George on Texas Marital Property Rights

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Updated through 88th Legislature 2023, Regular Session and 1st Called Session.

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Secondary Sources

Texas Constitution

Article 1.
Bill of Rights

§ 3a. Equality Under the Law.

Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.

(Added Nov. 7, 1972.)

Article 16.
General Provisions

§ 15. Separate and Community Property.

All property, both real and personal, of a spouse owned or claimed before marriage, and that acquired afterward by gift, devise or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of the spouses, in relation to separate and community property; provided that persons about to marry and spouses, without the intention to defraud pre-existing creditors, may by written instrument from time to time partition between themselves all or part of their property, then existing or to be acquired, or exchange between themselves the community interest of one spouse or future spouse in any property for the community interest of the other spouse or future spouse in other community property then existing or to be acquired, whereupon the portion or interest set aside to each spouse shall be and constitute a part of the separate property and estate of such spouse or future spouse; spouses also may from time to time, by written instrument, agree between themselves that the income or property from all or part of the separate property then owned or which thereafter might be acquired by only one of them, shall be the separate property of that spouse; if one spouse makes a gift of property to the other that gift is presumed to include all the income or property which might arise from that gift of property; spouses may agree in writing that all or part of their community property becomes the property of the surviving spouse on the death of a spouse; and spouses may agree in writing that all or part of the separate property owned by either or both of them shall be the spouses' community property.

(Feb. 15, 1876. Amended Nov. 2, 1948, Nov. 4, 1980, Nov. 3, 1987, and Nov. 2, 1999.)

§ 28. Garnishment of Wages.

No current wages for personal service shall ever be subject to garnishment, except for the enforcement of court-ordered:

(1) child support payments; or

(2) spousal maintenance.

(Feb. 15, 1876. Amended Nov. 8, 1983, and Nov. 2, 1999.)

§ 50. Protection of Homestead From Forced or Unauthorized Sale; Exceptions; Requirements for Mortgage Loans and Other Obligations Secured by Homestead.

(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money thereof, or a part of such purchase money;

(2) the taxes due thereon;

(3) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(4) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(5) work and material used in constructing new improvements thereon, if contracted for in writing, or work and material used to repair or renovate existing improvements thereon if:

(A) the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead;

(B) the contract for the work and material is not executed by the owner or the owner's spouse before the fifth day after the owner makes written application for any extension of credit for the work and material, unless the work and material are necessary

to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

(C) the contract for the work and material expressly provides that the owner may rescind the contract without penalty or charge within three days after the execution of the contract by all parties, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing; and

(D) the contract for the work and material is executed by the owner and the owner's spouse only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company;

(6) an extension of credit that:

(A) is secured by a voluntary lien on the homestead created under a written agreement with the consent of each owner and each owner's spouse;

(B) is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made;

(C) is without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud;

(D) is secured by a lien that may be foreclosed upon only by a court order;

(E) does not require the owner or the owner's spouse to pay, in addition to any interest or any bona fide discount points used to buy down the interest rate, any fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, two percent of the original principal amount of the extension of credit, excluding fees for:

(i) an appraisal performed by a third party appraiser;

(ii) a property survey performed by a state registered or licensed surveyor;

(iii) a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law; or

(iv) a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law;

(F) is not a form of open-end account that may be debited from time to time or under which credit may be extended from time to time unless the open-end account is a home equity line of credit;

(G) is payable in advance without penalty or other charge;

(H) is not secured by any additional real or personal property other than the homestead;

(I) (repealed);

(J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead;

(K) is the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsections (a)(1)-(a)(5) or Subsection (a)(8) of this section;

(L) is scheduled to be repaid:

(i) in substantially equal successive periodic installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment; or

(ii) if the extension of credit is a home equity line of credit, in periodic payments described under Subsection (t)(8) of this section;

(M) is closed not before:

(i) the 12th day after the later of the date that the owner of the homestead submits a loan application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by Subsection (g) of this section;

(ii) one business day after the date that the owner of the homestead receives a copy of the loan application if not previously provided and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing; and

(iii) the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property, except a refinance described by Paragraph (Q)(x)(f) of this subdivision, unless the owner on oath requests an earlier closing due to a state of emergency that:

(a) has been declared by the president of the United States or the governor as provided by law; and

(b) applies to the area where the homestead is located;

(N) is closed only at the office of the lender, an attorney at law, or a title company;

(O) permits a lender to contract for and receive any fixed or variable rate of interest authorized under statute;

(P) is made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area:

(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States, including a subsidiary of a bank, savings and loan association, savings bank, or credit union described by this subparagraph;

(ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans;

(iii) a person licensed to make regulated loans, as provided by statute of this state;

(iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase;

(v) a person who is related to the homestead property owner within the second degree of affinity or consanguinity; or

(vi) a person regulated by this state as a mortgage banker or mortgage company; and

(Q) is made on the condition that:

(i) the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender;

(ii) the owner of the homestead not assign wages as security for the extension of credit;

(iii) the owner of the homestead not sign any instrument in which blanks relating to substantive terms of agreement are left to be filled in;

(iv) the owner of the homestead not sign a confession of judgment or power of attorney to the lender or to a third person to confess judgment or to appear for the owner in a judicial proceeding;

(v) at the time the extension of credit is made, the owner of the homestead shall receive a copy of the final loan application and all executed documents signed by the owner at closing related to the extension of credit;

(vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Subsection (a)(6) of this section;

(vii) within a reasonable time after termination and full payment of the extension of credit, the lender cancel and return the promissory note to the owner of the homestead and give the owner, in recordable form, a release of the lien securing the extension of credit or a copy of an endorsement and assignment of the lien to a lender that is refinancing the extension of credit;

(viii) the owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge;

(ix) the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made;

(x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date the lender or holder is notified by the borrower of the lender's failure to comply by:

(a) paying to the owner an amount equal to any overcharge paid by the owner under or related to the extension of credit if the owner has paid an amount that exceeds an amount stated in the applicable Paragraph (E), (G), or (O) of this subdivision;

(b) sending the owner a written acknowledgement that the lien is valid only in the amount that the extension of credit does not exceed the percentage described by Paragraph (B) of this subdivision, if applicable, or is not secured by property described under Paragraph (H) of this subdivision, if applicable;

(c) sending the owner a written notice modifying any other amount, percentage, term, or other provision prohibited by this section to a permitted amount, percentage, term, or other provision and adjusting the account of the borrower to ensure that the borrower is not required to pay more than an amount permitted by this section and is not subject to any other term or provision prohibited by this section;

(d) delivering the required documents to the borrower if the lender fails to comply with Subparagraph (v) of this paragraph or obtaining the appropriate signatures if the lender fails to comply with Subparagraph (ix) of this paragraph;

(e) sending the owner a written acknowledgement, if the failure to comply is prohibited by Paragraph (K) of this subdivision, that the accrual of interest and all of the owner's obligations under the extension of credit are abated while any prior lien prohibited under Paragraph (K) remains secured by the homestead; or

(f) if the failure to comply cannot be cured under Subparagraphs (x)(a)-(e) of this paragraph, curing the failure to comply by a refund or credit to the owner of $1,000 and offering the owner the right to refinance the extension of credit with the lender or holder for the remaining term of the loan at no cost to the owner on the same terms, including interest, as the original extension of credit with any modifications necessary to comply with this section or on terms on which the owner and the lender or holder otherwise agree that comply with this section; and

(xi) the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the extension of credit is made by a person other than a person described under Paragraph (P) of this subdivision or if the lien was not created under a written agreement with the consent of each owner and each owner's spouse, unless each owner and each owner's spouse who did not initially consent subsequently consents;

(7) a reverse mortgage; or

(8) the conversion and refinance of a personal property lien secured by a manufactured home to a lien on real property, including the refinance of the purchase price of the manufactured home, the cost of installing the manufactured home on the real property, and the refinance of the purchase price of the real property.

(b) An owner or claimant of the property claimed as homestead may not sell or abandon the homestead without the consent of each owner and the spouse of each owner, given in such manner as may be prescribed by law.

(c) No mortgage, trust deed, or other lien on the homestead shall ever be valid unless it secures a debt described by this section, whether such mortgage, trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void.

(d) A purchaser or lender for value without actual knowledge may conclusively rely on an affidavit that designates other property as the homestead of the affiant and that states that the property to be conveyed or encumbered is not the homestead of the affiant.

(e) A refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1)-(a)(5) that includes the advance of additional funds may not be secured by a valid lien against the homestead unless:

(1) the refinance of the debt is an extension of credit described by Subsection (a)(6) of this section; or

(2) the advance of all the additional funds is for reasonable costs necessary to refinance such debt or for a purpose described by Subsection (a)(2), (a)(3), or (a)(5) of this section.

(f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless either:

(1) the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of this section; or

(2) all of the following conditions are met:

(A) the refinance is not closed before the first anniversary of the date the extension of credit was closed;

(B) the refinanced extension of credit does not include the advance of any additional funds other than:

(i) funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of this section; or

(ii) actual costs and reserves required by the lender to refinance the debt;

(C) the refinance of the extension of credit is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made; and

(D) the lender provides the owner the following written notice on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed:

"YOUR EXISTING LOAN THAT YOU DESIRE TO REFINANCE IS A HOME EQUITY LOAN. YOU MAY HAVE THE OPTION TO REFINANCE YOUR HOME EQUITY LOAN AS EITHER A HOME EQUITY LOAN OR AS A NON-HOME EQUITY LOAN, IF OFFERED BY YOUR LENDER.

"HOME EQUITY LOANS HAVE IMPORTANT CONSUMER PROTECTIONS. A LENDER MAY ONLY FORECLOSE A HOME EQUITY LOAN BASED ON A COURT ORDER. A HOME EQUITY LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE.

"IF YOU HAVE APPLIED TO REFINANCE YOUR EXISTING HOME EQUITY LOAN AS A NON-HOME EQUITY LOAN, YOU WILL LOSE CERTAIN CONSUMER PROTECTIONS. A NON-HOME EQUITY REFINANCED LOAN:

"(1) WILL PERMIT THE LENDER TO FORECLOSE WITHOUT A COURT ORDER;

"(2) WILL BE WITH RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE; AND

"(3) MAY ALSO CONTAIN OTHER TERMS OR CONDITIONS THAT MAY NOT BE PERMITTED IN A TRADITIONAL HOME EQUITY LOAN.

"BEFORE YOU REFINANCE YOUR EXISTING HOME EQUITY LOAN TO MAKE IT A NON-HOME EQUITY LOAN, YOU SHOULD MAKE SURE YOU UNDERSTAND THAT YOU ARE WAIVING IMPORTANT PROTECTIONS THAT HOME EQUITY LOANS PROVIDE UNDER THE LAW AND SHOULD CONSIDER CONSULTING WITH AN ATTORNEY OF YOUR CHOOSING REGARDING THESE PROTECTIONS.

"YOU MAY WISH TO ASK YOUR LENDER TO REFINANCE YOUR LOAN AS A HOME EQUITY LOAN. HOWEVER, A HOME EQUITY LOAN MAY HAVE A HIGHER INTEREST RATE AND CLOSING COSTS THAN A NON-HOME EQUITY LOAN."

(f-1) A lien securing a refinance of debt under Subsection (f)(2) of this section is deemed to be a lien described by Subsection (a)(4) of this section. An affidavit executed by the owner or the owner's spouse acknowledging that the requirements of Subsection (f)(2) of this section have been met conclusively establishes that the requirements of Subsection (a)(4) of this section have been met.

(g) An extension of credit described by Subsection (a)(6) of this section may be secured by a valid lien against homestead property if the extension of credit is not closed before the 12th day after the lender provides the owner with the following written notice on a separate instrument:

"NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

"SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

"(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

"(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME;

"(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

"(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;

"(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 2 PERCENT OF THE LOAN AMOUNT, EXCEPT FOR A FEE OR CHARGE FOR AN APPRAISAL PERFORMED BY A THIRD PARTY APPRAISER, A PROPERTY SURVEY PERFORMED BY A STATE REGISTERED OR LICENSED SURVEYOR, A STATE BASE PREMIUM FOR A MORTGAGEE POLICY OF TITLE INSURANCE WITH ENDORSEMENTS, OR A TITLE EXAMINATION REPORT;

"(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

"(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

"(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

"(I) (repealed);

"(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME;

"(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

"(L) THE LOAN MUST BE SCHEDULED TO BE REPAID IN PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD;

"(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A LOAN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND MAY NOT WITHOUT YOUR CONSENT CLOSE BEFORE ONE BUSINESS DAY AFTER THE DATE ON WHICH YOU RECEIVE A COPY OF YOUR LOAN APPLICATION IF NOT PREVIOUSLY PROVIDED AND A FINAL ITEMIZED DISCLOSURE OF THE ACTUAL FEES, POINTS, INTEREST, COSTS, AND CHARGES THAT WILL BE CHARGED AT CLOSING; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN, UNLESS ON OATH YOU REQUEST AN EARLIER CLOSING DUE TO A DECLARED STATE OF EMERGENCY;

"(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

"(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF INTEREST AUTHORIZED BY STATUTE;

"(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

"(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:

"(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT EXCEPT A DEBT THAT IS SECURED BY YOUR HOME OR OWED TO ANOTHER LENDER;

"(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

"(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS FOR SUBSTANTIVE TERMS OF AGREEMENT LEFT TO BE FILLED IN;

"(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

"(5) PROVIDE THAT YOU RECEIVE A COPY OF YOUR FINAL LOAN APPLICATION AND ALL EXECUTED DOCUMENTS YOU SIGN AT CLOSING;

"(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

"(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;

"(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

"(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

"(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

"(R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

"(1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND REBORROW MONEY UNDER THE LINE OF CREDIT;

"(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN AN AMOUNT OF AT LEAST $4,000;

"(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD, OR SIMILAR DEVICE, OR PREPRINTED CHECK THAT YOU DID NOT SOLICIT, TO OBTAIN ADVANCES UNDER THE LINE OF CREDIT;

"(4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

"(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LINE OF CREDIT IS ESTABLISHED;

"(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT AT ANY TIME EXCEEDS 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED, YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT UNTIL THE BALANCE IS LESS THAN 80 PERCENT OF THE FAIR MARKET VALUE; AND

"(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS OF THE LINE OF CREDIT.

"THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI, OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE."

If the discussions with the borrower are conducted primarily in a language other than English, the lender shall, before closing, provide an additional copy of the notice translated into the written language in which the discussions were conducted.

(h) A lender or assignee for value may conclusively rely on the written acknowledgment as to the fair market value of the homestead property made in accordance with Subsection (a)(6)(Q)(ix) of this section if:

(1) the value acknowledged to is the value estimate in an appraisal or evaluation prepared in accordance with a state or federal requirement applicable to an extension of credit under Subsection (a)(6); and

(2) the lender or assignee does not have actual knowledge at the time of the payment of value or advance of funds by the lender or assignee that the fair market value stated in the written acknowledgment was incorrect.

(i) This subsection shall not affect or impair any right of the borrower to recover damages from the lender or assignee under applicable law for wrongful foreclosure. A purchaser for value without actual knowledge may conclusively presume that a lien securing an extension of credit described by Subsection (a)(6) of this section was a valid lien securing the extension of credit with homestead property if:

(1) the security instruments securing the extension of credit contain a disclosure that the extension of credit secured by the lien was the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

(2) the purchaser acquires the title to the property pursuant to or after the foreclosure of the voluntary lien; and

(3) the purchaser is not the lender or assignee under the extension of credit.

(j) Subsection (a)(6) and Subsections (e)-(i) of this section are not severable, and none of those provisions would have been enacted without the others. If any of those provisions are held to be preempted by the laws of the United States, all of those provisions are invalid. This subsection shall not apply to any lien or extension of credit made after January 1, 1998, and before the date any provision under Subsection (a)(6) or Subsections (e)-(i) is held to be preempted.

(k) "Reverse mortgage" means an extension of credit:

(1) that is secured by a voluntary lien on homestead property created by a written agreement with the consent of each owner and each owner's spouse;

(2) that is made to a person who is or whose spouse is 62 years or older;

(3) that is made without recourse for personal liability against each owner and the spouse of each owner;

(4) under which advances are provided to a borrower:

(A) based on the equity in a borrower's homestead; or

(B) for the purchase of homestead property that the borrower will occupy as a principal residence;

(5) that does not permit the lender to reduce the amount or number of advances because of an adjustment in the interest rate if periodic advances are to be made;

(6) that requires no payment of principal or interest until:

(A) all borrowers have died;

(B) the homestead property securing the loan is sold or otherwise transferred;

(C) all borrowers cease occupying the homestead property for a period of longer than 12 consecutive months without prior written approval from the lender;

(C-1) if the extension of credit is used for the purchase of homestead property, the borrower fails to timely occupy the homestead property as the borrower's principal residence within a specified period after the date the extension of credit is made that is stipulated in the written agreement creating the lien on the property; or

(D) the borrower:

(i) defaults on an obligation specified in the loan documents to repair and maintain, pay taxes and assessments on, or insure the homestead property;

(ii) commits actual fraud in connection with the loan; or

(iii) fails to maintain the priority of the lender's lien on the homestead property, after the lender gives notice to the borrower, by promptly discharging any lien that has priority or may obtain priority over the lender's lien within 10 days after the date the borrower receives the notice, unless the borrower:

(a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to the lender;

(b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings so as to prevent the enforcement of the lien or forfeiture of any part of the homestead property; or

(c) secures from the holder of the lien an agreement satisfactory to the lender subordinating the lien to all amounts secured by the lender's lien on the homestead property;

(7) that provides that if the lender fails to make loan advances as required in the loan documents and if the lender fails to cure the default as required in the loan documents after notice from the borrower, the lender forfeits all principal and interest of the reverse mortgage, provided, however, that this subdivision does not apply when a governmental agency or instrumentality takes an assignment of the loan in order to cure the default;

(8) that is not made unless the prospective borrower and the spouse of the prospective borrower attest in writing that the prospective borrower and the prospective borrower's spouse received counseling regarding the advisability and availability of reverse mortgages and other financial alternatives that was completed not earlier than the 180th day nor later than the 5th day before the date the extension of credit is closed;

(9) that is not closed before the 12th day after the date the lender provides to the prospective borrower the following written notice on a separate instrument, which the lender or originator and the borrower must sign for the notice to take effect:

"IMPORTANT NOTICE TO BORROWERS
RELATED TO YOUR REVERSE MORTGAGE

"UNDER THE TEXAS TAX CODE, CERTAIN ELDERLY PERSONS MAY DEFER THE COLLECTION OF PROPERTY TAXES ON THEIR RESIDENCE HOMESTEAD. BY RECEIVING THIS REVERSE MORTGAGE YOU MAY BE REQUIRED TO FORGO ANY PREVIOUSLY APPROVED DEFERRAL OF PROPERTY TAX COLLECTION AND YOU MAY BE REQUIRED TO PAY PROPERTY TAXES ON AN ANNUAL BASIS ON THIS PROPERTY.

"THE LENDER MAY FORECLOSE THE REVERSE MORTGAGE AND YOU MAY LOSE YOUR HOME IF:

"(A) YOU DO NOT PAY THE TAXES OR OTHER ASSESSMENTS ON THE HOME EVEN IF YOU ARE ELIGIBLE TO DEFER PAYMENT OF PROPERTY TAXES;

"(B) YOU DO NOT MAINTAIN AND PAY FOR PROPERTY INSURANCE ON THE HOME AS REQUIRED BY THE LOAN DOCUMENTS;

"(C) YOU FAIL TO MAINTAIN THE HOME IN A STATE OF GOOD CONDITION AND REPAIR;

"(D) YOU CEASE OCCUPYING THE HOME FOR A PERIOD LONGER THAN 12 CONSECUTIVE MONTHS WITHOUT THE PRIOR WRITTEN APPROVAL FROM THE LENDER OR, IF THE EXTENSION OF CREDIT IS USED FOR THE PURCHASE OF THE HOME, YOU FAIL TO TIMELY OCCUPY THE HOME AS YOUR PRINCIPAL RESIDENCE WITHIN A PERIOD OF TIME AFTER THE EXTENSION OF CREDIT IS MADE THAT IS STIPULATED IN THE WRITTEN AGREEMENT CREATING THE LIEN ON THE HOME;

"(E) YOU SELL THE HOME OR OTHERWISE TRANSFER THE HOME WITHOUT PAYING OFF THE LOAN;

"(F) ALL BORROWERS HAVE DIED AND THE LOAN IS NOT REPAID;

"(G) YOU COMMIT ACTUAL FRAUD IN CONNECTION WITH THE LOAN; OR

"(H) YOU FAIL TO MAINTAIN THE PRIORITY OF THE LENDER'S LIEN ON THE HOME, AFTER THE LENDER GIVES NOTICE TO YOU, BY PROMPTLY DISCHARGING ANY LIEN THAT HAS PRIORITY OR MAY OBTAIN PRIORITY OVER THE LENDER'S LIEN WITHIN 10 DAYS AFTER THE DATE YOU RECEIVE THE NOTICE, UNLESS YOU:

"(1) AGREE IN WRITING TO THE PAYMENT OF THE OBLIGATION SECURED BY THE LIEN IN A MANNER ACCEPTABLE TO THE LENDER;

"(2) CONTEST IN GOOD FAITH THE LIEN BY, OR DEFEND AGAINST ENFORCEMENT OF THE LIEN IN, LEGAL PROCEEDINGS SO AS TO PREVENT THE ENFORCEMENT OF THE LIEN OR FORFEITURE OF ANY PART OF THE HOME; OR

"(3) SECURE FROM THE HOLDER OF THE LIEN AN AGREEMENT SATISFACTORY TO THE LENDER SUBORDINATING THE LIEN TO ALL AMOUNTS SECURED BY THE LENDER'S LIEN ON THE HOME.

"IF A GROUND FOR FORECLOSURE EXISTS, THE LENDER MAY NOT COMMENCE FORECLOSURE UNTIL THE LENDER GIVES YOU WRITTEN NOTICE BY MAIL THAT A GROUND FOR FORECLOSURE EXISTS AND GIVES YOU AN OPPORTUNITY TO REMEDY THE CONDITION CREATING THE GROUND FOR FORECLOSURE OR TO PAY THE REVERSE MORTGAGE DEBT WITHIN THE TIME PERMITTED BY SECTION 50(k)(10), ARTICLE XVI, OF THE TEXAS CONSTITUTION. THE LENDER MUST OBTAIN A COURT ORDER FOR FORECLOSURE EXCEPT THAT A COURT ORDER IS NOT REQUIRED IF THE FORECLOSURE OCCURS BECAUSE:

"(1) ALL BORROWERS HAVE DIED; OR

"(2) THE HOMESTEAD PROPERTY SECURING THE LOAN IS SOLD OR OTHERWISE TRANSFERRED."

"YOU SHOULD CONSULT WITH YOUR HOME COUNSELOR OR AN ATTORNEY IF YOU HAVE ANY CONCERNS ABOUT THESE OBLIGATIONS BEFORE YOU CLOSE YOUR REVERSE MORTGAGE LOAN. TO LOCATE AN ATTORNEY IN YOUR AREA, YOU MAY WISH TO CONTACT THE STATE BAR OF TEXAS."

"THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS CONSTITUTION. YOUR RIGHTS ARE GOVERNED IN PART BY SECTION 50, ARTICLE XVI, OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE.";

(10) that does not permit the lender to commence foreclosure until the lender gives notice to the borrower, in the manner provided for a notice by mail related to the foreclosure of liens under Subsection (a)(6) of this section, that a ground for foreclosure exists and gives the borrower at least 30 days, or at least 20 days in the event of a default under Subdivision (6)(D)(iii) of this subsection, to:

(A) remedy the condition creating the ground for foreclosure;

(B) pay the debt secured by the homestead property from proceeds of the sale of the homestead property by the borrower or from any other sources; or

(C) convey the homestead property to the lender by a deed in lieu of foreclosure; and

(11) that is secured by a lien that may be foreclosed upon only by a court order, if the foreclosure is for a ground other than a ground stated by Subdivision (6)(A) or (B) of this subsection.

(l) Advances made under a reverse mortgage and interest on those advances have priority over a lien filed for record in the real property records in the county where the homestead property is located after the reverse mortgage is filed for record in the real property records of that county.

(m) A reverse mortgage may provide for an interest rate that is fixed or adjustable and may also provide for interest that is contingent on appreciation in the fair market value of the homestead property. Although payment of principal or interest shall not be required under a reverse mortgage until the entire loan becomes due and payable, interest may accrue and be compounded during the term of the loan as provided by the reverse mortgage loan agreement.

(n) A reverse mortgage that is secured by a valid lien against homestead property may be made or acquired without regard to the following provisions of any other law of this state:

(1) a limitation on the purpose and use of future advances or other mortgage proceeds;

(2) a limitation on future advances to a term of years or a limitation on the term of open-end account advances;

(3) a limitation on the term during which future advances take priority over intervening advances;

(4) a requirement that a maximum loan amount be stated in the reverse mortgage loan documents;

(5) a prohibition on balloon payments;

(6) a prohibition on compound interest and interest on interest;

(7) a prohibition on contracting for, charging, or receiving any rate of interest authorized by any law of this state authorizing a lender to contract for a rate of interest; and

(8) a requirement that a percentage of the reverse mortgage proceeds be advanced before the assignment of the reverse mortgage.

(o) For the purposes of determining eligibility under any statute relating to payments, allowances, benefits, or services provided on a means-tested basis by this state, including supplemental security income, low-income energy assistance, property tax relief, medical assistance, and general assistance:

(1) reverse mortgage loan advances made to a borrower are considered proceeds from a loan and not income; and

(2) undisbursed funds under a reverse mortgage loan are considered equity in a borrower's home and not proceeds from a loan.

(p) The advances made on a reverse mortgage loan under which more than one advance is made must be made according to the terms established by the loan documents by one or more of the following methods:

(1) an initial advance at any time and future advances at regular intervals;

(2) an initial advance at any time and future advances at regular intervals in which the amounts advanced may be reduced, for one or more advances, at the request of the borrower;

(3) an initial advance at any time and future advances at times and in amounts requested by the borrower until the credit limit established by the loan documents is reached;

(4) an initial advance at any time, future advances at times and in amounts requested by the borrower until the credit limit established by the loan documents is reached, and subsequent advances at times and in amounts requested by the borrower according to the terms established by the loan documents to the extent that the outstanding balance is repaid; or

(5) at any time by the lender, on behalf of the borrower, if the borrower fails to timely pay any of the following that the borrower is obligated to pay under the loan documents to the extent necessary to protect the lender's interest in or the value of the homestead property:

(A) taxes;

(B) insurance;

(C) costs of repairs or maintenance performed by a person or company that is not an employee of the lender or a person or company that directly or indirectly controls, is controlled by, or is under common control with the lender;

(D) assessments levied against the homestead property; and

(E) any lien that has, or may obtain, priority over the lender's lien as it is established in the loan documents.

(q) To the extent that any statutes of this state, including without limitation, Section 41.001 of the Texas Property Code, purport to limit encumbrances that may properly be fixed on homestead property in a manner that does not permit encumbrances for extensions of credit described in Subsection (a)(6) or (a)(7) of this section, the same shall be superseded to the extent that such encumbrances shall be permitted to be fixed upon homestead property in the manner provided for by this amendment.

(r) The supreme court shall promulgate rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Subsection (a)(6) of this section and to foreclosure of a reverse mortgage lien that requires a court order.

(s) The Finance Commission of Texas shall appoint a director to conduct research on the availability, quality, and prices of financial services and research the practices of business entities in the state that provide financial services under this section. The director shall collect information and produce reports on lending activity of those making loans under this section. The director shall report his or her findings to the legislature not later than December 1 of each year.

(t) A home equity line of credit is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which:

(1) the owner requests advances, repays money, and reborrows money;

(2) any single debit or advance is not less than $4,000;

(3) the owner does not use a credit card, debit card, or similar device, or preprinted check unsolicited by the borrower, to obtain an advance;

(4) any fees described by Subsection (a)(6)(E) of this section are charged and collected only at the time the extension of credit is established and no fee is charged or collected in connection with any debit or advance;

(5) the maximum principal amount that may be extended under the account, when added to the aggregate total of the outstanding principal balances of all indebtedness secured by the homestead on the date the extension of credit is established, does not exceed an amount described under Subsection (a)(6)(B) of this section;

(6) (repealed);

(7) the lender or holder may not unilaterally amend the extension of credit; and

(8) repayment is to be made in regular periodic installments, not more often than every 14 days and not less often than monthly, beginning not later than two months from the date the extension of credit is established, and:

(A) during the period during which the owner may request advances, each installment equals or exceeds the amount of accrued interest; and

(B) after the period during which the owner may request advances, installments are substantially equal.

(u) The legislature may by statute delegate one or more state agencies the power to interpret Subsections (a)(5)-(a)(7), (e)-(p), and (t), of this section. An act or omission does not violate a provision included in those subsections if the act or omission conforms to an interpretation of the provision that is:

(1) in effect at the time of the act or omission; and

(2) made by a state agency to which the power of interpretation is delegated as provided by this subsection or by an appellate court of this state or the United States.

(v) A reverse mortgage must provide that:

(1) the owner does not use a credit card, debit card, preprinted solicitation check, or similar device to obtain an advance;

(2) after the time the extension of credit is established, no transaction fee is charged or collected solely in connection with any debit or advance; and

(3) the lender or holder may not unilaterally amend the extension of credit.

