texas is the last state in which you and your spouse had marital cohabitation (lived together as man and wife) and if your divorce suit is started within two years of the last time you cohabited. Even if you cannot satisfy this rule, you can still do your divorce if you do not need an order for the transfer of out-of-state property or for the payment of debts.
- 2) **The parent/child long-arm.** If there is a child, then you must satisfy this rule. The court can have jurisdiction over your case only if:
 - i) your spouse is personally served with Citation while in Texas; *or*
 - ii) your spouse consents to jurisdiction in Texas, by appearing in court or filing a document such as the Waiver (chapter 6A); *or*
 - iii) the child resides in Texas because of some act of your spouse, or with your spouse’s approval; *or*
 - iv) your spouse resided in Texas and provided prenatal expenses or support for the child (this is presumed if you and your spouse were living together during the pregnancy); *or*
 - v) the child was conceived in Texas.

There may be other ways for the court to get power to act in your case, but you will need an attorney to explore them and to plead them to the court properly.

c) Residency requirements

Residency in Texas is what gives the court power to dissolve your marriage. No matter where you were married—some other state or some other country—if you meet the residency requirement, you can be divorced in Texas.

The residency requirement. In the period immediately before filing your divorce, either you or your spouse must have been a domiciliary (resident) of Texas for at least six months and a resident of the county where you file it for at least 90 days. “Domiciliary” means you have your residence in Texas with the intention to live here permanently. It is okay to be absent on a temporary trip so long as you always intend to return. Also, a person does not lose domiciliary status if absent from the state for military or public service for the state or nation. You are a “resident” of a county simply by living there, no matter what your intentions. Finally, you don’t have to stay in Texas or in your county after the divorce is filed; it is okay to move anywhere you like once those papers are stamped by the clerk.

d) Notice to your spouse

A lawsuit is regarded as a struggle between two contestants, conducted before an impartial authority (judge) who decides the matter. It seems obvious (doesn’t it?) that you can’t have a proper contest if the other side doesn’t even know one is going on.

The court cannot act in your case unless you can properly notify your spouse of the lawsuit. Chapter 6 shows how this is done, but in general terms, either your spouse must sign a Waiver stating that court papers have been received, or else the papers must be served properly by a Sheriff. If your spouse is on active military duty, then the only way you can do your own divorce is if your spouse will sign the Waiver. If your spouse successfully avoids service, or if your spouse is on active military duty and refuses to sign a Waiver, you will need the help of an attorney to proceed with your case.

If your spouse is long gone and all attempts to locate him/her have failed, you are in for a little more work and expense. The law still requires that the missing spouse be given proper notice, but says you can do that by publishing your Citation in a newspaper. You can find forms and instructions for “Citation by Publication” or “Citation by Posting” on the CD that comes with this book. You can also download them for \$10.00 at www.nolodivorce.com/TX, or call Nolo at (800) 464-5502, or order by mail using the order form in the back of this book.

Proper notice means, among other things, that your spouse gets a copy of your Petition, and so can be presumed to know what the suit is about and more or less what you want. After proper notice, a lawsuit can go one of three ways:

- by agreement—parties agree in writing on property, debts, support, parenting.
- by default—the Respondent does nothing; Petitioner completes the case alone.
- by contest—the parties take the case to court and fight for a judicial decision.

The best and easiest way is if you work it out by written agreement, of course. The hardest way is where your spouse gets an attorney and files an Answer on time and you end up in a legal battle. The most common way is by default.

e) **Waiting periods**

Waiting period before the hearing. The hearing is the time when you get your divorce, but you cannot rush right into it. After filing your Petition, you must wait at least 60 days before you have your hearing. Because of the way the law is worded, the 60-day period can sometimes be tricky to compute, so many lawyers consider it good practice to play it safe by waiting two months and two weeks. If your spouse signs a Waiver, this is the only waiting period that must be satisfied before the hearing.

If your spouse was “served,” there are three different waiting periods, all of which must be satisfied. You must not have your hearing sooner than:

- 1) two months plus two weeks from the date you filed your Petition, *and*
- 2) 27 days from the date your spouse was served, *and*
- 3) 12 days from the date the Officer’s Return (on the Citation) is filed with the District Clerk (chapter 6).

Please note that these times include a safety margin to cover possible problems with computing time “legally.”

Waiting to remarry. You are not free to marry anyone else (except the person you just divorced) for 30 days after the judge orders your divorce.

f) **Change of name**

In a divorce case, if it is requested by either party, the judge will change the name of either spouse. In actual practice, this rule is almost always used to restore a former name to the wife, but the way the law reads, you can change the name of either spouse to any name they used before. The court *must* grant your name change request unless they state in the Decree a reason for denying the change. They may no longer deny a change of name just to keep the last names of the parents and children the same.

