



SO YOU'VE BEEN SERVED
WITH DIVORCE PAPERS:

A DIVORCE EXPERT'S
SURVIVAL GUIDE

schreier | **housewirth**
family law

You've just been served divorce papers... Now what?

Maybe you knew it was coming; maybe you didn't. Then it happened so fast; the knock at the door; a brief introduction and explanation from a process server; and finally the exchange of a bundle of papers from her hand to yours.

You've been served with a petition for divorce and a temporary restraining order.

“Crying is all right in its own way while it lasts. But you have to stop sooner or later, and then you still have to decide what to do.” - C. S. Lewis

This is your survival guide for the first 48 hours after you've been served with divorce papers, with advice from an experienced Fort Worth divorce attorney.

In most Texas divorces, you are served with two documents:

1. A Petition for Divorce

2. A Temporary Restraining Order

Let's take the mystery out of these two divorce legal documents so you can really decide what to do.

The Typical Petition for Divorce in Texas:

First, let's be clear. During these first moments of your divorce, you do not need to panic or overreact to what's in the petition for divorce. A petition is nothing more than a request by your spouse that the court enter certain orders at final trial. Some of these requests will be granted, others will not – so stay calm and read on...

Just the facts

Much of the petition covers the required basic information required by the court such as:

- The proper names of the parties as well as their driver's license and social security numbers for identification;
- The names, and ages of your children;
- The dates of both your marriage and separation;
- A statement that the court has jurisdiction of your divorce; and that venue is proper in the county where the divorce is filed;

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Grounds for Divorce in Texas

A Texas divorce petition must also allege a ground or basis for the divorce. Texas is a no-fault divorce state and most divorce petitions will simply state that the marriage has become “insupportable.” In other words, the divorce is occurring because your spouse wants a divorce!

If your spouse is particularly mad at you he may allege you have been cruel or maybe that you have committed adultery. Such bad acts can serve as a basis for a disproportionate division of your property, but most times these inflammatory allegations have no effect. Nevertheless, you’ll want to visit with an experienced Texas divorce attorney about the particulars of your divorce.

Divorce and division of property

How many people come into my office and announce to me that Texas is a “50-50” state? Hundreds! Is this true? Not really. Your typical divorce petition will say something like, “the community estate of the parties should be divided in a manner that is deemed fair and equitable.” Nowhere is the word “equal” used. You can expect, in most case, the division of your community property to be divided anywhere between a 50-50 split and a 60-40 split, depending on the circumstances.



“Get with an experienced divorce attorney to make the best decisions for your children.”

Some really scary divorce petitions will request a disproportionate division, one favoring your dear spouse. The petition will go on to list various reasons for the unequal split. Call your favorite [Dallas divorce attorney](#) to fully understand whether you have exposure.

Children and requests for conservatorship and support

Next, the typical divorce petition will identify your children and request the court to enter orders for their conservatorship and support. Normally, the petition will allege that you and your spouse should be named joint

managing conservators and that your spouse should be named the “primary” parent. To repeat, just because it’s in the petition for divorce doesn’t make it true. Get with an experienced divorce attorney to make the best decisions for your children.

Do pay special attention if the divorce petition contains a request that your spouse be named a sole managing conservator or alleges that you have abused or neglected a child. Usually, these allegations will be supported with an affidavit describing something that you have done to require your access to your children be restricted.

If your divorce petition contains an affidavit in support of sole managing conservatorship or for extraordinary relief, don’t go it alone. Seek help immediately from a divorce attorney if you wish to preserve your relationship with your children through your divorce.

Divorce Temporary Orders

Does your divorce decree contain a request for issuance of a temporary restraining order and temporary orders after a hearing? Again, this is not cause for alarm, but you should pay attention and plan to sit down with a divorce attorney.

Why temporary orders? A divorce in Texas cannot be finalized for at least 60 days after the date of filing and, if there are points of disagreement between you and your spouse, the process can drag on for months, even a year! Temporary orders establish a “holding pattern” while your divorce is being finalized.

Here are some things you can expect to be covered at a hearing on divorce temporary orders:

1. Exclusive possession of the family home, automobiles and other marital property;
2. Payment of bills and living expenses;
3. Conservatorship of the children;
4. Parenting time with the children;
5. Support of the children;
6. Drug testing;
7. Psychological evaluations; and,
8. Appointment of any other expert deemed necessary by the court.