(Feb. 15, 1876. Amended Nov. 6, 1973, and Nov. 7, 1995; Subsecs. (a)-(d) amended and (e)-(s) added Nov. 4, 1997; Subsecs. (k), (p), and (r) amended Nov. 2, 1999; Subsec. (a) amended Nov. 6, 2001; Subsecs. (a), (f), and (g) amended and (t) and (u) added Sept. 13, 2003; Subsec. (p) amended and (v) added Nov. 8, 2005; Subsecs. (a), (g), and (t) amended Nov. 6, 2007 ; Subsec. (k) amended Nov. 5, 2013; Subsecs. (a), (f), (g), and (t) amended and Subsection (f-1) added by Acts 2017, 85th Leg., R.S., SJR 60, § 1, approved by voters Nov. 7, 2017, eff. Jan. 1, 2018.)

§ 51. Amount of Homestead; Uses.

The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot or contiguous lots amounting to not more than 10 acres of land, together with any improvements on the land; provided, that the homestead in a city, town or

village shall be used for the purposes of a home, or as both an urban home and a place to exercise a calling or business, of the homestead claimant, whether a single adult person, or the head of a family; provided also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired; provided further that a release or refinance of an existing lien against a homestead as to a part of the homestead does not create an additional burden on the part of the homestead property that is unreleased or subject to the refinance, and a new lien is not invalid only for that reason.

(Feb. 15, 1876. Amended Nov. 3, 1970, Nov. 6, 1973, Nov. 8, 1983, and Nov. 2, 1999.)

NOTE: The joint resolution amending Sec. 51 in 1983 included a section that did not purport to amend the constitution and that provided the following: "This amendment applies to all homesteads in this state, including homesteads acquired before the adoption of this amendment."

§ 52. Descent and Distribution of Homestead; Restrictions on Partition

On the death of the husband or wife, or both, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same.

Feb. 15, 1876.

Texas Family Code

TITLE 1.
THE MARRIAGE RELATIONSHIP

SUBTITLE A.
MARRIAGE

CHAPTER 1.
GENERAL PROVISIONS

SUBCHAPTER A.
DEFINITIONS

§ 1.001. Applicability of Definitions.

(a) The definitions in this subchapter apply to this title.

(b) Except as provided by this subchapter, the definitions in Chapter 101 apply to terms used in this title.

(c) If, in another part of this title, a term defined by this subchapter has a meaning different from the meaning provided by this subchapter, the meaning of that other provision prevails.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 1.002. Court.

"Court" means the district court, juvenile court having the jurisdiction of a district court, or other court expressly given jurisdiction of a suit under this title.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 1.003. Suit for Dissolution of Marriage.

"Suit for dissolution of a marriage" includes a suit for divorce or annulment or to declare a marriage void.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

SUBCHAPTER B.
PUBLIC POLICY

§ 1.101. Every Marriage Presumed Valid.

In order to promote the public health and welfare and to provide the necessary records, this code specifies detailed rules to be followed in establishing the marriage relationship. However, in order to provide stability for those entering into the marriage relationship in good faith and to provide for an orderly determination of parentage and security for the children of the relationship, it is the policy of this state to preserve and uphold each marriage against claims of invalidity unless a strong reason exists for holding the marriage void or voidable. Therefore, every marriage entered into in this state is presumed to be valid unless expressly made void by Chapter 6 or unless expressly made voidable by Chapter 6 and annulled as provided by that chapter.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 1.102. Most Recent Marriage Presumed Valid.

When two or more marriages of a person to different spouses are alleged, the most recent marriage is presumed to be valid as against each marriage that precedes the most recent marriage until one who asserts the validity of a prior marriage proves the validity of the prior marriage.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 1.103. Persons Married Elsewhere.

The law of this state applies to persons married elsewhere who are domiciled in this state.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 1.104. Capacity of Spouse.

Except as expressly provided by statute or by the constitution, a person, regardless of age, who has been married in accordance with the law of this state has the capacity and power of an adult, including the capacity to contract.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 1.105. Joinder in Civil Suits.

(a) A spouse may sue and be sued without the joinder of the other spouse.

(b) When claims or liabilities are joint and several, the spouses may be joined under the rules relating to joinder of parties generally.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 1.106. Criminal Conversation Not Authorized.

A right of action by one spouse against a third party for criminal conversation is not authorized in this state.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 1.107. Alienation of Affection Not Authorized.

A right of action by one spouse against a third party for alienation of affection is not authorized in this state.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 1.108. Promise or Agreement Must be in Writing.

A promise or agreement made on consideration of marriage or nonmarital conjugal cohabitation is not enforceable unless the promise or agreement or a memorandum of the promise or agreement is in writing and signed by the person obligated by the promise or agreement.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 1.109. Use of Digitized Signature.

(a) A digitized signature on an original petition under this title or any other pleading or order in a proceeding under this title satisfies the requirements for and imposes the duties of signatories to pleadings, motions, and other papers identified under Rule 13, Texas Rules of Civil Procedure.

(b) A digitized signature under this section may be applied only by, and must remain under the sole control of, the person whose signature is represented.

Added by Acts 2015, 84th Leg., c. 1165, § 1, eff. Sept. 1, 2015.

Section 4 of Acts 2015, 84th Leg., c. 1165, provides:

> The changes in law made by this Act apply only to a proceeding that is commenced on or after the effective date of this Act. A proceeding that is commenced before that date is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

CHAPTER 2.
THE MARRIAGE RELATIONSHIP

SUBCHAPTER A.
APPLICATION FOR MARRIAGE LICENSE

§ 2.001. Marriage License.

(a) A man and a woman desiring to enter into a ceremonial marriage must obtain a marriage license from the county clerk of any county of this state.

(b) A license may not be issued for the marriage of persons of the same sex.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 2.002. Application for License.

Except as provided by Section 2.006, each person applying for a license must:

(1) appear before the county clerk;

(2) submit the person's proof of identity and age as provided by Section 2.005(b);

(3) provide the information applicable to that person for which spaces are provided in the application for a marriage license;

(4) mark the appropriate boxes provided in the application; and

(5) take the oath printed on the application and sign the application before the county clerk.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Subsec. (2) amended by Acts 2009, 81st Leg., R.S., c. 978, § 1, eff. Sept. 1, 2009.

Section 12(a) of Acts 2009, 81st Leg., R.S., c. 978, provides:

Sections 2.002, 2.005, 2.006, 2.009, and 2.102, Family Code, as amended by this Act, apply only to an application for a marriage license submitted to a county clerk on or after the effective date of this Act. An application for a marriage license submitted before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

§ 2.003. Application for License by Minor.

(a) A person under 18 years of age may not marry unless the person has been granted by this state or another state a court order removing the disabilities of minority of the person for general purposes.

(b) In addition to the other requirements provided by this chapter, a person under 18 years of age applying for a license must provide to the county clerk:

(1) a court order granted by this state under Chapter 31 removing the disabilities of minority of the person for general purposes; or

(2) if the person is a nonresident minor, a certified copy of an order removing the disabilities of minority of the person for general purposes filed with this state under Section 31.007.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2017, 85th Leg., R.S., c. 934, § 1, eff. Sept. 1, 2017.

Section 7(a) of Acts 2017, 85th Leg., R.S., c. 934, provides:

(a) Sections 2.003, 2.006, 2.009, and 2.101, Family Code, as amended by this Act, apply only to an application for a marriage license filed on or after the effective date of this Act. An application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

§ 2.004. Application Form.

(a) The county clerk shall furnish the application form as prescribed by the bureau of vital statistics.

(b) The application form must contain:

(1) a heading entitled "Application for Marriage License, _____ County, Texas";

(2) spaces for each applicant's full name, including the woman's maiden surname, address, social security number, if any, date of birth, and place of birth, including city, county, and state;

(3) a space for indicating the document tendered by each applicant as proof of identity and age;

(4) spaces for indicating whether each applicant has been divorced within the last 30 days;

(5) printed boxes for each applicant to check "true" or "false" in response to the following statement: "I am not presently married and the other applicant is not presently married.";

(6) printed boxes for each applicant to check "true" or "false" in response to the following statement: "The other applicant is not related to me as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption;

(C) a parent's brother or sister, of the whole or half blood or by adoption;

(D) a son or daughter of a brother or sister, of the whole or half blood or by adoption;

(E) a current or former stepchild or stepparent; or

(F) a son or daughter of a parent's brother or sister, of the whole or half blood or by adoption.";

(7) printed boxes for each applicant to check "true" or "false" in response to the following statement: "I am not presently delinquent in the payment of court-ordered child support.";

(8) a printed oath reading: "I SOLEMNLY SWEAR (OR AFFIRM) THAT THE INFORMATION I HAVE GIVEN IN THIS APPLICATION IS CORRECT.";

(9) spaces immediately below the printed oath for the applicants' signatures;

(10) a certificate of the county clerk that:

(A) each applicant made the oath and the date and place that it was made; or

(B) an applicant did not appear personally but the prerequisites for the license have been fulfilled as provided by this chapter;

(11) spaces for indicating the date of the marriage and the county in which the marriage is performed;

(12) a space for the address to which the applicants desire the completed license to be mailed; and

(13) a printed box for each applicant to check indicating that the applicant wishes to make a voluntary contribution of $5 to promote healthy early childhood by supporting the Texas Home Visiting Program administered by the Office of Early Childhood Coordination of the Health and Human Services Commission.

(c) An applicant commits an offense if the applicant knowingly provides false information under Subsection (b)(1), (2), (3), or (4). An offense under this subsection is a Class C misdemeanor.

(d) An applicant commits an offense if the applicant knowingly provides false information under Subsection (b)(5) or (6). An offense under this subsection is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 1997, 75th Leg., c. 776, § 1, eff. Sept. 1, 1997; Acts 2005, 79th Leg., c. 268, § 4.05, eff. Sept. 1, 2005; Acts 2013, 83rd Leg., R.S., c. 820, § 1, eff. June 14, 2013.

Section 4.20 of Acts 2005, c. 268, provides:

The changes in law made by this article to Sections 2.004, 2.005, 2.007, 2.009, and 2.102, Family Code, apply only to an application for a marriage license filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

Section 6 of Acts 2013, 83rd Leg., R.S., c. 820, provides:

The change in law made by this Act applies only to a person who applies for a marriage license or requests a copy or certified copy of a birth, marriage, or divorce record on or after January 1, 2014.

§ 2.005. Proof of Identity and Age.

(a) The county clerk shall require proof of the identity and age of each applicant.

(b) The proof must be established by:

(1) a driver's license or identification card issued by this state, another state, or a Canadian province that is current or has expired not more than two years preceding the date the identification is submitted to the county clerk in connection with an application for a license;

(2) a United States passport;

(3) a current passport issued by a foreign country or a consular document issued by a state or national government;

(4) an unexpired Certificate of United States Citizenship, Certificate of Naturalization, United States Citizen Identification Card, Permanent Resident Card, Temporary Resident Card, Employment Authorization Card, or other document issued by the federal Department of Homeland Security or the United States Department of State including an identification photograph;

(5) an unexpired military identification card for active duty, reserve, or retired personnel with an identification photograph;

(6) an original or certified copy of a birth certificate issued by a bureau of vital statistics for a state or a foreign government;

(7) an original or certified copy of a Consular Report of Birth Abroad or Certificate of Birth Abroad issued by the United States Department of State;

(8) an original or certified copy of a court order relating to the applicant's name change or sex change;

(9) school records from a secondary school or institution of higher education;

(10) an insurance policy continuously valid for the two years preceding the date of the application for a license;

(11) a motor vehicle certificate of title;

(12) military records, including documentation of release or discharge from active duty or a draft record;

(13) an unexpired military dependent identification card;

(14) an original or certified copy of the applicant's marriage license or divorce decree;

(15) a voter registration certificate;

(16) a pilot's license issued by the Federal Aviation Administration or another authorized agency of the United States;

(17) a license to carry a handgun under Subchapter H, Chapter 411, Government Code;

(18) a temporary identification card issued by the Department of Public Safety; or

(19) an offender identification card issued by the Texas Department of Criminal Justice.

(c) A person commits an offense if the person knowingly provides false, fraudulent, or otherwise inaccurate proof of an applicant's identity or age under this section. An offense under this subsection is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2005, 79th Leg., c. 268, § 4.06, eff. Sept. 1, 2005; Subsec. (b) amended by Acts 2009, 81st Leg., R.S., c. 978, § 2, eff. Sept. 1 2009; Acts 2015, 84th Leg., c. 437, § 10, eff. Jan. 1, 2016; Acts 2023, 88th Leg., R.S., HB 4528, § 7, eff. Sept. 1, 2023.

Section 4.20 of Acts 2005, c. 268, provides:

The changes in law made by this article to Sections 2.004, 2.005, 2.007, 2.009, and 2.102, Family Code, apply only to an application for a marriage license filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

Section 12(a) of Acts 2009, 81st Leg., R.S., c. 978, provides:

Sections 2.002, 2.005, 2.006, 2.009, and 2.102, Family Code, as amended by this Act, apply only to an application for a marriage license submitted to a county clerk on or after the effective date of this Act. An application for a marriage license submitted before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

Section 9 of Acts 2023, 88th Leg., R.S., HB 4528, provides:

The change in law made by this Act applies only to a failure to pass a test for intoxication or a refusal to submit to the taking of a specimen to test for intoxication that occurs on or after the effective date of this Act. A failure to pass a test for intoxication or refusal to submit to the taking of a specimen that occurred before the effective date of this Act is governed by the law in effect when the test was taken or the refusal was made, and the former law is continued in effect for that purpose.

§ 2.006. Absent Applicant.

(a) If an applicant who is 18 years of age or older is unable to appear personally before the county clerk to apply for a marriage license, any adult person or the other applicant may apply on behalf of the absent applicant.

(b) The person applying on behalf of an absent applicant shall provide to the clerk:

(1) notwithstanding Section 132.001, Civil Practice and Remedies Code, the notarized affidavit of the absent applicant as provided by this subchapter; and

(2) proof of the identity and age of the absent applicant under Section 2.005(b).

(c) Notwithstanding Subsection (a), the clerk may not issue a marriage license for which both applicants are absent unless the person applying on behalf of each absent applicant provides to the clerk an affidavit of the applicant declaring that the applicant is a member of the armed forces of the United States stationed in another country in support of combat or another military operation.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2005, 79th Leg., c. 947, § 1, eff. Sept. 1, 2005; Subsec. (b) amended by Acts 2009, 81st Leg., R.S., c. 978, § 3, eff. Sept. 1 2009; Acts 2013, 83rd Leg., R.S., c. 650, § 1, eff. Sept. 1, 2013; Acts 2017, 85th Leg., R.S., c. 934, § 2, eff. Sept. 1, 2017.

Section 3 of Acts 2005, c. 947, provides:

> The change in law made by this Act applies only to an application for a marriage license submitted on or after the effective date of this Act. An application for a marriage license submitted before the effective date of this Act is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

Section 12(a) of Acts 2009, 81st Leg., R.S., c. 978, provides:

> Sections 2.002, 2.005, 2.006, 2.009, and 2.102, Family Code, as amended by this Act, apply only to an application for a marriage license submitted to a county clerk on or after the effective date of this Act. An application for a marriage license submitted before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

Section 6 of Acts 2013, 83rd Leg., R.S., c. 650, provides:

> Sections 2.006 and 2.007, Family Code, as amended by this Act, apply to an application for a marriage license filed on or after the effective date of this Act. An application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

Section 7(a) of Acts 2017, 85th Leg., R.S., c. 934, provides:

> (a) Sections 2.003, 2.006, 2.009, and 2.101, Family Code, as amended by this Act, apply only to an application for a marriage license filed on or after the effective date of this Act. An application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

§ 2.007. Affidavit of Absent Applicant.

The affidavit of an absent applicant must include:

(1) the absent applicant's full name, including the maiden surname of a female applicant, address, date of birth, place of birth, including city, county, and state, citizenship, and social security number, if any;

(2) a declaration that the absent applicant has not been divorced within the last 30 days;

(3) a declaration that the absent applicant is:

(A) not presently married; or

(B) married to the other applicant and they wish to marry again;

(4) a declaration that the other applicant is not presently married and is not related to the absent applicant as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption;

(C) a parent's brother or sister, of the whole or half blood or by adoption;

(D) a son or daughter of a brother or sister, of the whole or half blood or by adoption;

(E) a current or former stepchild of stepparent; or

(F) a son or daughter of a parent's brother or sister, of the whole or half blood or by adoption;

(5) a declaration that the absent applicant desires to marry and the name, age, and address of the person to whom the absent applicant desires to be married;

(6) the approximate date on which the marriage is to occur;

(7) the reason the absent applicant is unable to appear personally before the county clerk for the issuance of the license; and

(8) the appointment of any adult, other than the other applicant, to act as proxy for the purpose of participating in the ceremony, if the absent applicant is:

(A) a member of the armed forces of the United States stationed in another country in support of combat or another military operation; and

(B) unable to attend the ceremony.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2005, 79th Leg., c. 268, § 4.07, eff. Sept. 1, 2005; Acts 2013, 83rd Leg., R.S., c. 650, § 2, eff. Sept. 1, 2013..

Section 4.20 of Acts 2005, c. 268, provides:

> The changes in law made by this article to Sections 2.004, 2.005, 2.007, 2.009, and 2.102, Family Code, apply only to an application for a marriage license filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

Section 6 of Acts 2013, 83rd Leg., R.S., c. 650, provides:

> Sections 2.006 and 2.007, Family Code, as amended by this Act, apply to an application for a marriage license filed on or after the effective date of this Act. An application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

§ 2.0071. Maintenance of Records by Clerk Relating to License for Absent Applicant.

A county clerk who issues a marriage license for an absent applicant shall maintain the affidavit of the absent applicant and the application for the marriage license in the same manner that the clerk maintains an application for a marriage license submitted by two applicants in person.

Added by Acts 2013, 83rd Leg., R.S., c. 650, § 1, eff. Sept. 1, 2013.

§ 2.008. Execution of Application by Clerk.

(a) The county clerk shall:

(1) determine that all necessary information, other than the date of the marriage ceremony, the county in which the ceremony is conducted, and the name of the person who performs the ceremony, is recorded on the application and that all necessary documents are submitted;

(2) administer the oath to each applicant appearing before the clerk;

(3) have each applicant appearing before the clerk sign the application in the clerk's presence; and

(4) execute the clerk's certificate on the application.

(b) A person appearing before the clerk on behalf of an absent applicant is not required to take the oath on behalf of the absent applicant.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 2.009. Issuance of License.

(a) Except as provided by Subsections (b) and (d), the county clerk may not issue a license if either applicant:

(1) fails to provide the information required by this subchapter;

(2) fails to submit proof of age and identity;

(3) under 18 years of age and has not presented:

(A) a court order granted by this state under Chapter 31 removing the disabilities of minority of the applicant for general purposes; or

(B) if the applicant is a nonresident minor, a certified copy of an order removing the disabilities of minority of the applicant for general purposes filed with this state under Section 31.007;

(4) checks "false" in response to a statement in the application, except as provided by Subsection (b) or (d), or fails to make a required declaration in an affidavit required of an absent applicant; or

(5) indicates that the applicant has been divorced within the last 30 days, unless:

(A) the applicants were divorced from each other; or

(B) the prohibition against remarriage is waived as provided by Section 6.802.

(b) If an applicant checks "false" in response to the statement "I am not presently married and the other applicant is not presently married," the county clerk shall inquire as to whether the applicant is presently married to the other applicant. If the applicant states that the applicant is currently married to the other applicant, the county clerk shall record that statement on the license before the administration of the oath. The county clerk may not refuse to issue a license on the ground that the applicants are already married to each other.

(c) On the proper execution of the application, the clerk shall:

(1) prepare the license;

(2) enter on the license the names of the licensees, the date that the license is issued, and, if applicable, the name of the person appointed to act as proxy for an absent applicant, if any;

(3) record the time at which the license was issued;

(4) distribute to each applicant written notice of the online location of the information prepared under Section 2.010 regarding acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) and note on the license that the distribution was made; and

(5) inform each applicant:

(A) that a premarital education handbook developed by the child support division of the office of the attorney general under Section 2.014 is available on the child support division's Internet website; or

(B) if the applicant does not have Internet access, how the applicant may obtain a paper copy of the handbook described by Paragraph (A).

(d) The county clerk may not refuse to issue a license to an applicant on the ground that the applicant checked "false" in response to the statement "I am not presently delinquent in the payment of court-ordered child support."

(e) A license issued by a county clerk under this section:

(1) must identify the county in which the license is issued; and

(2) may include the name of the county clerk.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 1997, 75th Leg., c. 776, § 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., c. 62, § 6.01(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 185, § 1, eff. Sept. 1, 1999; Acts 2005, 79th Leg., c. 268, § 4.08, eff. Sept. 1, 2005; Subsec. (a) amended by Acts 2009, 81st Leg., R.S., c. 978, §43, eff. Sept. 1 2009; Acts 2013, 83rd Leg., R.S., c. 890, § 1, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., R.S., c. 742, § 1, eff. Sept. 1, 2013; Acts 2017, 85th Leg., R.S., c. 934, § 3, eff. Sept. 1, 2017; Acts 2017, 85th Leg., R.S., c. 695, § 1, eff. June 12, 2017.

Section 4.20 of Acts 2005, c. 268, provides:

> The changes in law made by this article to Sections 2.004, 2.005, 2.007, 2.009, and 2.102, Family Code, apply only to an application for a marriage license filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

Section 12(a) of Acts 2009, 81st Leg., R.S., c. 978, provides:

> Sections 2.002, 2.005, 2.006, 2.009, and 2.102, Family Code, as amended by this Act, apply only to an application for a marriage license submitted to a county clerk on or after the effective date of this Act. An application for a marriage license submitted before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

Section 4 of Acts 2013, 83rd Leg., R.S., c. 890, provides:

The changes in law made by this Act apply only to an application for a marriage license submitted to a county clerk on or after the effective date of this Act. An application for a marriage license submitted before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

Section 19 of Acts 2013, 83rd Leg., R.S., c. 742, provides:

(a) The changes in law made by this Act to Sections 2.009 and 2.014, Family Code, apply only to an application for a marriage license submitted on or after the effective date of this Act. An application for a marriage license submitted before the effective date of this Act is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

Section 7(a) of Acts 2017, 85th Leg., R.S., c. 934, provides:

(a) Sections 2.003, 2.006, 2.009, and 2.101, Family Code, as amended by this Act, apply only to an application for a marriage license filed on or after the effective date of this Act. An application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

Section 6 of Acts 2017, 85th Leg., R.S., c. 695, provides:

The change in law made by this Act applies only to a marriage license issued on or after January 1, 2019. A marriage license issued before January 1, 2019, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

§ 2.0091. Application for and Issuance of License Through Remote Technology.

(a) This section applies only in a county in which the county clerk has been certified by the Texas Judicial Council under Section 71.039, Government Code, to issue a marriage license through the use of remote technology.

(b) In a county to which this section applies:

(1) a person who applies for a marriage license through the use of remote technology is considered to have appeared before the court for purposes of this subchapter; and

(2) the county clerk may issue a marriage license through the use of remote technology only in accordance with the procedures adopted by the Texas Judicial Council under Section 71.039, Government Code.

Added by Acts 2021, 87th Leg., R.S., c. 857, § 1, eff. Sept. 1, 2021.

§ 2.010. AIDS Information; Posting on Internet.

The Department of State Health Services shall prepare and make available to the public on its Internet website information about acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV). The information must be designed to inform an applicant for a marriage license about:

(1) the incidence and mode of transmission of AIDS and HIV;

(2) the local availability of medical procedures, including voluntary testing, designed to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS; and

(3) available and appropriate counseling services regarding AIDS and HIV infection.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2013, 83rd Leg., R.S., c. 890, § 1, eff. Sept. 1, 2013.

Section 4 of Acts 2013, 83rd Leg., R.S., c. 890, provides:

The changes in law made by this Act apply only to an application for a marriage license submitted to a county clerk on or after the effective date of this Act. An application for a marriage license submitted before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

§ 2.011. Repealed by Acts 2009, 81st Leg., R.S., c. 978, § 10, eff. Sept. 1, 2009.

§ 2.012. Violation by County Clerk; Penalty.

A county clerk or deputy county clerk who violates or fails to comply with this subchapter commits an offense. An offense under this section is a misdemeanor punishable by a fine of not less than $200 and not more than $500.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 2.013. Premarital Education Courses.

(a) Each person applying for a marriage license is encouraged to attend a premarital education course of at least eight hours during the year preceding the date of the application for the license.

(b) A premarital education course must include instruction in:

(1) conflict management;

(2) communication skills; and

(3) the key components of a successful marriage.

(c) A course under this section should be offered by instructors trained in a skills-based and research-based marriage preparation curricula. The following individuals and organizations may provide courses:

(1) marriage educators;

(2) clergy or their designees;

(3) licensed mental health professionals;

(4) faith-based organizations; and

(5) community-based organizations.

(d) The curricula of a premarital education course must meet the requirements of this section and provide the skills-based and research-based curricula of:

(1) the United States Department of Health and Human Services healthy marriage initiative;

(2) the National Healthy Marriage Resource Center;

(3) criteria developed by the Health and Human Services Commission; or

(4) other similar resources.

(e) The Health and Human Services Commission shall maintain an Internet website on which individuals and organizations described by Subsection (c) may electronically register with the commission to indicate the skills-based and research-based curriculum in which the registrant is trained.

(f) A person who provides a premarital education course shall provide a signed and dated completion certificate to each individual who completes the course. The certificate must include the name of the course, the name of the course provider, and the completion date.

Added by Acts 1999, 76th Leg., c. 185, § 2, eff. Sept. 1, 1999. Amended by Acts 2007, 80th Leg., c. 327, § 1, eff. Sept. 1, 2008.

§ 2.014. Family Trust Fund.

(a) The family trust fund is created as a trust fund with the state comptroller and shall be administered by the attorney general for the beneficiaries of the fund.

(b) Money in the trust fund is derived from depositing $3 of each marriage license fee as authorized under Section 118.018(c), Local Government Code, and may be used only for:

(1) the development of a premarital education handbook;

(2) grants to institutions of higher education having academic departments that are capable of research on marriage and divorce that will assist in determining programs, courses, and policies to help strengthen families and assist children whose parents are divorcing;

(3) support for counties to create or administer free or low-cost premarital education courses;

(4) programs intended to reduce the amount of delinquent child support; and

(5) other programs the attorney general determines will assist families in this state.

(c) The premarital education handbook under Subsection (b)(1) must:

(1) as provided by Section 2.009(c)(5), be made available to each applicant for a marriage license in an electronic form on the Internet website of the child support division of the office of the attorney general or, for an applicant who does not have Internet access, in paper copy form; and

(2) contain information on:

(A) conflict management;

(B) communication skills;

(C) children and parenting responsibilities; and

(D) financial responsibilities.

(d) Repealed by Acts 2017, 85th Leg., R.S., c. 755, § 15(b), eff. Sept. 1, 2017; Acts 2017, 85th Leg., R.S., c. 553, § 6(b), eff. Sept. 1, 2017.

Added by Acts 1999, 76th Leg., c. 185, § 2, eff. Sept. 1, 1999. Amended by Acts 2013, 83rd Leg., R.S., c. 890, § 3, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., R.S., c. 742, § 1, eff. Sept. 1, 2013. Subsec. (d) repealed by Acts 2017, 85th Leg., R.S., c. 755, § 15(b), eff. Sept. 1, 2017; Subsec. (d) repealed byActs 2017, 85th Leg., R.S., c. 553, § 6(b), eff. Sept. 1, 2017.

Section 4 of Acts 2013, 83rd Leg., R.S., c. 890, provides:

> The changes in law made by this Act apply only to an application for a marriage license submitted to a county clerk on or after the effective date of this Act. An application for a marriage license submitted before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

Section 19 of Acts 2013, 83rd Leg., R.S., c. 742, provides:

> (a) The changes in law made by this Act to Sections 2.009 and 2.014, Family Code, apply only to an application for a marriage license submitted on or after the effective date of this Act. An application for a marriage license submitted before the effective date of this Act is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

SUBCHAPTER B.
UNDERAGE APPLICANTS

§ 2.101. General Age Requirement.

A county clerk may not issue a marriage license if either applicant is under 18 years of age, unless each underage applicant shows that the applicant has been granted by this state or another state a court order removing the disabilities of minority of the applicant for general purposes.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2017, 85th Leg., R.S., c. 934, § 4, eff. Sept. 1, 2017.

Section 7(a) of Acts 2017, 85th Leg., R.S., c. 934, provides:

(a) Sections 2.003, 2.006, 2.009, and 2.101, Family Code, as amended by this Act, apply only to an application for a marriage license filed on or after the effective date of this Act. An application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

§ 2.102. Repealed by Acts 2017, 85th Leg., R.S., c. 934, § 6, eff. Sept. 1, 2017.

§ 2.103. Repealed by Acts 2017, 85th Leg., R.S., c. 934, § 6, eff. Sept. 1, 2017.

SUBCHAPTER C.
CEREMONY AND RETURN OF LICENSE

§ 2.201. Expiration of License.

If a marriage ceremony has not been conducted before the 90th day after the date the license is issued, the marriage license expires.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2013, 83rd Leg., R.S., c. 1350, § 1, eff. Sept. 1, 2013.

Section 3 of Acts 2013, 83rd Leg., R.S., c. 1350, provides:

Section 2.201, Family Code, as amended by this Act, applies only to a marriage license that is issued on or after the effective date of this Act. A marriage license issued before the effective date of this Act is governed by the law in effect on the date the license was issued, and the former law is continued in effect for that purpose.

§ 2.202. Persons Authorized to Conduct Ceremony.

(a) The following persons are authorized to conduct a marriage ceremony:

(1) a licensed or ordained Christian minister or priest;

(2) a Jewish rabbi;

(3) a person who is an officer of a religious organization and who is authorized by the organization to conduct a marriage ceremony; and

(4) a current, former, or retired federal judge or state judge.

(b) For the purposes of Subsection (a)(4), "federal judge" and "state judge" have the meanings assigned by Section 25.025, Tax Code.

(b-1) Repealed by Acts 2023, 88th Leg., R.S., HB 904, § 2, eff. Sept. 1, 2023.

