



LAW OFFICE OF
BRYAN FAGAN
— PLLC —



BILL OF REVIEW

IN HOUSTON, TX

WORK WITH A HOUSTON ATTORNEY

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INTRODUCTION

Thank you for downloading our special report: about Bills of Review, with information that will help you protect your assets and secure your future. For more insider divorce tips, please download our other special reports about Dirty Divorce Tricks, How to Plan and Prepare for Divorce, and Divorce after 50. We understand that you have a lot of questions and concerns about your divorce and we want to help you feel as comfortable with the process as we can. If you would like to speak to one of our highly skilled Law Office of Bryan Fagan, PLLC attorneys, we encourage you to contact us to schedule a free confidential consultation. We're here for you, always. Sincerely, Bryan Fagan, Law Office of Bryan Fagan

BILLS OF REVIEW IN TEXAS

GET HELP FROM A HOUSTON FAMILY LAW ATTORNEY

A Bill of Review is a way of securing a new trial after your initial trial has ended and a judgement against you has been issued. If you're not satisfied with the result, a Bill of Review may be a way you can secure a "do-over" and you can hopefully receive the result you're looking for.

- ☑ The Judge Ruled Against Me in My Family Law Case Now What?
- ☑ What is a Bill of Review and what impact can It have on a Texas family law case?
- ☑ A Houston area example of a Bill of Review's impact on a Family Law case

A bill of review may sound similar to a motion for a new trial, however there are some key differences:

- ☑ A bill of review may be filed anytime between four months to four years from the day a judgement is signed in court (with one limited exception)
- ☑ A bill of review case is usually significantly harder to win

If you're unhappy with the result of your trial, the Houston family law attorneys at the Law Office of Bryan Fagan, PLLC may be able to help you determine if pursuing a bill of review case is the right decision for you. Our attorneys have considerable experience with the divorce appeals process, including with bills of review and motion for a new trial cases. We take your best interests seriously, and we always provide our counsel with your goals in mind and tailor our advice to help you receive the outcome you're looking for. We're extremely proud of our reputation for excellence, and we aren't afraid to pursue all available options to help you find success.

HOW TO GET A BILL OF REVIEW GRANTED

Texas law clearly states what things are needed in order to win a bill of review hearing. Essentially, you need a valid defense for the action alleged against you, valid grounds for a new trial, or a valid defense arguing that you were unable to respond to a summons against you due to causes that included no negligent action on your behalf. A bill of review can also be requested if dishonesty or fraudulent action on behalf of the other party caused you to make your mistake—for example, if your spouse lies to you about the proposed court date, and you fail to show up in court because of it, then you may be able to get a bill of review granted.

The most common way of getting a bill of review granted is through a mistake made by an officer of the court during their duty. Court clerks often have a tremendous amount of work to do, including sending notices and other important documents to the right persons at the right time. A simple mistake in this regard could lead to serious consequences in your case, and thus give you grounds for petitioning for a bill of review.

As stated, these cases are not easy to win. Public policy in the state of Texas is set up to allow final judgements to be exactly that: final. Overturning them is not easy, but with the appropriate grounds and proper representation from a skilled attorney, you may be able to have yours granted.



THE JUDGE RULED AGAINST ME IN MY FAMILY LAW CASE NOW WHAT?

As a Houston, Texas divorce lawyer many times when I am meeting potential new clients is when things have not gone against them in court. Depending on the facts or how soon they have sought my help, I am often able to give them another chance for a different outcome.

DE NOVO HEARING

One example of where you might want a second chance would be if you had a hearing on Temporary Orders and you did not like the outcome. In if this is the case you might be not be stuck if you seek the help of a family law attorney immediately.

In Harris County, Texas and Montgomery County Texas there are both district and associate judges in all family courts. If the case was heard by an Associate Judge in a family law court and do not like their ruling you can request that your case be heard again by the district court judge. This is called a "de novo hearing."

It is very important to note the deadline to request a de novo hearing is extremely time limited. Texas Family Code Section 201.015(a) states that "a party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the third working date after the date the party receives notice of the substance of the associate judge's report."

In essence this means you must request a de novo hearing within three days from the time a Judge renders a Judgment.

Another important thing to be aware of is the Associate Judge's ruling is in full force an effect unless the district Judge changes it after a hearing. Therefore, you must follow the Associate Judge's ruling until a district judge changes it.

MOTION FOR NEW TRIAL

Another tool that people can utilize to try and get a second bite at the apple are "motions for new trial." In general, after a trial a "motion for new trial" must filed within 30 days after the date the judgment was signed. There are some exceptions such as if the judgment is based on service by publication. In such a circumstance then the deadline for filing a "motion for new trial" is extended to two years.