4. **How to start a divorce—Petitioners and Respondents**

The Petitioner and the Respondent. Every divorce starts with a Petition. The Petitioner is the person who first files papers and gets the case started. The Respondent is the other party. A Response need not be filed, but it is a good idea, otherwise the inactive

person has little say about when or how the divorce is completed, unless there is already a written agreement. In general, the more both parties participate, the better. After a Response is filed, the divorce can be completed only by written agreement or court trial. Agreement is better.

Equality. Once a Response is filed, Respondent has equal standing and there is no legal difference between the parties or their rights, and either party can take any available legal step. Where instructions in this book indicate “Petitioner,” Respondent can substitute “Respondent” and take the same action.

The Petition. To get your case started, you file a Petition and serve it on your spouse or partner. The only thing you need to know before you do this is that you want to start a divorce. The issues can all be sorted out and resolved later. On the other hand, it wouldn’t hurt to read through Part One before you start.

Advantages to serving the Petition:

- Starts the clock ticking on waiting periods.
- Causes automatic restraining orders to take effect.
- Helps establish the date of separation.
- Has psychological value for Petitioner and tells Respondent a divorce is really going to happen.

Possible downside. Serving papers can upset the Respondent and stir up conflict if you don’t properly prepare the Respondent ahead of time.

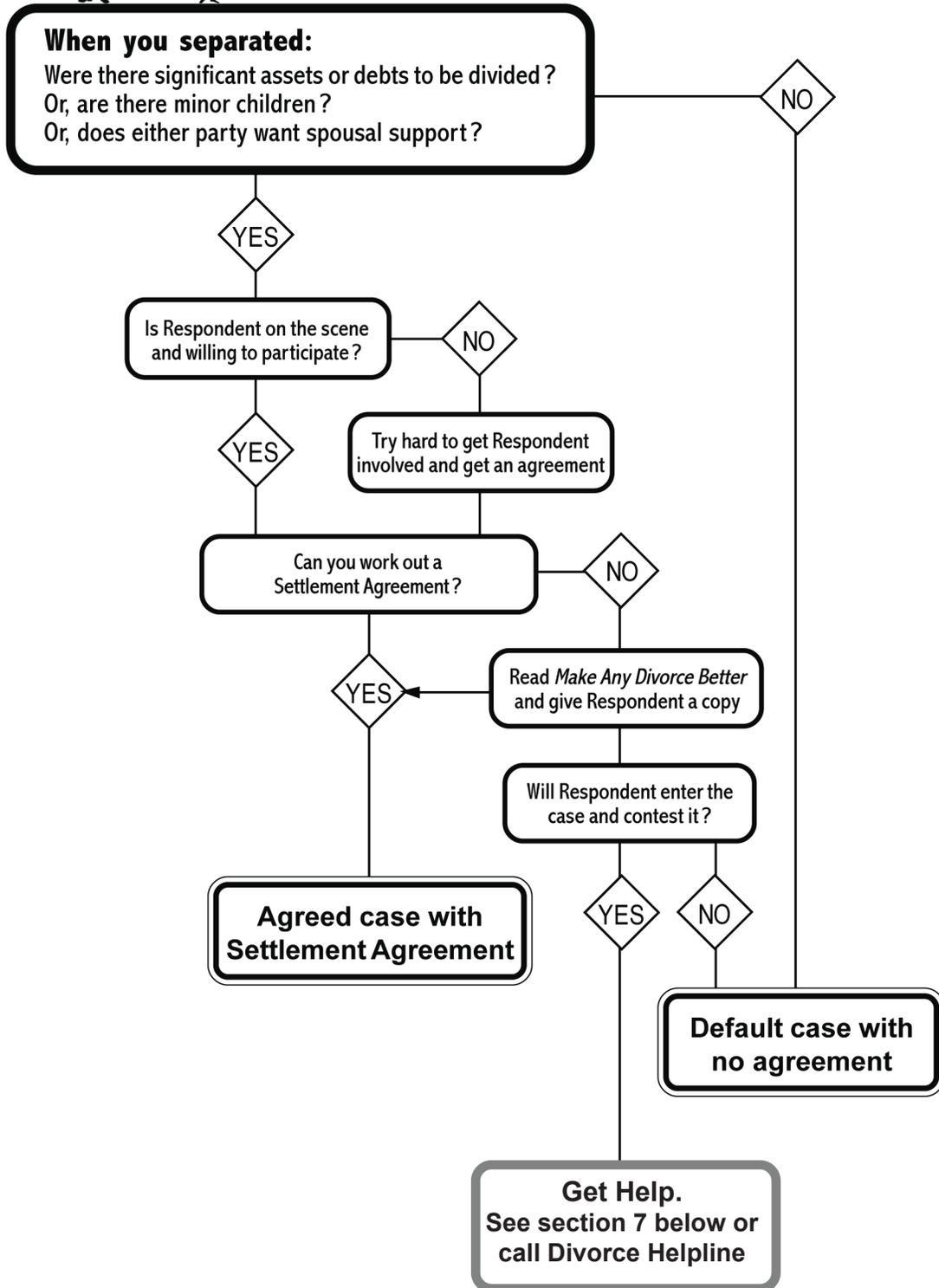
Getting a smooth start. Unless your Ex is an abuser/controller, you will probably want to start things off as nicely as possible. An abrupt start will probably increase conflict, as an upset spouse is more likely to run to an attorney who will probably make your case more complicated. So take some time to prepare your Ex and let him/her get used to the idea that a divorce is about to start. If you aren’t comfortable discussing things in person, write a nice letter. Let your spouse know you are committed to working out a settlement that you can both agree to and live with. Unless you are under time pressure, don’t serve your Summons and Petition until your partner seems ready to receive the papers calmly.