(c) Except as provided by Subsection (d), a person commits an offense if the person knowingly conducts a marriage ceremony without authorization under this section. An offense under this subsection is a Class A misdemeanor.

(d) A person commits an offense if the person knowingly conducts a marriage ceremony of a minor whose marriage is prohibited by law or of a person who by marrying commits an offense under Section 25.01, Penal Code. An offense under this subsection is a felony of the third degree.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2005, 79th Leg., c. 268, § 4.10, eff. Sept. 1, 2005; Subsec. (a) amended by Acts 2009, 81st Leg., R.S., c. 134, § 1, eff. Sept. 1, 2009; Acts 2013, 83rd Leg., R.S., c. 1350, § 2, eff. Sept. 1, 2013; Acts 2015, 84th Leg., c. 1069, § 1, eff. Sept. 1, 2015; Acts 2023, 88th Leg., R.S., HB 904, § 1, eff. Sept. 1, 2023 and subsection (b-1) repealed by Acts 2023, 88th Leg., R.S., HB 904, § 2, eff. Sept. 1, 2023.

Section 4.21 of Acts 2005, c. 268, provides:

The changes in law made by this article to Sections 2.202 and 2.302, Family Code, apply only to a marriage ceremony that is conducted on or after the effective date of this Act. A marriage ceremony conducted before the effective date of this Act is governed by the law in effect on the date the ceremony was conducted, and the former law is continued in effect for that purpose.

Section 2 of Acts 2009, 81st Leg., R.S., c. 134, provides:

The change in law made by this Act applies only to a marriage ceremony that is conducted on or after the effective date of this Act. A marriage ceremony conducted before the effective date of this Act is governed by the law in effect on the date the ceremony was conducted, and the former law is continued in effect for that purpose.

Section 4 of Acts 2013, 83rd Leg., R.S., c. 1350, provides:

Family Code, as amended by this Act, applies only to a marriage ceremony that is conducted on or after the effective date of this Act. A marriage ceremony conducted before the effective date of this Act is governed by the law in effect on the date the ceremony was conducted, and the former law is continued in effect for that purpose.

§ 2.203. Ceremony.

(a) On receiving an unexpired marriage license, an authorized person may conduct the marriage ceremony as provided by this subchapter.

(b) A person unable to appear for the ceremony may assent to marriage by the appearance of a proxy appointed in the affidavit authorized by Subchapter A.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 2.204. 72-Hour Waiting Period; Exceptions.

(a) Except as provided by this section, a marriage ceremony may not take place during the 72-hour period immediately following the issuance of the marriage license.

(b) The 72-hour waiting period after issuance of a marriage license does not apply to an applicant who:

(1) is a member of the armed forces of the United States and on active duty;

(2) is not a member of the armed forces of the United States but performs work for the United States Department of Defense as a department employee or under a contract with the department;

(3) obtains a written waiver under Subsection (c); or

(4) completes a premarital education course described by Section 2.013, and who provides to the county clerk a premarital education course completion certificate indicating completion of the premarital education course not more than one year before the date the marriage license application is filed with the clerk.

(c) An applicant may request a judge of a court with jurisdiction in family law cases, a justice of the supreme court, a judge of the court of criminal appeals, a county judge, [or] a judge of a court of appeals, an associate judge appointed under Chapter 201, an associate judge appointed under Chapter 54A, Government Code, or a justice of the peace for a written waiver permitting the marriage ceremony to take place during the 72-hour period immediately following the issuance of the marriage license. If the judge, associate judge, or justice finds that there is good cause for the marriage to take place during the period, the judge, associate judge, or justice shall sign the waiver. Notwithstanding any other provision of law, a judge, associate judge, or justice under this section has the authority to sign a waiver under this section.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 1999, 76th Leg., c. 1052, § 1, eff. Sept. 1, 1999; Acts 2005, 79th Leg., c. 1196, § 1, eff. June 18, 2005; Acts 2007, 80th Leg., c. 327, § 2, eff. Sept. 1, 2008; Acts 2023, 88th Leg., R.S., HB 4183, § 1, eff. Sept. 1, 2023.

Acts 2005, 79th Leg., c. 1196, § 2, provides:

> The change in law made by this Act applies to a marriage license issued on or after the effective date of this Act. A marriage license issued before the effective date of this Act is governed by the law in effect on the date the license was issued, and the former law is continued in effect for that purpose.

Section 2 of Acts 2023, 88th Leg., R.S., HB 4183, provides:

> The change in law made by this Act applies only to a marriage ceremony for which a marriage license application is filed on or after the effective date of this Act. A marriage ceremony for which a marriage license application is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

§ 2.205. Discrimination in Conducting Marriage Prohibited.

(a) A person authorized to conduct a marriage ceremony by this subchapter is prohibited from discriminating on the basis of race, religion, or national origin against an applicant who is otherwise competent to be married.

(b) On a finding by the State Commission on Judicial Conduct that a person has intentionally violated Subsection (a), the commission may recommend to the supreme court that the person be removed from office.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 2.206. Return of License; Penalty.

(a) The person who conducts a marriage ceremony shall record on the license the date on which and the county in which the ceremony is performed and the person's name, subscribe the license, and return the license to the county clerk who issued it not later than the 30th day after the date the ceremony is conducted.

(b) A person who fails to comply with this section commits an offense. An offense under this section is a misdemeanor punishable by a fine of not less than $200 and not more than $500.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 2.207. Marriage Conducted After License Expired; Penalty.

(a) A person who is to conduct a marriage ceremony shall determine whether the license has expired from the county clerk's endorsement on the license.

(b) A person who conducts a marriage ceremony after the marriage license has expired commits an offense. An offense under this section is a misdemeanor punishable by a fine of not less than $200 and not more than $500.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 2.208. Recording and Delivery of License.

(a) The county clerk shall record a returned marriage license and mail the license to the address indicated on the application. On request by the applicants, the county clerk may e-mail the marriage license to an e-mail address provided to the county clerk by the applicants in addition to mailing the license.

(b) On the application form the county clerk shall record:

(1) the date of the marriage ceremony;

(2) the county in which the ceremony was conducted; and

(3) the name of the person who conducted the ceremony.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2019, 86th Leg., c. 538, § 1, eff. Sept. 1, 2019

§ 2.209. Duplicate License.

(a) On request, the county clerk shall issue a certified copy of a recorded marriage license.

(b) If a marriage license issued by a county clerk is lost, destroyed, or rendered useless, the clerk shall issue a duplicate license.

(c) If one or both parties to a marriage license discover an error on the recorded marriage license, both parties to the marriage shall execute a notarized affidavit stating the error. The county clerk shall file and record the affidavit as an amendment to the marriage license, and the affidavit is considered part of the marriage license. The clerk shall include a copy of the affidavit with any future certified copy of the marriage license issued by the clerk.

(d) The executive commissioner of the Health and Human Services Commission by rule shall prescribe the form of the affidavit under Subsection (c).

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Subsecs. (a) and (b) amended and subsecs. (c) and (d) added by Acts 2009, 81st Leg., R.S., c. 978, § 6, eff. Sept. 1 2009.

Section 11 of Acts 2009, 81st Leg., R.S., c. 978, provides:

> As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall adopt the rules required by Sections 2.102(j) and 2.209(d), Family Code, as added by this Act.

Section 12(c) of Acts 2009, 81st Leg., R.S., c. 978, provides:

> (c) Section 2.209(c), Family Code, as added by this Act, applies to an affidavit submitted on or after the effective date of this Act. An affidavit submitted before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SUBCHAPTER D.
VALIDITY OF MARRIAGE

§ 2.301. Fraud, Mistake, or Illegality in Obtaining License.

Except as otherwise provided by this chapter, the validity of a marriage is not affected by any fraud, mistake, or illegality that occurred in obtaining the marriage license.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 2.302. Ceremony Conducted by Unauthorized Person.

The validity of a marriage is not affected by the lack of authority of the person conducting the marriage ceremony if:

(1) there was a reasonable appearance of authority by that person;

(2) at least one party to the marriage participated in the ceremony in good faith and that party treats the marriage as valid; and

(3) neither party to the marriage:

(A) is a minor whose marriage is prohibited by law; or

(B) by marrying commits an offense under Section 25.01, Penal Code.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997; Amended by Acts 2005, 79th Leg., c. 268, § 4.11, eff. Sept. 1, 2005.

Section 4.21 of Acts 2005, c. 268, provides:

> The changes in law made by this article to Sections 2.202 and 2.302, Family Code, apply only to a marriage ceremony that is conducted on or after the effective date of this Act. A marriage ceremony conducted before the effective date of this Act is governed by the law in effect on the date the ceremony was conducted, and the former law is continued in effect for that purpose.

SUBCHAPTER E.
MARRIAGE WITHOUT FORMALITIES

§ 2.401. Proof of Informal Marriage.

(a) In a judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that:

(1) a declaration of their marriage has been signed as provided by this subchapter; or

(2) the man and woman agreed to be married and after the agreement they lived together in this state as husband and wife and there represented to others that they were married.

(b) If a proceeding in which a marriage is to be proved as provided by Subsection (a)(2) is not commenced before the second anniversary of the date on which the parties separated and ceased living together, it is rebuttably presumed that the parties did not enter into an agreement to be married.

(c) A person under 18 years of age may not:

(1) be a party to an informal marriage; or

(2) execute a declaration of informal marriage under Section 2.402.

(d) A person may not be a party to an informal marriage or execute a declaration of an informal marriage if the person is presently married to a person who is not the other party to the informal marriage or declaration of an informal marriage, as applicable.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 1997, 75th Leg., c. 1362, § 1, eff. Sept. 1, 1997; Acts 2005, 79th Leg., c. 268, § 4.12, eff. Sept. 1, 2005.

Section 4.22 of Acts 2005, c. 268, provides:

Subsection (d), Section 2.401, Family Code, as added by this article, applies to an informal marriage or a declaration of an informal marriage regardless of when the informal marriage was entered into or the declaration was executed.

§ 2.402. Declaration and Registration of Informal Marriage.

(a) A declaration of informal marriage must be signed on a form prescribed by the bureau of vital statistics and provided by the county clerk. Each party to the declaration shall provide the information required in the form.

(b) The declaration form must contain:

(1) a heading entitled "Declaration and Registration of Informal Marriage, _____ County, Texas";

(2) spaces for each party's full name, including the woman's maiden surname, address, date of birth, place of birth, including city, county, and state, and social security number, if any;

(3) a space for indicating the type of document tendered by each party as proof of age and identity;

(4) printed boxes for each party to check "true" or "false" in response to the following statement: "The other party is not related to me as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption;

(C) a parent's brother or sister, of the whole or half blood or by adoption;

(D) a son or daughter of a brother or sister, of the whole or half blood or by adoption;

(E) a current or former stepchild or stepparent; or

(F) a son or daughter of a parent's brother or sister, of the whole or half blood or by adoption.";

(5) a printed declaration and oath reading: "I SOLEMNLY SWEAR (OR AFFIRM) THAT WE, THE UNDERSIGNED, ARE MARRIED TO EACH OTHER BY VIRTUE OF THE FOLLOWING FACTS: ON OR ABOUT (DATE) WE AGREED TO BE MARRIED, AND AFTER THAT DATE WE LIVED TOGETHER AS HUSBAND AND WIFE AND IN THIS STATE WE REPRESENTED TO OTHERS THAT WE WERE MARRIED. SINCE THE DATE OF MARRIAGE TO THE OTHER PARTY I HAVE NOT BEEN MARRIED TO ANY OTHER PERSON. THIS DECLARATION IS TRUE AND THE INFORMATION IN IT WHICH I HAVE GIVEN IS CORRECT.";

(6) spaces immediately below the printed declaration and oath for the parties' signatures; and

(7) a certificate of the county clerk that the parties made the declaration and oath and the place and date it was made.

(c) Repealed by Acts 1997, 75th Leg., c. 1362, § 4, eff. Sept. 1, 1997.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 1997, 75th Leg., c. 1362, § 4, eff. Sept. 1, 1997; Acts 2005, 79th Leg., c. 268, § 4.13, eff. Sept. 1, 2005.

Section 4.23 of Acts 2005, c. 268, provides:

The changes in law made by this article to Subsection (b), Section 2.402, and Section 2.403, Family Code, apply to a declaration of an informal marriage executed on or after the effective date of this Act. A declaration executed before the effective date of this Act is governed by the law in effect on the date the declaration was executed, and the former law is continued in effect for that purpose.

§ 2.403. Proof of Identity and Age; Age.

(a) The county clerk shall require proof of the identity and age of each party to the declaration of informal marriage to be established by a document listed in Section 2.005(b).

(b) A person commits an offense if the person knowingly provides false, fraudulent, or otherwise inaccurate proof of the person's identity or age under this section. An offense under this subsection is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2005, 79th Leg., c. 268, § 4.14, eff. Sept. 1, 2005; Subsec. (a) amended and by Acts 2009, 81st Leg., R.S., c. 978, § 7, eff. Sept. 1 2009.

Acts 2005, c. 268, § 4.23, provides:

The changes in law made by this article to Subsection (b), Section 2.402, and Section 2.403, Family Code, apply to a declaration of an informal marriage executed on or after the effective date of this Act. A declaration executed before the effective date of this Act is governed by the law in effect on the date the declaration was executed, and the former law is continued in effect for that purpose.

Section 12(d) of Acts 2009, 81st Leg., R.S., c. 978, provides:

(d) Sections 2.403 and 2.404, Family Code, as amended by this Act, apply only to a declaration or certificate of informal marriage issued on or after the effective date of this Act. A declaration or certificate of informal marriage issued before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

§ 2.404. Recording of Certificate or Declaration of Informal Marriage.

(a) The county clerk shall:

(1) determine that all necessary information is recorded on the declaration of informal marriage form and that all necessary documents are submitted to the clerk;

(2) administer the oath to each party to the declaration;

(3) have each party sign the declaration in the clerk's presence; and

(4) execute the clerk's certificate to the declaration.

(a-1) On the proper execution of the declaration, the clerk may:

(1) prepare a certificate of informal marriage;

(2) enter on the certificate the names of the persons declaring their informal marriage and the date the certificate or declaration is issued; and

(3) record the time at which the certificate or declaration is issued.

(b) The county clerk may not certify the declaration or issue or record the certificate of informal marriage or declaration if:

(1) either party fails to supply any information or provide any document required by this subchapter;

(2) either party is under 18 years of age; or

(3) either party checks "false" in response to the statement of relationship to the other party.

(c) On execution of the declaration, the county clerk shall record the declaration or certificate of informal marriage, deliver the original of the declaration to the parties, deliver the original of the certificate of informal marriage to the parties, if a certificate was prepared, and send a copy of the declaration of informal marriage to the bureau of vital statistics.

(d) An executed declaration or a certificate of informal marriage recorded as provided in this section is prima facie evidence of the marriage of the parties. (e) At the time the parties sign the declaration, the clerk shall distribute to each party printed materials about acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV). The clerk shall note on the declaration that the distribution was made. The materials shall be prepared and provided to the clerk by the Texas Department of Health and shall be designed to inform the parties about:

(1) the incidence and mode of transmission of AIDS and HIV;

(2) the local availability of medical procedures, including voluntary testing, designed to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS; and

(3) available and appropriate counseling services regarding AIDS and HIV infection.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 1997, 75th Leg., c. 1362, § 2, eff. Sept. 1, 1997; Heading amended by Subsec. (a) amended Acts 2009, 81st Leg., R.S., c. 978, § 8, eff. Sept. 1 2009. Subsec. (a-1) added and subsecs. (b), (c), and (d) amended by Acts 2009, 81st Leg., R.S., c. 978, § 9, eff. Sept. 1 2009.

Section 12(d) of Acts 2009, 81st Leg., R.S., c. 978, provides:

(d) Sections 2.403 and 2.404, Family Code, as amended by this Act, apply only to a declaration or certificate of informal marriage issued on or after the effective date of this Act. A declaration or certificate of informal marriage issued before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

§ 2.405. Violation by County Clerk; Penalty.

A county clerk or deputy county clerk who violates this subchapter commits an offense. An offense under this section is a misdemeanor punishable by a fine of not less than $200 and not more than $500.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

SUBCHAPTER F.
RIGHTS AND DUTIES OF SPOUSES

§ 2.501. Duty to Support.

(a) Each spouse has the duty to support the other spouse.

(b) A spouse who fails to discharge the duty of support is liable to any person who provides necessaries to the spouse to whom support is owed.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

SUBCHAPTER G.
FREEDOM OF RELIGION WITH RESPECT TO RECOGNIZING OR PERFORMING CERTAIN MARRIAGES

§ 2.601. Rights of Certain Religious Organizations.

A religious organization, an organization supervised or controlled by or in connection with a religious organization, an individual employed by a religious organization while acting in the scope of that employment, or a clergy or minister may not be required to solemnize any marriage or provide services, accommodations, facilities, goods, or privileges for a purpose related to the solemnization, formation, or celebration of any marriage if the action would cause the organization or individual to violate a sincerely held religious belief.

Added by Acts 2015, 84th Leg., c. 434, § 1, eff. June 11, 2015.

§ 2.602. Discrimination Against Religious Organization Prohibited.

A refusal to provide services, accommodations, facilities, goods, or privileges under Section 2.601 is not the basis for a civil or criminal cause of action or any other action by this state or a political subdivision of this state to penalize or withhold benefits or privileges, including tax exemptions or governmental contracts, grants, or licenses, from any protected organization or individual.

Added by Acts 2015, 84th Leg., c. 434, § 1, eff. June 11, 2015.

SUBTITLE B.
PROPERTY RIGHTS AND LIABILITIES

CHAPTER 3.
MARITAL PROPERTY RIGHTS AND LIABILITIES

SUBCHAPTER A.
GENERAL RULES FOR SEPARATE AND COMMUNITY PROPERTY

§ 3.001. Separate Property.

A spouse's separate property consists of:

(1) the property owned or claimed by the spouse before marriage;

(2) the property acquired by the spouse during marriage by gift, devise, or descent; and

(3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 3.002. Community Property.

Community property consists of the property, other than separate property, acquired by either spouse during marriage.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 3.003. Presumption of Community Property.

(a) Property possessed by either spouse during or on dissolution of marriage is presumed to be community property.

(b) The degree of proof necessary to establish that property is separate property is clear and convincing evidence.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 3.004. Recordation of Separate Property.

(a) A subscribed and acknowledged schedule of a spouse's separate property may be recorded in the deed records of the county in which the parties, or one of them, reside and in the county or counties in which the real property is located.

(b) A schedule of a spouse's separate real property is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the instrument is acknowledged and recorded in the deed records of the county in which the real property is located.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 3.005. Gifts Between Spouses.

If one spouse makes a gift of property to the other spouse, the gift is presumed to include all the income and property that may arise from that property.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 3.006. Proportional Ownership of Property by Marital Estates.

If the community estate of the spouses and the separate estate of a spouse have an ownership interest in property, the respective ownership interests of the marital estates are determined by the rule of inception of title.

Added by Acts 1999, 76th Leg., c. 692, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., c. 838, § 3, eff. Sept. 1, 2001.

§ 3.007. Property Interest in Certain Employee Benefits.

(a) A spouse who is a participant in a defined benefit retirement plan has a separate property interest in the monthly accrued benefit the spouse had a right to receive on normal retirement age, as defined by the plan, as of the date of marriage, regardless of whether the benefit had vested.

(b) The community property interest in a defined benefit plan shall be determined as if the spouse began to participate in the plan on the date of marriage and ended that participation on the date of dissolution or termination of the marriage, regardless of whether the benefit had vested.

(c) The separate property interest of a spouse in a defined contribution retirement plan may be traced using the tracing and characterization principles that apply to a nonretirement asset.

(d) A spouse who is a participant in an employer-provided stock option plan or an employer-provided restricted stock plan has a separate property interest in the options or restricted stock granted to the spouse under the plan as follows:

(1) if the option or stock was granted to the spouse before marriage but required continued employment during marriage before the grant could be exercised or the restriction removed, the spouse's separate property interest is equal to the fraction of the option or restricted stock in which:

(A) the numerator is the sum of:

(i) the period from the date the option or stock was granted until the date of marriage; and

(ii) if the option or stock also required continued employment following the date of dissolution of the marriage before the grant could be exercised or the restriction removed, the period from the date of dissolution of the marriage until the date the grant could be exercised or the restriction removed; and

(B) the denominator is the period from the date the option or stock was granted until the date the grant could be exercised or the restriction removed; and

(2) if the option or stock was granted to the spouse during the marriage but required continued employment following the date of dissolution of the marriage before the grant could be exercised or the restriction removed, the spouse's separate property interest is equal to the fraction of the option or restricted stock in which:

(A) the numerator is the period from the date of dissolution of the marriage until the date the grant could be exercised or the restriction removed; and

(B) the denominator is the period from the date the option or stock was granted until the date the grant could be exercised or the restriction removed.

(e) The computation described by Subsection (d) applies to each component of the benefit requiring varying periods of employment before the grant could be exercised or the restriction removed.

(f) Repealed by Acts 2009, 81st Leg., R.S., c. 768, § 11, eff. Sept. 1, 2009.

Added by Acts 2005, 79th Leg. c. 490, § 1, eff. Sept. 1, 2005. Subsec. (d) amended and subsec. (f) repealed by Acts 2009, 81st Leg., R.S., c. 207, § 1, Sept. 1, 2009.

Section 2 of Acts 2005, 79th Leg., c. 490, provides:

The changes in law made by this Act apply:

(1) to a suit for dissolution of a marriage pending before a trial court on or filed on or after the effective date of this Act; and

(2) with respect to Section 3.007, Family Code, as added by this Act, to the estate of a person who dies on or after the effective date of this Act.

Section 12 of Acts 2009, 81st Leg., R.S., c. 207, provides:

The changes in law made by this Act to Section 3.007, Family Code, apply to:

(1) a suit for dissolution of a marriage pending before a trial court on or filed on or after the effective date of this Act; and

(2) the estate of a person who dies on or after the effective date of this Act.

§ 3.008. Property Interest in Certain Insurance Proceeds.

(a) Insurance proceeds paid or payable that arise from a casualty loss to property during marriage are characterized in the same manner as the property to which the claim is attributable.

(b) If a person becomes disabled or is injured, any disability insurance payment or workers' compensation payment is community property to the extent it is intended to replace earnings lost while the disabled or injured person is married. To the extent that any insurance payment or workers' compensation payment is intended to replace earnings while the disabled or injured person is not married, the recovery is the separate property of the disabled or injured spouse.

Added by Acts 2005, 79th Leg. c. 490, § 1, eff. Sept. 1, 2005.

Section 2 of Acts 2005, 79th Leg., c. 490, provides:

The changes in law made by this Act apply:

(1) to a suit for dissolution of a marriage pending before a trial court on or filed on or after the effective date of this Act; and

(2) with respect to Section 3.007, Family Code, as added by this Act, to the estate of a person who dies on or after the effective date of this Act.

SUBCHAPTER B.
MANAGEMENT, CONTROL, AND DISPOSITION OF MARITAL PROPERTY

§ 3.101. Managing Separate Property.

Each spouse has the sole management, control, and disposition of that spouse's separate property.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 3.102. Managing Community Property.

(a) During marriage, each spouse has the sole management, control, and disposition of the community property that the spouse would have owned if single, including:

(1) personal earnings;

(2) revenue from separate property;

(3) recoveries for personal injuries; and

(4) the increase and mutations of, and the revenue from, all property subject to the spouse's sole management, control, and disposition.

(b) If community property subject to the sole management, control, and disposition of one spouse is mixed or combined with community property subject to the sole management, control, and disposition of the other spouse, then the mixed or combined community property is subject to the joint management, control, and disposition of the spouses, unless the spouses provide otherwise by power of attorney in writing or other agreement.

(c) Except as provided by Subsection (a), community property is subject to the joint management, control, and disposition of the spouses unless the spouses provide otherwise by power of attorney in writing or other agreement.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 3.103. Managing Earnings of Minor.

Except as provided by Section 264.0111, during the marriage of the parents of an unemancipated minor for whom a managing conservator has not been appointed, the earnings of the minor are subject to the joint management, control, and disposition of the parents of the minor, unless otherwise provided by agreement of the parents or by judicial order.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., c. 964, § 1, eff. Sept. 1, 2001.

§ 3.104. Protection of Third Persons.

(a) During marriage, property is presumed to be subject to the sole management, control, and disposition of a spouse if it is held in that spouse's name, as shown by muniment, contract, deposit of funds, or other evidence of ownership, or if it is in that spouse's possession and is not subject to such evidence of ownership.

(b) A third person dealing with a spouse is entitled to rely, as against the other spouse or anyone claiming from that spouse, on that spouse's authority to deal with the property if:

(1) the property is presumed to be subject to the sole management, control, and disposition of the spouse; and

(2) the person dealing with the spouse:

(A) is not a party to a fraud on the other spouse or another person; and

(B) does not have actual or constructive notice of the spouse's lack of authority.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

SUBCHAPTER C.
MARITAL PROPERTY LIABILITIES

§ 3.201. Spousal Liability.

(a) A person is personally liable for the acts of the person's spouse only if:

(1) the spouse acts as an agent for the person; or

(2) the spouse incurs a debt for necessaries as provided by Subchapter F, Chapter 2.

(b) Except as provided by this subchapter, community property is not subject to a liability that arises from an act of a spouse.

(c) A spouse does not act as an agent for the other spouse solely because of the marriage relationship.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 3.202. Rules of Marital Property Liability.

(a) A spouse's separate property is not subject to liabilities of the other spouse unless both spouses are liable by other rules of law.

(b) Unless both spouses are personally liable as provided by this subchapter, the community property subject to a spouse's sole management, control, and disposition is not subject to:

(1) any liabilities that the other spouse incurred before marriage; or

(2) any nontortious liabilities that the other spouse incurs during marriage.

(c) The community property subject to a spouse's sole or joint management, control, and disposition is subject to the liabilities incurred by the spouse before or during marriage.

(d) All community property is subject to tortious liability of either spouse incurred during marriage.

(e) For purposes of this section, all retirement allowances, annuities, accumulated contributions, optional benefits, and money in the various public retirement system accounts of this state that are community property subject to the participating spouse's sole management, control, and disposition are not subject to any claim for payment of a criminal restitution judgment entered against the nonparticipant spouse except to the extent of the nonparticipant spouse's interest as determined in a qualified domestic relations order under Chapter 804, Government Code.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Subsec. (e) added by Acts 2009, 81st Leg., R.S., c. 1244, § 1, eff. Sept. 1, 2009.

Section 2 of Acts 2009, 81st Leg., R.S., c. 1244, provides:

This Act applies only to a claim for payment of a criminal restitution judgment issued on or after the effective date of this Act. A claim for payment of a criminal restitution judgment issued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 3.203. Order in Which Property is Subject to Execution.

(a) A judge may determine, as deemed just and equitable, the order in which particular separate or community property is subject to execution and sale to satisfy a judgment, if the property subject to liability for a judgment includes any combination of:

(1) a spouse's separate property;

(2) community property subject to a spouse's sole management, control, and disposition;

(3) community property subject to the other spouse's sole management, control, and disposition; and

(4) community property subject to the spouses' joint management, control, and disposition.

(b) In determining the order in which particular property is subject to execution and sale, the judge shall consider the facts surrounding the transaction or occurrence on which the suit is based.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

SUBCHAPTER D.
MANAGEMENT, CONTROL, AND DISPOSITION OF MARITAL PROPERTY UNDER UNUSUAL CIRCUMSTANCES

§ 3.301. Missing, Abandoned, or Separated Spouse.

(a) A spouse may file a sworn petition stating the facts that make it desirable for the petitioning spouse to manage, control, and dispose of community property described or defined in the petition that would otherwise be subject to the sole or joint management, control, and disposition of the other spouse if:

(1) the other spouse has disappeared and that spouse's location remains unknown to the petitioning spouse, unless the spouse is reported to be a prisoner of war or missing on public service;

(2) the other spouse has permanently abandoned the petitioning spouse; or

(3) the spouses are permanently separated.

(b) The petition may be filed in a court in the county in which the petitioner resided at the time the separation began, or the abandonment or disappearance occurred, not earlier than the 60th day after the date of the occurrence of the event. If both spouses are nonresidents of this state at the time the petition is filed, the petition may be filed in a court in a county in which any part of the described or defined community property is located.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., c. 217, § 23, eff. Sept. 1, 2001.

§ 3.302. Spouse Missing on Public Service.

(a) If a spouse is reported by an executive department of the United States to be a prisoner of war or missing on the public service of the United States, the spouse of the prisoner of war or missing person may file a sworn petition stating the facts that make it desirable for the petitioner to manage, control, and dispose of the community property described or defined in the petition that would otherwise be subject to the sole or joint management, control, and disposition of the imprisoned or missing spouse.

(b) The petition may be filed in a court in the county in which the petitioner resided at the time the report was made not earlier than six months after the date of the notice that a spouse is reported to be a prisoner of war or missing on public service. If both spouses were nonresidents of this state at the time the report was made, the petition shall be filed in a court in a county in which any part of the described or defined property is located.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 3.303. Appointment of Attorney.

(a) Except as provided by Subsection (b), the court may appoint an attorney in a suit filed under this subchapter for the respondent.

(b) The court shall appoint an attorney in a suit filed under this subchapter for a respondent reported to be a prisoner of war or missing on public service.

(c) The court shall allow a reasonable fee for an appointed attorney's services as a part of the costs of the suit.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 3.304. Notice of Hearing; Citation.

(a) Notice of the hearing, accompanied by a copy of the petition, shall be issued and served on the attorney representing the respondent, if an attorney has been appointed.

(b) If an attorney has not been appointed for the respondent, citation shall be issued and served on the respondent as in other civil cases.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 3.305. Citation by Publication.

