



# Attorney's Fees 2019

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## The American Rule

“Each litigant pays his own attorney's fees, win or lose, unless a statute or contract provides otherwise.”

*Baker Botts LLP v. ASARCO LLC*, 135 S.Ct. 2158, 2164 (2015); see also *In re Nat'l Lloyds Ins. Co.*, 532 S.W.3d 794, 809 (Tex. 2017).



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“When fee-shifting is authorized, the party seeking to recover those fees bears the burden of establishing the fees are reasonable and necessary.”

*In re Nat'l Lloyds Ins. Co.*, 532 S.W.3d 794, 809 (Tex. 2017).

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“In short, to secure an award of attorney's fees from an opponent, the prevailing party must prove that: (1) recovery of attorney's fees is legally authorized, and (2) the requested attorney's fees are reasonable and necessary for the legal representation, so that such an award will compensate the prevailing party generally for its losses resulting from the litigation process.”

*Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 487 (Tex. Apr. 26, 2019).

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## What is a prevailing party?

Under section 38.001, a party must prevail on cause of action for which attorney's fees are recoverable and recover damages.

But what if no damages were sought or awarded and Chapter 38 is not controlling?

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## Prevailing Party

Must obtain actual and meaningful relief;  
materially alter the parties' legal relationship

*Rohrmoos Venture*, 578 S.W.3d at 486.

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