5. Three ways to get it done (see map on next page)

After you file your Petition, there are only three ways you can get your Divorce Decree: (1) by default, (2) by contest, or (3) by written agreement.

MAP – How to get there from here

(Discussion in section 5)



The default divorce

In a default case, Respondent is served with the Petition but does nothing. No Response is filed, so the case is completed by default, without participation by Respondent. Default should be used only if you have little property or debts, no children, and no need for spousal or partner support, or where Respondent is long gone or doesn't care to participate. If Respondent is around and cares, you'll need to work out an agreement, otherwise you'll have a complicated contested case to resolve all issues in court.

The contested divorce

If a Response is filed, you can complete your divorce only by written agreement or by taking the case to court and having a judge decide issues that you can't settle. Until there is an agreement, your case is *technically* considered to be contested. Whether or not there is a battle and a lot of legal activity depends on how you go about solving problems and reaching agreement. If you have problems reaching agreement, read *Make Any Divorce Better*. If you find yourself headed into a court battle, get help. Call Divorce Helpline at (800) 359-7004 or see section 8 below.

Divorce by settlement agreement

When the problems are all solved and you finally reach an agreement, one of the parties files a Waiver (chapter 6A) and steps out. The case is now uncontested and sails through. If your spouse is in the picture and you have children, significant property or debts, or you need to arrange spousal support, then you should make *every* effort to reach a written agreement on all issues. Look what you gain:

- You can be certain exactly what the orders in the Decree of Divorce will be;
- You can complete your case by mail and almost certainly won't have to go to court;
- Both parties participate, so the Respondent can feel confident about letting the divorce go through without contest or representation because the terms of the Decree of Divorce are all settled;
- It invariably leads to better relations with your ex-spouse or partner. Where there are children, this is extremely important; and
- You are far more likely to get compliance with terms of the divorce after the Decree of Divorce.

These advantages are so important that you should struggle long and hard to work out an agreement, with or without the help of a mediator or collaborative law attorney (section 8). Chapter E discusses written agreements in detail.

6. Solving divorce problems

The steps you take to make your case go more smoothly depend on what your situation is right at this moment. Five divorce profiles are described below with steps you should take in each situation. See which profile best fits you.

Early cases

You haven't broken up yet, or broke up only recently. This is good, because the earlier you start, the easier it is to heal wounds and lay a foundation for a smoother trip. The way you go about doing things now will have a powerful influence on how things work out in your future—for better or worse.

Your goal is to solve problems and settle issues without taking problems to court or spending much (if any) time in a lawyer's office. Your goal is to end up with an Easy Case (below).

Here are steps you can take to achieve these goals.

- Go to www.nolodivorce.com and get my *Free Guide to a Better Divorce*. It offers a mine of information with links to free articles like those mentioned below. The articles can be found in the Reading Room at my web site.
- Read my article, "The Good Divorce," so you will have a model to keep in mind and an idea of things you can try to accomplish to keep your divorce peaceful.
- Read my "Pre-divorce Checklist" and start working on those items.
- Read Part One of this book to learn about divorce laws, and skim Part Two to get a sense of how divorce paperwork is done.
- Get my book, *Make Any Divorce Better*, and learn specific things you can do to smooth things out. Get a copy for your Ex, too, so you can discuss ideas in it.
- **Do not talk to your spouse about divorce** until you learn how to reduce conflict, create a foundation for negotiation, and negotiate effectively.
- **Do not go to an attorney** until you are better informed and prepared—unless, that is, you face an emergency as described in section 7 below.