(a) Except as provided by Section 17.032, Civil Practice and Remedies Code, if the residence of the respondent, other than a respondent reported to be a prisoner of war or missing on public service, is unknown, citation shall be published on the public information Internet website maintained as required by Section 72.034, Government Code, and in a newspaper of general circulation published in the county in which the petition was filed.

(b) The notice shall be published on the public information Internet website for at least two consecutive weeks before the hearing and in a newspaper once a week for two consecutive weeks before the hearing. Neither notice may be initially published after the 20th day before the date set for the hearing.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Act 2019, 86th Leg., c. 606, § 10.09, eff. June 1, 2020.

§ 3.306. Court Order for Management, Control, and Disposition of Community Property.

(a) After hearing the evidence in a suit under this subchapter, the court, on terms the court considers just and equitable, shall render an order describing or defining the community property at issue that will be subject to the management, control, and disposition of each spouse during marriage.

(b) The court may:

(1) impose any condition and restriction the court deems necessary to protect the rights of the respondent;

(2) require a bond conditioned on the faithful administration of the property; and

(3) require payment to the registry of the court of all or a portion of the proceeds of the sale of the property, to be disbursed in accordance with the court's further directions.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 3.307. Continuing Jurisdiction of Court; Vacating Original Order.

(a) The court has continuing jurisdiction over the court's order rendered under this subchapter.

(b) On the motion of either spouse, the court shall amend or vacate the original order after notice and hearing if:

(1) the spouse who disappeared reappears;

(2) the abandonment or permanent separation ends; or

(3) the spouse who was reported to be a prisoner of war or missing on public service returns.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., c. 217, § 24, eff. Sept. 1, 2001.

§ 3.308. Recording Order to Affect Real Property.

An order authorized by this subchapter affecting real property is not constructive notice to a good faith purchaser for value or to a creditor without actual notice unless the order is recorded in the deed records of the county in which the real property is located.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 3.309. Remedies Cumulative.

The remedies provided in this subchapter are cumulative of other rights, powers, and remedies afforded spouses by law.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

SUBCHAPTER E.
CLAIMS FOR REIMBURSEMENT

§ 3.401. Definitions.

In this subchapter:

(1) "Benefited estate" means a marital estate that receives a benefit from another marital estate.

(2) "Conferring estate" means a marital estate that confers a benefit on another marital estate.

(3) Repealed by Acts 2009, 81st Leg., R.S., c. 768, Sec. 11(2), eff. September 1, 2009.

(4) "Marital estate" means one of three estates:

(A) the community property owned by the spouses together and referred to as the community marital estate;

(B) the separate property owned individually by the husband and referred to as a separate marital estate; or

(C) the separate property owned individually by the wife, also referred to as a separate marital estate.

(5) "Spouse" means a husband, who is a man, or a wife, who is a woman. A member of a civil union or similar relationship entered into in another state between persons of the same sex is not a spouse.

Added by Acts 1999, 76th Leg., c. 692, § 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., c. 838, § 2, eff. Sept. 1, 2001; Subdivisions (1), (2), and (3) repealed by Acts 2009, 81st Leg., R.S., c. 768, § 11, eff. Sept. 1, 2009; Acts 2023, 88th Leg., R.S., HB 1547, § 1, eff. Sept. 1, 2023.

Section 13 of Acts 2009, 81st Leg., R.S., c. 768, provides:

(a) In regard to a claim under Subchapter E, Chapter 3, Family Code, that arises from a suit for dissolution of a marriage, the changes in law made by this Act to that subchapter apply only to a claim made in a suit filed on or after the effective date of this Act. A claim made in a suit filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

(b) In regard to a claim under Subchapter E, Chapter 3, Family Code, that arises from the death of a spouse, the changes in law made by this Act to that subchapter apply only to a claim arising from a death that occurs on or after the effective date of this Act. A claim arising from a death that occurs before the effective date of this Act is governed by the law in effect on the date of death, and the former law is continued in effect for that purpose.

Section 6 of Acts 2023, 88th Leg., R.S., HB 1547, provides:

The change in law made by this Act applies to a claim for reimbursement that is pending in a trial court on the effective date of this Act or that is filed on or after that date.

§ 3.402. Claim for Reimbursement; Offsets.

(a) A claim for reimbursement exists when one or both spouses use property of one marital estate to confer on the property of another marital estate a benefit which, if not repaid, would result in unjust enrichment to the benefited estate.

(b) A spouse seeking reimbursement to a marital estate must prove:

(1) that the spouse or both spouses used property of the marital estate to confer a benefit on the property of another marital estate;

(2) the value of the benefit described by Subdivision (1); and

(3) that unjust enrichment of the benefited estate will occur if the benefited estate is not required to reimburse the conferring estate.

(c) For purposes of this subchapter, the property of a marital estate confers a benefit on another marital estate's property if:

(1) one or both spouses used property of the conferring estate to pay a debt, liability, or expense that in equity and good conscience should have been paid from the benefited estate's property;

(2) one or both spouses used property of the conferring estate to make improvements on the benefited estate's real property, and the improvements resulted in an enhancement in the value of the benefited estate's real property; or

(3) one or both spouses used time, toil, talent, or effort to enhance the value of property of a spouse's separate estate beyond that which was reasonably necessary to manage and preserve the spouse's separate property, and for which the community marital estate did not receive adequate compensation.

(d) For purposes of this subchapter, the value of the benefit conferred by the property of one marital estate on the property of another marital estate is determined as of the date of the trial's commencement and:

(1) if the benefit resulted from the use of the conferring estate's property to pay a debt, liability, or expense that in equity and good conscience should have been paid from the benefited estate's property, then the value of the benefit conferred is measured by the amount of the debt, liability, or expense paid by the conferring estate;

(2) if the benefit resulted from the use of the conferring estate's property to make improvements on the benefited estate's real property, then the value of the benefit conferred is measured by the enhancement in the value of the benefited estate's real property that resulted from the improvements; or

(3) if the benefit resulted from the use of time, toil, talent, or effort to enhance the value of property of a spouse's separate estate, then the value of the benefit conferred is measured by the value of the time, toil, talent, or effort beyond that which was reasonably necessary to manage and preserve the spouse's separate property.

(e) The determination of whether unjust enrichment will occur if one marital estate is not required to reimburse another marital estate is a question for the court to decide.

(f) The court shall resolve a claim for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court determines it to be appropriate.

(g) A claim for reimbursement of a marital estate by one spouse may be offset by the value of any related benefit that the other spouse proves that the conferring estate received from the benefited estate, including:

(1) the value of the use and enjoyment of the property by the conferring estate, except that the separate marital estate of a spouse may not claim an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by the separate marital estate against contributions made by the community marital estate to the separate marital estate;

(2) income received by the conferring estate from the property of the benefited estate; or

(3) any reduction in the amount of any income tax obligation of the conferring estate by virtue of the conferring estate claiming tax-deductible items relating to the property of the benefited estate, such as depreciation, interest, taxes, maintenance, or other deductible payments.

(h) The party seeking an offset to a claim for reimbursement has the burden of proof with respect to the offset.

Added by Acts 1999, 76th Leg., c. 692, § 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., c. 838, § 2, eff. Sept. 1, 2001; Acts 2009, 81st Leg., R.S., c. 768, § 3, eff. Sept. 1, 2009; Subdivisions (1), (2), and (3) repealed by Acts 2009, 81st Leg., R.S., c. 768, § 11, eff. Sept. 1, 2009; Acts 2023, 88th Leg., R.S., HB 1547, § 2, eff. Sept. 1, 2023.

Section 13 of Acts 2009, 81st Leg., R.S., c. 768, provides:

(a) In regard to a claim under Subchapter E, Chapter 3, Family Code, that arises from a suit for dissolution of a marriage, the changes in law made by this Act to that subchapter apply only to a claim made in a suit filed on or after the effective date of this Act. A claim made in a suit filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

(b) In regard to a claim under Subchapter E, Chapter 3, Family Code, that arises from the death of a spouse, the changes in law made by this Act to that subchapter apply only to a claim arising from a death that occurs on or after the effective date of this Act. A claim arising from a death that occurs before the effective date of this Act is governed by the law in effect on the date of death, and the former law is continued in effect for that purpose.

Section 6 of Acts 2023, 88th Leg., R.S., HB 1547, provides:

The change in law made by this Act applies to a claim for reimbursement that is pending in a trial court on the effective date of this Act or that is filed on or after that date.

§ 3.403. Repealed by Acts 2009, 81st Leg., R.S., c. 768, § 11, eff. Sept. 1, 2009.

Section 13 of Acts 2009, 81st Leg., R.S., c. 768, provides:

(a) In regard to a claim under Subchapter E, Chapter 3, Family Code, that arises from a suit for dissolution of a marriage, the changes in law made by this Act to that subchapter apply only to a claim made in a suit filed on or after the effective date of this Act. A claim made in a suit filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

(b) In regard to a claim under Subchapter E, Chapter 3, Family Code, that arises from the death of a spouse, the changes in law made by this Act to that subchapter apply only to a claim arising from a death that occurs on or after the effective date of this Act. A claim arising from a death that occurs before the effective date of this Act is governed by the law in effect on the date of death, and the former law is continued in effect for that purpose.

§ 3.404. Application of Inception of Title Rule; Ownership Interest Not Created.

(a) This subchapter does not affect the rule of inception of title under which the character of property is determined at the time the right to own or claim the property arises.

(b) A claim for reimbursement created under this subchapter does not create an ownership interest in property, but does create a claim against the property of the benefited estate by the conferring estate. The claim matures on dissolution of the marriage or the death of either spouse.

Added by Acts 1999, 76th Leg., c. 692, § 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., c. 838, § 2, eff. Sept. 1, 2001; Subsec. (b) amended by Acts 2009, 81st Leg., R.S., c. 768, § 4, eff. Sept. 1, 2009; Acts 2023, 88th Leg., R.S., HB 1547, § 3, eff. Sept. 1, 2023.

Section 6 of Acts 2023, 88th Leg., R.S., HB 1547, provides:

The change in law made by this Act applies to a claim for reimbursement that is pending in a trial court on the effective date of this Act or that is filed on or after that date.

§ 3.405. Management Rights.

This subchapter does not affect the right to manage, control, or dispose of marital property as provided by this chapter.

Added by Acts 1999, 76th Leg., c. 692, § 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., c. 838, § 2, eff. Sept. 1, 2001.

§ 3.406. Equitable Lien.

(a) On dissolution of a marriage, the court may impose an equitable lien on the property of a benefited estate to secure a claim for reimbursement against that property by a conferring estate.

(b) On the death of a spouse, a court may, on application for a claim for reimbursement brought by the surviving spouse, the personal representative of the estate of the deceased spouse, or any other person interested in the estate, as defined by Chapter 22, Estates Code, impose an equitable lien on the property of a benefited estate to secure a claim for reimbursement against that property by a conferring estate.

(c) Repealed by Acts 2009, 81st Leg., R.S., c. 768, § 11, eff. Sept. 1, 2009.

Added by Acts 1999, 76th Leg., c. 692, § 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., c. 838, § 2, eff. Sept. 1, 2001; Subsecs. (a) and (b) amended by Acts 2009, 81st Leg., R.S., c. 768, § 5, eff. Sept. 1, 2009; Subsec. (c) repealed by Acts 2009, 81st Leg., R.S., c. 768, § 11, eff. Sept. 1, 2009; Acts 2017, 85th Leg., R.S., c. 324, § 22.013, eff. Sept. 1, 2017; Acts 2023, 88th Leg., R.S., HB 1547, § 4, eff. Sept. 1, 2023.

Section 13 of Acts 2009, 81st Leg., R.S., c. 768, provides:

(a) In regard to a claim under Subchapter E, Chapter 3, Family Code, that arises from a suit for dissolution of a marriage, the changes in law made by this Act to that subchapter apply only to a claim made in a suit filed on or after the effective date of this Act. A claim made in a suit filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

(b) In regard to a claim under Subchapter E, Chapter 3, Family Code, that arises from the death of a spouse, the changes in law made by this Act to that subchapter apply only to a claim arising from a death that occurs on or after the effective date of this Act. A claim arising from a death that occurs before the effective date of this Act is governed by the law in effect on the date of death, and the former law is continued in effect for that purpose.

Section 6 of Acts 2023, 88th Leg., R.S., HB 1547, provides:

The change in law made by this Act applies to a claim for reimbursement that is pending in a trial court on the effective date of this Act or that is filed on or after that date.

§ 3.407. Repealed by Acts 2009, 81st Leg., R.S., c. 768, § 11, eff. Sept. 1, 2009.

Section 13 of Acts 2009, 81st Leg., R.S., c. 768, provides:

(a) In regard to a claim under Subchapter E, Chapter 3, Family Code, that arises from a suit for dissolution of a marriage, the changes in law made by this Act to that subchapter apply only to a claim made in a suit filed on or after the effective date of this Act. A claim made in a suit filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

(b) In regard to a claim under Subchapter E, Chapter 3, Family Code, that arises from the death of a spouse, the changes in law made by this Act to that subchapter apply only to a claim arising from a death that occurs on or after the effective date of this Act. A claim arising from a death that occurs before the effective date of this Act is governed by the law in effect on the date of death, and the former law is continued in effect for that purpose.

§ 3.408. Repealed by Acts 2009, 81st Leg., R.S., c. 768, § 11, eff. Sept. 1, 2009.

Section 13 of Acts 2009, 81st Leg., R.S., c. 768, provides:

(a) In regard to a claim under Subchapter E, Chapter 3, Family Code, that arises from a suit for dissolution of a marriage, the changes in law made by this Act to that subchapter apply only to a claim made in a suit filed on or after the effective date of this Act. A claim made in a suit filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

(b) In regard to a claim under Subchapter E, Chapter 3, Family Code, that arises from the death of a spouse, the changes in law made by this Act to that subchapter apply only to a claim arising from a death that occurs on or after the effective date of this Act. A claim arising from a death that occurs before the effective date of this Act is governed by the law in effect on the date of death, and the former law is continued in effect for that purpose.

§ 3.409. Nonreimbursable Claims.

The court may not recognize a marital estate's claim for reimbursement for:

(1) the payment of child support, alimony, or spousal maintenance;

(2) the living expenses of a spouse or child of a spouse;

(3) contributions of property of a nominal value;

(4) the payment of a liability of a nominal amount; or

(5) a student loan owed by a spouse.

Added by Acts 2001, 77th Leg., c. 838, § 2, eff. Sept. 1, 2001.

§ 3.410. Effect of Marital Property Agreements.

A premarital or marital property agreement, whether executed before, on, or after September 1, 2009, that satisfies the requirements of Chapter 4 is effective to waive, release, assign, or partition a claim for economic contribution, reimbursement, or both, under this subchapter to the same extent the agreement would have been effective to waive, release, assign, or partition a claim for economic contribution, reimbursement, or both under the law as it existed immediately before September 1, 2009, unless the agreement provides otherwise.

Added by Acts 2001, 77th Leg., c. 838, § 2, eff. Sept. 1, 2001. Amended by Acts 2009, 81st Leg., R.S., c. 768, § 6, eff. Sept. 1, 2009.

§ 3.411. Cumulative Remedies.

The remedies provided by this subchapter are not exclusive and are in addition to any other remedy provided by law.

Added by Acts 2023, 88th Leg., R.S., HB 1547, § 5, eff. Sept. 1, 2023.

Section 6 of Acts 2023, 88th Leg., R.S., HB 1547, provides:

The change in law made by this Act applies to a claim for reimbursement that is pending in a trial court on the effective date of this Act or that is filed on or after that date.

CHAPTER 4.
PREMARITAL AND MARITAL PROPERTY AGREEMENTS

SUBCHAPTER A.
UNIFORM PREMARITAL AGREEMENT ACT

§ 4.001. Definitions.

In this subchapter:

(1) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective on marriage.

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 4.002. Formalities.

A premarital agreement must be in writing and signed by both parties. The agreement is enforceable without consideration.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 4.003. Content.

(a) The parties to a premarital agreement may contract with respect to:

(1) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

(2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(3) the disposition of property on separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(4) the modification or elimination of spousal support;

(5) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(6) the ownership rights in and disposition of the death benefit from a life insurance policy;

(7) the choice of law governing the construction of the agreement; and

(8) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by a premarital agreement.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 4.004. Effect of Marriage.

A premarital agreement becomes effective on marriage.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 4.005. Amendment or Revocation.

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 4.006. Enforcement.

(a) A premarital agreement is not enforceable if the party against whom enforcement is requested proves that:

(1) the party did not sign the agreement voluntarily; or

(2) the agreement was unconscionable when it was signed and, before signing the agreement, that party:

(A) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(C) did not have, or reasonably could not have had, adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

(c) The remedies and defenses in this section are the exclusive remedies or defenses, including common law remedies or defenses.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 4.007. Enforcement: Void Marriage.

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 4.008. Limitation of Actions.

A statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 4.009. Application and Construction.

This subchapter shall be applied and construed to effect its general purpose to make uniform the law with respect to the subject of this subchapter among states enacting these provisions.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 4.010. Short Title.

This subchapter may be cited as the Uniform Premarital Agreement Act.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

SUBCHAPTER B.
MARITAL PROPERTY AGREEMENT

§ 4.101. Definition.

In this subchapter, “property” has the meaning assigned by Section 4.001.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 4.102. Partition or Exchange of Community Property.

At any time, the spouses may partition or exchange between themselves all or part of their community property, then existing or to be acquired, as the spouses may desire. Property or a property interest transferred to a spouse by a partition or exchange agreement becomes that spouse's separate property. The partition or exchange of property may also provide that future earnings and income arising from the transferred property shall be the separate property of the owning spouse.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997; Amended by Acts 2003, 78th Leg., R.S., c. 230, § 2, eff. Sept. 1, 2003; Acts 2005, 79th Leg., c. 477, § 1, eff. Sept. 1, 2005.

Section 5(b) of Acts 2003, 78th Leg., R.S., c. 230, provides:

> (b) The change in law made by this Act by the amendment of Section 4.102, Family Code, applies only to an agreement to partition or exchange property made on or after the effective date of this Act. An agreement made before the effective date of this Act is governed by the law in effect on the date the agreement was made, and the former law is continued in effect for that purpose.

Section 4 of Acts 2005, 79th Leg., c. 477, provides:

> The changes in law made by this Act to Sections 4.102 and 4.104, Family Code, apply only to agreements made on or after the effective date of this Act. An agreement made before the effective date of this Act is governed by the law in effect on the date the agreement was made, and the former law is continued in effect for that purpose.

§ 4.103. Agreement Between Spouses Concerning Income or Property From Separate Property.

At any time, the spouses may agree that the income or property arising from the separate property that is then owned by one of them, or that may thereafter be acquired, shall be the separate property of the owner.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 4.104. Formalities.

A partition or exchange agreement under Section 4.102 or an agreement under Section 4.103 must be in writing and signed by both parties. Either agreement is enforceable without consideration.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2005, 79th Leg., c. 477, § 1, eff. Sept. 1, 2005.

Section 4 of Acts 2005, 79th Leg., c. 477, provides:

> The changes in law made by this Act to Sections 4.102 and 4.104, Family Code, apply only to agreements made on or after the effective date of this Act. An agreement made before the effective date of this Act is governed by the law in effect on the date the agreement was made, and the former law is continued in effect for that purpose.

§ 4.105. Enforcement.

(a) A partition or exchange agreement is not enforceable if the party against whom enforcement is requested proves that:

(1) the party did not sign the agreement voluntarily; or

(2) the agreement was unconscionable when it was signed and, before execution of the agreement, that party:

(A) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(C) did not have, or reasonably could not have had, adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a partition or exchange agreement shall be decided by the court as a matter of law.

(c) The remedies and defenses in this section are the exclusive remedies or defenses, including common law remedies or defenses.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 4.106. Rights of Creditors and Recordation Under Partition or Exchange Agreement.

(a) A provision of a partition or exchange agreement made under this subchapter is void with respect to the rights of a preexisting creditor whose rights are intended to be defrauded by it.

(b) A partition or exchange agreement made under this subchapter may be recorded in the deed records of the county in which a party resides and in the county in which the real property affected is located. An agreement made under this subchapter is constructive notice to a good faith purchaser for value or a creditor without actual notice only if the instrument is acknowledged and recorded in the county in which the real property is located.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

SUBCHAPTER C.
AGREEMENT TO CONVERT SEPARATE PROPERTY TO COMMUNITY PROPERTY

§ 4.201. Definition.

In this subchapter, "property" has the meaning assigned by Section 4.001.

Added by Acts 1999, 76th Leg., c. 692, § 3, eff. Jan. 1, 2000.

§ 4.202. Agreement to Convert to Community Property.

At any time, spouses may agree that all or part of the separate property owned by either or both spouses is converted to community property.

Added by Acts 1999, 76th Leg., c. 692, § 3, eff. Jan. 1, 2000.

§ 4.203. Formalities of Agreement.

(a) An agreement to convert separate property to community property:

(1) must be in writing and:

(A) be signed by the spouses;

(B) identify the property being converted; and

(C) specify that the property is being converted to the spouses' community property; and

(2) is enforceable without consideration.

(b) The mere transfer of a spouse's separate property to the name of the other spouse or to the name of both spouses is not sufficient to convert the property to community property under this subchapter.

Added by Acts 1999, 76th Leg., c. 692, § 3, eff. Jan. 1, 2000.

§ 4.204. Management of Converted Property.

Except as specified in the agreement to convert the property and as provided by Subchapter B, Chapter 3, and other law, property converted to community property under this subchapter is subject to:

(1) the sole management, control, and disposition of the spouse in whose name the property is held;

(2) the sole management, control, and disposition of the spouse who transferred the property if the property is not subject to evidence of ownership;

(3) the joint management, control, and disposition of the spouses if the property is held in the name of both spouses; or

(4) the joint management, control, and disposition of the spouses if the property is not subject to evidence of ownership and was owned by both spouses before the property was converted to community property.

Added by Acts 1999, 76th Leg., c. 692, § 3, eff. Jan. 1, 2000.

§ 4.205. Enforcement.

(a) An agreement to convert property to community property under this subchapter is not enforceable if the spouse against whom enforcement is sought proves that the spouse did not:

(1) execute the agreement voluntarily; or

(2) receive a fair and reasonable disclosure of the legal effect of converting the property to community property.

(b) An agreement that contains the following statement, or substantially similar words, prominently displayed in bold-faced type, capital letters, or underlined, is rebuttably presumed to provide a fair and reasonable disclosure of the legal effect of converting property to community property:

"THIS INSTRUMENT CHANGES SEPARATE PROPERTY TO COMMUNITY PROPERTY. THIS MAY HAVE ADVERSE CONSEQUENCES DURING MARRIAGE AND ON TERMINATION OF THE MARRIAGE BY DEATH OR DIVORCE. FOR EXAMPLE:

"EXPOSURE TO CREDITORS. IF YOU SIGN THIS AGREEMENT, ALL OR PART OF THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME SUBJECT TO THE LIABILITIES OF YOUR SPOUSE. IF YOU DO NOT SIGN THIS AGREEMENT, YOUR SEPARATE PROPERTY IS GENERALLY NOT SUBJECT TO THE LIABILITIES OF YOUR SPOUSE UNLESS YOU ARE PERSONALLY LIABLE UNDER ANOTHER RULE OF LAW.

"LOSS OF MANAGEMENT RIGHTS. IF YOU SIGN THIS AGREEMENT, ALL OR PART OF THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME SUBJECT TO EITHER THE JOINT MANAGEMENT, CONTROL, AND DISPOSITION OF YOU AND YOUR SPOUSE OR THE SOLE MANAGEMENT, CONTROL, AND DISPOSITION OF YOUR SPOUSE ALONE. IN THAT EVENT, YOU WILL LOSE YOUR MANAGEMENT RIGHTS OVER THE PROPERTY. IF YOU DO NOT SIGN THIS AGREEMENT, YOU WILL GENERALLY RETAIN THOSE RIGHTS."

"LOSS OF PROPERTY OWNERSHIP. IF YOU SIGN THIS AGREEMENT AND YOUR MARRIAGE IS SUBSEQUENTLY TERMINATED BY THE DEATH OF EITHER SPOUSE OR BY DIVORCE, ALL OR PART OF THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME THE SOLE PROPERTY OF YOUR SPOUSE OR YOUR SPOUSE'S HEIRS. IF YOU DO NOT SIGN THIS AGREEMENT, YOU GENERALLY CANNOT BE DEPRIVED OF OWNERSHIP OF YOUR SEPARATE PROPERTY ON TERMINATION OF YOUR MARRIAGE, WHETHER BY DEATH OR DIVORCE."

(c) If a proceeding regarding enforcement of an agreement under this subchapter occurs after the death of the spouse against whom enforcement is sought, the proof required by Subsection (a) may be made by an heir of the spouse or the personal representative of the estate of that spouse.

Added by Acts 1999, 76th Leg., c. 692, § 3, eff. Jan. 1, 2000; Acts 2003, 78th Leg., R.S., c. 230, § 3, eff. Sept. 1, 2003.

Section 5(c) of Acts 2003, 78th Leg., R.S., c. 230, provides:

(c) The change in law made by this Act by the enactment of Section 4.205(c), Family Code, applies to an agreement under Subchapter C, Chapter 4, Family Code, without regard to whether the agreement was made before, on, or after the effective date of this Act.

§ 4.206. Rights of Creditors; Recording.

(a) A conversion of separate property to community property does not affect the rights of a preexisting creditor of the spouse whose separate property is being converted.

(b) A conversion of separate property to community property may be recorded in the deed records of the county in which a spouse resides and of the county in which any real property is located.

(c) A conversion of real property from separate property to community property is constructive notice to a good faith purchaser for value or a creditor without actual notice only if the agreement to convert the property is acknowledged and recorded in the deed records of the county in which the real property is located.

Added by Acts 1999, 76th Leg., c. 692, § 3, eff. Jan. 1, 2000.

CHAPTER 5.
HOMESTEAD RIGHTS

SUBCHAPTER A.
SALE OF HOMESTEAD; GENERAL RULE

§ 5.001. Sale, Conveyance, or Encumbrance of Homestead.

Whether the homestead is the separate property of either spouse or community property, neither spouse may sell, convey, or encumber the homestead without the joinder of the other spouse except as provided in this chapter or by other rules of law.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 5.002. Sale of Separate Homestead After Spouse Judicially Declared Incapacitated.

If the homestead is the separate property of a spouse and the other spouse has been judicially declared incapacitated by a court exercising original jurisdiction over guardianship and other matters under Title 3, Estates Code, the owner may sell, convey, or encumber the homestead without the joinder of the other spouse.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., c. 217, § 25, eff. Sept. 1, 2001; Acts 2017, 85th Leg., R.S., c. 324, § 22.014, eff. Sept. 1, 2017.

§ 5.003. Sale of Community Homestead after Spouse Judicially Declared Incapacitated.

If the homestead is the community property of the spouses and one spouse has been judicially declared incapacitated by a court exercising original jurisdiction over guardianship and other matters under Title 3, Estates Code, the competent spouse may sell, convey, or encumber the homestead without the joinder of the other spouse.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Renumbered from V.T.C.A., Family Code § 5.107 and amended by Acts 2001, 77th Leg., c. 217, § 29, eff. Sept. 1, 2001; Acts 2017, 85th Leg., R.S., c. 324, § 22.015, eff. Sept. 1, 2017.

SUBCHAPTER B.
SALE OF HOMESTEAD UNDER UNUSUAL CIRCUMSTANCES

§ 5.101. Sale of Separate Homestead Under Unusual Circumstances.

If the homestead is the separate property of a spouse, that spouse may file a sworn petition that gives a description of the property, states the facts that make it desirable for the spouse to sell, convey, or encumber the homestead without the joinder of the other spouse, and alleges that the other spouse:

(1) has disappeared and that the location of the spouse remains unknown to the petitioning spouse;

(2) has permanently abandoned the homestead and the petitioning spouse;

(3) has permanently abandoned the homestead and the spouses are permanently separated; or

(4) has been reported by an executive department of the United States to be a prisoner of war or missing on public service of the United States.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., c. 217, § 26, eff. Sept. 1, 2001.

§ 5.102. Sale of Community Homestead Under Unusual Circumstances.

If the homestead is the community property of the spouses, one spouse may file a sworn petition that gives a description of the property, states the facts that make it desirable for the petitioning spouse to sell, convey, or encumber the homestead without the joinder of the other spouse, and alleges that the other spouse:

(1) has disappeared and that the location of the spouse remains unknown to the petitioning spouse;

(2) has permanently abandoned the homestead and the petitioning spouse;

(3) has permanently abandoned the homestead and the spouses are permanently separated; or

(4) has been reported by an executive department of the United States to be a prisoner of war or missing on public service of the United States.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., c. 217, § 27, eff. Sept. 1, 2001.

§ 5.103. Time for Filing Petition.

The petitioning spouse may file the petition in a court of the county in which any portion of the property is located not earlier than the 60th day after the date of the occurrence of an event described by Sections 5.101(1)-(3) and 5.102(1)-(3) or not less than six months after the date the other spouse has been reported to be a prisoner of war or missing on public service.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., c. 217, § 28, eff. Sept. 1, 2001.

§ 5.104. Appointment of Attorney.

(a) Except as provided by Subsection (b), the court may appoint an attorney in a suit filed under this subchapter for the respondent.

(b) The court shall appoint an attorney in a suit filed under this subchapter for a respondent reported to be a prisoner of war or missing on public service.

(c) The court shall allow a reasonable fee for the appointed attorney's services as a part of the costs of the suit.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 5.105. Citation; Notice of Hearing.

Citation and notice of hearing for a suit filed as provided by this subchapter shall be issued and served in the manner provided in Subchapter D, Chapter 3.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 5.106. Court Order.

(a) After notice and hearing, the court shall render an order the court deems just and equitable with respect to the sale, conveyance, or encumbrance of a separate property homestead.

