

Divorce petition requesting temporary orders and a temporary restraining order alternate form

PREVIEW

Information & Instructions: Divorce -General

1. The purpose of a divorce is to sever the legal marriage relationship. This process entails dividing the property of the parties and making suitable arrangements for custody of children, if any, and visitation rights. The forms set forth in the following sections are designed to take the general practitioner through the most common steps used in a divorce practice.

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Information & Instructions: Petition

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1. A divorce petition commences divorce proceedings. The petition may also seek ancillary relief, such as a restraining order to prevent one of the parties from harming or harassing the other party or children of the parties, or harming, destroying or wasting the parties' property.
2. The petition may also seek temporary support or alimony during the interim period between the time the divorce petition is filed and the divorce is granted.
3. The form in the following section is based upon the assumptions that:
 - a. The parties have no children and have satisfied the six-month residency requirement.
 - b. The Respondent will either file an answer or execute a waiver to dispense with the requirement of personal service.
 - c. The parties will mutually agree to a property division without a trial.
 - d. The parties make appropriate modifications to the petition in the event that the above assumptions are different. Note that such a petition may also request temporary orders pending the final outcome of the divorce.
4. The procedure for filing a divorce petition is the same as in other litigation. Nonresident service and service by publication is frequently encountered in divorce actions where one of the parties has abandoned the other and personal service is therefore impractical.

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Information & Instructions: Instructions to prepare for temporary hearing

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1. This form should be given to the client before the hearing on temporary orders.
2. While it is clear that where there is already a contest, there is a great deal more preparation involved prior to a hearing on temporary orders, the following form may be considered to be a basic summary of the elements necessary to prove the case.

Form: Instructions to prepare for temporary hearing

INSTRUCTIONS TO PREPARE FOR TEMPORARY HEARING

1. Write a history of your marital relationship. This history should be related to dates and facts supporting your claim for custody.
2. Make a list of all the reasons why you are best for custody, with supporting facts and dates.
3. Make a list of all the reasons why your wife should not be appointed custodian of the child, with supporting facts and dates.
4. Make a list of all witnesses you will need at the temporary hearing, names, addresses, telephone numbers, and a brief summary of what they know. Also, determine if they need a subpoena.
5. Fill out the financial information statement of your income and living expenses.
6. Make an appointment to come in and discuss strategy within 7 days.
7. Develop a plan to manage the child now -- from day to day while you are employed.

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Information & Instructions: Amount of Child Support

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1. Child support guidelines apply to situations in which the obligor's monthly net resources are \$6,000 or less. Guideline child support is rebuttably presumed to be in the best interest of the child. Where the obligor's income is over \$6,000, the court should allocate the responsibility to meet the additional needs of the child according to the parties' circumstances.

2. Interest on delinquent child support payments is raised from 10 to 13% per year. Payments are delinquent if not received within 31 days of the due date. Earnings include annuities, worker's compensation, overtime pay, severance pay and pay as an independent contractor.

3. All child support payments, unless the parties agree otherwise, shall be made through the local registry or the attorney general's office.

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4. Prior to 1993, the court struggled with the application of child support guidelines when a party had a duty to support more than one family or was under two or more child support orders.

5. Sections 154.070, 154.138, and 154.139 (previously Section 14.055 (f)-(j)) have been amended to provide for a multiple family adjusted guideline table. The table sets forth the percentage that a party will pay for child support in this multiple family situation.

6. Child support is based on the parent's gross wages less statutory deductions for social security taxes, federal income taxes based on allowance for one dependent allowance, health insurance premiums for the child and union dues where they are applicable.

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7. The income tax deduction is for the standard deduction for a single person claiming one exemption.

8. Based on the monthly net resources of the child support obligor, child support guidelines provide as follows:

1 child	20% of net resources
2 children	25% of net resources
3 children	30% of net resources
4 children	35% of net resources
5 children	40% of net resources

THANK YOU

If there are six or more children, the amount of support is not less than the amount for 5 children.

9. If the resources are over \$6,000 dollars then the court can presumptively apply guideline support for the first \$6,000 dollars of net resources and then may order additional support based on proven needs.

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Form: Divorce petition requesting temporary orders and a temporary restraining order alternate form

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NO: [Cause Number]

IN THE MATTER OF THE MARRIAGE OF §
[Petitioner Name], Petitioner §

IN THE DISTRICT COURT

v. §

[Respondent Name], Respondent §

[District] JUDICIAL DISTRICT

AND IN THE INTEREST OF: §
[CHILD NAME] §

[SUIT COUNTY] COUNTY, TEXAS

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ORIGINAL PETITION FOR DIVORCE AND TEMPORARY INJUNCTION

1. Discovery Control Plan

1.1 As provided by Rule 190 of the Texas Rules of Civil Procedure, discovery in this cause will be governed pursuant to Level 1, 2 or 3.