Before you visit an attorney, you should gather and organize all the facts and documents in your case as described in the Early and Easy case profiles below. Also read section 8 below to learn what you can and cannot expect from various types of attorneys and other professional services.

Easy cases

If your spouse won't come to court to oppose you, you've got an easy case. It could be because he/she is gone, doesn't care, or because you are able to sit down and agree on terms. All that's left is to file papers and go through some red tape to get a Decree of Divorce. You can do the paperwork yourself with this book or get it done inexpensively by negotiating a low price with an attorney. Call Divorce Helpline.

Spouse on board? It's very difficult to divide major assets or arrange parenting without your spouse's participation, so your goal is to settle things in a written settlement agreement. Here are steps you can take to complete an easy case and make sure it stays easy.

- Go to **www.nolodivorce.com** and get my *Free Guide to a Better Divorce*. It offers a mine of information and links to free articles on my site.
- Go to the Reading Room on my site and read my "Pre-divorce Checklist" and start working on those items.
- Read Part One of this book carefully to learn about divorce laws and skim Part Two to get a sense of how divorce paperwork is done. If you have major assets (real estate, retirement funds), it would make sense to have expert advice and an agreement drafted by an attorney, so I recommend that you call Divorce Helpline (800) 359-7004 and find out how they can help you. For other options, read section 8 below. If you're thinking of using online divorce forms, go to the Reading Room at **www.nolodivorce.com** and read my article that explains why online forms are *not* a good idea.
- **Keeping easy cases easy.** Most divorces are delicate and easily stirred up. To learn how to keep an easy case from blowing up into a difficult one, I recommend that each spouse have a copy of *Make Any Divorce Better* and follow specific steps to calm conflict and negotiate effectively. Discuss ideas in it.
- **Get organized.** As soon as you can, organize your facts, gather documents, and start thinking about how to divide community property, how much spousal support will be paid (if any), and how children will be supported and parented. You'll find a set of Divorce Worksheets on the CD that comes with this book. These will help you organize, think about, and discuss the facts and finances in your case. They will definitely save you time and money.
- **A written settlement agreement** is very important in most cases. The simple sample agreement that comes with this book is not ideal for dealing with major assets, but **DealMaker** software is (see inside front cover). **DealMaker** clarifies the many possible options for real estate or retirement funds and also guides you in the

creation of a parenting plan if you have minor children. **DealMaker** guides you to enter information and make some decisions, then it writes a sophisticated, professional settlement agreement that you can sign as is or edit with any word processor.

Difficult cases—when things don't go smoothly (or might not)

This profile fits most divorces. Your spouse is in the picture and cares about how things will end up, but you're having some trouble (or you expect to) with discussing and settling terms.

The reason divorce agreements are difficult is almost always personal—bad communication, bad history, bad habits, etc.—and almost never about the law. Neither the law nor lawyers have any tools to help you settle problems that originate in your personal relationship. In fact, the things you can do yourself are far superior to anything a lawyer can do for you.

Your goal is to take specific steps that will make your case smoother and easier, to turn it into an Easy Divorce (above), so you can make a written agreement and do the paperwork yourself or get it done inexpensively. There are a lot of things you can do for yourself to make things better, steps that have helped tens of thousands of couples, so they can help you, too.

Here are the steps you should take.

- Go to **www.nolodivorce.com** and get my *Free Guide to a Better Divorce*. It contains a mine of information with links to my free articles mentioned below, found in the Reading Room at my web site.
- Read my article “The Good Divorce,” so you will have a model to keep in mind and an idea of things you can try to accomplish to keep your divorce peaceful.
- Start working on early steps, listed in my “Pre-divorce Checklist.”
- Get *Make Any Divorce Better* and learn about the specific things you can do to smooth things out. Get a copy for your Ex, too, so you can discuss ideas in it. Section 7 below discusses strategies for difficult cases.
- **Do not talk to your spouse** about divorce until you learn how to reduce conflict, create a foundation for negotiation, and negotiate effectively.
- **Do not talk to an attorney** until you are informed and prepared—unless, that is, you face an emergency like those described in section 7 below.
- **Organize your facts.** Start now to organize your documents and facts. I created a set of Divorce Worksheets to help you organize, think about, and discuss the facts and

finances in your case. They will definitely save you time and money. These worksheets can be found on the CD that comes with this book or can be purchased separately.

