

Service by Posting

(when you can't find your spouse in a divorce without kids)

Use these instructions & forms if:

- you are filing for divorce but cannot find your spouse and there are no children involved.

This packet includes:

1. Instructions for Service by Posting
2. Affidavit for Citation by Posting
3. Motion for Citation by Posting
4. Order on Motion for Citation by Posting
5. Statement of the Evidence
6. Certificate of Last Known Mailing Address
7. Military Status Affidavit

Note: You may not need all of the forms listed or you may need additional forms. Get more information at www.TexasLawHelp.org. Talk to a lawyer if you have questions.

- **Statement of the Evidence**

(<https://texaslawhelp.org/form/statement-evidence-citation-posting-divorce-without-children>)

Online Guided Forms – Interactive

SERVICE BY POSTING OR PUBLICATION AFFIDAVIT & MOTION – GUIDED FORM

(<https://texaslawhelp.org/guided-form/interactive-service-posting-or-publication-affidavit-motion>)

SERVICE BY POSTING OR PUBLICATION STATEMENT OF EVIDENCE, MILITARY, ADDRESS – GUIDED FORM

(<https://texaslawhelp.org/guided-form/interactive-service-posting-or-publication-statement-evidence-military-address>)

I’m filing for divorce. Do I have to notify my spouse?

Yes. If you file for divorce then your spouse must be served with the initial divorce papers.

What if I can’t find my spouse?

If you cannot find your spouse and there are **no children** involved, you may be able to serve by having the notice posted at the courthouse. This is called **service by posting**.

You **can** serve by posting if:

- You cannot find your spouse;
- You and your spouse do not have any children under 18 or still in high school;
- The wife is not pregnant; **and**
- The wife does not have any children under 18 who were born during the marriage with another man (unless paternity of those children has been legally established).

You **cannot** serve by posting if there are children involved. See **Service by Publication (when you can’t find the other parent)**

(<https://texaslawhelp.org/article/service-publication-when-you-cant-find-other-parent>)

How hard do I have to look for my spouse?

To serve by posting, you must take a number of steps. These steps will delay your case—but they are required. Before serving by posting, the law says you must make a diligent search for your spouse. This means you must look really hard.

Use the steps set out in the **Affidavit for Citation by Posting**

(<https://texaslawhelp.org/form/affidavit-citation-posting>)

form as a guide when looking for your spouse. You should also use common sense. A diligent search must include the steps someone who really wants to find their spouse would take.

What are the risks of serving by posting?

When you serve by posting, your spouse may not actually learn about your case. Because of this, the law says your spouse has 2 years to ask for a new trial.

In addition, if your spouse can show that you did not look hard enough before serving by posting then your spouse may be able to get a new trial no matter how much time has passed.

If you have questions, it's important to talk with a lawyer **before** service by posting.

How do I serve by posting?

Fill out the following forms:

- **Affidavit for Citation by Posting**
(<https://texaslawhelp.org/form/affidavit-citation-posting>)

This form tells the judge that, even though you made a diligent search, you could not find your spouse. Fill it out completely and sign it in front of a notary.

- **Motion for Citation by Posting**
(<https://texaslawhelp.org/form/motion-citation-posting>)

This form tells the judge you want to serve your spouse by posting. Fill it out completely and sign it.

- **Certificate of Last Known Address**
(<https://texaslawhelp.org/form/certificate-last-known-address-service-posting>)

This form puts the Respondent's last known address into the case file. Fill it out completely and sign it.

completely and sign it.

- **Order on Motion for Citation by Posting**

(<https://texaslawhelp.org/form/order-motion-citation-posting>)

In some counties, you may need a court order before the clerk will issue citation by posting. If needed, you may use the Order on Motion for Citation by Posting to ask for a court order. You will ask the judge to sign this form to allow you to serve by posting. Fill it out completely except for the judge's signature.

Take the completed Affidavit for Citation by Posting and Motion for Citation by Posting forms and at least one copy of each to the clerk's office where you filed the Petition in your case. The clerk will keep the original, stamp your copies, and give the copies back to you.

If your county requires a court order before the clerk will issue citation, ask the clerk when you can give your proposed Order on Motion for Citation by Posting (called Order for short) to the judge. You may be able to see the judge that day. Or, you may have to come back another day. Read the article **Tips for the Courtroom** (<https://texaslawhelp.org/article/tips-courtroom>)

for information about going to court. After the judge has signed your Order, turn in the signed Order at the clerk's office. Get a file-stamped copy of the Order for your records.

Tell the clerk you need to serve by posting. Ask the clerk, constable, or sheriff to post your notice for 7 days at the courthouse. It may be possible that it could be displayed **electronically on a public information website or electronic kiosk** (<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.51.htm#51.3032>)

. The clerk, constable, or sheriff will fill out a Return of Citation that says when the notice was posted. Make sure the Return of Citation is filed in the clerk's office.

