

Divorce Set 1

Uncontested, No Minor Children, No Real Property

INSTRUCTIONS

This Divorce Set Contains instructions and seven forms: an Affidavit of Indigency, an Original Petition for Divorce, a Waiver of Service, a Final Decree of Divorce, a Certificate of Last Known Address, a Notice of Change of Address, and an Affidavit of Military Status. The chart on the next page describes each form and when to use it.

Do Not Use This Divorce Set if:

- ☐ You and your spouse disagree about any issue in your divorce.
- ☐ You or your spouse wants to file specific grounds for divorce, such as cruelty or adultery. This Set provides for a no-fault divorce, for example, you do not get along and do not plan to get back together.
- ☐ The wife is pregnant, even if the husband is not the father.
- ☐ The wife has had a child by another man since the date of marriage.
- ☐ You and your spouse have a disabled child, regardless of that child's age.
- ☐ You and your spouse have a biological or adopted child together who is either under 18 years old or who is 18 years old and still in high school.
- ☐ You or your spouse wants spousal support or maintenance, referred to as "alimony" in some states.
- ☐ You or your spouse owns or is buying real property (such as a house, building, piece of land, or other real estate).
- ☐ You or your spouse has an ongoing bankruptcy case.

Use This Divorce Set if:

- ☐ Nothing in the above "Do Not Use This Divorce Set" section applies to you.
- ☐ You think you and your spouse will agree on every issue in your divorce or you do not think your spouse will participate in the divorce process.
- ☐ You or your spouse has lived in Texas for at least 6 months and in the county where you are filing for divorce for at least 90 days.
 - Immigrants: You may file for divorce in Texas even if you do not have legal status in the United States if you have lived in Texas and in your county for the above time periods.
 - Military Families: If you are serving in the armed forces outside of Texas, or you have accompanied your spouse who is serving in the armed forces outside of Texas, you may still use these forms if Texas has been the home state for either spouse for at least 6 months and the county where you plan to file the divorce has been the home county of either spouse for at least 90 days.

Need Help?

- It is always best to hire a lawyer. To get a referral to a lawyer or, if you are poor, to a free Legal Aid program, call the State Bar of Texas Lawyer Referral Information Service at 1-800-252-9690.
- If you are a victim of domestic violence, or if at any time you feel unsafe, you can get confidential help from the National Domestic Violence Hotline at 1-800-799-7233 or legal help from the Texas Advocacy Project Family Violence Legal Line at 1-800-374-4673.
- If you are poor, you may be able to talk to an attorney online by live chat at www.TexasLawHelp.org.

Note on Retirement Funds (for example, pension, profit-sharing, and stock option plans, 401ks, and IRAs):

- If you use these forms to divide retirement funds, you will need to obtain an additional court order, usually called a "qualified domestic relations order" (QDRO), to make the division effective. A QDRO form is not included in this Divorce Set. It is recommended that you hire a lawyer to prepare a QDRO. If you and your spouse keep your own retirement funds or do not have any retirement funds, you do not need a QDRO.

Contents of Divorce Set 1 - Uncontested, No Minor Children, No Real Property:

Name of Form	What It Is and How to Use It
Affidavit of Indigency	If you are poor, or on government benefits because you are poor, or you cannot pay court fees, you may fill out this form to ask the Court if you can file for divorce without paying the court and filing fees. The Court may ask you to present evidence of your income and expenses at a hearing. The Court may or may not decide to let you file without paying. It is sometimes called a "Pauper's Oath" or an "Affidavit of Inability to Pay Costs."
Original Petition for Divorce	This form must be filed at the courthouse to start your divorce case. It tells the Court and your spouse that you want a divorce and states what you want the Court to order in the Final Decree of Divorce. It is sometimes called the "Original Petition" or "Petition."
Waiver of Service	This form may be filled out by your spouse, if he or she agrees to sign it. It tells the Court that your spouse has received a copy of the Original Petition for Divorce and does not want to be formally given a copy by a constable, sheriff, or process server. This form allows the judge to finalize your divorce as long as your spouse has signed the Final Decree of Divorce, and allows your spouse to be notified of any hearings in the case. Other Waiver of Service forms are not the same. Your spouse must sign the Waiver <u>in front of a notary</u> . The Waiver must be signed at least one day <u>after</u> the Original Petition for Divorce is filed.
Final Decree of Divorce	This form finalizes your divorce and states what the Court has ordered in your case. Fill it out and bring it to your final divorce hearing.
Certificate of Last Known Address	This form tells the Court what your spouse's last known address is and is filled out only in certain situations. If a Waiver or an Answer (<i>see below for definition</i>) has not been filed and your spouse has not signed the Final Decree of Divorce, you must bring this form to the final divorce hearing.
Notice of Change of Address	This form <u>must</u> be filed if you or your spouse moves. It tells the Court what the new address is so that the Court can contact you about hearings, etc.
Affidavit of Military Status	This form tells the Court whether or not your spouse is on active military duty. If a Waiver or an Answer (<i>see below for definition</i>) has not been filed and your spouse has not signed the Final Decree of Divorce, you must bring this form to the final divorce hearing.