- **DealMaker.** Your highest goal is to get a written settlement agreement of all issues in your case. The sample agreement in this book is not ideal for dealing with major or complex assets, but **DealMaker** software is. You'll find a trial version on the CD in the back of this book. **DealMaker** is especially useful for dealing with the many possible options for real estate and retirement funds, and it helps you create a custom parenting plan. DealMaker guides you to enter information and make some decisions, then it writes a sophisticated, professional settlement agreement that you can sign as is or edit with any word processor.

- **Mediation.** If you have trouble working out terms, you don't need an attorney, you need a mediator. Call Divorce Helpline at (800) 359-7004.

- **Collaborative law.** If you want to be represented by an attorney, try to get a collaborative lawyer on both sides. Read more about this in section 8 below. Divorce Helpline does collaborative law as well as arbitration.

- **Arbitration.** If you can't resolve issues in mediation, consider taking your case to arbitration rather than court. It is similar, in that the arbitrator imposes a decision, but the setting is less formal and an arbitrator is paid by the hour, so will take all the time you need to understand the facts about your family and situation. A judge has to move cases along quickly, so will tend to hurry through divorce motions or trials.

Domestic abuse and violence (DV)

DV includes physical attacks, threats, intimidation, verbal attacks (put-downs, insults, undermining your self-confidence) and other efforts to control you. It can be difficult to distinguish between high levels of divorce conflict and forms of domestic abuse and violence. The DV profile is about cases where your spouse is an habitual controller/abuser, someone who has abused repeatedly. These people are not responsive to reason because their need to control or abuse is too strong, so when dealing with an habitual controller/abuser, your only choice is to go somewhere safe and get specialized help.

Safety first. If you fear for the safety of yourself or a child, go somewhere safe where you can't be found. Ask the local police for domestic abuse support groups near you. What you need most now is personal advice and counseling from someone who specializes in domestic abuse.

Legal battle

If you follow my advice, you probably won't end up in a legal battle, but sometimes you simply can't avoid one or you might be in one already. If you're already in a legal battle, or if you can't avoid a battle even after following the steps in *Make Any Divorce Better*, then you have to do what you have to do—get an attorney and fight. If you must fight, you might as well learn how to do it effectively, so welcome to the Battle Group. Keep in mind that this is a legal battle, which is all about business. You do not want to battle on a personal or emotional level. In fact, you will be more effective and healthier if you don't. But you do need to learn:

- How to deal with extreme conflict
- Damage control
- How to protect children
- Winning strategies—hardball or softball?
- How to fight effectively at less expense
- How to choose and use your attorney
- How to fire your attorney (if you want to)

Make Any Divorce Better discusses this information in detail. Also get *How to Solve Divorce Problems*, which discusses all stages of legal battle, so you can either handle them yourself or monitor and supervise your attorney's conduct of your case. This allows you to call the shots and maintain a degree of control over your own case.

If you're in a legal battle, you should make persistent efforts to move your case toward negotiated or mediated agreement, using all the steps discussed in *Make Any Divorce Better*. Discourage legal action or activity that you think is not necessary and instruct your attorney that you want to mediate as soon as possible and be kept informed of every effort to make that happen. Also talk about this directly with your spouse, if possible, either in person or by mail.

7. When you should get some help

Emergencies—when retaining an attorney makes sense

If your situation is described below, read the recommended articles to decide if you need to retain an attorney. If your situation is not described below, you should read Part One of this book and also look through *Make Any Divorce Better*, then take some time to think things over and take the steps I recommend for your type of case.

a) Personal emergencies

- **Fear for the safety of yourself or your child.** If your spouse is an habitual controller/abuser and you fear it will happen again, you need advice from a domestic violence counselor. Ask your local police or Superior Court Clerk’s office for a list of local DV support groups and call them to ask for names of people who can advise you and, if necessary, help you find a safe place to stay.
- **Fear of sneak attack.** If you think your spouse might do a sneak attack by filing for court orders for custody and support without discussion or warning, or maybe just take the kids and the money and run, or both, read about strategies in Chapter 5D of *Make Any Divorce Better* and decide if you are going to be defensive or take the offense first.
- **Desperately broke.** If your financial situation is truly desperate—or if your spouse feels this way—go to the Reading Room at www.nolodivorce.com and read my article “Funding Your Separation.”
- **Parenting children.** Many people run to an attorney because they are afraid they won’t get to see their children often enough. If this describes you, go to the Reading Room at www.nolodivorce.com and read “Parenting in the Early Stages.”

b) Legal emergencies

- **Divorce papers served on you.** This may not be an emergency. If you’ve only been served with the Summons and Petition that start a divorce action in court and you want to have some say in the outcome, you need to file a Response—see section 8 to read about who can help you do this—before the deadline stated on your papers. If the deadline has passed, call the Superior Court Clerk and ask if you are still able to file a Response even though the deadline has passed. If so, quickly file a Response. If not, you’ll need an attorney to help you make a motion to allow you to enter the case late. In either situation, read section 8 below about how to find the right kind of help.