Do I have to hire an attorney to look for my spouse?

If you and your spouse own property of significant value, such as a house, you must also hire an attorney to look for your spouse. This attorney is called an **attorney ad litem**. You are responsible for locating, hiring, and paying for the attorney ad litem. Some counties may have volunteer attorneys ad litem, but you cannot rely on that possibility. This protects your spouse's right to be notified about the case when there is property of significant value.

When can I finish my case?

You can finish your case when:

- It has been at least 60 days since you filed your Petition for Divorce;
- It has been at least 27 days **plus** the next Monday after 10 a.m. since the notice was posted; and
- The Return of Citation has been on file at the clerk's office for at least 10 days, not counting the day it was filed or the day you come to court.

Read the article **Tips for the Courtroom**

(<https://texaslawhelp.org/article/tips-courtroom>)

for information about going to court.

Note: If you had to hire an attorney ad litem to look for your spouse because you own property of significant value, set a date to meet the attorney at court. The attorney ad litem must testify that he or she tried to find your spouse.

How do I finish my case?

If your spouse did not respond to (answer) the service by posting, ask the clerk's office when the court hears uncontested divorce cases. Fill out these forms and bring them with you to court:

- The Final Decree of Divorce or any other orders you want the court to sign.
- **Military Status Declaration**
(<https://texaslawhelp.org/form/military-status-declaration>)
(If your case is filed in Harris County, fill out a **Military Status Affidavit** (<https://texaslawhelp.org/form/military-status-affidavit>) instead. Sign it in front of a notary.)
- **Certificate of Last Known Mailing Address**
(<https://texaslawhelp.org/form/certificate-last-known-address-service-posting>)
- **Statement of the Evidence**
(<https://texaslawhelp.org/form/statement-evidence-citation-posting-divorce-without-children>)

Note: If you or the attorney ad litem find your spouse, you cannot serve by posting.

See **How to Serve the Initial Divorce Papers**

(<https://texaslawhelp.org/article/how-serve-initial-divorce-papers>)

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NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA.

Cause No. _____
(Print court information exactly as it appears on the Original Petition for Divorce)

In the Matter of the Marriage of

In the _____
Court Number

Print first, middle, and last name of the spouse filing for divorce.

District Court

County Court at Law

And

Fill in name of county above
County,

Print first, middle, and last name of the other spouse.

Texas

Affidavit for Citation by Posting

THE STATE OF TEXAS

COUNTY OF _____

The person who signed this affidavit appeared, in person, before me, the undersigned notary, and stated under oath:

“My name is: _____
First Middle Last

“I am above the age of 18 years, and I am fully competent to make this affidavit.

“The facts stated in this affidavit are within my personal knowledge and are true and correct.

“I am the Petitioner in this case.

“The Respondent is: _____
First Middle Last

The Respondent is my spouse.

“The Respondent and I do not have any adopted or biological children under the age of 18. There are no children born or adopted during this marriage. No other child is expected at this time, to the best of my knowledge.

“I cannot find the Respondent.

“I do not know where the Respondent lives or works.

“I do not have a current phone number, email address or other way to contact the Respondent.

“I do not know of any location where the Respondent could be served.

“I understand that I must look really hard for the Respondent before having the Respondent served by posting.

In order to fulfill my obligation to exercise due diligence in my search for the Respondent, I did the following:

(Check only the boxes that apply.)

- a. "I wrote to Respondent's friends and family and asked them where Respondent is.

Persons Contacted	Relationship	Results
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- b. "I tried to have the Respondent served in person or by certified mail at the Respondent's last known address or addresses.

Address	Results
_____	_____
_____	_____

- c. "I tried to find a forwarding address for the Respondent. I mailed a letter to the Respondent at the Respondent's last known address or addresses with the words "Address Correction Requested" printed on the front of the envelope. I included my return address so the Post Office could send me the Respondent's forwarding address.

Address	Results
_____	_____
_____	_____

- d. "I wrote to Respondent's current and previous employer(s) and asked where Respondent is.

Employers Contacted	Results
_____	_____
_____	_____
_____	_____

- e. "I checked telephone directories or called telephone information in the city or cities where I think the Respondent might live.

City Directories Checked

Results

_____	_____
_____	_____
_____	_____

- f. "I checked online social networks such as Facebook.

Social Network Sites Checked

Results

_____	_____
_____	_____
_____	_____

- g. "I conducted people-finder research on the internet.

Websites Researched

Results

_____	_____
_____	_____
_____	_____

- h. "I searched property tax listings in the following counties.