Glossary:

Term	Definition
Legal Notice	Your spouse has a right to know, in writing, that you are filing for divorce. You cannot simply send your spouse a letter. You must use a legally acceptable way <i>and</i> prove to the Court that you did so. There are (3) ways to give legal notice: Waiver of Service, Official Service of Process, or by Posting or Publication. Each is described in Step 4 in these instructions.
Official Service of Process	Official service of process is when your spouse is formally "served" with (given) the Original Petition for Divorce by a constable, sheriff, or private process server, or when the clerk sends it by certified mail, return receipt requested. You <u>must</u> use official service of process if a Waiver of Service form has not been filed in your case. It is always best to officially serve your spouse if there has been domestic violence in the relationship or a Protective Order is in effect.
Waiving Service of Process	When your spouse tells the Court in writing that s/he has received a copy of the Original Petition for Divorce and does not want to be formally "served" with the Original Petition for Divorce, your spouse is "waiving service of process."
Answer	If your spouse contests the divorce, your spouse may file an "answer" instead of signing the Waiver of Service. This Set has no answer form because it is for uncontested cases. However, you may still use this Set if your spouse signs the Final Decree of Divorce after filing an answer.
Qualified Domestic Relations Order (QDRO)	An additional court order that is necessary to complete the division of a retirement fund. A QDRO form is not included in this Divorce Set. It is recommended that you hire a lawyer to prepare a QDRO if you use these forms to divide retirement funds.

How to Use this Set:

Step 1: Read These General Instructions

- Do not change the forms to include children, spousal support or maintenance (called “alimony” in some states), or real estate. This Set is NOT to be used for those situations.
- Use blue ink to complete the forms. Pencil and other color ink will not scan clearly.
- You must fill out all the spaces on the forms unless instructed otherwise. The judge and court personnel will not fill them out for you. The judge may require you to correct errors that you may make or may deny the divorce if the information is inaccurate or incomplete.
- Make two copies of each form you complete. Keep one copy. The other copy is for your spouse.
- Find out where to file for divorce in your county at the TexasLawHelp.org website (<http://www.texaslawhelp.org/TX/courts/>) by answering the questions at the bottom of the page.

Step 2: Fill out the Original Petition for Divorce and, if you are poor, the Affidavit of Indigency

- Fill out the Original Petition for Divorce and sign it. You are the Petitioner. Your spouse is the Respondent.
- If you are poor, are receiving public assistance, or do not think you have enough money to pay the court costs for your divorce, fill out the Affidavit of Indigency.
- You will need to fill out a Civil Case Information Sheet form, which you can get at the courthouse.
- Make two copies of the Original Petition for Divorce and, if you are using it, the Affidavit of Indigency.

Step 3: File (turn in) your Original Petition for Divorce, and if applicable, your Affidavit of Indigency

- Take the original and the two copies of your Original Petition for Divorce and your Affidavit of Indigency, if applicable, to the courthouse and file them (turn them in) with the District or County Court at Law Clerk.
 - NOTE: If you are using an Affidavit of Indigency, you must sign it in front of a notary and you must file the Original Petition for Divorce and the Affidavit of Indigency at the same time.
- Ask the clerk:
 - If there is a local standing order that you need to follow or attach to any of your documents.
 - If there are local rules that you need to know about for your divorce case.
 - For a Civil Case Information Sheet. Fill it out and file it with your Original Petition for Divorce.
 - For an Information on Suit Affecting the Family Relationship form, also called a BVS or Bureau of Vital Statistics form. It changes state records about your marital status, etc. Fill it out and file it with your Original Petition for Divorce.
 - To “file-stamp” your copies. The clerk will stamp your papers with the date and time you turned them in. The clerk will keep the original and give you back your file-stamped copies.
- If you are not filing an Affidavit of Indigency, you will need to pay a filing fee. The fee may be between \$150-\$300, depending on where you live.
- The clerk will ask you if you want to have your spouse “served” with the papers. See Step 4 for an explanation.

Step 4: Give Your Spouse “Legal Notice” that You Have Filed for Divorce. (See definition on page 2)

- There are three ways to give legal notice for this Set. Choose the one method that best fits your situation:

1. **By Waiver of Service.** If your spouse agrees to fill out the Waiver of Service form in this Set, you do not need to have your spouse served by Official Service of Process. Follow the steps below to use the Waiver of Service.
 - Mail or hand-deliver a “file-stamped” copy of the Original Petition for Divorce and a blank Waiver of Service form to your spouse. **WARNING: Do not hand-deliver these papers if there has been domestic violence in the relationship**, especially if a judge has signed a Protective Order ordering you or your spouse to stay away from the other. Mail or give legal notice by official service of process instead.
 - Tell your spouse to sign the Waiver in front of a notary public at least one day after you filed the Original Petition for Divorce. Otherwise, your spouse will have to redo it.
 - You or your spouse must file (turn in) the Waiver where you filed your Original Petition for Divorce.
2. **By Official Service of Process.** This method must be used in certain situations, described in the Glossary chart on page 2. Follow the steps below to use Official Service of Process.
 - Tell the clerk where you filed your Original Petition for Divorce that you need to “serve” your spouse with the Original Petition for Divorce. There will be a fee for this service.
 - Tell the clerk if you want a constable, sheriff, or private process server to handle service of process or if you want the clerk to handle it by certified mail, return receipt requested.
 - If a constable, sheriff or private process server handles it, they will complete a Return of Service form stating where and when your spouse was served. This form is proof to the Court that you gave your spouse legal notice. They may file the Return of Service at the courthouse or give it to you. If they give it to you, make a copy and file the original.
 - If the clerk handles it, the return receipt (or, “green card”) is proof to the Court that you gave your spouse legal notice. The return receipt must be signed by your spouse, so only use this option if you know that your spouse is the only person who will sign for the letter when the mailman delivers it.
 - Check to make sure the Return of Service or the return receipt is filed (turned in) to the court where you filed your Original Petition for Divorce, at least 12 days before your final hearing.
3. **By Posting or Publication.** If you do not know where your spouse is, you will need to give legal notice by posting (posting the paperwork at the courthouse) or by publication (publishing legal notice in the newspaper).
 - Go to www.TexasLawHelp.org and look at the Legal Notice, Service by Posting, and Service by Publication Sets for more details.
 - If you change anything in the Original Petition for Divorce after giving your spouse legal notice, you must give your spouse a copy of the Amended (changed) Original Petition for Divorce and file it with the court. You can give your spouse a copy by using the methods listed above, or you can use any method allowed under Texas Rule of Civil Procedure 21a, which is available online and may be available at the court. If you use a method allowed under Texas Rule of Civil Procedure 21a, the Amended (changed) Original Petition that you file with the court must include a signed statement showing you complied with the rule.

Step 5. Complete Final Forms and Prepare for Court.

- Fill out the Final Decree of Divorce form and sign it. If your spouse has filed an Answer or a Waiver, your spouse must sign the Final Decree of Divorce.

- NOTE: A creditor's right to collect on a debt is not affected by a divorce decree. So, if the Court orders your spouse to pay a specific debt from the marriage and your spouse does not pay it, the creditor can still seek payment from you.
- If a Waiver or an Answer has not been filed, you must fill out the Certificate of Last Known Address form and the Military Status Affidavit form. Make two copies.
- Prepare for Court.
 - You will need to give testimony when talking to the judge. Some judges will ask you questions, others want you to read a "script" of testimony. You can find sample "prove up" testimony online at www.TexasLawHelp.org.
 - Learn tips on what to do when you go to court and when the judge calls your case online at www.TexasLawHelp.org.

Step 6. Go to Court and Present Your Divorce Case to the Judge

- After 61 days have passed since you filed the Original Petition for Divorce, you may finalize your divorce.
 - Victims of domestic violence may be able to finalize a divorce earlier. Call 1-800-374-4673 to get advice from an attorney at no charge.
- Ask the clerk or court coordinator when uncontested divorce cases are heard and bring the following to court with you on that day:

If your spouse has signed the Final Decree of Divorce, bring:

1. A file-stamped copy of your Original Petition for Divorce;
2. Your completed Final Decree of Divorce form, signed by you and your spouse; and
3. The Waiver of Service signed by your spouse (if not already filed) or a file-stamped copy of the Return of Service (if a Waiver or Answer has not been filed).

If your spouse has not signed the Final Decree of Divorce or filed a Waiver or an Answer, bring:

1. A file-stamped copy of your Original Petition for Divorce;
2. A file-stamped copy of the Return of Service;
3. Certificate of Last Known Address;
4. Military Status Affidavit; and
5. Your completed Final Decree of Divorce, signed by you.

- When you go to the courthouse, stop by the clerk's office:
 - Ask if you need the court file, a docket sheet (list of what has been filed), or anything else from their office to bring with you to court.
 - If a Waiver or an Answer has not been filed, you need to file the Certificate of Last Known Address and the Military Status Affidavit in the clerk's office before you go to court, then bring a file-stamped copy of each with you to court.

Step 7. Finalize Your Divorce

- Once the judge has signed your Final Decree of Divorce, take it to the clerk's office and file it. Your divorce is NOT final until you do so.
- Turn in the Information on Suit Affecting the Family Relationship form (a BVS, or Bureau of Vital Statistics form) if you did not turn it in when you filed your Original Petition for Divorce.

- Get a certified copy of your Final Decree of Divorce from the clerk while you are there. You will need one if you are changing your name or dealing with creditors and may need one for other circumstances. The clerk may charge a fee for the certified copy.
- NOTES:
 - You cannot get married to someone else until 30 days after your Final Decree of Divorce is signed.
 - After your divorce is final, remember to sign documents to get car titles changed; revise your will; change beneficiaries on your life insurance policies, retirement plans, bank accounts, etc; prepare and submit a QDRO if you use these forms to divide retirements funds.