GROUND FOR A MOTION FOR NEW TRIAL

A trial court has broad discretion in granting a new trial. Texas Rules of Civil Procedure 320 provides that a new trial may be granted:

- for good cause
- on motion
- or on the court's own motion

Some reasons given for a court granting a new trial include, "...New trials may be granted when the damages are manifestly too small or too large. When it appears to the court that a new trial should be granted on a point or points that affect only a part of the matters in controversy and that such part is clearly separable without unfairness to the parties, the court may grant a new trial as to that part only, provided that a separate trial on unliquidated damages alone shall not be ordered if liability issues are contested..."

NO ANSWER DEFAULT JUDGMENTS

Often times you will see "motions for new trial" brought after a default judgment. In many of these circumstances the defendant failed to file an answer or did not appear for trial.

If a default judgment was granted in addition to the reasons for granting a new trial given under Texas Rules of Civil Procedure 320 there may be other reasons to ask for a new trial including:



- ☑ Defects in the Citation
- ☑ Defects in Service
- ☑ Defects in the Return
- ☑ Deficiencies in the Plaintiff's Petition
- ☑ "Craddock Factors"

One of the big cases regarding asking for a new trial based on a no answer default is *Craddock v. Sunshine Bus Lines, Inc.*, 133 S.W.2d 124, 126 (Tex.1939). Under Craddock a defendant must show that its failure to file an answer or appear at a hearing was not intentional or the result of conscious indifference but was due to a mistake or accident.

Counsel preparing the affidavits should do so with an eye toward each of the Craddock factors. The affidavits should be detailed enough to satisfy Craddock, but not so detailed that opposing counsel has the opportunity to show inconsistencies in the testimony provided.

WHAT IS A BILL OF REVIEW AND WHAT IMPACT CAN IT HAVE ON A TEXAS FAMILY LAW CASE?

If you were involved in a civil case in Texas and are not happy with the result, you have options to seek a new trial. The most widely known option is to file a motion for new trial. In the event that you had a default judgment rendered against you this would be the preferred option.

Courts in Texas do not like judgments against people based on their not having participated in the initial case so if filed within thirty days of the signing of the judgment it is likely you would be able to get your new trial and fresh bite at the apple.

An equitable bill of review is a similar post-trial method of attempting to secure a new trial. A bill of review may be filed any time after four months before four years have elapsed since the judgment was signed by the judge.

An exception to this four year requirement exists when and if you are able to prove that fraud caused the prior judgment to be entered. For example, if you are able to show a judge that you were lied to by the opposing party and chose not to show up to a trial based on that lie you may be able to win your bill of review hearing even after four years has elapsed.

WHAT DO YOU NEED TO SHOW IN ORDER TO WIN A BILL OF REVIEW MOTION?

There is set standard in Texas law which states what is necessary to win a Bill of Review hearing. However, if we look to what needs to be proved in a Motion for New Trial we will have a pretty good understanding of what a court will be looking for in a Bill of Review petition. They are:

- ☑ A meritorious defense to the cause of action alleged, or a meritorious ground for new trial or appeal, or a meritorious claim
- ☑ Which the Petitioner was prevented from making by the fraud, accident, or wrongful act of the opposing party, or by official mistake
- ☑ Unmixed with the Petitioner's own fault or negligence. *Caldwell v. Barnes*, 154 S.W.3d 93, 96 (Tex. 2004)

The standard is pretty cut and dry in one regard: your own fault at not being able to present your claim or defense in the first trial could not have been caused in any way by your own fault or negligence. You must prove that you truly were the victim of some wrongdoing in this regard.

BILL OF REVIEWS ARE DIFFICULT MOTIONS TO WIN IN A COURTROOM

If by reading the elements of proving a successful Bill of Review and my own short interpretation hasn't been enough to clue you in, you should realize that winning a Bill of Review petition is exceedingly difficult.

For starters, our state's public policy is to allow final judgments to remain final. If every judgment from every civil court in our state were easily appealable or could be overturned by the mere filing of a motion there would be little stability in our judicial system and in our society at large.



A WORD (OR TWO) ON WHAT AN OFFICIAL MISTAKE MEANS

If you go back to the elements that must be proved for your Bill of Review case to be successful, you will note that the second element notes that you could have been prevented from making your meritorious claim or defense "by official mistake". What exactly is an official mistake?

An official mistake would more than likely be a mistake made by an officer of the court in the performance of their official duties, more often, the clerk of the court.