Counties Searched

Results

_____	_____
_____	_____
_____	_____

- i. "I checked to see if the Respondent was registered to vote in the following counties.

Counties Searched

Results

_____	_____
_____	_____
_____	_____

- j. "I checked to see if the Respondent was incarcerated by contacting the Texas Department of Criminal Justice at www.tdcj.state.tx.us or 800-535-0283 and the following city, county, state, or federal jails or prisons.

Jails/Prisons Contacted	Results
<u>TX Department of Criminal Justice</u>	_____
_____	_____
_____	_____
_____	_____

- k. "I submitted a record request for the Respondent on the Department of Defense website <https://scra.dmdc.osd.mil/scra/>. with the following results:

- l. "I believe the Respondent may be in the military. Therefore, I contacted the following military locator services:

Military Locator Service Contacted	Results
<u>Air Force: 210-565-2660</u>	_____
<u>Navy: 866-827-5672</u>	_____
<u>Marines: 800-268-3710</u>	_____

- m. "I have also done the following to look for the Respondent:

"I cannot find the Respondent. I do not know of any other way I can learn the whereabouts of the Respondent.

"The Respondent and I were married on or about: _____.
(date)

"The Respondent and I separated on or about: _____.
(date)

"The last time I saw or heard from the Respondent was on or about: _____.
(date)

"The last time I saw or heard from the Respondent, they were in: _____.
(city, state, country)

"The Respondent was originally from: _____
(city, state, country)

"I understand that I must continue to look for the Respondent during this case.

"I understand that if I find the Respondent during this case, service by posting will not be sufficient and I must have the Respondent served with citation in person or by certified or registered mail return receipt requested or other method of service ordered by the court.

Property (Check applicable box below.)

- "No appreciable amount of property was accumulated during our marriage.
- "The following property was accumulated during our marriage:

"This affidavit is made to authorize the clerk of the above named court to issue citation for the Respondent by posting in accordance with the Texas Rules of Civil Procedure, Texas Government Code, and Texas Family Code."

Your Signature (Do not sign until you are in front of a notary.)

State of Texas

County of _____

SIGNED under oath before me on _____, 20_____, by

PRINT the first and last names of the person who signed this affidavit.

Notary Public, State of Texas

(Notary's seal must be included.)

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA.

Cause Number: _____

In the Matter of the Marriage of:

Petitioner: _____
Print first, middle and last name of the spouse filing for divorce.

In the _____
Court Number

And

District Court County Court of:

Respondent: _____
Print first, middle and last name of other spouse.

_____ County, Texas

Motion for Citation by Posting

My name is: _____
First Middle Last

I am the **Petitioner** in this case.

The **Respondent** is: _____
First Middle Last

The Respondent and I do not have any children under the age of 18 and none are expected.

As shown in my attached Affidavit for Citation by Posting, I have made a diligent attempt to locate the Respondent but have been unable to do so.

I ask the Court to order that the Respondent be served with citation by posting as allowed by Texas Family Code 6.409(d), and Texas Government Code 51.3032.

I ask the Court to grant this Motion for Citation by Posting.

Respectfully submitted,

Your signature. Date

(PRINT your name and information.):

Name: _____ :

Mailing Address: _____

Email Address: _____

Phone number: _____

Fax (if available): _____

Cause No. _____
(Print court information exactly as it appears on the Original Petition for Divorce)

In the Matter of the Marriage of

In the _____
Court Number

Print first, middle, and last name of the spouse filing for divorce.

District Court

County Court at Law

And

Print first, middle, and last name of the other spouse.

Print name of county above
Texas County,

Order on Motion for Citation by Posting

On this date the Court considered the Motion for Citation by Posting filed by the Petitioner and ORDERS that the Respondent, _____,
PRINT the Respondent's full name.

be served with citation by:

(Check all that apply.)

- posting the citation at the courthouse door for seven days as authorized by Texas Family Code Section 6.409(d).
- posting electronically as authorized by Texas Government Code 51.3032.

SIGNED on _____ (date).

JUDGE PRESIDING

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

Cause Number: _____

In the Matter of the Marriage of

Petitioner: _____
Print first, middle and last name of the spouse filing for divorce.

In the _____
Court Number

And

District Court County Court of:

Respondent: _____
Print first, middle and last name of other spouse.

_____ County, Texas

Statement of the Evidence

A trial on the merits was held in this case today.

Petitioner's name is: _____
PRINT Petitioner's full name.

Respondent's name is: _____
PRINT Respondent's full name.

Appearances

Petitioner appeared in person, and was self-represented. Respondent was cited by posting and did not appear.