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2. Parties

2.1 The Petitioner's name is [Petitioner Name]. Petitioner brings this suit.

2.2 The Respondent is [Respondent's Name].

3. Domicile

3.1 Petitioner has been a domiciliary of this state for the preceding six-month period.

3.2 Petitioner has been a resident of [County name] for the preceding 90-day period.

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4. Service

4.1 Process may be served upon Respondent at Respondent's residence, [Address], or in the alternative, at [Respondent's Work Address].

5. Date of Marriage and Separation
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5.1 The parties were married on or about [Date of Marriage], and ceased to live together as husband and wife on or about [Date].

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6. Grounds for Divorce

6.1 The marriage has become insupportable because of discord or conflict of personalities between Petitioner and Respondent that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.

7.1 ^{7. Children of the Marriage} There are no children born or adopted during this marriage who are under the age of eighteen (18) years and Petitioner is not now expecting a child.

[or]

7.1

Petitioner and Respondent are parents of the following child [or children] of this marriage who [is or are] not under the continuing jurisdiction of any other court:

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Name: [Child Name]

Birth date: [Date of Birth]

[Continue for each additional child]

[If there are children then add in the request for custody:]

7.2 Petitioner believes that Petitioner and Respondent will enter into a written agreement providing for the Managing Conservatorship of the child, and Petitioner requests the Court to approve of such agreement if it is reached.

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7.3 If such written agreement is not reached by Petitioner and Respondent, it is in the best interests of the child that Petitioner be appointed Sole Managing Conservator of the child.

[If joint custody is desired state:

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7.4 If such written agreement is not reached by Petitioner and Respondent, it is in the best interests of the child that Petitioner and Respondent be appointed Joint Managing Conservators of the child.

[Then include the provision for Child Support:

7.5 Petitioner believes that Petitioner and Respondent will enter into a written agreement providing for the support of the child, and Petitioner requests the Court to approve of such agreement if it is reached.

7.6 If such written agreement is not reached by the parties, Petitioner requests the Court to order [Respondent Name], Respondent, to make payments to Petitioner for the support of the child in a manner specified by the Court.

[or]

7.4 [Petitioner, on final hearing, should be appointed Sole Managing Conservator of the child or children, with all the rights, privileges, duties, and powers of a parent Managing Conservator, and Respondent should be ordered to make payments for the support of the child or children in the manner specified by the Court. Petitioner requests that such payments for the support of the child or children survive the death of Respondent and become the obligation of Respondent's estate.]

Optional:

7.7 [The child the subject of this suit is fully enrolled in an accredited secondary school in a program leading toward a high school diploma or is enrolled in community college courses permitted by the Texas Family Code. The Court is requested to order that payments for the support of this child be continued until the end of the month in which the child graduates.]

8. Division of Community Estate

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8.1 Petitioner requests the Court to order a division of the estate of Petitioner and Respondent, having due regard for the rights of each party in a manner that the Court deems just and right, as provided by law.

8.2 Petitioner requests the use of the residence of the parties, located at [Residence Location] during the pendency of this suit.

[If appropriate]

⁹ ~~Disproportionate Division~~
9.1 Petitioner should be awarded a disproportionate share of the parties' estate.

9.2. The reasons which justify said award, include but not limited to the following reasons:

[list the applicable reasons, i.e.]

1. fault in the breakup of the marriage;
2. benefits the innocent spouse may have derived from the continuation of the marriage;
3. disparity of earning power of the spouses and their ability to support themselves;
4. health of the spouses;
5. education and future employability of the spouses;
6. community indebtedness and liabilities;
7. tax consequences of the division of property;
8. ages of the spouses;
9. earning power;
10. business opportunities, capacities, and abilities of the spouses;
11. need for future support;

12. nature of the property involved in the division; waiving of community assets of Respondent; community funds used to purchase out-of-state property;

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13. gifts to or by a spouse during the marriage;
14. increase in value of separate property through community efforts by time;
15. talent, labor, and effort; reimbursement;
16. expected inheritance of a spouse;
17. attorney's fees to be paid;
18. creation of community property through the use of a spouse's separate estate;
19. the size and nature of the separate estate of the spouse;
20. creation of community property by the efforts or lack thereof of the spouses.

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10. Reimbursement

10.1 Petitioner requests the Court to reimburse the community estate for funds or assets expended by the community estate to benefit or enhance Respondent's separate estate.

10.2 Petitioner requests the Court to reimburse the community estate for the value of community time and effort expended to enhance Respondent's separate estate.

10.3 Petitioner requests the Court to reimburse Petitioner's separate estate for separate funds or assets that Petitioner expended to benefit or enhance the community estate.