(b) After hearing the evidence, the court, on terms the court deems just and equitable, shall render an order describing or defining the community property at issue that will be subject to the management, control, and disposition of each spouse during marriage.

(c) The court may:

(1) impose any conditions and restrictions the court deems necessary to protect the rights of the respondent;

(2) require a bond conditioned on the faithful administration of the property; and

(3) require payment to the registry of the court of all or a portion of the proceeds of the sale of the property to be disbursed in accordance with the court's further directions.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 5.108. Remedies and Powers Cumulative.

The remedies and the powers of a spouse provided by this subchapter are cumulative of the other rights, powers, and remedies afforded the spouses by law.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

SUBTITLE C.
DISSOLUTION OF MARRIAGE

CHAPTER 6.
SUIT FOR DISSOLUTION OF MARRIAGE

SUBCHAPTER A.
GROUNDS FOR DIVORCE AND DEFENSES

§ 6.001. Insupportability.

On the petition of either party to a marriage, the court may grant a divorce without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marital relationship and prevents any reasonable expectation of reconciliation.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.002. Cruelty.

The court may grant a divorce in favor of one spouse if the other spouse is guilty of cruel treatment toward the complaining spouse of a nature that renders further living together insupportable.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.003. Adultery.

The court may grant a divorce in favor of one spouse if the other spouse has committed adultery.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.004. Conviction of Felony.

(a) The court may grant a divorce in favor of one spouse if during the marriage the other spouse:

(1) has been convicted of a felony;

(2) has been imprisoned for at least one year in the Texas Department of Criminal Justice, a federal penitentiary, or the penitentiary of another state; and

(3) has not been pardoned.

(b) The court may not grant a divorce under this section against a spouse who was convicted on the testimony of the other spouse.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Subsec. (a) amended by Acts 2009, 81st Leg., R.S., c. 87, § 25.056, eff. Sept. 1, 2009.

§ 6.005. Abandonment.

The court may grant a divorce in favor of one spouse if the other spouse:

(1) left the complaining spouse with the intention of abandonment; and

(2) remained away for at least one year.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.006. Living Apart.

The court may grant a divorce in favor of either spouse if the spouses have lived apart without cohabitation for at least three years.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.007. Confinement in Mental Hospital.

The court may grant a divorce in favor of one spouse if at the time the suit is filed:

(1) the other spouse has been confined in a state mental hospital or private mental hospital, as defined in Section 571.003, Health and Safety Code, in this state or another state for at least three years; and

(2) it appears that the hospitalized spouse's mental disorder is of such a degree and nature that adjustment is unlikely or that, if adjustment occurs, a relapse is probable.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.008. Defenses.

(a) The defenses to a suit for divorce of recrimination and adultery are abolished.

(b) Condonation is a defense to a suit for divorce only if the court finds that there is a reasonable expectation of reconciliation.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

SUBCHAPTER B.
GROUNDS FOR ANNULMENT

§ 6.101. Repealed by Acts 2007, 80th Leg., c. 52, § 8, eff. Sept. 1, 2007.

§ 6.102. Annulment of Marriage of Person Under Age 18.

(a) The court may grant an annulment of a marriage of a person 16 years of age or older but under 18 years of age that occurred without parental consent or without a court order as provided by Subchapters B and E, Chapter 2.

(b) A petition for annulment under this section may be filed by:

(1) a next friend for the benefit of the underage party;

(2) a parent; or

(3) the judicially designated managing conservator or guardian of the person of the underage party, whether an individual, authorized agency, or court.

(c) A suit filed under this subsection by a next friend is barred unless it is filed within 90 days after the date of the marriage.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997; Amended by Acts 2005, 79th Leg., c. 268, § 4.16, eff. Sept. 1, 2005; Acts 2007, 80th Leg., c. 52, § 3, eff. Sept. 1, 2007.

Acts 2005, c. 268, § 4.24, provides:

The changes in law made by this article by the amendment of Section 6.101 and Subsection (a), Section 6.102, Family Code, and the enactment of Sections 6.205 and 6.206, Family Code, apply only to a marriage entered into on or after the effective date of this Act. A marriage entered into before the effective date of this Act is governed by the law in effect on the date the marriage was entered into, and the former law is continued in effect for that purpose.

§ 6.103. Underage Annulment Barred by Adulthood.

A suit to annul a marriage may not be filed under Section 6.102 by a parent, managing conservator, or guardian of a person after the 18th birthday of the person.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2007, 80th Leg., c. 52, § 4, eff. Sept. 1, 2007.

§ 6.104. Discretionary Annulment of Underage Marriage.

(a) An annulment under Section 6.102 of a marriage may be granted at the discretion of the court sitting without a jury.

(b) In exercising its discretion, the court shall consider the pertinent facts concerning the welfare of the parties to the marriage, including whether the female is pregnant.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2007, 80th Leg., c. 52, § 5, eff. Sept. 1, 2007.

§ 6.105. Under Influence of Alcohol or Narcotics.

The court may grant an annulment of a marriage to a party to the marriage if:

(1) at the time of the marriage the petitioner was under the influence of alcoholic beverages or narcotics and as a result did not have the capacity to consent to the marriage; and

(2) the petitioner has not voluntarily cohabited with the other party to the marriage since the effects of the alcoholic beverages or narcotics ended.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.106. Impotency.

The court may grant an annulment of a marriage to a party to the marriage if:

(1) either party, for physical or mental reasons, was permanently impotent at the time of the marriage;

(2) the petitioner did not know of the impotency at the time of the marriage; and

(3) the petitioner has not voluntarily cohabited with the other party since learning of the impotency.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.107. Fraud, Duress, or Force.

The court may grant an annulment of a marriage to a party to the marriage if:

(1) the other party used fraud, duress, or force to induce the petitioner to enter into the marriage; and

(2) the petitioner has not voluntarily cohabited with the other party since learning of the fraud or since being released from the duress or force.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.108. Mental Incapacity.

(a) The court may grant an annulment of a marriage to a party to the marriage on the suit of the party or the party's guardian or next friend, if the court finds it to be in the party's best interest to be represented by a guardian or next friend, if:

(1) at the time of the marriage the petitioner did not have the mental capacity to consent to marriage or to understand the nature of the marriage ceremony because of a mental disease or defect; and

(2) since the marriage ceremony, the petitioner has not voluntarily cohabited with the other party during a period when the petitioner possessed the mental capacity to recognize the marriage relationship.

(b) The court may grant an annulment of a marriage to a party to the marriage if:

(1) at the time of the marriage the other party did not have the mental capacity to consent to marriage or to understand the nature of the marriage ceremony because of a mental disease or defect;

(2) at the time of the marriage the petitioner neither knew nor reasonably should have known of the mental disease or defect; and

(3) since the date the petitioner discovered or reasonably should have discovered the mental disease or defect, the petitioner has not voluntarily cohabited with the other party.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.109. Concealed Divorce.

(a) The court may grant an annulment of a marriage to a party to the marriage if:

(1) the other party was divorced from a third party within the 30-day period preceding the date of the marriage ceremony;

(2) at the time of the marriage ceremony the petitioner did not know, and a reasonably prudent person would not have known, of the divorce; and

(3) since the petitioner discovered or a reasonably prudent person would have discovered the fact of the divorce, the petitioner has not voluntarily cohabited with the other party.

(b) A suit may not be brought under this section after the first anniversary of the date of the marriage.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.110. Marriage Less Than 72 Hours After Issuance of License.

(a) The court may grant an annulment of a marriage to a party to the marriage if the marriage ceremony took place in violation of Section 2.204 during the 72-hour period immediately following the issuance of the marriage license.

(b) A suit may not be brought under this section after the 30th day after the date of the marriage.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.111. Death of Party to Voidable Marriage.

Except as provided by Subchapter C, Chapter 123, Estates Code, a marriage subject to annulment may not be challenged in a proceeding instituted after the death of either party to the marriage.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2007, 80th Leg., c. 1170, § 4.03, eff. Sept. 1, 2007; Acts 2017, 85th Leg., R.S., c. 324, § 22.016, eff. Sept. 1, 2017.

Section 4.04 of Acts 2007, 80th Leg., c. 1170, provides:

(a) Except as provided by Subsection (b) of this section, the changes in law made by this article apply only to:

(1) the estate of a decedent who dies before the effective date of this article, if the probate or administration of the estate is pending on or commenced on or after the effective date of this article; and

(2) the estate of a decedent who dies on or after the effective date of this article.

SUBCHAPTER C.
DECLARING A MARRIAGE VOID

§ 6.201. Consanguinity.

A marriage is void if one party to the marriage is related to the other as:

(1) an ancestor or descendant, by blood or adoption;

(2) a brother or sister, of the whole or half blood or by adoption;

(3) a parent's brother or sister, of the whole or half blood or by adoption; or

(4) a son or daughter of a brother or sister, of the whole or half blood or by adoption.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.202. Marriage During Existence of Prior Marriage.

(a) A marriage is void if entered into when either party has an existing marriage to another person that has not been dissolved by legal action or terminated by the death of the other spouse.

(b) The later marriage that is void under this section becomes valid when the prior marriage is dissolved if, after the date of the dissolution, the parties have lived together as husband and wife and represented themselves to others as being married.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.203. Certain Void Marriages Validated.

Except for a marriage that would have been void under Section 6.201, a marriage that was entered into before January 1, 1970, in violation of the prohibitions of Article 496, Penal Code of Texas, 1925, is validated from the date the marriage commenced if the parties continued until January 1, 1970, to live together as husband and wife and to represent themselves to others as being married.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.204. Recognition of Same-Sex Marriage or Civil Union.

(a) In this section, "civil union" means any relationship status other than marriage that:

(1) is intended as an alternative to marriage or applies primarily to cohabitating persons; and

(2) grants to the parties of the relationship legal protections, benefits, or responsibilities granted to the spouses of a marriage.

b) A marriage between persons of the same sex or a civil union is contrary to the public policy of this state and is void in this state.

c) The state or an agency or political subdivision of the state may not give effect to a:

(1) public act, record, or judicial proceeding that creates, recognizes, or validates a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction; or

(2) right or claim to any legal protection, benefit, or responsibility asserted as a result of a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction.

Added by Acts 2003, 78th Leg., R.S., c. 124, § 1, eff. Sept. 1, 2003.

Section 2 of Acts 2003, 78th Leg., R.S., c. 124, provides:

> The legislature finds that through the designation of guardians, the appointment of agents, and the use of private contracts persons may adequately and properly appoint guardians and arrange rights relating to hospital visitation, property, and the entitlement to proceeds of life insurance policies without the existence of any legally recognized familial relationship between the persons.

Section 3 of Acts 2003, 78th Leg., R.S., c. 124, provides:

> This Act applies to a same-sex marriage or a civil union regardless of whether the marriage or civil union was entered into before, on, or after the effective date of this Act.

§ 6.205. Marriage to Minor.

A marriage is void if either party to the marriage is younger than 18 years of age, unless a court order removing the disabilities of minority of the party for general purposes has been obtained in this state or in another state.

Added by Acts 2005, 79th Leg., c. 268, § 4.17, eff. Sept. 1, 2005. Amended by Acts 2007, 80th Leg., c. 52, § 6, eff. Sept. 1, 2007; Acts 2017, 85th Leg., R.S., c. 934, § 5, eff. Sept. 1, 2017.

Section 4.24 of Acts 2005, c. 268, provides:

> The changes in law made by this article by the amendment of Section 6.101 and Subsection (a), Section 6.102, Family Code, and the enactment of Sections 6.205 and 6.206, Family Code, apply only to a marriage entered into on or after the effective date of this Act. A marriage entered into before the effective date of this Act is governed by the law in effect on the date the marriage was entered into, and the former law is continued in effect for that purpose.

Section 9 of Acts 2007, 80th Leg., c. 52, provides:

> (c) The change in law made by this Act to Section 6.205, Family Code, applies to a marriage regardless of whether the marriage was entered into before, on, or after the effective date of this Act.

Section 7(b) of Acts 2017, 85th Leg., R.S., c. 934, provides:

> (b) Section 6.205, Family Code, as amended by this Act, applies only to a marriage entered into on or after the effective date of this Act. A marriage entered into before that date is governed by the law in effect on the date the marriage was entered into, and the former law is continued in effect for that purpose.

§ 6.206. Marriage to Stepchild or Stepparent.

A marriage is void if a party is a current or former stepchild or stepparent of the other party.

Added by Acts 2005, 79th Leg., c. 268, § 4.17, eff. Sept. 1, 2005.

Section 4.24 of Acts 2005, c. 268, provides:

> The changes in law made by this article by the amendment of Section 6.101 and Subsection (a), Section 6.102, Family Code, and the enactment of Sections 6.205 and 6.206, Family Code, apply only to a marriage entered into on or after the effective date of this Act. A marriage entered into before the effective date of this Act is governed by the law in effect on the date the marriage was entered into, and the former law is continued in effect for that purpose.

SUBCHAPTER D.
JURISDICTION, VENUE, AND RESIDENCE QUALIFICATIONS

§ 6.301. General Residency Rule for Divorce Suit.

A suit for divorce may not be maintained in this state unless at the time the suit is filed either the petitioner or the respondent has been:

(1) a domiciliary of this state for the preceding six-month period; and

(2) a resident of the county in which the suit is filed for the preceding 90-day period.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.302. Suit for Divorce by Nonresident Spouse.

If one spouse has been a domiciliary of this state for at least the last six months, a spouse domiciled in another state or nation may file a suit for divorce in the county in which the domiciliary spouse resides at the time the petition is filed.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.303. Absence on Public Service.

Time spent by a Texas domiciliary outside this state or outside the county of residence of the domiciliary while in the service of the armed forces or other service of the United States or of this state, or while accompanying the domiciliary's spouse in the spouse's service of the armed forces or other service of the United States or of this state, is considered residence in this state and in that county.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2011, 82nd Leg., R.S., c. 436, § 1, eff. June 17, 2011.

Section 2 of Acts 2011, 82nd Leg., R.S., S.B. 1159, provides:

The change in law made by this Act applies only to a suit for dissolution of a marriage filed on or after the effective date of this Act. A suit filed before that date is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

§ 6.304. Armed Forces Personnel Not Previously Residents.

A person not previously a resident of this state who is serving in the armed forces of the United States and has been stationed at one or more military installations in this state for at least the last six months and at a military installation in a county of this state for at least the last 90 days, or who is accompanying the person's spouse during the spouse's military service in those locations and for those periods, is considered to be a Texas domiciliary and a resident of that county for those periods for the purpose of filing suit for dissolution of a marriage.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2011, 82nd Leg., R.S., S.B. 1159, § 1, eff. June 17, 2011.

Section 2 of Acts 2011, 82nd Leg., R.S., S.B. 1159, provides:

The change in law made by this Act applies only to a suit for dissolution of a marriage filed on or after the effective date of this Act. A suit filed before that date is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

§ 6.305. Acquiring Jurisdiction Over Nonresident Respondent.

(a) If the petitioner in a suit for dissolution of a marriage is a resident or a domiciliary of this state at the time the suit for dissolution is filed, the court may exercise personal jurisdiction over the respondent or over the respondent's personal representative although the respondent is not a resident of this state if:

(1) this state is the last marital residence of the petitioner and the respondent and the suit is filed before the second anniversary of the date on which marital residence ended; or

(2) there is any basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction.

(b) A court acquiring jurisdiction under this section also acquires jurisdiction over the respondent in a suit affecting the parent-child relationship.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.306. Jurisdiction to Annul Marriage.

(a) A suit for annulment of a marriage may be maintained in this state only if the parties were married in this state or if either party is domiciled in this state.

(b) A suit for annulment is a suit in rem, affecting the status of the parties to the marriage.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.307. Jurisdiction to Declare Marriage Void.

(a) Either party to a marriage made void by this chapter may sue to have the marriage declared void, or the court may declare the marriage void in a collateral proceeding.

(b) The court may declare a marriage void only if:

(1) the purported marriage was contracted in this state; or

(2) either party is domiciled in this state.

(c) A suit to have a marriage declared void is a suit in rem, affecting the status of the parties to the purported marriage.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.308. Exercising Partial Jurisdiction.

(a) A court in which a suit for dissolution of a marriage is filed may exercise its jurisdiction over those portions of the suit for which it has authority.

(b) The court's authority to resolve the issues in controversy between the parties may be restricted because the court lacks:

(1) the required personal jurisdiction over a nonresident party in a suit for dissolution of the marriage;

(2) the required jurisdiction under Chapter 152; or

(3) the required jurisdiction under Chapter 159.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

SUBCHAPTER E.
FILING SUIT

§ 6.401. Caption.

(a) Pleadings in a suit for divorce or annulment shall be styled "In the Matter of the Marriage of _____ and _____."

(b) Pleadings in a suit to declare a marriage void shall be styled "A Suit To Declare Void the Marriage of _____ and _____."

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.402. Pleadings.

(a) A petition in a suit for dissolution of a marriage is sufficient without the necessity of specifying the underlying evidentiary facts if the petition alleges the grounds relied on substantially in the language of the statute.

(b) Allegations of grounds for relief, matters of defense, or facts relied on for a temporary order that are stated in short and plain terms are not subject to special exceptions because of form or sufficiency.

(c) The court shall strike an allegation of evidentiary fact from the pleadings on the motion of a party or on the court's own motion.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.403. Answer.

The respondent in a suit for dissolution of a marriage is not required to answer on oath or affirmation.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.4035. Waiver of Service.

(a) A party to a suit for the dissolution of a marriage may waive the issuance or service of process after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt of a copy of the filed petition.

(b) The waiver must contain the mailing address of the party who executed the waiver.

(c) Notwithstanding Section 132.001, Civil Practice and Remedies Code, the waiver must be sworn before a notary public who is not an attorney in the suit. This subsection does not apply if the party executing the waiver is incarcerated.

(d) The Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

(e) The party executing the waiver may not sign the waiver using a digitized signature.

(f) For purposes of this section, "digitized signature" has the meaning assigned by Section 101.0096.

Added by Acts 1997, 75th Leg., c. 614, § 1, eff. Sept. 1, 1997. Amended by Acts 2013, 83rd Leg., R.S., c. 916, § 2, eff. Sept. 1, 2013; Acts 2015, 84th Leg., c. 198, § 1, eff. Sept. 1, 2015.

Section 9 of Acts 2013, 83rd Leg., R.S., c. 916, provides:

The change in law made by this Act to Section 6.4035(c), Family Code, applies to a waiver of service of process executed by a party to a suit for the dissolution of a marriage on or after the effective date of this Act, regardless of whether the suit is filed before, on, or after that date.

Section 6 of Acts 2015, 84th Leg., c. 198, provides:

The changes in law made by this Act apply only to a suit that is commenced on or after the effective date of this Act. A suit that is commenced before that date is governed by the law as it existed on the date the suit was commenced, and the former law is continued in effect for that purpose.

§ 6.404. Repealed by Acts 2003, 78th Leg., R.S., c. 1313, § 1, eff. Sept. 1, 2003.

Section 2 of Acts 2003, 78th Leg., R.S., ch.1313, provides:

This Act takes effect September 1, 2003, and applies to a suit for dissolution of a marriage or a suit affecting the parent-child relationship filed before, on, or after that date.

§ 6.404. Information Regarding Protective Orders.

At any time while a suit for dissolution of a marriage is pending, if the court believes, on the basis of any information received by the court, that a party to the suit or a member of the party's family or household may be a victim of family violence, the court shall inform that party of the party's right to apply for a protective order under Title 4.

Added by Acts 2005, 79th Leg., c. 361, § 2, eff. June 17, 2005.

§ 6.405. Protective Order and Related Orders.

(a) The petition in a suit for dissolution of a marriage must state whether, in regard to a party to the suit or a child of a party to the suit:

(1) there is in effect:

(A) a protective order under Title 4;

(B) a protective order under Subchapter A, Chapter 7B, Code of Criminal Procedure; or

(C) an order for emergency protection under Article 17.292, Code of Criminal Procedure; or

(2) an application for an order described by Subdivision (1) is pending.

(b) The petitioner shall attach to the petition a copy of each order described by Subsection (a)(1) in which a party to the suit or the child of a party to the suit was the applicant or victim of the conduct alleged in the application or order and the other party was the respondent or defendant of an action regarding the conduct alleged in the application or order without regard to the date of the order. If a copy of the order is not available at the time of filing, the petition must state that a copy of the order will be filed with the court before any hearing.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 6.04, eff. Sept. 1, 1999; Acts 2017, 85th Leg., R.S., c. 885, § 1, eff. Sept. 1, 2017; Acts 2019, 86th Leg., c. 469, § 2.03, eff Jan. 1, 2021.

Sections 8 and 9 of Acts 2017, 85th Leg., R.S., c. 885, provides:

SECTION 8. Sections 6.405 and 102.008, Family Code, as amended by this Act, and Section 160.6035, Family Code, as added by this Act, apply only to a petition filed on or after September 1, 2017. A petition filed before September 1, 2017, is governed by the law in effect on the date the petition was filed, and the former law is continued in effect for that purpose.

SECTION 9. The changes in law made by this Act apply only to an authorization agreement executed on or after the effective date of this Act. An authorization agreement executed before that date is governed by the law in effect on the date the authorization agreement was executed, and the former law is continued in effect for that purpose.

§ 6.406. Mandatory Joinder of Suit Affecting Parent-Child Relationship.

(a) The petition in a suit for dissolution of a marriage shall state whether there are children born or adopted of the marriage who are under 18 years of age or who are otherwise entitled to support as provided by Chapter 154.

(a-1) If the parties to a suit for dissolution of a marriage are the intended parents under a gestational agreement that is in effect and that establishes a parent-child relationship between the parties as intended parents and an unborn child on the birth of the child, the petition in the suit for dissolution of a marriage shall state:

(1) that the parties to the marriage have entered into a gestational agreement establishing a parent-child relationship between the parties as intended parents and an unborn child on the birth of the child;

(2) whether the gestational mother under the agreement is pregnant or a child who is the subject of the agreement has been born; and

(3) whether the agreement has been validated under Section 160.756.

(b) If the parties are parents of a child, as defined by Section 101.003, and the child is not under the continuing jurisdiction of another court as provided by Chapter 155, the suit for dissolution of a marriage must include a suit affecting the parent-child relationship under Title 5.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2019, 86th Leg., c. 130, § 1, eff. Sept. 1, 2019.

§ 6.407. Transfer of Suit Affecting Parent-Child Relationship to Divorce Court.

(a) If a suit affecting the parent-child relationship is pending at the time the suit for dissolution of a marriage is filed, the suit affecting the parent-child relationship shall be transferred as provided by Section 103.002 to the court in which the suit for dissolution is filed.

(b) If the parties are parents of a child, as defined by Section 101.003, and the child is under the continuing jurisdiction of another court under Chapter 155, either party to the suit for dissolution of a marriage may move that court for transfer of the suit affecting the parent-child relationship to the court having jurisdiction of the suit for dissolution. The court with continuing jurisdiction shall transfer the proceeding as provided by Chapter 155. On the transfer of the proceedings, the court with jurisdiction of the suit for dissolution of a marriage shall consolidate the two causes of action.

(c) After transfer of a suit affecting the parent-child relationship as provided in Chapter 155, the court with jurisdiction of the suit for dissolution of a marriage has jurisdiction to render an order in the suit affecting the parent-child relationship as provided by Title 5.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.408. Service of Citation.

Citation on the filing of an original petition in a suit for dissolution of a marriage shall be issued and served as in other civil cases. Citation may also be served on any other person who has or who may assert an interest in the suit for dissolution of the marriage.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.409. Citation by Publication.

(a) Citation in a suit for dissolution of a marriage may be by publication as in other civil cases, except that notice shall be published one time only.

(b) The notice shall be sufficient if given in substantially the following form:

"STATE OF TEXAS

To (name of person to be served with citation), and to all whom it may concern (if the name of any person to be served with citation is unknown), Respondent(s),

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you. The petition of _____, Petitioner, was filed in the Court of _____ County, Texas, on the _____ day of _____, against _____, Respondent(s), numbered _____, and entitled 'In the Matter of Marriage of _____ and _____. The suit requests _____ (statement of relief sought).'

"The Court has authority in this suit to enter any judgment or decree dissolving the marriage and providing for the division of property that will be binding on you.

"Issued and given under my hand and seal of said Court at _____, Texas, this the _____ day of _____, _____.

"_____
Clerk of the _____ Court of _____ County, Texas
By _____, Deputy."

(c) The form authorized in this section and the form authorized by Section 102.010 may be combined in appropriate situations.

(d) If the citation is for a suit in which a parent-child relationship does not exist, service by publication may be completed by posting the citation at the courthouse door for seven days in the county in which the suit is filed.

(e) If the petitioner or the petitioner's attorney of record makes an oath that no child presently under 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, the court may dispense with the appointment of an attorney ad litem. In a case in which citation was by publication, a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the suit as a part of the record.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.410. Report to Accompany Petition.

At the time a petition for divorce or annulment of a marriage is filed, the petitioner shall also file a completed report that may be used by the district clerk, at the time the petition is granted, to comply with Section 194.002, Health and Safety Code.

Added by Acts 2003, 78th Leg., R.S., c. 1128, § 1, eff. Sept. 1, 2003.

§ 6.411. Confidentiality of Pleadings.

(a) This section applies only in a county with a population of 3.4 million or more.

(b) Except as otherwise provided by law, all pleadings and other documents filed with the court in a suit for dissolution of a marriage are confidential, are excepted from required public disclosure under Chapter 552, Government Code, and may not be released to a person who is not a party to the suit until after the date of service of citation or the 31st day after the date of filing the suit, whichever date is sooner.

Added by Acts 2003, 78th Leg., R.S., c. 1314, § 1, eff. Sept. 1, 2003. Renumbered from § 6.410 by Laws, 2005, 79th Leg., c. 728, § 23.001(24), eff. Sept. 1, 2005.

Section 4(b) of Acts 2003, 78th Leg., R.S., c. 230, provides:

(b) Section 6.410, Family Code, as added by this Act, applies only to a suit for dissolution of a marriage filed on or after the effective date of this Act. A suit for dissolution of a marriage filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

Section 23.003 of Acts 2005, 79th Leg. c. 728, provides:

If the number, letter, or designation assigned by Section 23.001 of this Act conflicts with a number, letter, or designation assigned by another Act of the 79th Legislature:

(1) the other Act controls, and the change made by Section 23.001 of this Act has no effect; and

(2) any cross-reference change made by Section 23.002 of this Act to conform to that change made by Section 23.001 of this Act has no effect.

SUBCHAPTER F.
TEMPORARY ORDERS

§ 6.501. Temporary Restraining Order.

(a) After the filing of a suit for dissolution of a marriage, on the motion of a party or on the court's own motion, the court may grant a temporary restraining order without notice to the adverse party for the preservation of the property and for the protection of the parties as necessary, including an order prohibiting one or both parties from:

(1) intentionally communicating in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, with the other party by use of vulgar, profane, obscene, or indecent language or in a coarse or offensive manner, with intent to annoy or alarm the other party;

(2) threatening the other party in person or in any other manner, including by telephone or another electronic voice transmission, video chat, [or] in writing, or electronic messaging, to take unlawful action against any person, intending by this action to annoy or alarm the other party;

(3) placing a telephone call, anonymously, at an unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication with the intent to annoy or alarm the other party;

(4) intentionally, knowingly, or recklessly causing bodily injury to the other party or to a child of either party;

(5) threatening the other party or a child of either party with imminent bodily injury;

(6) intentionally, knowingly, or recklessly destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of the parties or either party with intent to obstruct the authority of the court to order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage;

(7) intentionally falsifying a writing or record, including an electronic record, relating to the property of either party;

(8) intentionally misrepresenting or refusing to disclose to the other party or to the court, on proper request, the existence, amount, or location of any tangible or intellectual property of the parties or either party, including electronically stored or recorded information;

(9) intentionally or knowingly damaging or destroying the tangible or intellectual property of the parties or either party, including electronically stored or recorded information;

(10) intentionally or knowingly tampering with the tangible or intellectual property of the parties or either party, including electronically stored or recorded information, and causing pecuniary loss or substantial inconvenience to the other party;

(11) except as specifically authorized by the court:

(A) selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of the parties or either party, regardless of whether the property is:

(i) personal property, real property, or intellectual property; or

(ii) separate or community property;

(B) incurring any debt, other than legal expenses in connection with the suit for dissolution of marriage;

(C) withdrawing money from any checking or savings account in a financial institution for any purpose;

(D) spending any money in either party's possession or subject to either party's control for any purpose;

(E) withdrawing or borrowing money in any manner for any purpose from a retirement, profit sharing, pension, death, or other employee benefit plan, employee savings plan, individual retirement account, or Keogh account of either party; or

(F) withdrawing or borrowing in any manner all or any part of the cash surrender value of a life insurance policy on the life of either party or a child of the parties;

(12) entering any safe deposit box in the name of or subject to the control of the parties or either party, whether individually or jointly with others;

(13) changing or in any manner altering the beneficiary designation on any life insurance policy on the life of either party or a child of the parties;

(14) canceling, altering, failing to renew or pay premiums on, or in any manner affecting the level of coverage that existed at the time the suit was filed of, any life, casualty, automobile, or health insurance policy insuring the parties' property or persons, including a child of the parties;

(15) opening or diverting mail or e-mail or any other electronic communication addressed to the other party;

(16) signing or endorsing the other party's name on any negotiable instrument, check, or draft, including a tax refund, insurance payment, and dividend, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party;

(17) taking any action to terminate or limit credit or charge credit cards in the name of the other party;

(18) discontinuing or reducing the withholding for federal income taxes from either party's wages or salary;

(19) destroying, disposing of, or altering any financial records of the parties, including a canceled check, deposit slip, and other records from a financial institution, a record of credit purchases or cash advances, a tax return, and a financial statement;

(20) destroying, disposing of, or altering any e-mail, text message, video message, or chat message or other electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium;

(21) modifying, changing, or altering the native format or metadata of any electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium;

(22) deleting any data or content from any social network profile used or created by either party or a child of the parties;

(23) using any password or personal identification number to gain access to the other party's e-mail account, bank account, social media account, or any other electronic account;

(24) terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or any other contractual service, including security, pest control, landscaping, or yard maintenance at the residence of either party, or in any manner attempting to withdraw any deposit paid in connection with any of those services;

(25) excluding the other party from the use and enjoyment of a specifically identified residence of the other party; or

(26) entering, operating, or exercising control over a motor vehicle in the possession of the other party.

