



# A HANDBOOK FOR TEXAS MARRIAGE

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## **MARRIAGE IN TEXAS**

So, you're in Texas and want to get married, but are unsure of the steps you need to take or the implications of a lawful marriage in the State of Texas. The information in this handbook will help answer your questions.

### **TEXAS FAMILY CODE, MARRIAGE, AND THE COMMUNITY PROPERTY SYSTEM**

The Texas Family Code is a codification of laws dealing with the family. Texas even has a limited provision for court-awarded alimony. The act provides for spousal maintenance primarily as a temporary rehabilitative measure for a divorced spouse whose ability for self-support is lacking or has deteriorated through passage of time while the spouse was engaged in homemaking activities and whose capital assets are insufficient to provide support.

Every marriage entered into in Texas is considered valid unless it is made void by the Family Code, or unless it is made voidable by the Family Code and subsequently annulled. The validity of a Texas marriage is not affected by any deficiency in obtaining the marriage license nor any lack of authority by the person conducting the ceremony. Each spouse has the duty to support the other spouse. Failure to do so can result in liability to any person who provides necessities.

The state of Texas applies the community property system. The system of community property comes from the civilized view that marriage is a full partnership with the spouses as equal partners. It assumes that marriage is a joint undertaking with both parties devoting their personal efforts, time, profits and individual property for the furtherance of the partnership in return for equal shares in all gains and acquisitions of the partnership. Each spouse has a present, vested half interest in all community property.

Community property consists of the property acquired by either spouse during marriage. This does not include "separate property." A spouse's separate property consists of the property owned or claimed by the spouse before marriage, the property acquired by the spouse during marriage by gift, devise, or descent, and the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.

Grounds for dissolution of marriage in Texas include both non-fault and fault grounds. The non-fault grounds are insupportability, living apart, and confinement in a mental hospital. The fault grounds are adultery, abandonment, cruelty, and imprisonment for a felony. The great majority of dissolution cases in Texas are filed under the no-fault ground of insupportability, because of discord or conflict of personalities that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation. With proper pleading and proof, there is no defense to a dissolution of the marital relationship based upon the statutory non-fault ground of insupportability.

Generally, a suit for divorce may be brought in Texas, if at the time the suit is filed, either spouse has been a domiciliary of the state for the preceding 6-month period and a resident of the county in which the suit is filed for the preceding 90-day period. Time spent outside of Texas or the

county of residence by a Texas domiciliary in the service of the Armed Forces, United States or Texas (i.e., public service), is considered state and county residency.

Military personnel not previously residents of Texas who have been stationed at one or more military installations in Texas for at least the last 6 months and at one or more military installations in a Texas county for at least the last 90 days are considered to be domiciliaries and residents for the purpose of bringing suit for divorce. If one spouse has been a Texas domiciliary for at least the last 6 months, a non-resident spouse may sue for divorce in the county where the Texas domiciled spouse is domiciled at the time the petition is filed.

### **WHERE DO YOU GET A MARRIAGE LICENSE?**

A couple who intends to be married in Texas must apply, in person, for a marriage license at a Texas County Clerk's Office. The application for a license must be signed by both the bride and the groom in the presence of the county clerk. If this is not possible, any adult or the other applicant may apply on behalf of the absent applicant. (Certain terms must be met. Contact the County Clerk's office for details.) Applications must be filled out and Social Security Numbers and Proof of Age and Identity must be shown (social security card, certified birth certificate, driver's license). A nominal filing fee of approximately \$36.00 in cash will be charged.

### **HOW LONG MUST I WAIT BETWEEN THE TIME I GET MY LICENSE AND THE ACTUAL CEREMONY?**

There must be at least 72 hours between the date and time of issuance of a license and the time the ceremony occurs unless an applicant is on active duty in the armed forces, or a waiver is granted by a judge (see County Clerk for details). A marriage license is valid for only 30 days, so with the 72-hour waiting period, there is only a 27-day period in which the marriage ceremony can take place.

### **DOES MY MARRIAGE HAVE TO OCCUR IN TEXAS? WHAT IF I WANT TO GET MARRIED IN MEXICO?**

The marriage ceremony does not have to occur in Texas. The ceremony may occur in another state, another county, or in international waters. However, the applicants should realize that, if issues should arise, the validity of the marriage may be subject to the jurisdiction's laws where the marriage occurred. The issue ultimately depends upon which jurisdiction has the more significant interest in the marriage. The applicants should research the laws of the other jurisdiction (for example, the jurisdiction may require the purchase of a local license) and should seek independent legal advice before the ceremony.

## **WHAT IF I AM UNDER THE AGE OF 18? CAN I STILL GET MARRIED?**

If you are under the age of 18, you cannot marry unless you have been legally emancipated.