If you are going to court for a temporary orders hearing, you’d better be prepared! If your divorce case drags on for months, you’ll be living under those temporary orders a long time.

This would be a good time to retain an experienced divorce attorney.

Attorneys’ Fees in Divorce

Most Texas divorce petitions conclude with one final insult. The ubiquitous request that you be ordered to pay all attorneys’ fees incurred by your spouse... how rude! This usually doesn’t happen but it is part of every divorce lawyer’s repertoire.

Unless there is a clear income disparity between you and your spouse, you each will pay your own attorneys’ fees. Where there is a disparity in income, courts will sometimes “equalize” attorneys’ fees at the temporary orders hearing. If you are in control of the family finances, don’t expect to come to court with an attorney while your spouse does without.

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Divorce Temporary Restraining Orders and Standing Orders in Texas:

It's a Real Court Order

The key word here is “order.” An order has the full weight and authority of the divorce court behind it, and if you violate a temporary restraining order, the court can hold you in contempt, fine you, order you to pay damages, or some combination of the above.

Unlike other court orders, a temporary restraining order is issued ex parte, or without prior notice to you. Also, divorce courts require no proof to issue such orders and, provided it is in proper form, a temporary restraining order will be issued automatically by the divorce court, no questions asked.

But, that's not fair! It is fair when you consider the rationale behind these orders. Family court judges have long known that the first weeks of a marital separation and subsequent divorce filing are turbulent times. Also, there is a strong chance that, without a temporary restraining order in place, an angry spouse may do lasting harm to the children or the marital estate before a temporary orders hearing can be scheduled.

So, just like that... you're slapped with a restraining order, page after page of admonitions and prohibitions clothed in fancy legal language.

You might ask:

1. Can I sleep at home tonight?
2. Can I talk to my spouse?
3. Can I use my credit card?

4. Can I see my kids?
5. Can my kids stay with me?
6. Can I hire a lawyer?

Sure, a temporary restraining order is serious business, but it's important for you to review the order with a divorce attorney to understand exactly what you can and can't do once you've been served with a restraining order.

In the meantime, here's a fast tour through a typical Texas divorce temporary restraining order.

Your conduct towards your spouse and your kids:

- ▶ Do not use foul language when talking with your spouse, don't harass her with e-mails, phone calls or text messages.
- ▶ Don't threaten him with bodily harm.
- ▶ Don't threaten your spouse with doing something that's just stupid.
- ▶ Don't withdraw your kids from school or daycare.
- ▶ Don't hide your kids from your spouse.
- ▶ Don't move off with your children.
- ▶ Don't say bad things to your children about their mother or father.
- ▶ You may talk to your spouse in a civil and constructive manner.
- ▶ You may spend time with your children and even keep them in your care.

Your conduct towards your property:

- ▶ Don't sell any marital property.
- ▶ Don't alter any important documents.
- ▶ Don't give away property to your mother.
- ▶ Don't cash out your retirement, money market or stock accounts
- ▶ Don't cancel your spouse from health insurance coverage
- ▶ Don't spend money on anything other than: expenses related to your business, your living expenses, or your attorneys' fees.
- ▶ You may continue to buy your morning Starbucks, run your business, or hire a divorce attorney.

Your duty to preserve documents:

- ▶ Don't alter or dispose of financial records.
- ▶ Don't intercept mail that isn't yours.
- ▶ Don't wipe your computer hard drive clean.

How is a Texas divorce temporary restraining order like a carton of milk?

Sure, it may be overwhelming, but that TRO isn't the end of the world. It is a clear message that you shouldn't lose your mind and do something foolish in the days ahead.

Pay close attention to the hearing date written into the temporary restraining order in ink. That's right; the temporary restraining order is good for only two weeks and then it expires by operation of law. So, like the carton of milk, it goes bad in two weeks. This is why you'll have a court date for temporary orders before that TRO goes bad.





The beginning of the end

You've got a challenging road ahead of you, and things may get worse before they get better. At times like these, the fog of emotion can cloud your judgment and make rational thought impossible.

You owe it to yourself to talk to a respected [Fort Worth divorce attorney](#), one who can give your reliable advice and guide you on this journey. For over 25 years, Board Certified divorce attorney Greg Housewirth has been the steady hand at the wheel for thousands of divorce clients. Negotiating when he can and fighting when he should, Mr. Housewirth gives you the tools you need to emerge from divorce whole and ready for the next chapter of your life.