The parties announced ready for trial. All witnesses were sworn, the Court took judicial notice of the contents of the case file, any exhibits attached to this Statement of Evidence were introduced and admitted, and the case proceeded.

The Court waived the appointment of an attorney ad litem as Petitioner testified that no child presently under the age of 18 years of age was born or adopted by the spouses and that no appreciable amount of property was accumulated by the spouses during the marriage.

Domicile and Residence Requirements

Petitioner has been a domiciliary of Texas (lived in Texas) for the six months before filing the Petition for Divorce and a resident of this county for the ninety days before filing the Petition for Divorce.

Respondent's Residence Unknown

The residence of Respondent is unknown to Petitioner. Petitioner has exercised due diligence to locate the whereabouts of Respondent and has been unable to do so as evidenced by Petitioner's Affidavit for Citation by Posting filed in this case.

Service of Citation

Respondent was served with citation by posting the citation at the courthouse door for seven days beginning on (date): _____.

The citation was returned to the Court on (date): _____.

Long Arm Jurisdiction

The Court may exercise personal jurisdiction over the Respondent because:

(Check all applicable boxes below.)

- Texas is the last marital residence of Petitioner and Respondent, and this suit was filed before the second anniversary of the date on which marital residence ended.
- There is another basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction: _____

Marriage and Separation

The parties were married on or about (date): _____ and separated on or about (date): _____.

Grounds for Divorce

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.

Property of the Parties

Petitioner testified that no appreciable amount of property was accumulated by the spouses during the marriage.

Separate Property of the Parties

The property listed below is Petitioner’s separate property under the laws of Texas:

The property listed below is Respondent’s separate property under the laws of Texas:

No Children

Petitioner and Respondent do not have any children, born or adopted, who are under 18 or still in high school.

Pregnancy

Neither spouse is pregnant.

Other Children Born During the Marriage

(Check applicable box below.)

- No wife in this marriage had children with anyone else during the marriage.
- A wife in this marriage did have a child or children with someone else during the marriage. Paternity of that child or those children has been established by court order or properly filed acknowledgment and denial of paternity.

A copy of that court order or properly filed acknowledgment and denial of paternity is attached to the Decree of Divorce.

Change of Name

(Check applicable box below.)

- Petitioner did not request a name change.
- Petitioner’s name should be changed to: _____

APPROVED on _____.

JUDGE PRESIDING

I have read the foregoing and agree that it accurately represents the evidence introduced at the hearing described above.

Signature of Petitioner

Case No: _____
(Print court information exactly as it appears on your Petition)

In the (check one):

District County Justice Court of:

_____ County, Texas

Certificate of Last Known Mailing Address

1. My name is: _____
 First Middle Last

2. I am the Petitioner in this case.

3. The Respondent's name is: _____
 First Middle Last


4. I certify that the last known mailing address I have for the Respondent is:

Address City State Zip Country

5. I certify that the last known email address I have for the Respondent is:

Respondent's email address

Respectfully Submitted,

 _____
Your Signature

Date

Your Printed Name

Phone

Your Mailing Address City State Zip

Email Address: _____ Fax # (if available) _____

Case No: _____
(Print court information exactly as it appears on your Petition)

In the (check one):
 District County Justice Court of:
_____ County, Texas

Military Status Affidavit

THE STATE OF TEXAS

COUNTY OF _____

The person who signed this affidavit appeared, in person, before me, the undersigned notary, and stated under oath:

“My name is: _____
 First Middle Last

“I am above the age of 18 years.

“I am fully competent to make this affidavit.

“The facts stated in this affidavit are within my personal knowledge and are true and correct.

“I am the Petitioner in this case.

“The Respondent is: _____
 First Middle Last

“I submitted a record request using the Department of Defense personnel locator website, <https://scra.dmdc.osd.mil/scra/>, also known as the Defense Manpower Data Center (DMDC) database.

“The search results showed that the Respondent is not on active duty in any of the armed forces. I have attached a true and correct copy of the DMDC verification to this affidavit.

(If you check this box, you must attach a copy of the DMDC verification.

You can print a copy of the DMDC verification from this web address:
<https://scra.dmdc.osd.mil/scra/>.)

"I believe the Respondent may be in the military. Therefore, I contacted the following military locator services:

Military Locator Service Contacted	Results
<u>Air Force: 210-565-2660</u>	_____
<u>Navy: 866-827-5672</u>	_____
<u>Marines: 800-268-3710</u>	_____

I know that the Respondent is not now in the military because:

I do not know if the Respondent is in the military now.

Your Signature (Do not sign until you are in front of a notary.)

State of Texas

County of _____

SIGNED under oath before me on _____, 20_____, by

PRINT the first and last names of the person who signed this affidavit.

Notary Public, State of Texas

(Notary's seal must be included.)