11. Request for Temporary Orders and Injunctions

11.1 Petitioner would show the Court that Respondent has embarked on a course of conduct designed to deprive Petitioner of rights in the community estate. Petitioner alleges that Respondent is cruel, vindictive and vengeful, is possessed of a violent temper and has been guilty of extreme behavior towards Petitioner, including the threats to deprive Petitioner of Petitioner's rights.

11.2 Petitioner further contends that unless Respondent is enjoined and restrained, Petitioner will suffer harm for which there is not an adequate remedy at law to compensate her for her loss.

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11.3 Attached hereto is Petitioner's affidavit setting forth facts causing Petitioner to plea for a temporary restraining order.

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11.4 Petitioner requests the Court to dispense with the necessity of a bond, and Petitioner requests that Respondent be temporarily restrained immediately, without hearing, and upon notice and hearing e temporarily enjoined, pending the further order of this Court, from:

Intentionally communicating with Petitioner by telephone, or in writing in vulgar, profane, obscene, or indecent language, or in a coarse or offensive manner with intent to annoy or alarm Petitioner.

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Threatening Petitioner by telephone, or in writing to take unlawful action against any person intending to annoy or alarm Petitioner

Placing one or more telephone calls, anonymously, at an unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication with the intent to annoy or alarm Petitioner.

Intentionally, knowingly, or recklessly causing bodily injury to Petitioner or the child.

Threatening Petitioner or the child with imminent bodily injury.

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Intentionally, knowingly, or recklessly destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties with intent to obstruct the authority of the Court to order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage.

Intentionally falsifying any writing or record relating to the property of either party.

Intentionally misrepresenting or refusing to disclose to Petitioner or to the Court, on proper request, the existence, amount, or location of any property of one or both of the parties.

Intentionally or knowingly damaging or destroying the tangible property of one or both of the parties, including any document that represents or embodies anything of value.

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Intentionally or knowingly tampering with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, and causing pecuniary loss or substantial loss to Petitioner.

Disposing of any of the property of the parties by sale, transfer, assignment, mortgage, encumbrance, or alienation by any of the parties, except as specifically authorized by the Court's order.

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Incurring debts other than those legal expenses incurred in connection with this lawsuit, other than specifically authorized by the Court's order.

Withdrawing any funds from any checking, savings or depository account in any bank or financial institution for any purpose, other than specifically authorized by the Court's order.

Expending any sum of money in the possession or subject to the control of Respondent, other than specifically authorized by the Court's order.

Withdrawing or borrowing any sum of money, funds or benefits for any purpose from any employee benefit plan, including retirement plans, profit-sharing plans, death benefit plans, individual retirement accounts, or Keogh Accounts, other than specifically authorized by the Court's order.

Making entry into any safety-deposit box in the name of or subject to the control of either.

Making withdrawals or borrowing funds or benefits from any life insurance policy on the life of either party, other than specifically authorized by the Court's order.

Making changes or alterations of the designation of any beneficiary on any life insurance policy on the life of either party and their child.

Changing in any manner by cancellation, alteration or other means of affecting any insurance policy on the property or persons of either party and their child, including casualty, automobile, health insurance of owner and tenant policies.

Affecting by termination, cancellation or any other manner, the continuation of utility or contractual services including, but not limited to water, gas, garbage, telephone, cable television, security, pest control, landscape or yard maintenance at the address of Petitioner, [Client Address], or affecting any deposit related to such services.

Intentionally or knowingly excluding Petitioner from the use and enjoyment of the residence located at [Client Address].

Intentionally or knowingly opening, diverting, or interfering with mail delivery address to Petitioner.

Affixing the signature or endorsement of Petitioner's name to any negotiable instrument, check, draft, refunds, payments, or dividends, or attempting to negotiate any such instrument which is made payable to Petitioner, without Petitioner's own signature.

Attempting to terminate or alter any credit card or charge service in the name of Petitioner.

Interfering in any way with the Petitioner's vehicle, not a vehicle (or in the possession of Petitioner), by entry, operation or other exercise of control.

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Altering the amount of withholding for federal income taxes on the wages of Respondent during this lawsuit by reducing or otherwise amending such withholding.

Molesting or disturbing the peace of the child named within this suit.

Removing the child named within this suit beyond the jurisdiction of the Court, whether acting alone or in a concerted plan or effort with others.

Disrupting or withdrawing the child from school, day-care facility or sitting arrangement in which the child is presently enrolled, attending or being cared for.

Hiding or secreting the child from Petitioner, changing or attempting to change the child's current place of residence or abode (Address).

