

Obtaining an Order of Protection Under Texas Law

Even though going through a divorce is never easy and is likely to stir up unpleasant emotions at some point in the process, in most instances spouses who are separating are able to do so without intimidation or threats of violence. There will be times, however, that abuse is a reason for the divorce filing in the first place or anger at events that unfold after the separation lead to an unsafe environment for one of the parties involved. In such cases, legally enforced protection may be necessary and is something that should be pursued quickly. And, it is not just warring spouses who may file for a protective order; other blood relatives, members of your household, a relative by marriage, a father or mother of your child, a foster parent or child, or someone with whom you have had a romantic relationship all may face the restrictions of a protective order if the court determines that you are at risk by their presence. Under Texas law, as is common across the country, protective orders are most often granted in cases of domestic violence or stalking.¹

There are two different orders that can be signed by the court: temporary and permanent. In the first instance, the person requesting the order will appear before a judge and present evidence that she needs immediate protection from someone who offers a clear and present danger. If the argument is compelling, a temporary order that usually lasts up to twenty days or until a full court hearing on the matter can be scheduled will be installed.² At the time of the subsequent court hearing, a petition can be made to institute a permanent protective order. Despite its name, this is not a legal action that is in place for a lifetime. Instead, under Texas law, the permanent order is one that can be in place for up to two years, with the abuser being given the option of arguing before the court after one year that the order is no longer needed. If the abuser is in prison at the time the order goes into effect or enters prison during its duration, the order is good for one year after his release.³

The steps for securing a protective order in Texas are meant to be as simple and comfortable for the petitioner as possible. There are no fees associated with this request, although the court may require the person against whom the order was issued to pay for court costs or other expenses.⁴ You can apply for the order with the district or county attorney, a private Texas lawyer, or through a legal aid firm. The application must be filed in the county of residence of the victim or abuser, and there is no minimum time limit to establish residency. If the requested order is associated with a pending divorce, it must be requested in the same county in which the divorce is occurring. Protective orders are available in every county in the state of Texas.

¹ "Violation of a Protective Order: Texas Laws and Penalties," Texas Criminal Defense Lawyer, <http://www.mytexasdefenselawyer.com/texas-criminal-laws-penalties/violation-protective-order/>, 2011.

² "Protective Orders," Texas Attorney General's Office, <https://www.oag.state.tx.us/victims/protective.shtml>, May 7, 2010.

³ "Restraining Orders," WomensLaw.Org, http://www.womenslaw.org/laws_state_type.php?statelaw_name=Restraining%20Orders&state_code=TX, 2008.

⁴ "Restraining Orders," 2008.

You will be asked for some basic information concerning your contact information and your relationship with the abuser and then the court clerk will present the paperwork to a judge. If a temporary restraining order is granted, this decision will be made official at the same initial appearance. The clerk then will issue a Notice of an Application for a Protective Order and deliver it to the abuser. At the assigned hearing date, which will be within two weeks of the initial petition, the judge will review the evidence of violence committed against you in the past and the likelihood of this same person engaging in such violence again in the future. Both parties are allowed to have Texas attorneys and witnesses in the courtroom to offer support in the case. It is at this hearing that the need for a permanent protective order will be determined.

Once the protective order is in place, the abuser will be required to stay away from the home and workplace of the victim. The abuser also will be told not to threaten, harass, stalk, or commit violence against the victim. The order also may contain provisions requiring the abuser to continue or begin child support payments, attend counseling, turn over firearms, stop any transfer of property that may be shared, or stay away from the school or daycare of a child involved in the order.⁵ A violation of any part of the order, even if the contact is consensual with the person who asked for the protection, is considered contempt of court and may result in a fine and/or jail time.⁶

If you believe that your physical safety, or the safety of your children, is being threatened by a spouse or boyfriend (either current or former), you should take action to make sure that you are as safe from harm as possible. A protective order will keep your abuser away, or at least result in a visit from the police if he chooses to come around anyway. If you are intimidated by the paperwork process and the idea of appearing in court, an experienced Texas family law attorney will be able to guide you through the process with compassion and your well-being in mind.

⁵ "Protective Orders," 2010.

⁶ "Violation of a Protective Order," 2011.