However, if a motion has been filed and a hearing scheduled in the near future to determine support or child custody issues, you need to get an attorney right away to either represent you at the hearing or seek a continuance so you can prepare. Read section 8 about what kind of attorney you want. If you don’t have time to get an attorney, show up in court at the time and place indicated on your papers and ask the judge for a continuance so you can get an attorney. Even if you are in litigation, you should read *Make Any Divorce Better* and look for ways to move the action out of court and into mediation.

- **You are already in litigation.** If you are already in a legal struggle with attorneys on both sides, read *Make Any Divorce Better* to learn how the law works and how to guide your case toward negotiation, mediation, or collaborative divorce. If all else fails, arbitration is better than going to court. Get *How to Solve Divorce Problems* so you can see how a contested divorce works and use it to monitor your own attorney's performance. What you do not want is to end up stuck in a court battle where everyone loses but the attorneys.

c) Legal advice—when to get it and from whom

In some situations, you can get a lot of good from a little advice. In *any* case, you can get peace of mind from knowing you are doing things right. A few hundred dollars for advice may not seem unreasonable when weighed against the value of your property, debts, possible tax savings, all future support payments, and the importance of a good parenting plan. You can often save more than you spend.

If you have any of the situations listed below in your case, you have good reason to get some legal advice. Section 8 suggests who to go to.

Property

- The division of assets and debts is not equal.
- A major asset is being divided or sold—avoiding capital gains problems.
- You aren't sure how to value some assets, such as a business or a professional practice, etc.
- You have stock options—valuation, division, relationship to child and spousal (partner) support.
- Separate and community money was mixed together in a major asset.
- Pension or retirement funds accumulated at least in part during marriage—how to value and how to divide without penalty.

Debts

- You have lots of debts and/or you want to protect yourself from your spouse's debts.
- Either party might declare bankruptcy.
- Joint credit card or other accounts have not been not closed.

Your spouse (solutions are discussed at length in *Make Any Divorce Better*)

- You can't agree about important issues.
- You can't get information from your spouse about income, assets, debts.
- You suspect your spouse might be hiding assets.

Children

- There is disagreement over parenting arrangements.
- One parent doesn't want the other to move.
- One parent earns much more than the other—consider saving on taxes by arranging for family support instead of child support.
- There are special needs or health problems.

Spousal or partner support

- You have been married five years or more.
- There is more than 20% difference in incomes.
- One spouse is not self-supporting.
- One spouse put the other through school or training.
- You have preschool children.
- There are special needs or health problems.

Personal

- With a good income and busy schedule, you would be better off if someone else did the paperwork.
- You want to be sure you're doing the right thing and know things are being done correctly.
- You don't understand your situation or what to do about it.
- You want help and suggestions for how to negotiate with your spouse.

8. Who can help?

Friends and relatives are the least reliable sources of advice. Accept all the moral support you can get, but when they give you advice, just smile and say, "Thank you," but do not take it to heart. Also be wary of "common knowledge." If you didn't get it from this book or a family law attorney in Texas, *don't trust it!* Just because you like or trust someone doesn't make them right.

Online divorce services

There are services on the Internet where you can fill out divorce forms for anywhere from zero to \$250 or more. What's wrong with that? Well, if it was a good idea, we would have done it long ago, but it is not a good idea. What you really want is someone you can meet with face to face and discuss the options for your case. Here's what online services don't tell you:

Not enough information. Divorce is not about filling out forms—it is about understanding your situation and making decisions. To fill out forms, you need to know what it means to check one box rather than another or file one form rather than another. You need to know where you are in the paperwork, what’s going on, where you are going. At all online services we have reviewed, this information is either totally inadequate or completely missing. Not good.

Limited and incomplete. These services have one fixed way to do cases that does not cover a wide variety of situations. You can easily discover partway through that your case does not fit their pattern. Some services get you started but do not complete the case or do not provide important options.

Inflexible. Once you start to fill out the forms, you are stuck on a very long path that you can’t get off. It is not easy, maybe not possible, to jump about from one form or page to another. What’s worse, you can’t step back and get a long view, so you are forced to work without a good understanding of what’s going on, where you are in the process, where you are trying to go, or why you are doing things their way.