(b) A temporary restraining order under this subchapter may not include a provision:

(1) the subject of which is a requirement, appointment, award, or other order listed in Section 64.104, Civil Practice and Remedies Code; or

(2) that:

(A) excludes a spouse from occupancy of the residence where that spouse is living except as provided in a protective order made in accordance with Title 4;

(B) prohibits a party from spending funds for reasonable and necessary living expenses; or

(C) prohibits a party from engaging in acts reasonable and necessary to conduct that party's usual business and occupation.

(27) tracking or monitoring personal property or a motor vehicle in the possession of a party, without that party's effective consent, including by:

(A) using a tracking application on a personal electronic device in the possession of that party or using a tracking device; or

(B) physically following that party or causing another to physically follow that party.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 1999, 76th Leg., c. 1081, § 6, eff. Sept. 1, 1999; Acts 2015, 84th Leg., c. 43, § 1, eff. Sept. 1, 2015; Acts 2023, 88th Leg., R.S., HB 2715, § 41, eff. Sept. 1, 2023.

Section 2 of Acts 2015, 84th Leg., c. 43, provides:

> The change in law made by this Act applies only to a suit for dissolution of marriage that is filed on or after the effective date of this Act. A suit for dissolution of marriage filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

Section 8(a) of Acts 2023, 88th Leg., R.S., HB 2715, provides:

> Article 7B.005, Code of Criminal Procedure, as amended by this Act, and Sections 6.501 and 85.022, Family Code, as amended by this Act, apply only to a protective or restraining order rendered on or after the effective date of this Act. A protective or restraining order rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

§ 6.502. Temporary Injunction and Other Temporary Orders.

(a) While a suit for dissolution of a marriage is pending and on the motion of a party or on the court's own motion after notice and hearing, the court may render an appropriate order, including the granting of a temporary injunction for the preservation of the property and protection of the parties as deemed necessary and equitable and including an order directed to one or both parties:

(1) requiring a sworn inventory and appraisement of the real and personal property owned or claimed by the parties and specifying the form, manner, and substance of the inventory and appraisal and list of debts and liabilities;

(2) requiring payments to be made for the support of either spouse;

(3) requiring the production of books, papers, documents, and tangible things by a party;

(4) ordering payment of reasonable attorney's fees and expenses;

(5) appointing a receiver for the preservation and protection of the property of the parties;

(6) awarding one spouse exclusive occupancy of the residence during the pendency of the case;

(7) prohibiting the parties, or either party, from spending funds beyond an amount the court determines to be for reasonable and necessary living expenses;

(8) awarding one spouse exclusive control of a party's usual business or occupation; or

(9) prohibiting an act described by Section 6.501(a).

(a-1) If the court on its own motion refers to mediation a suit described by Subsection (a) in which a motion for a temporary order described by that subsection is pending, the court may not postpone the initial hearing on the pending motion to a date that is later than the 30th day after the date set for the hearing.

(b) Not later than the 30th day after the date a receiver is appointed under Subsection (a)(5), the receiver shall give notice of the appointment to each lienholder of any property under the receiver's control.

(c) Not later than the seventh day after the date a receiver is appointed under Subsection (a)(5), the court shall issue written findings of fact and conclusions of law in support of the receiver's appointment. If the court dispenses with the issuance of a bond between the spouses as provided by Section 6.503(b) in connection with the receiver's appointment, the court shall include in the court's findings an explanation of the reasons the court dispensed with the issuance of a bond.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., c. 695, § 1, eff. Sept. 1, 2001; Acts 2017, 85th Leg., R.S., c. 493, § 1, eff. Sept. 1, 2017; Acts 2023, 88th Leg., R.S., HB 2671, § 1, eff. Sept. 1, 2023.

Section 3 of Acts 2023, 88th Leg., R.S., HB 2671, provides:

The change in law made by this Act applies to a suit that is pending in a trial court on the effective date of this Act or that is filed on or after that date.

§ 6.503. Affidavit, Verified Pleading, and Bond Not Required.

(a) A temporary restraining order or temporary injunction under this subchapter:

(1) may be granted without an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result before notice can be served and a hearing can be held; and

(2) need not:

(A) define the injury or state why it is irreparable;

(B) state why the order was granted without notice; or

(C) include an order setting the suit for trial on the merits with respect to the ultimate relief sought.

(b) In a suit for dissolution of a marriage, the court may dispense with the issuance of a bond between the spouses in connection with temporary orders for the protection of the parties and their property.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.504. Protective Orders.

On the motion of a party to a suit for dissolution of a marriage, the court may render a protective order as provided by Subtitle B, Title 4.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 1997, 75th Leg., c. 1193, § 1, eff. Sept. 1, 1997.

§ 6.505. Counseling.

(a) While a divorce suit is pending, the court may direct the parties to counsel with a person named by the court.

(b) The person named by the court to counsel the parties shall submit a written report to the court and to the parties before the final hearing. In the report, the counselor shall give only an opinion as to whether there exists a reasonable expectation of reconciliation of the parties and, if so, whether further counseling would be beneficial. The sole purpose of the report is to aid the court in determining whether the suit for divorce should be continued pending further counseling.

(c) A copy of the report shall be furnished to each party.

(d) If the court believes that there is a reasonable expectation of the parties' reconciliation, the court may by written order continue the proceedings and direct the parties to a person named by the court for further counseling for a period fixed by the court not to exceed 60 days, subject to any terms, conditions, and limitations the court considers desirable. In ordering counseling, the court shall consider the circumstances of the parties, including the needs of the parties' family and the availability of counseling services. At the expiration of the period specified by the court, the counselor to whom the parties were directed shall report to the court whether the parties have complied with the court's order. Thereafter, the court shall proceed as in a divorce suit generally.

(e) If the court orders counseling under this section and the parties to the marriage are the parents of a child under 18 years of age born or adopted during the marriage, the counseling shall include counseling on issues that confront children who are the subject of a suit affecting the parent-child relationship.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 1997, 75th Leg., c. 1325, § 1, eff. Sept. 1, 1997.

§ 6.506. Contempt.

The violation of a temporary restraining order, temporary injunction, or other temporary order issued under this subchapter is punishable as contempt.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.507. Interlocutory Appeal.

An order under this subchapter, except an order appointing a receiver, is not subject to interlocutory appeal.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

SUBCHAPTER G.
ALTERNATIVE DISPUTE RESOLUTION

§ 6.601. Arbitration Procedures.

(a) On written agreement of the parties, the court may refer a suit for dissolution of a marriage to arbitration. The agreement must state whether the arbitration is binding or nonbinding.

(b) If the parties agree to binding arbitration, the court shall render an order reflecting the arbitrator's award.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.6015. Determination of Validity and Enforceability of Contract Containing Agreement to Arbitrate.

(a) If a party to a suit for dissolution of a marriage opposes an application to compel arbitration or makes an application to stay arbitration and asserts that the contract containing the agreement to arbitrate is not valid or enforceable, notwithstanding any provision of the contract to the contrary, the court shall try the issue promptly and may order arbitration only if the court determines that the contract containing the agreement to arbitrate is valid and enforceable against the party seeking to avoid arbitration.

(b) A determination under this section that a contract is valid and enforceable does not affect the court's authority to stay arbitration or refuse to compel arbitration on any other ground provided by law.

(c) This section does not apply to:

(1) a court order;

(2) a mediated settlement agreement described by Section 6.602;

(3) a collaborative law agreement described by Section 6.603;

(4) a written settlement agreement reached at an informal settlement conference described by Section 6.604; or

(5) any other agreement between the parties that is approved by a court.

Added by Acts 2011, 82nd Leg., R.S., c. 1088, § 1, eff. June 17, 2011.

Section 3 of Acts 2011, 82nd Leg., R.S., c. 1088, provides:

> The changes in law made by this Act apply only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

§ 6.602. Mediation Procedures.

(a) On the written agreement of the parties or on the court's own motion, the court may refer a suit for dissolution of a marriage to mediation.

(b) A mediated settlement agreement is binding on the parties if the agreement:

(1) provides, in a prominently displayed statement that is in boldfaced type or capital letters or underlined, that the agreement is not subject to revocation;

(2) is signed by each party to the agreement; and

(3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(c) If a mediated settlement agreement meets the requirements of this section, a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law.

(d) A party may at any time prior to the final mediation order file a written objection to the referral of a suit for dissolution of a marriage to mediation on the basis of family violence having been committed against the objecting party by the other party. After an objection is filed, the suit may not be referred to mediation unless, on the request of the other party, a hearing is held and the court finds that a preponderance of the evidence does not support the objection. If the suit is referred to mediation, the court shall order appropriate measures be taken to ensure the physical and emotional safety of the party who filed the objection. The order shall provide that the parties not be required to have face-to-face contact and that the parties be placed in separate rooms during mediation.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 1999, 76th Leg., c. 178, § 2, eff. Aug. 30, 1999; Acts 1999, 76th Leg., c. 1351, § 1, eff. Sept. 1, 1999.

§ 6.603. Repealed by Laws 2011, 82nd Leg., R.S., c. 1048, § 2, eff. Sept. 1, 2011.

§ 6.604. Informal Settlement Conference.

(a) The parties to a suit for dissolution of a marriage may agree to one or more informal settlement conferences and may agree that the settlement conferences may be conducted with or without the presence of the parties' attorneys, if any.

(b) A written settlement agreement reached at an informal settlement conference is binding on the parties if the agreement:

(1) provides, in a prominently displayed statement that is in boldfaced type or in capital letters or underlined, that the agreement is not subject to revocation;

(2) is signed by each party to the agreement; and

(3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(c) If a written settlement agreement meets the requirements of Subsection (b), a party is entitled to judgment on the settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law.

(d) If the court finds that the terms of the written informal settlement agreement are just and right, those terms are binding on the court. If the court approves the agreement, the court may set forth the agreement in full or incorporate the agreement by reference in the final decree.

(e) If the court finds that the terms of the written informal settlement agreement are not just and right, the court may request the parties to submit a revised agreement or set the case for a contested hearing.

Added by Acts 2005, 79th Leg., c. 477, § 1, eff. Sept. 1, 2005.

SUBCHAPTER H.
TRIAL AND APPEAL

§ 6.701. Failure to Answer.

In a suit for divorce, the petition may not be taken as confessed if the respondent does not file an answer.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.702. Waiting Period.

(a) Except as provided by Subsection (c), the court may not grant a divorce before the 60th day after the date the suit was filed. A decree rendered in violation of this subsection is not subject to collateral attack.

(b) A waiting period is not required before a court may grant an annulment or declare a marriage void other than as required in civil cases generally.

(c) A waiting period is not required under Subsection (a) before a court may grant a divorce in a suit in which the court finds that:

(1) the respondent has been finally convicted of or received deferred adjudication for an offense involving family violence as defined by Section 71.004 against the petitioner or a member of the petitioner's household; or

(2) the petitioner has an active protective order under Title 4 or an active magistrate's order for emergency protection under Article 17.292, Code of Criminal Procedure, based on a finding of family violence, against the respondent because of family violence committed during the marriage.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Subsec. (a) amended and subsec. (c) added by Acts 2009, 81st Leg., R.S., c. 896, § 1, eff. June 19, 2009.

Section 2 of Acts 2009, 81st Leg., R.S., c. 896, provides:

> The change in law made by this Act applies only to a suit for dissolution of a marriage filed on or after the effective date of this Act. A suit for dissolution of a marriage filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

§ 6.703. Jury.

In a suit for dissolution of a marriage, either party may demand a jury trial unless the action is a suit to annul an underage marriage under Section 6.102.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2007, 80th Leg., c. 52, § 7, eff. Sept. 1, 2007.

§ 6.704. Testimony of Husband or Wife.

(a) In a suit for dissolution of a marriage, the husband and wife are competent witnesses for and against each other. A spouse may not be compelled to testify as to a matter that will incriminate the spouse.

(b) If the husband or wife testifies, the court or jury trying the case shall determine the credibility of the witness and the weight to be given the witness's testimony.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.705. Testimony by Marriage Counselor.

(a) The report by the person named by the court to counsel the parties to a suit for divorce may not be admitted as evidence in the suit.

(b) The person named by the court to counsel the parties is not competent to testify in any suit involving the parties or their children.

(c) The files, records, and other work products of the counselor are privileged and confidential for all purposes and may not be admitted as evidence in any suit involving the parties or their children.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.706. Change of Name.

(a) In a decree of divorce or annulment, the court shall change the name of a party specifically requesting the change to a name previously used by the party unless the court states in the decree a reason for denying the change of name.

(b) The court may not deny a change of name solely to keep the last name of family members the same.

(c) A change of name does not release a person from liability incurred by the person under a previous name or defeat a right the person held under a previous name.

(d) A person whose name is changed under this section may apply for a change of name certificate from the clerk of the court as provided by Section 45.106.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.707. Transfers and Debts Pending Decree.

(a) A transfer of real or personal community property or a debt incurred by a spouse while a suit for divorce or annulment is pending that subjects the other spouse or the community property to liability is void with respect to the other spouse if the transfer was made or the debt incurred with the intent to injure the rights of the other spouse.

(b) A transfer or debt is not void if the person dealing with the transferor or debtor spouse did not have notice of the intent to injure the rights of the other spouse.

(c) The spouse seeking to void a transfer or debt incurred while a suit for divorce or annulment is pending has the burden of proving that the person dealing with the transferor or debtor spouse had notice of the intent to injure the rights of the spouse seeking to void the transaction.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.708. Costs; Attorney's Fees and Expenses.

(a) In a suit for dissolution of a marriage, the court as it considers reasonable may award costs to a party. Costs may not be adjudged against a party against whom a divorce is granted for confinement in a mental hospital under Section 6.007.

(b) The expenses of counseling may be taxed as costs against either or both parties.

(c) In a suit for dissolution of a marriage, the court may award reasonable attorney's fees and expenses. The court may order the fees and expenses and any postjudgment interest to be paid directly to the attorney, who may enforce the order in the attorney's own name by any means available for the enforcement of a judgment for debt.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2013, 83rd Leg., R.S., c. 916, §§ 3, 4, eff. Sept. 1, 2013.

Section 10 of Acts 2013, 83rd Leg., R.S., c. 916, provides:

> Section 6.708(c), Family Code, as added by this Act, applies only to a suit for dissolution of a marriage filed on or after the effective date of this Act. A suit filed before that date is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

§ 6.709. Temporary Orders During Appeal.

(a) In a suit for dissolution of a marriage, on the motion of a party or on the court's own motion, after notice and hearing, the trial court may render a temporary order as considered equitable and necessary for the preservation of the property and for the protection of the parties during an [the] appeal, including an order directed toward one or both parties:

(1) requiring the support of either spouse;

(2) requiring the payment of reasonable and necessary attorney's fees and expenses;

(3) appointing a receiver for the preservation and protection of the property of the parties; [or]

(4) awarding one spouse exclusive occupancy of the parties' residence pending the appeal;

(5) enjoining a party from dissipating or transferring the property awarded to the other party in the trial court's property division; or

(6) suspending the operation of all or part of the property division that is being appealed.

(b) A temporary order under this section enjoining a party from dissipating or transferring the property awarded to the other party in the trial court's property division:

(1) may be rendered without:

(A) the issuance of a bond between the spouses; or

(B) an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result;

(2) is not required to:

(A) define the injury or state why the injury is irreparable; or

(B) include an order setting the suit for trial on the merits with respect to the ultimate relief sought; and

(3) may not prohibit a party's use, transfer, conveyance, or dissipation of the property awarded to the other party in the trial court's property division if the use, transfer, conveyance, or dissipation of the property is for the purpose of suspending the enforcement of the property division that is the subject of the appeal.

(c) A temporary order under this section that suspends the operation of all or part of the property division that is the subject of the appeal may not be rendered unless the trial court takes reasonable steps to ensure that the party awarded property in the trial court's property division is protected from the other party's dissipation or transfer of that property.

(d) In considering a party's request to suspend the enforcement of the property division, the trial court shall consider whether:

(1) any relief granted under Subsection (a) is adequate to protect the party's interest in the property awarded to the party; or

(2) the party who was not awarded the property should also be required to provide security for the appeal in addition to any relief granted under Subsection (a).

(e) If the trial court determines that the party awarded the property can be adequately protected from the other party's dissipation of assets during the appeal only if the other party provides security for the appeal, the trial court shall set the appropriate amount of security, taking into consideration any relief granted under Subsection (a) and the amount of security that the other party would otherwise have to provide by law if relief under Subsection (a) was not granted.

(f) In rendering a temporary order under this section that suspends enforcement of all or part of the property division, the trial court may grant any relief under Subsection (a), in addition to requiring the party who was not awarded the property to post security for that part of the property division to be suspended. The trial court may require that the party who was not awarded the property post all or only part of the security that would otherwise be required by law.

(g) This section does not prevent a party who was not awarded the property from exercising that party's right to suspend the enforcement of the property division as provided by law.

(h) A motion seeking an original temporary order under this section:

(1) may be filed before trial; and

(2) may not be filed by a party after the date by which that party is required to file the party's notice of appeal under the Texas Rules of Appellate Procedure.

(i) The trial court retains jurisdiction to conduct a hearing and sign an original temporary order under this section until the 60th day after the date any eligible party has filed a notice of appeal from final judgment under the Texas Rules of Appellate Procedure.

(j) The trial court retains jurisdiction to modify and enforce a temporary order under this section unless the appellate court, on a proper showing, supersedes the trial court's order.

(k) On the motion of a party or on the court's own motion, after notice and hearing, the trial court may modify a previous temporary order rendered under this section if:

(1) the circumstances of a party have materially and substantially changed since the rendition of the previous order; and

(2) modification is equitable and necessary for the preservation of the property or for the protection of the parties during the appeal.

(l) A party may seek review of the trial court's temporary order under this section by:

(1) motion filed in the court of appeals with jurisdiction or potential jurisdiction over the appeal from the judgment in the case;

(2) proper assignment in the party's brief; or

(3) petition for writ of mandamus.

(m) A temporary order rendered under this section is not subject to interlocutory appeal.

(n) The remedies provided in this section are cumulative of all other remedies allowed by law.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2017, 85th Leg., R.S., c. 421, § 1, eff. Sept. 1, 2017.

Sections 13 and 14 of Acts 2017, 85th Leg., R.S., c. 421, provides:

SECTION 13. Notwithstanding Section 6.709, Family Code, as amended by this Act, if any eligible parties have filed a notice of appeal from a final judgment under the Texas Rules of Appellate Procedure before September 1, 2017, any party to the appeal may file a motion in the trial court for an original temporary order under Section 6.709, Family Code, as it existed immediately before the effective date of this Act, and the trial court has jurisdiction to conduct a hearing and sign an original temporary order under that section until October 30, 2017.

SECTION 14. Except as provided by Section 13 of this Act, the changes in law made by this Act apply only to an order that is rendered on or after the effective date of this Act. An order rendered before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

§ 6.710. Notice of Final Decree.

The clerk of the court shall mail a notice of the signing of the final decree of dissolution of a marriage to the party who waived service of process under Section 6.4035 at the mailing address contained in the waiver or the office of the party's attorney of record. The notice must state that a copy of the decree is available at the office of the clerk of the court and include the physical address of that office.

Added by Acts 1997, 75th Leg., c. 614, § 2, eff. Sept. 1, 1997. Amended by Acts 2011, 82nd Leg., R.S., c. 529, § 1, eff. June 1, 2011.

Section 2 of Acts 2011, 82nd Leg., R.S., H.B. 2422, provides:

Section 6.710, Family Code, as amended by this Act, applies to a suit for dissolution of a marriage filed on or after the effective date of this Act. A suit for dissolution of a marriage filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

§ 6.711. Findings of Fact and Conclusions of Law.

(a) In a suit for dissolution of a marriage in which the court has rendered a judgment dividing the estate of the parties, on request by a party, the court shall state in writing its findings of fact and conclusions of law, including the characterization and value of all assets, liabilities, claims, and offsets on which disputed evidence has been presented.

(b) A request for findings of fact and conclusions of law under this section must conform to the Texas Rules of Civil Procedure.

(c) The findings of fact and conclusions of law required by this section are in addition to any other findings or conclusions required or authorized by law.

Added by Acts 2001, 77th Leg., c. 297, § 1, eff. Sept. 1, 2001. Amended by Acts 2017, 85th Leg., R.S., c. 421, § 2, eff. Sept. 1, 2017.

Section 14 of Acts 2017, 85th Leg., R.S., c. 421, provides:

SECTION 14. Except as provided by Section 13 of this Act, the changes in law made by this Act apply only to an order that is rendered on or after the effective date of this Act. An order rendered before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SUBCHAPTER I.
REMARRIAGE

§ 6.712. Date of Marriage Requirement in Final Decree.

(a) In a suit for dissolution of a marriage in which the court grants a divorce, the court shall state the date of the marriage in the decree of divorce.

(b) This section does not apply to a suit for dissolution of a marriage described by Section 2.401(a)(2).

Added by Acts 2021, 87th Leg., R.S., c. 934, § 4.01, eff Sept. 1, 2021.

§ 6.801. Remarriage.

(a) Except as otherwise provided by this subchapter, neither party to a divorce may marry a third party before the 31st day after the date the divorce is decreed.

(b) The former spouses may marry each other at any time.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 6.802. Waiver of Prohibition Against Remarriage.

For good cause shown the court may waive the prohibition against remarriage provided by this subchapter as to either or both spouses if a record of the proceedings is made and preserved or if findings of fact and conclusions of law are filed by the court.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

CHAPTER 7.
AWARD OF MARITAL PROPERTY

§ 7.001. General Rule of Property Division.

In a decree of divorce or annulment, the court shall order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 7.002. Division of Property Under Special Circumstances.

(a) In addition to the division of the estate of the parties required by Section 7.001, in a decree of divorce or annulment the court shall order a division of the following real and personal property, wherever situated, in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage:

(1) property that was acquired by either spouse while domiciled in another state and that would have been community property if the spouse who acquired the property had been domiciled in this state at the time of the acquisition; or

(2) property that was acquired by either spouse in exchange for real or personal property and that would have been community property if the spouse who acquired the property so exchanged had been domiciled in this state at the time of its acquisition.

(b) In a decree of divorce or annulment, the court shall award to a spouse the following real and personal property, wherever situated, as the separate property of the spouse:

(1) property that was acquired by the spouse while domiciled in another state and that would have been the spouse's separate property if the spouse had been domiciled in this state at the time of acquisition; or

(2) property that was acquired by the spouse in exchange for real or personal property and that would have been the spouse's separate property if the spouse had been domiciled in this state at the time of acquisition.

(c) In a decree of divorce or annulment, the court shall confirm the following as the separate property of a spouse if partitioned or exchanged by written agreement of the spouses:

(1) income and earnings from the spouses' property, wages, salaries, and other forms of compensation received on or after January 1 of the year in which the suit for dissolution of marriage was filed; or

(2) income and earnings from the spouses' property, wages, salaries, and other forms of compensation received in another year during which the spouses were married for any part of the year.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 1999, 76th Leg., c. 692, § 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., c. 838, § 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., R.S., c. 230, § 4, eff. Sept. 1, 2003.

Section 5(d) of Acts 2003, 78th Leg., R.S., c. 230, provides:

(d) The changes in law made by this Act by the amendment of Sections 3.403 and 7.002, Family Code, apply to a suit for dissolution of a marriage pending before a trial court on or filed on or after the effective date of this Act.

§ 7.003. Disposition of Retirement and Employment Benefits and Other Plans.

In a decree of divorce or annulment, the court shall determine the rights of both spouses in a pension, retirement plan, annuity, individual retirement account, employee stock option plan, stock option, or other form of savings, bonus, profit-sharing, or other employer plan or financial plan of an employee or a participant, regardless of whether the person is self-employed, in the nature of compensation or savings.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 7.004. Disposition of Rights in Insurance.

In a decree of divorce or annulment, the court shall specifically divide or award the rights of each spouse in an insurance policy.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 7.005. Insurance Coverage Not Specifically Awarded.

(a) If in a decree of divorce or annulment the court does not specifically award all of the rights of the spouses in an insurance policy other than life insurance in effect at the time the decree is rendered, the policy remains in effect until the policy expires according to the policy's own terms.

(b) The proceeds of a valid claim under the policy are payable as follows:

(1) if the interest in the property insured was awarded solely to one former spouse by the decree, to that former spouse;

(2) if an interest in the property insured was awarded to each former spouse, to those former spouses in proportion to the interests awarded; or

(3) if the insurance coverage is directly related to the person of one of the former spouses, to that former spouse.

(c) The failure of either former spouse to change the endorsement on the policy to reflect the distribution of proceeds established by this section does not relieve the insurer of liability to pay the proceeds or any other obligation on the policy.

(d) This section does not affect the right of a former spouse to assert an ownership interest in an undivided life insurance policy, as provided by Subchapter D, Chapter 9.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 7.006. Agreement Incident to Divorce or Annulment.

(a) To promote amicable settlement of disputes in a suit for divorce or annulment, the spouses may enter into a written agreement concerning the division of the property and the liabilities of the spouses and maintenance of either spouse. The agreement may be revised or repudiated before rendition of the divorce or annulment unless the agreement is binding under another rule of law.

(b) If the court finds that the terms of the written agreement in a divorce or an annulment are just and right, those terms are binding on the court. If the court approves the agreement, the court may set forth the agreement in full or incorporate the agreement by reference in the final decree. If the court incorporates the agreement by reference in the final decree, the agreement is not required to be filed with the court or the court clerk.

(c) If the court finds that the terms of the written agreement in a divorce or annulment are not just and right, the court may request the spouses to submit a revised agreement or may set the case for a contested hearing.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2019, 86th Leg., c. 161, § 1, eff. May 14, 2019.

§ 7.007. Disposition of Claim for Reimbursement.

In a decree of divorce or annulment, the court shall determine the rights of both spouses in a claim for reimbursement as provided by Subchapter E, Chapter 3, and shall apply equitable principles to:

(1) determine whether to recognize the claim after taking into account all the relative circumstances of the spouses; and

(2) order a division of the claim for reimbursement, if appropriate, in a manner that the court considers just and right, having due regard for the rights of each party and any children of the marriage.

Added by Acts 2001, 77th Leg., c. 838, § 5, eff. Sept. 1, 2001. Amended by Acts 2009, 81st Leg., R.S., c. 768, § 7, eff. Sept. 1, 2009.

§ 7.008. Consideration of Taxes.

In ordering the division of the estate of the parties to a suit for dissolution of a marriage, the court may consider:

(1) whether a specific asset will be subject to taxation; and

(2) if the asset will be subject to taxation, when the tax will be required to be paid.

Added by Acts 2005, 79th Leg., c. 168, § 1, eff. Sept. 1, 2005.

Section 2 of Laws 2005, 79th Leg., c. 168, provides:

The change in law made by this Act applies to a suit for dissolution of a marriage pending before a trial court on or filed on or after the effective date of this Act.

§ 7.009. Fraud on the Community; Division and Disposition of Reconstituted Estate.

(a) In this section, "reconstituted estate" means the total value of the community estate that would exist if an actual or constructive fraud on the community had not occurred.

(b) If the trier of fact determines that a spouse has committed actual or constructive fraud on the community, the court shall:

(1) calculate the value by which the community estate was depleted as a result of the fraud on the community and calculate the amount of the reconstituted estate; and

(2) divide the value of the reconstituted estate between the parties in a manner the court deems just and right.

(c) In making a just and right division of the reconstituted estate under Section 7.001, the court may grant any legal or equitable relief necessary to accomplish a just and right division, including:

(1) awarding to the wronged spouse an appropriate share of the community estate remaining after the actual or constructive fraud on the community;

(2) awarding a money judgment in favor of the wronged spouse against the spouse who committed the actual or constructive fraud on the community; or

(3) awarding to the wronged spouse both a money judgment and an appropriate share of the community estate.

Added by Acts 2011, 82nd Leg., R.S., c. 487, § 1, eff. Sept. 1, 2011.

Section 2 of Acts 2011, 82nd Leg., R.S., H.B. 908, provides:

The change in law made by this Act applies to a suit for dissolution of a marriage pending before a trial court on or filed on or after the effective date of this Act.

CHAPTER 8.
MAINTENANCE

SUBCHAPTER A.
GENERAL PROVISIONS

§ 8.001. Definitions.

In this chapter:

(1) "Maintenance" means an award in a suit for dissolution of a marriage of periodic payments from the future income of one spouse for the support of the other spouse.

(2) "Notice of application for a writ of withholding" means the document delivered to an obligor and filed with the court as required by this chapter for the nonjudicial determination of arrears and initiation of withholding for spousal maintenance.

(3) "Obligee" means a person entitled to receive payments under the terms of an order for spousal maintenance.

(4) "Obligor" means a person required to make periodic payments under the terms of an order for spousal maintenance.

(5) "Writ of withholding" means the document issued by the clerk of a court and delivered to an employer, directing that earnings be withheld for payment of spousal maintenance as provided by this chapter.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

SUBCHAPTER B.
SPOUSAL MAINTENANCE

§ 8.051. Eligibility for Maintenance.