\*effective September 2017, see Texas Family Code chapters 2.003, 2.101, and 6.205

## **CAN I GET MARRIED IF MY DIVORCE HAS JUST BEEN FINALIZED?**

When applying for a marriage license, each applicant must indicate that he or she has not been divorced within the last 30 days, unless the applicants were divorced from each other, or the prohibition against remarriage was waived by the court under Section 6.802 of the Texas Family Code.

## **CAN SAME SEX COUPLES BE ISSUED A MARRIAGE LICENSE?**

As of 26 June 2015 per the U.S. Supreme Court ruling of Obergefell v. Hodges, same sex couples are able to obtain marriage licenses and get married in Texas.

## **DOES COMMON-LAW MARRIAGE EXIST IN TEXAS?**

Common-law marriage, also known as “informal marriage” is legal in Texas, as is marriage by ceremony. A couple may choose whether or not to register their informal marriage. If they do choose to register, both the husband and wife must appear before the County Clerk to file a Declaration of Informal Marriage. The couple must list the date on the declaration from which they have considered themselves married. In other words, a couple can be married for some period of time before registering their informal marriage.

There are two ways a couple may prove that they are informally married:

- They can file a Declaration of Informal Marriage; or
- They meet all of the following conditions:
  - the couple agrees that they are married,
  - they live together in Texas, and
  - they represent themselves or “hold out” to other individuals that they are married to one another.

If the couple should split up and one of the individuals wishes to prove in a proceeding that the common-law marriage had occurred, he or she must start the determination process before the second anniversary of the date on which the couple separated and ceased living together. Otherwise, it is rebuttably presumed that the individuals did not agree to being married.

A person under the age of 18 may not:

- be a party to an informal marriage; or
- execute a Declaration of Informal Marriage.

## **REQUIREMENTS FOR APPLYING FOR A TEXAS MARRIAGE LICENSE**

Much of the information below is state law. However, this information can change from county to county. We recommend contacting your County Clerk's office before applying for your marriage license.

### ID requirements:

- Certified copy of birth certificate, or valid driver's license or other acceptable ID issued by the state, another state, the United States, or a foreign government.
- Your Social Security Card.
- If you want to use your maiden name on the license, bring a certified copy of your birth certificate or a certified copy of your divorce decree that states name is to be changed to maiden name.

### Residency requirements

- You do not have to be a resident of Texas.

### If previously married:

- If your divorce was finalized within 30 days, bring a certified copy of the divorce decree stating the 30-day waiting period is waived.

### Application requirements:

- Both parties must appear, together or separately, to apply. If one of the applicants is unable to appear personally before the county clerk, any adult person or the other applicant may apply on behalf of the absent applicant.
- The absent applicant must complete an Affidavit of Absent Applicant and provide this document, in addition to proof of identity and age (if under 18, emancipation order) to the person acting in his/her behalf.
- If the absent applicant is unable to attend the ceremony, the appointment of any adult, other than the other applicant, to act as proxy for the purpose of participating in the ceremony.

### Fees:

- \$60+ cash only. \$72 in Tom Green County. Fees are waived if you've completed a pre-martial education course.

### Waiting period:

- Marriage licenses have a 72-hour waiting period – unless waived due to active duty military status or a written waiver from a judge is obtained.

Blood tests:

- No blood test requirement.

Proxy marriages:

- Yes. If an absent applicant will be unable to attend the ceremony, any adult, other than the other applicant, may be appointed to act as proxy for the purpose of participating in the ceremony. The proxy will be named on the Affidavit of Absent Applicant form.

Common Law marriage:

- Yes. Known as “informal marriage,” both parties (just as in ceremonial marriages) must be of the opposite sex, of legal age, and possess no legal impediment, such as concerning kinship or the existence of a current marriage.
- There are two ways a couple may prove that they are informally married:
  - They can file a Declaration of Informal Marriage; or
  - They meet all of the following conditions:
    - the couple agrees that they are married,
    - they live together in Texas, and
    - they represent themselves or “hold out” to other individuals that they are married to one another.

Cousin marriage:

- No. Both parties may not be related as an ancestor or descendant, related by blood or adoption, nor be siblings by whole, half blood, or by adoption, nor may either be a parent’s brother or sister, of the whole or half blood or by adoption, or a son or daughter of a brother or sister, of the whole or half blood or by adoption

Same Sex marriage:

- Yes.

Officiants:

- Persons authorized to conduct a marriage ceremony include:
  - licensed or ordained Christian ministers or priests,
  - Jewish rabbis,

- persons who are officers of a religious organization and are authorized by that organization to conduct marriage ceremonies, and
- Court judges, including retired judges.
- Officiants must endorse the marriage license and return it to the issuing County Clerk's office within 30 days after the marriage ceremony.

Valid:

- License is valid for 30 days. If the marriage ceremony has not been conducted before the 31<sup>st</sup> day after the date the license was issued, the marriage license expires.

REFERENCES:

Texas Department of State Health Services

<http://www.dshs.state.tx.us/vs/marriagedivorce/mdfaq.shtm>

V.T.C.A., Family Code