The better option. If you and your Ex can agree on how to divide property, whether or not there will be alimony and, if you have minor children, how they will be supported and parented after your separation, then you can use this book to complete your forms, or find someone in a city near you who will complete your paperwork for relatively little, a few hundred dollars. Get a copy of our **DealMaker** software (inside front cover) and make a settlement agreement. Then go on the Internet and search for “Divorce Assistance” plus the name of a city near you, or call lots of attorneys and explain that you have a settlement agreement and only need paperwork completed and ask how much this will cost. Keep calling until you get a price that seems reasonable.

Mediators

If you can’t work out an agreement on your own, you should try mediation. A mediator can help you communicate, balance the negotiating power, develop options you haven’t thought of, solve problems, break through any impasse and help you reach a fair agreement. If your problems are primarily personal or about parenting, a non-attorney mediator can be used, but if property or legal issues are involved, it might be best to select a family law attorney-mediator.

Mediation is not just for friendly divorces. Angry, conflicted couples are especially in need of mediation and stand to gain the most, particularly if they have children. Mediation

can be very effective, even in cases with high conflict, when conducted by a good family law attorney-mediator like those at Divorce Helpline. If the parties can't even agree to try mediation, we are willing to contact the other side and try to arrange a meeting. Divorce Helpline works by phone, email, video-conference, and fax throughout Texas. We can even do telephone mediation, which can be surprisingly effective and a lifesaver if parties can't meet at one location in person.

Lawyers

Advice. Unless you expect (or want) a legal battle, the best place to get advice is from a family law attorney who mostly does mediation rather than litigation. This way, you are more likely to get practical advice designed to solve problems rather than contentious advice that can lead you to court.

Traditional lawyers who *specialize* in divorce and work in the court system know a lot that could help you, but, because of the way the system works and the way lawyers work, they will almost certainly create unnecessary conflict and expense if you retain one. Unfortunately, getting information and advice from traditional attorneys without retaining them can be tricky, because they don't really want to help you help yourself; they want to be retained to do it all.

Attorneys will frequently do the first interview for a fairly small fee, but too often they spend that time convincing you that you need them to handle your case. Hourly rates can run from \$150 to \$450, but \$175–\$350 per hour is normal. Most attorneys require a retainer—\$1,200 to \$5,000 is typical—but the amount doesn't matter because the final bill will be *much* higher. Few attorneys will give you a definite maximum figure for the whole job. You are doing *very* well if you end up spending less than \$5,000 *per spouse* on the *simplest* case. The average in urban areas when both spouses are represented is *well* over \$18,000 *per spouse*, but couples with larger estates can expect costs to run into tens or hundreds of thousands of dollars—*per spouse!*

Limited representation. A small but growing number of lawyers are offering representation limited to specific tasks or portions of your case while you keep overall responsibility. For example, they will represent you only to draft your agreement, or only to appear in court if you are asked to show up there for some reason, or only to file and appear on one motion. If you need a bit of service from a family law attorney, call around and ask if they offer "limited representation" or "unbundling," the two names by which this service is known. Better yet, call Divorce Helpline, as we've been doing this sort of thing since 1990.

Attorney-mediators. See “Mediators” above. When you’re looking for advice, it would be best to get it from an attorney who does mostly mediation, as the advice you get is more likely to be practical and about solving problems rather than going to court.

Collaborative divorce. Increasingly popular, spouses and their attorneys pledge in writing not go to court or threaten to go to court as a way to solve problems. Instead, they will use advice, negotiation, and mediation to reach a settlement. If there’s no settlement, the spouses will have to get different attorneys to take the case into litigation. In some cases, the collaborative team might include other professionals, such as a divorce coach, family counselor, child specialist, accountant, or financial planner. Collaborative divorce has a good track record and, even with all the professional services you get, it will still cost less than a court battle.

Divorce Helpline

Divorce Helpline was created to change the way attorneys practice in divorce cases and to provide expert support for people who are doing their own. Divorce Helpline is operated by the law offices of Sherman, Naraghi, Woodcock & Pipersky. Texas cases are handled and supervised by Texas attorney Bruce Naraghi. Divorce Helpline will not litigate (go to court) because we don’t believe in it. Instead, our expert family law attorneys work exclusively as your guide and assistant, helping you plan, solve problems, and reach a fair settlement. We offer advice, mediation, arbitration, and collaborative law, working by telephone throughout Texas. Divorce Helpline attorneys are trained in mediation and communication and are good at solving problems. We’ll answer your questions, but we can do a better job for you when we do the *whole* case—the paperwork and the settlement agreement—as well as giving you advice. That way we have *all* the information, not just the small bit you are asking about. When we do the whole case, we often find problems to solve and ways to save money that people don’t know to ask about. Our methods have proven to be highly successful and very affordable. Learn more about Divorce Helpline, including our rates and services, at www.divorcehelp.com, or call (800) 359-7004 for a free explanation of how we work and how we can help you.