In a suit for dissolution of a marriage or in a proceeding for maintenance in a court with personal jurisdiction over both former spouses following the dissolution of their marriage by a court that lacked personal jurisdiction over an absent spouse, the court may order maintenance for either spouse only if the spouse seeking maintenance will lack sufficient property, including the spouse's separate property, on dissolution of the marriage to provide for the spouse's minimum reasonable needs and:

(1) the spouse from whom maintenance is requested was convicted of or received deferred adjudication for a criminal offense that also constitutes an act of family violence, as defined by Section 71.004, committed during the marriage against the other spouse or the other spouse's child and the offense occurred:

(A) within two years before the date on which a suit for dissolution of the marriage is filed; or

(B) while the suit is pending; or

(2) the spouse seeking maintenance:

(A) is unable to earn sufficient income to provide for the spouse's minimum reasonable needs because of an incapacitating physical or mental disability;

(B) has been married to the other spouse for 10 years or longer and lacks the ability to earn sufficient income to provide for the spouse's minimum reasonable needs; or

(C) is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because of a physical or mental disability that prevents the spouse from earning sufficient income to provide for the spouse's minimum reasonable needs.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 6.05, eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 304, § 1, eff. Sept. 1, 1999. Renumbered from § 8.002 and amended by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001. Amended by Acts 2005, 79th Leg., c. 914, § 1, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., R.S., c. 486, § 1, eff. Sept. 1, 2011; Acts 2013, 83rd Leg., R.S., c. 242, § 2, eff. Sept. 1, 2013.

Section 4 of Acts 2005, 79th Leg., c. 914, provides:

(a) The changes in law made by this Act apply only to a suit for dissolution of marriage or a proceeding for maintenance that was commenced on or after September 1, 2005. A suit for dissolution of marriage or a proceeding for maintenance that was commenced before that date is governed by the law in effect on the date on which the suit or proceeding was commenced, and the former law is continued in effect for that purpose.

(b) The enactment of this Act does not by itself constitute a material and substantial change in circumstances sufficient under Section 8.057, Family Code, to warrant modification of a spousal maintenance order rendered before September 1, 2005.

Section 10 of Acts 2011, 82nd Leg., R.S., c. 486, provides:

(a) Except as provided by Subsection (b) of this section, the changes in law made by this Act to Subchapter B, Chapter 8, Family Code, apply only to a suit for dissolution of a marriage or proceeding for maintenance that was commenced on or after the effective date of this Act. A suit for dissolution of a marriage or proceeding for maintenance commenced before the effective date of this Act is governed by the law in effect on the date the suit or proceeding was commenced, and the former law is continued in effect for that purpose.

Section 9 of Acts 2013, 83rd Leg., R.S., c. 242, provides:

(a) The changes in law made by this Act to Chapter 8, Family Code, apply to an order for maintenance or a maintenance agreement under Subchapter B, Chapter 8, Family Code, regardless of whether the order was rendered or the agreement was approved before, on, or after the effective date of this Act.

§ 8.052. Factors in Determining Maintenance.

A court that determines that a spouse is eligible to receive maintenance under this chapter shall determine the nature, amount, duration, and manner of periodic payments by considering all relevant factors, including:

(1) each spouse's ability to provide for that spouse's minimum reasonable needs independently, considering that spouse's financial resources on dissolution of the marriage;

(2) the education and employment skills of the spouses, the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to earn sufficient income, and the availability and feasibility of that education or training;

(3) the duration of the marriage;

(4) the age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;

(5) the effect on each spouse's ability to provide for that spouse's minimum reasonable needs while providing periodic child support payments or maintenance, if applicable;

(6) acts by either spouse resulting in excessive or abnormal expenditures or destruction, concealment, or fraudulent disposition of community property, joint tenancy, or other property held in common;

(7) the contribution by one spouse to the education, training, or increased earning power of the other spouse;

(8) the property brought to the marriage by either spouse;

(9) the contribution of a spouse as homemaker;

(10) marital misconduct, including adultery and cruel treatment, by either spouse during the marriage; and

(11) any history or pattern of family violence, as defined by Section 71.004.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Renumbered from § 8.003 by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001. Amended by Acts 2011, 82nd Leg., R.S., c. 486, § 1, eff. Sept. 1, 2011.

Section 10 of Acts 2011, 82nd Leg., R.S., c. 486, provides:

(a) Except as provided by Subsection (b) of this section, the changes in law made by this Act to Subchapter B, Chapter 8, Family Code, apply only to a suit for dissolution of a marriage or proceeding for maintenance that was commenced on or after the effective date of this Act. A suit for dissolution of a marriage or proceeding for maintenance commenced before the effective date of this Act is governed by the law in effect on the date the suit or proceeding was commenced, and the former law is continued in effect for that purpose.

§ 8.053. Presumption.

(a) It is a rebuttable presumption that maintenance under Section 8.051(2)(B) is not warranted unless the spouse seeking maintenance has exercised diligence in:

(1) earning sufficient income to provide for the spouse's minimum reasonable needs; or

(2) developing the necessary skills to provide for the spouse's minimum reasonable needs during a period of separation and during the time the suit for dissolution of the marriage is pending.

(b) Repealed by Acts 2011, 82nd Leg., R.S., c. 486, § 9, eff. Sept. 1, 2011.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Renumbered from § 8.004 by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001. Amended by Acts 2005, 79th Leg., c. 914, § 2, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., R.S., c. 486, § 2, eff. Sept. 1, 2011..

Section 4 of Acts 2005, 79th Leg., c. 914, provides:

(a) The changes in law made by this Act apply only to a suit for dissolution of marriage or a proceeding for maintenance that was commenced on or after September 1, 2005. A suit for dissolution of marriage or a proceeding for maintenance that was commenced before that date is governed by the law in effect on the date on which the suit or proceeding was commenced, and the former law is continued in effect for that purpose.

(b) The enactment of this Act does not by itself constitute a material and substantial change in circumstances sufficient under Section 8.057, Family Code, to warrant modification of a spousal maintenance order rendered before September 1, 2005.

Section 10 of Acts 2011, 82nd Leg., R.S., c. 486, provides:

(a) Except as provided by Subsection (b) of this section, the changes in law made by this Act to Subchapter B, Chapter 8, Family Code, apply only to a suit for dissolution of a marriage or proceeding for maintenance that was commenced on or after the effective date of this Act. A suit for dissolution of a marriage or proceeding for maintenance commenced before the effective date of this Act is governed by the law in effect on the date the suit or proceeding was commenced, and the former law is continued in effect for that purpose.

§ 8.054. Duration of Maintenance Order.

(a) Except as provided by Subsection (b), a court:

(1) may not order maintenance that remains in effect for more than:

(A) five years after the date of the order, if:

(i) the spouses were married to each other for less than 10 years and the eligibility of the spouse for whom maintenance is ordered is established under Section 8.051(1); or

(ii) the spouses were married to each other for at least 10 years but not more than 20 years;

(B) seven years after the date of the order, if the spouses were married to each other for at least 20 years but not more than 30 years; or

(C) 10 years after the date of the order, if the spouses were married to each other for 30 years or more; and

(2) shall limit the duration of a maintenance order to the shortest reasonable period that allows the spouse seeking maintenance to earn sufficient income to provide for the spouse's minimum reasonable needs, unless the ability of the spouse to provide for the spouse's minimum reasonable needs is substantially or totally diminished because of:

(A) physical or mental disability of the spouse seeking maintenance;

(B) duties as the custodian of an infant or young child of the marriage; or

(C) another compelling impediment to earning sufficient income to provide for the spouse's minimum reasonable needs.

(b) The court may order maintenance for a spouse to whom Section 8.051(2)(A) or (C) applies for as long as the spouse continues to satisfy the eligibility criteria prescribed by the applicable provision.

(c) On the request of either party or on the court's own motion, the court may order the periodic review of its order for maintenance under Subsection (b).

(d) The continuation of maintenance ordered under Subsection (b) is subject to the procedural requirements for a motion to modify as provided by Section 8.057.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Renumbered from § 8.005 and amended by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001. Amended by Acts 2005, 79th Leg., c. 914, § 3, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., R.S., c. 486, § 3, eff. Sept. 1, 2011; Acts 2023, 88th Leg., R.S., HB 2070, § 1, eff. June 9, 2023.

Section 4 of Acts 2005, 79th Leg., c. 914, provides:

(a) The changes in law made by this Act apply only to a suit for dissolution of marriage or a proceeding for maintenance that was commenced on or after September 1, 2005. A suit for dissolution of marriage or a proceeding for maintenance that was commenced before that date is governed by the law in effect on the date on which the suit or proceeding was commenced, and the former law is continued in effect for that purpose.

(b) The enactment of this Act does not by itself constitute a material and substantial change in circumstances sufficient under Section 8.057, Family Code, to warrant modification of a spousal maintenance order rendered before September 1, 2005.

Section 10 of Acts 2011, 82nd Leg., R.S., c. 486, provides:

(a) Except as provided by Subsection (b) of this section, the changes in law made by this Act to Subchapter B, Chapter 8, Family Code, apply only to a suit for dissolution of a marriage or proceeding for maintenance that was commenced on or after the effective date of this Act. A suit for dissolution of a marriage or proceeding for maintenance commenced before the effective date of this Act is governed by the law in effect on the date the suit or proceeding was commenced, and the former law is continued in effect for that purpose.

Section 2 of Acts 2023, 88th Leg., R.S., HB 2070, provides:

The change in law made by this Act applies to a motion to continue spousal maintenance under Subchapter B, Chapter 8, Family Code, that is made on or after the effective date of this Act, regardless of whether the original spousal maintenance order was rendered before, on, or after that date.

§ 8.055. Amount of Maintenance.

(a) A court may not order maintenance that requires an obligor to pay monthly more than the lesser of:

(1) $5,000; or

(2) 20 percent of the spouse's average monthly gross income.

(a-1) For purposes of this chapter, gross income:

(1) includes:

(A) 100 percent of all wage and salary income and other compensation for personal services (including commissions, overtime pay, tips, and bonuses);

(B) interest, dividends, and royalty income;

(C) self-employment income;

(D) net rental income (defined as rent after deducting operating expenses and mortgage payments, but not including noncash items such as depreciation); and

(E) all other income actually being received, including severance pay, retirement benefits, pensions, trust income, annuities, capital gains, unemployment benefits, interest income from notes regardless of the source, gifts and prizes, maintenance, and alimony; and

(2) does not include:

(A) return of principal or capital;

(B) accounts receivable;

(C) benefits paid in accordance with federal public assistance programs;

(D) benefits paid in accordance with the Temporary Assistance for Needy Families program;

(E) payments for foster care of a child;

(F) Department of Veterans Affairs service-connected disability compensation;

(G) supplemental security income (SSI), social security benefits, and disability benefits; or

(H) workers' compensation benefits.

(b) Repealed by Acts 2011, 82nd Leg., R.S., c. 486, § 9, eff. Sept. 1, 2011.

(c) Repealed by Acts 2011, 82nd Leg., R.S., c. 486, § 9, eff. Sept. 1, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., c. 486, § 9, eff. Sept. 1, 2011.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Renumbered from § 8.006 and amended by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., R.S., c. 3114, § 1, eff. Sept. 1, 2003; Acts 2011, 82nd Leg., R.S., c. 486, § 4, eff. Sept. 1, 2011.

Section 10 of Acts 2011, 82nd Leg., R.S., c. 486, provides:

(a) Except as provided by Subsection (b) of this section, the changes in law made by this Act to Subchapter B, Chapter 8, Family Code, apply only to a suit for dissolution of a marriage or proceeding for maintenance that was commenced on or after the effective date of this Act. A suit for dissolution of a marriage or proceeding for maintenance commenced before the effective date of this Act is governed by the law in effect on the date the suit or proceeding was commenced, and the former law is continued in effect for that purpose.

§ 8.056. Termination.

(a) The obligation to pay future maintenance terminates on the death of either party or on the remarriage of the obligee.

(b) After a hearing, the court shall order the termination of the maintenance obligation if the court finds that the obligee cohabits with another person with whom the obligee has a dating or romantic relationship in a permanent place of abode on a continuing basis.

(c) Termination of the maintenance obligation does not terminate the obligation to pay any maintenance that accrued before the date of termination, whether as a result of death or remarriage under Subsection (a) or a court order under Subsection (b).

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Renumbered from § 8.007 and amended by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001. Amended by Acts 2011, 82nd Leg., R.S., c. 486, § 5, eff. Sept. 1, 2011.

Section 10 of Acts 2011, 82nd Leg., R.S., c. 486, provides:

(a) Except as provided by Subsection (b) of this section, the changes in law made by this Act to Subchapter B, Chapter 8, Family Code, apply only to a suit for dissolution of a marriage or proceeding for maintenance that was commenced on or after the effective date of this Act. A suit for dissolution of a marriage or proceeding for maintenance commenced before the effective date of this Act is governed by the law in effect on the date the suit or proceeding was commenced, and the former law is continued in effect for that purpose.

§ 8.057. Modification of Maintenance Order.

(a) The amount of maintenance specified in a court order or the portion of a decree that provides for the maintenance of a former spouse may be modified by the filing of a motion in the court that originally rendered the order. A party affected by the order or the portion of the decree to be modified may file the motion.

(b) Notice of a motion to modify maintenance or to establish or modify a maintenance qualified domestic relations order under Subchapter H and the response to the motion, if any, are governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit. Notice must be given by service of citation, and a response must be in the form of an answer due on or before 10 a.m. of the first Monday after 20 days after the date of service. A court shall set a hearing on the motion in the manner provided by Rule 245, Texas Rules of Civil Procedure.

(c) After a hearing, the court may modify an original or modified order or portion of a decree providing for maintenance or a maintenance qualified domestic relations order under Subchapter H on a proper showing of a material and substantial change in circumstances that occurred after the date of the order or decree, including circumstances reflected in the factors specified in Section 8.052, relating to either party or to a child of the marriage described by Section 8.051(2)(C). The court:

(1) shall apply the modification only to payment accruing after the filing of the motion to modify; and

(2) may not increase maintenance to an amount or duration that exceeds the amount or remaining duration of the original maintenance order.

[Text as added by Acts 2021, 87th Leg., R.S., c. 227, § 1, eff. Sept. 1, 2021.]

(c-1) A party who files a motion to modify maintenance based on a material and substantial change of circumstances may not be considered on that basis alone to have admitted a material and substantial change of circumstances regarding any other matter.

(d) A loss of employment or circumstances that render a former spouse unable to provide for the spouse's minimum reasonable needs by reason of incapacitating physical or mental disability that occur after the divorce or annulment are not grounds for the institution of spousal maintenance for the benefit of the former spouse.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Renumbered from § 8.008 by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001. Amended by Acts 2011, 82nd Leg., R.S., c. 486, § 6, eff. Sept. 1, 2011; Acts 2021, 87th Leg., R.S., c. 227, § 1, eff. Sept. 1, 2021; Acts 2021, 87th Leg., R.S., c. 64, § 1, eff. Sept. 1, 2021.

Section 10 of Acts 2011, 82nd Leg., R.S., c. 486, provides:

(a) Except as provided by Subsection (b) of this section, the changes in law made by this Act to Subchapter B, Chapter 8, Family Code, apply only to a suit for dissolution of a marriage or proceeding for maintenance that was commenced on or after the effective date of this Act. A suit for dissolution of a marriage or proceeding for maintenance commenced before the effective date of this Act is governed by the law in effect on the date the suit or proceeding was commenced, and the former law is continued in effect for that purpose.

Section 3 of Acts 2021, 87th Leg., R.S., c. 227, provides:

The changes in law made by this Act apply only to a motion to modify that is filed on or after the effective date of this Act. A motion to modify filed before that date is governed by the law in effect on the date the motion was filed, and that law is continued in effect for that purpose.

Section 6(a) and (b) of Acts 2021, 87th Leg., R.S., c. 64, provides:

(a) The changes in law made by this Act to Chapters 8, 154, and 157, Family Code, apply to an order for maintenance under Chapter 8, Family Code, or for child support under Chapter 154, Family Code, as applicable, regardless of whether the order was rendered before, on, or after the effective date of this Act.

(b) The enactment of this Act does not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for maintenance or child support rendered before the effective date of this Act.

§ 8.058. Maintenance Arrearages.

A spousal maintenance payment not timely made constitutes an arrearage.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.059. Enforcement of Maintenance Order.

(a) The court may enforce by contempt against the obligor:

(1) the court's maintenance order; or

(2) an agreement for periodic payments of spousal maintenance under the terms of this chapter voluntarily entered into between the parties and approved by the court.

(a-1) The court may not enforce by contempt any provision of an agreed order for maintenance that exceeds the amount of periodic support the court could have ordered under this chapter or for any period of maintenance beyond the period of maintenance the court could have ordered under this chapter.

(b) On the suit to enforce by an obligee, the court may render judgment against a defaulting party for the amount of arrearages after notice by service of citation, answer, if any, and a hearing finding that the defaulting party has failed or refused to comply with the terms of the order. The judgment may be enforced by any means available for the enforcement of judgment for debts, including by an order or writ of withholding and a maintenance qualified domestic relations order under Subchapter H.

(c) It is an affirmative defense to an allegation of contempt of court or the violation of a condition of probation requiring payment of court-ordered maintenance that the obligor:

(1) lacked the ability to provide maintenance in the amount ordered;

(2) lacked property that could be sold, mortgaged, or otherwise pledged to raise the funds needed;

(3) attempted unsuccessfully to borrow the needed funds; and

(4) did not know of a source from which the money could have been borrowed or otherwise legally obtained.

(d) The issue of the existence of an affirmative defense does not arise until pleaded. An obligor must prove the affirmative defense by a preponderance of the evidence.

(e) Repealed by Acts 2011, 82nd Leg., R.S., c. 486, § 9, eff. Sept. 1, 2011.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Renumbered from § 8.009 and amended by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001. Amended by Acts 2011, 82nd Leg., R.S., c. 486, § 7, eff. Sept. 1, 2011; Acts 2013, 83rd Leg., R.S., c. 242, § 3, eff. Sept. 1, 2013; Acts 2021 87th Leg., R.S. c. 64, § 2, eff. Sept. 1, 2021.

Section 10 of Acts 2011, 82nd Leg., R.S., c. 486, provides:

(a) Except as provided by Subsection (b) of this section, the changes in law made by this Act to Subchapter B, Chapter 8, Family Code, apply only to a suit for dissolution of a marriage or proceeding for maintenance that was commenced on or after the effective date of this Act. A suit for dissolution of a marriage or proceeding for maintenance commenced before the effective date of this Act is governed by the law in effect on the date the suit or proceeding was commenced, and the former law is continued in effect for that purpose.

Section 9 of Acts 2013, 83rd Leg., R.S., c. 242, provides:

(a) The changes in law made by this Act to Chapter 8, Family Code, apply to an order for maintenance or a maintenance agreement under Subchapter B, Chapter 8, Family Code, regardless of whether the order was rendered or the agreement was approved before, on, or after the effective date of this Act.

Section 6 of Acts 2021, 87th Leg., R.S., c. 64, provides:

(a) The changes in law made by this Act to Chapters 8, 154, and 157, Family Code, apply to an order for maintenance under Chapter 8, Family Code, or for child support under Chapter 154, Family Code, as applicable, regardless of whether the order was rendered before, on, or after the effective date of this Act.

(b) The enactment of this Act does not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for maintenance or child support rendered before the effective date of this Act.

§ 8.0591. Overpayment.

(a) If an obligor is not in arrears on the obligor's maintenance obligation and the obligor's maintenance obligation has terminated, the obligee must return to the obligor any maintenance payment made by the obligor that exceeds the amount of maintenance ordered or approved by the court, regardless of whether the payment was made before, on, or after the date the maintenance obligation terminated.

(b) An obligor may file a suit to recover overpaid maintenance under Subsection (a). If the court finds that the obligee failed to return overpaid maintenance under Subsection (a), the court shall order the obligee to pay the obligor's attorney's fees and all court costs in addition to the amount of the overpaid maintenance. For good cause shown, the court may waive the requirement that the obligee pay attorney's fees and court costs if the court states in its order the reasons supporting that finding.

Added by Acts 2011, 82nd Leg., R.S., c. 486, § 8, eff. Sept. 1, 2011.

Section 10 of Acts 2011, 82nd Leg., R.S., c. 486, provides:

(b) Section 8.0591, Family Code, as added by this Act, applies to an order for maintenance under Subchapter B, Chapter 8, Family Code, regardless of whether the order was rendered before, on, or after the effective date of this Act.

§ 8.060. Putative Spouse.

In a suit to declare a marriage void, a putative spouse who did not have knowledge of an existing impediment to a valid marriage may be awarded maintenance if otherwise qualified to receive maintenance under this chapter.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Renumbered from § 8.010 by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.061. Unmarried Cohabitants.

An order for maintenance is not authorized between unmarried cohabitants under any circumstances.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Renumbered from § 8.011 by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.062. Place of Payment.

If an obligor is ordered to pay an obligee maintenance under this chapter and child support under Chapter 154, the court shall order the payment of maintenance to the state disbursement unit as provided by Chapter 234.

Added by Acts 2021, 87th Leg., R.S., c. 552, § 1, eff. Sept. 1, 2021.

SUBCHAPTER C.
INCOME WITHHOLDING

§ 8.101. Income Withholding; General Rule.

(a) In a proceeding in which periodic payments of spousal maintenance are ordered, modified, or enforced, the court may order that income be withheld from the disposable earnings of the obligor as provided by this chapter.

(a-1) The court may order that income be withheld from the disposable earnings of the obligor in a proceeding in which there is an agreement for periodic payments of spousal maintenance under the terms of this chapter voluntarily entered into between the parties and approved by the court.

(a-2) The court may not order that income be withheld from the disposable earnings of the obligor to the extent that any provision of an agreed order for maintenance exceeds the amount of periodic support the court could have ordered under this chapter or for any period of maintenance beyond the period of maintenance the court could have ordered under this chapter.

(b) This subchapter does not apply to contractual alimony or spousal maintenance, regardless of whether the alimony or maintenance is taxable, unless:

(1) the contract specifically permits income withholding; or

(2) the alimony or maintenance payments are not timely made under the terms of the contract.

(c) An order or writ of withholding for spousal maintenance may be combined with an order or writ of withholding for child support only if the obligee has been appointed managing conservator of the child for whom the child support is owed and is the conservator with whom the child primarily resides.

(d) An order or writ of withholding that combines withholding for spousal maintenance and child support must:

(1) require that the withheld amounts be paid to the appropriate place of payment under Section 154.004;

(2) be in the form prescribed by the Title IV-D agency under Section 158.106;

(3) clearly indicate the amounts withheld that are to be applied to current spousal maintenance and to any maintenance arrearages; and

(4) subject to the maximum withholding allowed under Section 8.106, order that withheld income be applied in the following order of priority:

(A) current child support;

(B) current spousal maintenance;

(C) child support arrearages; and

(D) spousal maintenance arrearages.

(e) Garnishment for the purposes of spousal maintenance does not apply to unemployment insurance benefit payments.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001. Amended by Acts 2013, 83rd Leg., R.S., c. 242, § 3, eff. Sept. 1, 2013.

Section 9 of Acts 2013, 83rd Leg., R.S., c. 242, provides:

(a) The changes in law made by this Act to Chapter 8, Family Code, apply to an order for maintenance or a maintenance agreement under Subchapter B, Chapter 8, Family Code, regardless of whether the order was rendered or the agreement was approved before, on, or after the effective date of this Act.

§ 8.102. Withholding for Arrearages in Addition to Current Spousal Maintenance.

(a) The court may order that, in addition to income withheld for current spousal maintenance, income be withheld from the disposable earnings of the obligor to be applied toward the liquidation of any arrearages.

(b) The additional amount withheld to be applied toward arrearages must be whichever of the following amounts will discharge the arrearages in the least amount of time:

(1) an amount sufficient to discharge the arrearages in not more than two years; or

(2) 20 percent of the amount withheld for current maintenance.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.103. Withholding for Arrearages When Current Maintenance is Not Due.

A court may order income withholding to be applied toward arrearages in an amount sufficient to discharge those arrearages in not more than two years if current spousal maintenance is no longer owed.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.104. Withholding to Satisfy Judgment for Arrearages.

The court, in rendering a cumulative judgment for arrearages, may order that a reasonable amount of income be withheld from the disposable earnings of the obligor to be applied toward the satisfaction of the judgment.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.105. Priority of Withholding.

An order or writ of withholding under this chapter has priority over any garnishment, attachment, execution, or other order affecting disposable earnings, except for an order or writ of withholding for child support under Chapter 158.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.106. Maximum Amount Withheld From Earnings.

An order or writ of withholding must direct that an obligor's employer withhold from the obligor's disposable earnings the lesser of:

(1) the amount specified in the order or writ; or

(2) an amount that, when Added to the amount of income being withheld by the employer for child support, is equal to 50 percent of the obligor's disposable earnings.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.107. Order or Writ Binding on Employer Doing Business in This State.

An order or writ of withholding issued under this chapter and delivered to an employer doing business in this state is binding on the employer without regard to whether the obligor resides or works outside this state.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.108. Voluntary Writ of Withholding by Obligor.

(a) An obligor may file with the clerk of the court a notarized or acknowledged request signed by the obligor and the obligee for the issuance and delivery to the obligor's employer of a writ of withholding. The obligor may file the request under this section regardless of whether a writ or order has been served on any party or whether the obligor owes arrearages.

(b) On receipt of a request under this section, the clerk shall issue and deliver a writ of withholding in the manner provided by this subchapter.

(c) An employer who receives a writ of withholding issued under this section may request a hearing in the same manner and according to the same terms provided by Section 8.205.

(d) An obligor whose employer receives a writ of withholding issued under this section may request a hearing in the manner provided by Section 8.258.

(e) An obligee may contest a writ of income withholding issued under this section by requesting, not later than the 180th day after the date on which the obligee discovers that the writ was issued, a hearing to be conducted in the manner provided by Section 8.258 for a hearing on a motion to stay.

(f) A writ of withholding under this section may not reduce the total amount of spousal maintenance, including arrearages, owed by the obligor.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

SUBCHAPTER D.
PROCEDURE

§ 8.151. Time Limit.

The court may issue an order or writ for withholding under this chapter at any time before all spousal maintenance and arrearages are paid.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.152. Contents of Order of Withholding.

(a) An order of withholding must state:

(1) the style, cause number, and court having jurisdiction to enforce the order;

(2) the name, address, and, if available, the social security number of the obligor;

(3) the amount and duration of the spousal maintenance payments, including the amount and duration of withholding for arrearages, if any; and

(4) the name, address, and, if available, the social security number of the obligee.

(b) The order for withholding must require the obligor to notify the court promptly of any material change affecting the order, including a change of employer.

(c) On request by an obligee, the court may exclude from an order of withholding the obligee's address and social security number if the obligee or a member of the obligee's family or household is a victim of family violence and is the subject of a protective order to which the obligor is also subject. On granting a request under this subsection, the court shall order the clerk to:

(1) strike the address and social security number required by Subsection (a) from the order or writ of withholding; and

(2) maintain a confidential record of the obligee's address and social security number to be used only by the court.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.153. Request for Issuance of Order or Writ of Withholding.

An obligor or obligee may file with the clerk of the court a request for issuance of an order or writ of withholding.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.154. Issuance and Delivery of Order or Writ of Withholding.

(a) On receipt of a request for issuance of an order or writ of withholding, the clerk of the court shall deliver a certified copy of the order or writ to the obligor's current employer or to any subsequent employer of the obligor. The clerk shall attach a copy of Subchapter E to the order or writ.

(b) Not later than the fourth working day after the date the order is signed or the request is filed, whichever is later, the clerk shall issue and deliver the certified copy of the order or writ by:

(1) certified or registered mail, return receipt requested, to the employer; or

(2) service of citation to:

(A) the person authorized to receive service of process for the employer in civil cases generally; or

(B) a person designated by the employer by written notice to the clerk to receive orders or notices of income withholding.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

SUBCHAPTER E.
RIGHTS AND DUTIES OF EMPLOYER

§ 8.201. Order or Writ Binding on Employer.

(a) An employer required to withhold income from earnings under this chapter is not entitled to notice of the proceedings before the order of withholding is rendered or writ of withholding is issued.

(b) An order or writ of withholding is binding on an employer regardless of whether the employer is specifically named in the order or writ.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.202. Effective Date and Duration of Income Withholding.

An employer shall begin to withhold income in accordance with an order or writ of withholding not later than the first pay period after the date the order or writ was delivered to the employer. The employer shall continue to withhold income as required by the order or writ as long as the obligor is employed by the employer.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.203. Remitting Withheld Payments.

(a) The employer shall remit to the person or office named in the order or writ of withholding the amount of income withheld from an obligor on each pay date. The remittance must include the date on which the income withholding occurred.

(b) The employer shall include with each remittance:

(1) the cause number of the suit under which income withholding is required;

(2) the payor's name; and

(3) the payee's name, unless the remittance is made by electronic funds transfer.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.204. Employer May Deduct Fee From Earnings.

An employer may deduct an administrative fee of not more than $5 each month from the obligor's disposable earnings in addition to the amount withheld as spousal maintenance.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.205. Hearing Requested by Employer.

(a) Not later than the 20th day after the date an order or writ of withholding is delivered to an employer, the employer may file with the court a motion for a hearing on the applicability of the order or writ to the employer.

(b) The hearing under this section must be held on or before the 15th day after the date the motion is made.

(c) An order or writ of withholding is binding and the employer shall continue to withhold income and remit the amount withheld pending further order of the court.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.206. Liability and Obligation of Employer for Payments.

(a) An employer who complies with an order or writ of withholding under this chapter is not liable to the obligor for the amount of income withheld and remitted as required by the order or writ.

(b) An employer who receives, but does not comply with, an order or writ of withholding is liable to:

(1) the obligee for any amount of spousal maintenance not paid in compliance with the order or writ;

(2) the obligor for any amount withheld from the obligor's disposable earnings, but not remitted to the obligee; and

(3) the obligee or obligor for reasonable attorney's fees and court costs incurred in recovering an amount described by Subdivision (1) or (2).