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Instituting any lawsuit or legal action in any [Suit County] County, state, or nation which attempts to obtain either temporary or permanent orders relating to the parties' marriage relationship, its dissolution, or custody, support, access to or conservatorship of the child of the parties, or to obtain any other order which normally may be issued incident to a divorce suit which involves the marital or parent-child relationship.

12. Use of Property and Request for Temporary Orders

12.1 Petitioner requests the Court, after notice and hearing, to make temporary orders and issue any appropriate temporary injunctions respecting the temporary use of the parties' property as deemed necessary and equitable.

a. Petitioner requests the following including, but not limited to:

1. Awarding Petitioner the exclusive use and enjoyment of the residence of the parties located at [Residence Location], and all furniture, appliances and furnishings therein, and enjoining Respondent from entering or remaining on the premises except at the express invitation of Petitioner.

2. Awarding Petitioner exclusive use and control of the [Petitioner Vehicle] motor vehicle in Petitioner's possession and enjoining Respondent from entering, operating, or exercising control over it.

1. Awarding Petitioner the exclusive use of such other property as follows: all other property in the possession of or subject to the control of Petitioner.

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13. Request for Temporary Orders, for Discovery and Ancillary Relief

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13.1 Petitioner requests the Court, after notice and hearing, to make temporary orders and issue any appropriate temporary injunctions for discovery and ancillary relief as deemed necessary and equitable, including, but not limited to, the following:

a. Ordering Respondent to provide to Petitioner a sworn inventory and appraisal of all the separate and community property owned or claimed by the parties and all debts and liabilities owed by the parties.

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Ordering Respondent to produce copies of the parties' income tax returns, together with any and all supporting schedules and information returns used in connection with their original income tax returns for the years [First Tax Year to Produce] through [Last Tax Year to Produce] inclusive, and such other documents as the Court may deem necessary and equitable.

14. Protective Orders

14.1 There [is or is not any] protective orders under the Texas Family Code in effect and [there is or is not an] application for a protective order is pending with regard to the parties to the suit.

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15. Interim Attorneys Fees and Temporary Alimony

15.1 Petitioner requests the Court, after notice and hearing, to make its orders providing for the following:

a. Petitioner requests the Court to order Respondent to make payments to Petitioner for r support. Petitioner is not in control of sufficient community assets to provide for herself.

b. Petitioner requests the Court to order Respondent to pay interim attorney's fees to Petitioner's attorney. Petitioner is not in control of sufficient community assets to pay attorney's fees.

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16. Attorney's Fees

16.1 It was necessary for Petitioner to secure the services of [Petitioner Attorney Name], a licensed attorney, to prepare and prosecute this suit.

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16.2 In order to effect an equitable division of the estate of the parties and as a part thereof, judgment for attorney's fees and expenses should be granted against Respondent and in favor of

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Petitioner for the use and benefit of Petitioner's attorneys.

16.3 In the alternative, Petitioner requests that reasonable attorney's fees and expenses be taxed as costs and be ordered paid directly to Petitioner's attorney, who may enforce the order for fees in the attorney's own name.

PRAYER
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Petitioner prays that citation and notice issue as required by law and that the Court grant a

divorce and such other relief requested in this petition.

Petitioner prays that the Court, upon notice and hearing, grant a temporary injunction enjoining Respondent, in conformity with the allegations of this petition, from the acts set forth herein during the pendency of this suit.

Petitioner prays for attorney's fees, expenses, and costs. Petitioner prays for general relief.

THIS DOCUMENT

Respectfully Submitted,

[Law Firm Name]

By

[Attorney's Name]

[Attorney for Client Role]

[Attorney's Address]

[Telephone Number]

[Facsimile Number]

[Bar Card Number]

THANK YOU

STATEMENT ON ALTERNATIVE DISPUTE RESOLUTION

I AM WAIVING MY RIGHTS UNDER THE POLICY OF THE STATE OF TEXAS TO PROMOTE THE AMICABLE AND NONJUDICIAL SETTLEMENT OF DISPUTES INVOLVING
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CHILDREN AND FAMILIES. I AM AWARE OF ALTERNATIVE DISPUTE RESOLUTION METHODS INCLUDING MEDIATION. WHILE I RECOGNIZE THAT ALTERNATIVE DISPUTE RESOLUTION IS AN ALTERNATIVE TO AND NOT A SUBSTITUTE FOR A TRIAL AND THAT THIS CASE MAY BE TRIED IF IT IS NOT SETTLED, I REPRESENT TO THE COURT THAT I WILL ATTEMPT IN GOOD FAITH TO RESOLVE, BEFORE FINAL TRIAL, CONTESTED ISSUES IN THIS CASE BY ALTERNATIVE DISPUTE RESOLUTION WITHOUT THE NECESSITY OF COURT INTERVENTION.

[Client's Signature]

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