9. Some Common Questions and Answers

- **How much will it cost to do your own divorce?** The filing fees are set from time to time by law, and costs vary slightly from one county to another. These days, it costs as much as \$200 to file papers in a case where your spouse signs a Waiver of the Citation, and as much as \$50 more if the Citation must be issued, plus the Sheriff's fee (about \$60) for serving the Citation on your spouse. Add to this a few dollars for photocopies and postage, and that's it. If you were to hire an attorney or a typist or buy a kit, you would still have to pay these fees in addition to the base cost. You'll be hard pressed to find a better bargain than this book.
- **How long will it take?** The shortest possible time to complete a divorce is 61 days from the filing of the Petition, but plan on a bit longer, say three months. It is okay to take longer if you are in no hurry.
- **What if we reconcile?** If you file a divorce Petition and later reconcile and change your mind, just let it lie there. Within a few months, it will be dismissed for lack of prosecution, after a written notice from the clerk.
- **When can I remarry?** After your final Decree of divorce is ordered, you must wait at least 30 days before marrying anyone other than the spouse you just divorced.
- **What about alimony?** In 1995, Texas finally joined the other 49 states in granting alimony (called spousal maintenance) upon divorce. It is a stingy little law, with severe limitations on amount and duration that are described in more detail in chapter D. However, the spouses are free to reach almost any kind of agreement about alimony in a written marital settlement agreement and the courts will almost certainly go along with it.
- **What if the wife is pregnant?** You should wait until the child is born to get your divorce. Judges do not like to see a child born out of wedlock, and enforcing child support could be a problem. If you can't wait, see an attorney.
- **Am I liable for my spouse's bills?** During the marriage (even if you are separated), both spouses are liable for the bills of the other. After the divorce, the parties are responsible only for their own bills.
- **What if I am common-law married?** Three elements must exist to form a common-law marriage: 1) an agreement to be married (whether explicit or implied); 2) after the agreement, you lived together as husband and wife; and 3) you represented to others

that you were husband and wife. If your marriage is common-law, the same rules for divorce apply to you as to couples married in a ceremony. However, if you believe you are common-law married, you have only two years from the date you separate to file for divorce. If neither party files within that time, it is presumed that no common-law marriage existed, and you won't be able to use this book to get a divorce.

- **Does divorce have tax consequences?** Yes. Almost every aspect of divorce could possibly have important tax consequences. Depending upon what property and income you have, you could possibly save a lot of money by seeing a tax expert, especially before making a marital settlement agreement. There are also rules you should know about if you have children. The tax rules are numerous and they change frequently, but fortunately there is an excellent little booklet that tells you everything you should know, and it is absolutely free. Simply call your local Internal Revenue Service office and ask for IRS publication 504, "Divorced or Separated Individuals."

10. Looking ahead

As mentioned in section 4 above, you can file your Petition and serve it at any time, assuming you have arranged for a smooth start by preparing your spouse or partner to receive it. You can then take some time to make decisions and work out the details about your property, support, and children. We discuss the basic rules of these subjects in chapters B, C, and D. Chapter E shows you how everything can be wrapped up in a settlement agreement once you get things worked out. If you have a more complex estate, real estate, or retirement funds, you should get **DealMaker** software (inside front cover), which uses the power of software to make it easy for you to deal with the many options available for major assets. You just enter requested information, make requested decisions, and **DealMaker** drafts a comprehensive settlement agreement that you can sign as is or edit in any full-featured word processor.

Preparation. Eventually, to complete your divorce you will have to create a complete list of all of your assets and debts, and it will be extremely useful if you start doing that now. Start filling out the worksheets that come on the CD with this book and gather all documents and records related to your assets, debts, and family. Getting prepared in this manner will help organize your facts, your documents, and your thinking. It will suggest other information or questions you might have.

If you have trouble getting information you need, read “Getting the Information You Need,” which is in the appendix in *Make Any Divorce Better*.

Go to my web site, www.nolodivorce.com, look in the Reading Room, get the free article, “Pre-divorce Checklist,” and start working on those items right away.

Study the Decree of Divorce. While you are reading through the next few chapters, at some point you should jump ahead to chapter 7 and take a look at the Decree. Read the language in the various orders that are used in the Decree so you can understand where all this information you are reading about will end up. Then you’ll have a better idea of where you are going while reading about how to get there.