Alexander v. Hagedorn, 226 S.W.2d at 999 (Tex. 1950). A clerk has a duty to inform parties to a case of any orders related to a case, but not necessarily a status of what is happening. Relying on a clerk to update you about what is happening with an old case you are involved in is not a smart move.

Perhaps the most notable responsibility that a clerk has insofar as your family law case may be concerned is providing you notice of any order or judgment that has been rendered by a court. Your ability to appeal or file a motion for new trial is time sensitive and not being told of any new order by the court's clerk is an official mistake.

County and District clerks in Texas will send out automatic updates on your case prior to trial. These updates will inform you of any recent documents filed and any instances where the judge has signed an order for final or temporary orders. This is done I would imagine to satisfy the basic requirement to keep parties up to date on any order that may be appealed down the line.

With as many cases as the courts are responsible for in Southeast Texas, it is possible to imagine a scenario where a clerk makes a mistake and a party is harmed as a result. A bill of review would need to stand as the only remedy available in order to pursue one based on the mistake of a court clerk.

Fraud by the opposing party and official mistake stand as the two most likely grounds to file for a bill of review in your Texas family law case. Tomorrow, we will review a situation from the Houston area involving a family lawcase and a bill of review that was filed in response to a judgment made in that case.

A HOUSTON AREA EXAMPLE OF A BILL OF REVIEW'S IMPACT ON A FAMILY LAW CASE

Yesterday's blog post dealt with the issue of what a Bill of Review is and how it can be used in a family lawcase in the event that you had a negative judgment against you that was not due to any wrongdoing or negligence on your part.

This is a topic that requires a little background information to know what is going on, in my opinion, so I would recommend that you go back and read yesterday's post before moving on to today's.

With that said, while a Bill of Review may be a foreign term to many of you, in reality it is a legal mechanism that allows you to tell your story to a judge when you had been denied that opportunity previously. Today we will look at an actual story involving people from the Houston area and how their lives were impacted by the filing of a Bill of Review.

GRANT V. GRANT- TWO MARRIAGES AND TWO DIVORCES

Let's meet our cast of characters before we discuss the exciting world of the Bill of Review. The Grants were a married couple that were actually married and divorced two times. Their first marriage occurred in 1994 and the Wife filed for divorce in 2010. As many people do during a divorce, the Grants continued to live together during the divorce case..



Here is where our case gets a little interested. As it happened, the Husband was convicted of a federal crime during the divorce case (unrelated to the divorce) and was sentenced to serve three years in prison. With this in mind, both Husband and Wife wanted to get their divorce case completed before Husband was shipped off to federal prison.

A trial notice was sent to Husband by certified mail (who was under house arrest at the time and was not represented by an attorney) but he did not show up for the trial date.

Ultimately, as it happens when one party doesn't appear for a trial, the judgment was much more favorable to the Wife and the Husband was none too pleased when he found out. After this, Husband began to serve his prison term as scheduled

THE GRANTS REMARRY AND OUR STORY CONTINUES

Approximately one year after their divorce, with Husband still serving time in prison, the Grants decided it would be a terrific idea to remarry one another. After this marriage Wife ended up selling some of the property that she was awarded in the first divorce.

To that point, Husband would still contend that the property was rightfully his separate property and he lost out on it only because he claims to never have received notice of the first divorce trial date.

As luck would have it, our parties divorced again in 2015. The parties had their second Final Decree of Divorce entered by the court, at which point the Husband filed a Bill of Review in regard to the first Decree that awarded the Wife property that he asserted was rightfully his separate property.

THE LAW OFFICE OF BRYAN FAGAN, PLLC- ADVOCATES FOR SOUTHEAST TEXAS FAMILIES

This story involved people that live in our area and went through quite a journey through our legal system here.

While their circumstances are certainly unique – the standards applied to them are the same that will apply to you and your family in a southeast Texas divorce. Having experienced and assertive representation can reduce the occurrence of mistakes and mishaps with your own divorce or child custody case.

The Law Office of Bryan Fagan, PLLC prides itself on representing individuals and families throughout southeast Texas. If you have questions about a particular issue in family law please do not hesitate to contact our office today. A free of charge consultation is only a phone call away, where your questions can be answered by one of our licensed family law attorneys.





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WE'RE HERE FOR YOU

When it comes to your financial future, your peace of mind matters. No matter where you are in the divorce process, we are always available to help you protect your assets and safeguard your future. As a Texas law firm exclusively devoted to divorce and family law, our experienced divorce attorneys will explain your options and support you throughout the process. Please contact us at (281) 810-9760 if you would like to schedule a free confidential consultation

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