(c) An employer shall comply with an order of withholding for spousal maintenance or alimony issued in another state that appears regular on its face in the same manner as an order issued by a tribunal of this state. The employer shall notify the employee of the order and comply with the order in the manner provided by Subchapter F, Chapter 159, with respect to an order of withholding for child support issued by another state. The employer may contest the order of withholding in the manner provided by that subchapter with respect to an order of withholding for child support issued by another state.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.207. Employer Receiving Multiple Orders or Writs.

(a) An employer who receives more than one order or writ of withholding to withhold income from the same obligor shall withhold the combined amounts due under each order or writ unless the combined amounts due exceed the maximum total amount of allowed income withholding under Section 8.106.

(b) If the combined amounts to be withheld under multiple orders or writs for the same obligor exceed the maximum total amount of allowed income withholding under Section 8.106, the employer shall pay, until that maximum is reached, in the following order of priority:

(1) an equal amount toward current child support owed by the obligor in each order or writ until the employer has complied fully with each current child support obligation;

(2) an equal amount toward current maintenance owed by the obligor in each order or writ until the employer has complied fully with each current maintenance obligation;

(3) an equal amount toward child support arrearages owed by the obligor in each order or writ until the employer has complied fully with each order or writ for child support arrearages; and

(4) an equal amount toward maintenance arrearages owed by the obligor in each order or writ until the employer has complied fully with each order or writ for spousal maintenance arrearages.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.208. Employer's Liability for Discriminatory Hiring or Discharge.

(a) An employer may not use an order or writ of withholding as grounds in whole or part for the termination of employment of, or for any other disciplinary action against, an employee.

(b) An employer may not refuse to hire an employee because of an order or writ of withholding.

(c) An employer who intentionally discharges an employee in violation of this section is liable to that employee for current wages, other employment benefits, and reasonable attorney's fees and court costs incurred in enforcing the employee's rights.

(d) In addition to liability imposed under Subsection (c), the court shall order with respect to an employee whose employment was suspended or terminated in violation of this section appropriate injunctive relief, including reinstatement of:

(1) the employee's position with the employer; and

(2) fringe benefits or seniority lost as a result of the suspension or termination.

(e) An employee may bring an action to enforce the employee's rights under this section.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.209. Penalty for Noncompliance.

(a) In addition to the civil remedies provided by this subchapter or any other remedy provided by law, an employer who knowingly violates this chapter by failing to withhold income for spousal maintenance or to remit withheld income in accordance with an order or writ of withholding issued under this chapter commits an offense.

(b) An offense under this section is punishable by a fine not to exceed $200 for each violation.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.210. Notice of Termination of Employment and of New Employment.

(a) An obligor who terminates employment with an employer who has been withholding income and the obligor's employer shall each notify the court and the obligee of:

(1) the termination of employment not later than the seventh day after the date of termination;

(2) the obligor's last known address; and

(3) the name and address of the obligor's new employer, if known.

(b) The obligor shall inform a subsequent employer of the order or writ of withholding after obtaining employment.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

SUBCHAPTER F.
WRIT OF WITHHOLDING ISSUED BY CLERK

§ 8.251. Notice of Application for Writ of Withholding; Filing.

(a) An obligor or obligee may file a notice of application for a writ of withholding if income withholding was not ordered at the time spousal maintenance was ordered.

(b) The obligor or obligee may file the notice of application for a writ of withholding in the court that ordered the spousal maintenance under Subchapter B.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.252. Contents of Notice of Application for Writ of Withholding.

The notice of application for a writ of withholding must be verified and:

(1) state the amount of monthly maintenance due, including the amount of arrearages or anticipated arrearages, and the amount of disposable earnings to be withheld under a writ of withholding;

(2) state that the withholding applies to each current or subsequent employer or period of employment;

(3) state that the obligor's employer will be notified to begin the withholding if the obligor does not contest the withholding on or before the 10th day after the date the obligor receives the notice;

(4) describe the procedures for contesting the issuance and delivery of a writ of withholding;

(5) state that the obligor will be provided an opportunity for a hearing not later than the 30th day after the date of receipt of the notice of contest if the obligor contests the withholding;

(6) state that the sole ground for successfully contesting the issuance of a writ of withholding is a dispute concerning the identity of the obligor or the existence or amount of the arrearages;

(7) describe the actions that may be taken if the obligor contests the notice of application for a writ of withholding, including the procedures for suspending issuance of a writ of withholding; and

(8) include with the notice a suggested form for the motion to stay issuance and delivery of the writ of withholding that the obligor may file with the clerk of the appropriate court.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.253. Interstate Request for Withholding.

(a) The registration of a foreign order that provides for spousal maintenance or alimony as provided in Chapter 159 is sufficient for filing a notice of application for a writ of withholding.

(b) The notice must be filed with the clerk of the court having venue as provided in Chapter 159.

(c) The notice of application for a writ of withholding may be delivered to the obligor at the same time that an order is filed for registration under Chapter 159.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.254. Additional Arrearages.

If the notice of application for a writ of withholding states that the obligor has failed to pay more than one spousal maintenance payment according to the terms of the spousal maintenance order, the writ of withholding may include withholding for arrearages that accrue between the filing of the notice and the date of the hearing or the issuance of the writ.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.255. Delivery of Notice of Application for Writ of Withholding; Time of Delivery.

(a) The party who files a notice of application for a writ of withholding shall deliver the notice to the obligor by:

(1) first-class or certified mail, return receipt requested, addressed to the obligor's last known address or place of employment; or

(2) service of citation as in civil cases generally.

(b) If the notice is delivered by mail, the party who filed the notice shall file with the court a certificate stating the name, address, and date the party mailed the notice.

(c) The notice is considered to have been received by the obligor:

(1) on the date of receipt, if the notice was mailed by certified mail;

(2) on the 10th day after the date the notice was mailed, if the notice was mailed by first-class mail; or

(3) on the date of service, if the notice was delivered by service of citation.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.256. Motion to Stay Issuance of Writ of Withholding.

(a) The obligor may stay issuance of a writ of withholding by filing a motion to stay with the clerk of the court not later than the 10th day after the date the notice of application for a writ of withholding was received.

(b) The grounds for filing a motion to stay issuance are limited to a dispute concerning the identity of the obligor or the existence or the amount of the arrearages.

(c) The obligor shall verify that the statements of fact in the motion to stay issuance of the writ are correct.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.257. Effect of Filing Motion to Stay.

If the obligor files a motion to stay as provided by Section 8.256, the clerk of the court may not deliver the writ of withholding to the obligor's employer before a hearing is held.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.258. Hearing on Motion to Stay.

(a) If the obligor files a motion to stay as provided by Section 8.256, the court shall set a hearing on the motion and the clerk of the court shall notify the obligor and obligee of the date, time, and place of the hearing.

(b) The court shall hold a hearing on the motion to stay not later than the 30th day after the date the motion was filed unless the obligor and obligee agree and waive the right to have the motion heard within 30 days.

(c) After the hearing, the court shall:

(1) render an order for income withholding that includes a determination of any amount of arrearages; or

(2) grant the motion to stay.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.259. Special Exceptions.

(a) A defect in a notice of application for a writ of withholding is waived unless the respondent specially excepts in writing and cites with particularity the alleged defect, obscurity, or other ambiguity in the notice.

(b) A special exception under this section must be heard by the court before hearing the motion to stay issuance.

(c) If the court sustains an exception, the court shall provide the party filing the notice an opportunity to refile and shall continue the hearing to a specified date without requiring additional service.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.260. Writ of Withholding After Arrearages Are Paid.

(a) The court may not refuse to order withholding solely on the basis that the obligor paid the arrearages after the obligor received the notice of application for a writ of withholding.

(b) The court shall order that a reasonable amount of income be withheld and applied toward the liquidation of arrearages, even though a judgment confirming arrearages was rendered against the obligor.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.261. Request for Issuance and Delivery of Writ of Withholding.

(a) If a notice of application for a writ of withholding is delivered and the obligor does not file a motion to stay within the time provided by Section 8.256, the party who filed the notice shall file with the clerk of the court a request for issuance of the writ of withholding stating the amount of current spousal maintenance, the amount of arrearages, and the amount to be withheld from the obligor's income.

(b) The party who filed the notice may not file a request for issuance before the 11th day after the date the obligor received the notice of application for a writ of withholding.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.262. Issuance and Delivery of Writ of Withholding.

The clerk of the court shall, on the filing of a request for issuance of a writ of withholding, issue and deliver the writ as provided by Subchapter D not later than the second working day after the date the request is filed. The clerk shall charge a fee in the amount of $15 for issuing the writ of withholding.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.263. Contents of Writ of Withholding.

A writ of withholding must direct that an obligor's employer or a subsequent employer withhold from the obligor's disposable earnings an amount for current spousal maintenance and arrearages consistent with this chapter.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.264. Extension of Repayment Schedule by Party; Unreasonable Hardship.

A party who files a notice of application for a writ of withholding and who determines that the schedule for repaying arrearages would cause unreasonable hardship to the obligor or the obligor's family may extend the payment period in the writ.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.265. Remittance of Amount to be Withheld.

The obligor's employer shall remit the amount withheld to the person or office named in the writ on each pay date and shall include with the remittance the date on which the withholding occurred.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.266. Failure to Receive Notice of Application for Writ of Withholding.

(a) Not later than the 30th day after the date of the first pay period after the date the obligor's employer receives a writ of withholding, the obligor may file an affidavit with the court stating that:

(1) the obligor did not timely file a motion to stay because the obligor did not receive the notice of application for a writ of withholding; and

(2) grounds exist for a motion to stay.

(b) The obligor may:

(1) file with the affidavit a motion to withdraw the writ of withholding; and

(2) request a hearing on the applicability of the writ.

(c) Income withholding may not be interrupted until after the hearing at which the court renders an order denying or modifying withholding.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.267. Issuance and Delivery of Writ of Withholding to Subsequent Employer.

(a) After the clerk of the court issues a writ of withholding, a party authorized to file a notice of application for a writ of withholding under this subchapter may deliver a copy of the writ to a subsequent employer of the obligor by certified mail.

(b) Except as provided by an order under Section 8.152, the writ of withholding must include the name, address, and signature of the party and clearly indicate that the writ is being issued to a subsequent employer.

(c) The party shall file:

(1) a copy of the writ of withholding with the clerk not later than the third working day after the date of delivery of the writ to the subsequent employer; and

(2) the postal return receipt from the delivery to the subsequent employer not later than the third working day after the date the party receives the receipt.

(d) The party shall pay the clerk a fee in the amount of $15 for filing the copy of the writ.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

SUBCHAPTER G.
MODIFICATION, REDUCTION, OR TERMINATION OF WITHHOLDING

§ 8.301. Agreement by Parties Regarding Amount or Duration of Withholding.

(a) An obligor and obligee may agree to reduce or terminate income withholding for spousal maintenance on the occurrence of any contingency stated in the order.

(b) The obligor and obligee may file a notarized or acknowledged request with the clerk of the court under Section 8.108 for a revised writ of withholding or notice of termination of withholding.

(c) The clerk shall issue and deliver to the obligor's employer a writ of withholding that reflects the agreed revision or a notice of termination of withholding.

(d) An agreement by the parties under this section does not modify the terms of an order for spousal maintenance.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.302. Modifications to or Termination of Withholding in Voluntary Withholding Cases.

(a) If an obligor initiates voluntary withholding under Section 8.108, the obligee may file with the clerk of the court a notarized request signed by the obligor and the obligee for the issuance and delivery to the obligor of:

(1) a modified writ of withholding that reduces the amount of withholding; or

(2) a notice of termination of withholding.

(b) On receipt of a request under this section, the clerk shall issue and deliver a modified writ of withholding or notice of termination in the manner provided by Section 8.301.

(c) The clerk may charge a fee in the amount of $15 for issuing and delivering the modified writ of withholding or notice of termination.

(d) An obligee may contest a modified writ of withholding or notice of termination issued under this section by requesting a hearing in the manner provided by Section 8.258 not later than the 180th day after the date the obligee discovers that the writ or notice was issued.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.303. Termination of Withholding in Mandatory Withholding Cases.

(a) An obligor for whom withholding for maintenance owed or withholding for maintenance and child support owed is mandatory may file a motion to terminate withholding. On a showing by the obligor that the obligor has complied fully with the terms of the maintenance or child support order, as applicable, the court shall render an order for the issuance and delivery to the obligor of a notice of termination of withholding.

(b) The clerk shall issue and deliver the notice of termination ordered under this section to the obligor.

(c) The clerk may charge a fee in the amount of $15 for issuing and delivering the notice.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.304. Delivery of Order of Reduction or Termination of Withholding.

Any person may deliver to the obligor's employer a certified copy of an order that reduces the amount of spousal maintenance to be withheld or terminates the withholding.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

§ 8.305. Liability of Employers.

The provisions of this chapter regarding the liability of employers for withholding apply to an order that reduces or terminates withholding.

Added by Acts 2001, 77th Leg., c. 807, § 1, eff. Sept. 1, 2001.

SUBCHAPTER H.
MAINTENANCE QUALIFIED DOMESTIC RELATIONS ORDER

§ 8.351. Jurisdiction for Qualified Domestic Relations Order.

(a) The court that rendered an order for the payment of maintenance, or the court that obtains jurisdiction to enforce a maintenance order, has continuing jurisdiction to render enforceable qualified domestic relations orders or similar orders permitting payment of pension, retirement plan, or other employee benefits to an alternate payee or other lawful payee to satisfy amounts due

under the maintenance order. A maintenance order includes a temporary or final order for maintenance and arrears and interest with respect to that order.

(b) Unless prohibited by federal law, a suit seeking a qualified domestic relations order or similar order under this subchapter applies to a pension, retirement plan, or other employee benefit, regardless of whether the pension, retirement plan, or other employee benefit:

(1) is private, state, or federal;

(2) is subject to another qualified domestic relations order or similar order;

(3) is property that is the subject of a pending proceeding for dissolution of a marriage;

(4) is property disposed of in a previous decree for dissolution of a marriage; or

(5) is the subject of an agreement under Chapter 4.

(c) A court described by Subsection (a) retains jurisdiction to render a qualified domestic relations order or similar order under this subchapter until all maintenance due under the maintenance order, including arrearages and interest, has been paid.

Added by Acts 2021, 87th Leg., R.S., c. 64, § 3, eff. Sept. 1, 2021.

Section 6 of Acts 2021, 87th Leg., R.S., c. 64, provides:

(a) The changes in law made by this Act to Chapters 8, 154, and 157, Family Code, apply to an order for maintenance under Chapter 8, Family Code, or for child support under Chapter 154, Family Code, as applicable, regardless of whether the order was rendered before, on, or after the effective date of this Act.

(b) The enactment of this Act does not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for maintenance or child support rendered before the effective date of this Act.

§ 8.352. Procedure.

(a) A party to a maintenance order may petition the court for a qualified domestic relations order or similar order in an original suit or in an action for enforcement of the maintenance order under this chapter.

(b) Each party whose rights may be affected by the petition is entitled to receive notice.

Added by Acts 2021, 87th Leg., R.S., c. 64, § 3, eff. Sept. 1, 2021.

Section 6 of Acts 2021, 87th Leg., R.S., c. 64, provides:

(a) The changes in law made by this Act to Chapters 8, 154, and 157, Family Code, apply to an order for maintenance under Chapter 8, Family Code, or for child support under Chapter 154, Family Code, as applicable, regardless of whether the order was rendered before, on, or after the effective date of this Act.

(b) The enactment of this Act does not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for maintenance or child support rendered before the effective date of this Act.

§ 8.353. Temporary Orders.

(a) While a suit for a qualified domestic relations order or similar order is pending or during an appeal of an enforcement order, and on the motion of a party or on the court's own motion after notice and hearing, the court may render an appropriate order, including the granting of a temporary restraining order and temporary injunction, for the preservation of the pension, retirement plan, or other employee benefits and protection of the parties as the court considers necessary.

(b) An order under this section is not subject to interlocutory appeal.

Added by Acts 2021, 87th Leg., R.S., c. 64, § 3, eff. Sept. 1, 2021.

Section 6 of Acts 2021, 87th Leg., R.S., c. 64, provides:

(a) The changes in law made by this Act to Chapters 8, 154, and 157, Family Code, apply to an order for maintenance under Chapter 8, Family Code, or for child support under Chapter 154, Family Code, as applicable, regardless of whether the order was rendered before, on, or after the effective date of this Act.

(b) The enactment of this Act does not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for maintenance or child support rendered before the effective date of this Act.

§ 8.354. Defective Prior Domestic Relations Order.

If a plan administrator or other person acting in an equivalent capacity determines that a domestic relations order does not satisfy the requirements of a qualified domestic relations order or similar order, the court retains continuing jurisdiction over the parties to the extent necessary to render a qualified domestic relations order.

Added by Acts 2021, 87th Leg., R.S., c. 64, § 3, eff. Sept. 1, 2021.

Section 6 of Acts 2021, 87th Leg., R.S., c. 64, provides:

(a) The changes in law made by this Act to Chapters 8, 154, and 157, Family Code, apply to an order for maintenance under Chapter 8, Family Code, or for child support under Chapter 154, Family Code, as applicable, regardless of whether the order was rendered before, on, or after the effective date of this Act.

(b) The enactment of this Act does not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for maintenance or child support rendered before the effective date of this Act.

§ 8.355. Amendment of Qualified Domestic Relations Order.

(a) A court that renders a qualified domestic relations order or similar order retains continuing jurisdiction:

(1) to amend the order to correct the order, clarify the terms of the order, or add language to the order to provide for the collection of maintenance;

(2) to convert the amount or frequency of payments under the order to a formula that is in compliance with the terms of the pension, retirement plan, or employee benefit plan; or

(3) to vacate or terminate the order.

(b) An amended domestic relations order or similar order under this section must be submitted to the plan administrator or other person acting in an equivalent capacity to determine whether the amended order satisfies the requirements of a qualified domestic relations order or similar order. Section 8.354 applies to an order amended under this section.

Added by Acts 2021, 87th Leg., R.S., c. 64, § 3, eff. Sept. 1, 2021.

Section 6 of Acts 2021, 87th Leg., R.S., c. 64, provides:

(a) The changes in law made by this Act to Chapters 8, 154, and 157, Family Code, apply to an order for maintenance under Chapter 8, Family Code, or for child support under Chapter 154, Family Code, as applicable, regardless of whether the order was rendered before, on, or after the effective date of this Act.

(b) The enactment of this Act does not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for maintenance or child support rendered before the effective date of this Act.

§ 8.356. Liberal Construction.

The court shall liberally construe this subchapter to effect payment of pension, retirement plan, or other employee benefits for the satisfaction of the obligor's maintenance obligation.

Added by Acts 2021, 87th Leg., R.S., c. 64, § 3, eff. Sept. 1, 2021.

Section 6 of Acts 2021, 87th Leg., R.S., c. 64, provides:

(a) The changes in law made by this Act to Chapters 8, 154, and 157, Family Code, apply to an order for maintenance under Chapter 8, Family Code, or for child support under Chapter 154, Family Code, as applicable, regardless of whether the order was rendered before, on, or after the effective date of this Act.

(b) The enactment of this Act does not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for maintenance or child support rendered before the effective date of this Act.

§ 8.357. Attorney's Fees and Costs.

(a) In a proceeding under this subchapter, the court may order the obligor to pay reasonable attorney's fees incurred by a party to obtain the order, all court costs, and all fees charged by a plan administrator for the qualified domestic relations order or similar order.

(b) Fees and costs ordered under this section may be enforced by any means available for the enforcement of a judgment for debt.

Added by Acts 2021, 87th Leg., R.S., c. 64, § 3, eff. Sept. 1, 2021.

Section 6 of Acts 2021, 87th Leg., R.S., c. 64, provides:

(a) The changes in law made by this Act to Chapters 8, 154, and 157, Family Code, apply to an order for maintenance under Chapter 8, Family Code, or for child support under Chapter 154, Family Code, as applicable, regardless of whether the order was rendered before, on, or after the effective date of this Act.

(b) The enactment of this Act does not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for maintenance or child support rendered before the effective date of this Act.

§ 8.358. Direct Payment.

Payments under a qualified domestic relations order under this subchapter may be made by direct payment or other method ordered by the court.

Added by Acts 2021, 87th Leg., R.S., c. 64, § 3, eff. Sept. 1, 2021.

Section 6 of Acts 2021, 87th Leg., R.S., c. 64, provides:

(a) The changes in law made by this Act to Chapters 8, 154, and 157, Family Code, apply to an order for maintenance under Chapter 8, Family Code, or for child support under Chapter 154, Family Code, as applicable, regardless of whether the order was rendered before, on, or after the effective date of this Act.

(b) The enactment of this Act does not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for maintenance or child support rendered before the effective date of this Act.

§ 8.359. Conflicts with Other Laws.

(a) To the extent of a conflict between this subchapter and Chapter 804, Government Code, Chapter 804, Government Code, prevails.

(b) To the extent of a conflict between this subchapter and federal law, the federal law prevails.

Added by Acts 2021, 87th Leg., R.S., c. 64, § 3, eff. Sept. 1, 2021.

Section 6 of Acts 2021, 87th Leg., R.S., c. 64, provides:

(a) The changes in law made by this Act to Chapters 8, 154, and 157, Family Code, apply to an order for maintenance under Chapter 8, Family Code, or for child support under Chapter 154, Family Code, as applicable, regardless of whether the order was rendered before, on, or after the effective date of this Act.

(b) The enactment of this Act does not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for maintenance or child support rendered before the effective date of this Act.

CHAPTER 9.
POST-DECREE PROCEEDINGS

SUBCHAPTER A.
SUIT TO ENFORCE DECREE

§ 9.001. Enforcement of Decree.

(a) A party affected by a decree of divorce or annulment providing for a division of property as provided by Chapter 7, including a division of property and any contractual provisions under the terms of an agreement incident to divorce or annulment under Section 7.006 that was approved by the court, may request enforcement of that decree by filing a suit to enforce as provided by this chapter in the court that rendered the decree.

(b) Except as otherwise provided in this chapter, a suit to enforce shall be governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit.

(c) A party whose rights, duties, powers, or liabilities may be affected by the suit to enforce is entitled to receive notice by citation and shall be commanded to appear by filing a written answer. Thereafter, the proceedings shall be as in civil cases generally.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2013, 83rd Leg., R.S., c. 242, § 5, eff. Sept. 1, 2013.

Section 9 of Acts 2013, 83rd Leg., R.S., c. 242, provides:

(b) The changes in law made by this Act to Chapter 9, Family Code, apply to the enforcement of a property division and any contractual provisions under the terms of an agreement incident to divorce or annulment under Section 7.006, Family Code, that was approved by the court regardless of whether the agreement was approved or the decree of divorce or annulment was rendered before, on, or after the effective date of this Act.

§ 9.002. Continuing Authority to Enforce Decree.

The court that rendered the decree of divorce or annulment retains the power to enforce the property division as provided by Chapter 7, including a property division and any contractual provisions under the terms of an agreement incident to divorce or annulment under Section 7.006 that was approved by the court.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2013, 83rd Leg., R.S., c. 242, § 6, eff. Sept. 1, 2013.

Section 9 of Acts 2013, 83rd Leg., R.S., c. 242, provides:

(b) The changes in law made by this Act to Chapter 9, Family Code, apply to the enforcement of a property division and any contractual provisions under the terms of an agreement incident to divorce or annulment under Section 7.006, Family Code, that was approved by the court regardless of whether the agreement was approved or the decree of divorce or annulment was rendered before, on, or after the effective date of this Act.

§ 9.003. Filing Deadlines.

(a) A suit to enforce the division of tangible personal property in existence at the time of the decree of divorce or annulment must be filed before the second anniversary of the date the decree was signed or becomes final after appeal, whichever date is later, or the suit is barred.

(b) A suit to enforce the division of future property not in existence at the time of the original decree must be filed before the second anniversary of the date the right to the property matures or accrues or the decree becomes final, whichever date is later, or the suit is barred.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.004. Applicability to Undivided Property.

The procedures and limitations of this subchapter do not apply to existing property not divided on divorce, which are governed by Subchapter C and by the rules applicable to civil cases generally.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.005. No Jury.

A party may not demand a jury trial if the procedures to enforce a decree of divorce or annulment provided by this subchapter are invoked.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.006. Enforcement of Division of Property.

(a) Except as provided by this subchapter and by the Texas Rules of Civil Procedure, the court may render further orders to enforce the division of property made or approved in the decree of divorce or annulment to assist in the implementation of or to clarify the prior order.

(b) The court may specify more precisely the manner of effecting the property division previously made or approved if the substantive division of property is not altered or changed.

(c) An order of enforcement does not alter or affect the finality of the decree of divorce or annulment being enforced.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2013, 83rd Leg., R.S., c. 242, § 7, eff. Sept. 1, 2013.

Section 9 of Acts 2013, 83rd Leg., R.S., c. 242, provides:

(b) The changes in law made by this Act to Chapter 9, Family Code, apply to the enforcement of a property division and any contractual provisions under the terms of an agreement incident to divorce or annulment under Section 7.006, Family Code, that was approved by the court regardless of whether the agreement was approved or the decree of divorce or annulment was rendered before, on, or after the effective date of this Act.

§ 9.007. Limitation on Power of Court to Enforce.

(a) A court may not amend, modify, alter, or change the division of property made or approved in the decree of divorce or annulment. An order to enforce the division is limited to an order to assist in the implementation of or to clarify the prior order and may not alter or change the substantive division of property.

(b) An order under this section that amends, modifies, alters, or changes the actual, substantive division of property made or approved in a final decree of divorce or annulment is beyond the power of the divorce court and is unenforceable.

(c) The trial court may not render an order to assist in the implementation of or to clarify the property division made or approved in the decree before the 30th day after the date the final judgment is signed. If a timely motion for new trial or to vacate, modify, correct, or reform the decree is filed, the trial court may not render an order to assist in the implementation of or to clarify the property division made or approved in the decree before the 30th day after the date the order overruling the motion is signed or the motion is overruled by operation of law.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2017, 85th Leg., R.S., c. 421, § 3, eff. Sept. 1, 2017.

Section 14 of Acts 2017, 85th Leg., R.S., c. 421, provides:

SECTION 14. Except as provided by Section 13 of this Act, the changes in law made by this Act apply only to an order that is rendered on or after the effective date of this Act. An order rendered before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

§ 9.008. Clarification Order.

(a) On the request of a party or on the court's own motion, the court may render a clarifying order before a motion for contempt is made or heard, in conjunction with a motion for contempt or on denial of a motion for contempt.

(b) On a finding by the court that the original form of the division of property is not specific enough to be enforceable by contempt, the court may render a clarifying order setting forth specific terms to enforce compliance with the original division of property.

(c) The court may not give retroactive effect to a clarifying order.

(d) The court shall provide a reasonable time for compliance before enforcing a clarifying order by contempt or in another manner.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.009. Delivery of Property.

To enforce the division of property made or approved in a decree of divorce or annulment, the court may make an order to deliver the specific existing property awarded, without regard to whether the property is of especial value, including an award of an existing sum of money or its equivalent.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2013, 83rd Leg., R.S., c. 242, § 8, eff. Sept. 1, 2013.

Section 9 of Acts 2013, 83rd Leg., R.S., c. 242, provides:

(b) The changes in law made by this Act to Chapter 9, Family Code, apply to the enforcement of a property division and any contractual provisions under the terms of an agreement incident to divorce or annulment under Section 7.006, Family Code, that was approved by the court regardless of whether the agreement was approved or the decree of divorce or annulment was rendered before, on, or after the effective date of this Act.

§ 9.010. Reduction to Money Judgment.

(a) If a party fails to comply with a decree of divorce or annulment and delivery of property awarded in the decree is no longer an adequate remedy, the court may render a money judgment for the damages caused by that failure to comply.

(b) If a party did not receive payments of money as awarded in the decree of divorce or annulment, the court may render judgment against a defaulting party for the amount of unpaid payments to which the party is entitled.

(c) The remedy of a reduction to money judgment is in addition to the other remedies provided by law.

(d) A money judgment rendered under this section may be enforced by any means available for the enforcement of judgment for debt.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.011. Right to Future Property.

(a) The court may, by any remedy provided by this chapter, enforce an award of the right to receive installment payments or a lump-sum payment due on the maturation of an existing vested or nonvested right to be paid in the future.

(b) The subsequent actual receipt by the non-owning party of property awarded to the owner in a decree of divorce or annulment creates a fiduciary obligation in favor of the owner and imposes a constructive trust on the property for the benefit of the owner.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.012. Contempt.

(a) The court may enforce by contempt an order requiring delivery of specific property or an award of a right to future property.

(b) The court may not enforce by contempt an award in a decree of divorce or annulment of a sum of money payable in a lump sum or in future installment payments in the nature of debt, except for:

(1) a sum of money in existence at the time the decree was rendered; or

(2) a matured right to future payments as provided by Section 9.011.

(c) This subchapter does not detract from or limit the general power of a court to enforce an order of the court by appropriate means.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.013. Costs.

The court may award costs in a proceeding to enforce a property division under this subchapter as in other civil cases.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.014. Attorney's Fees.

The court may award reasonable attorney's fees in a proceeding under this subchapter. The court may order the attorney's fees to be paid directly to the attorney, who may enforce the order for fees in the attorney's own name by any means available for the enforcement of a judgment for debt.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2009, 81st Leg., R.S., c. 768, § 8, eff. Sept. 1, 2009.

Section 14 of Acts 2009, 81st Leg., R.S., c. 768, provides:

> The changes in law made by this Act to Chapter 9, Family Code, apply only to a proceeding commenced under that chapter on or after the effective date of this Act. A proceeding commenced under Chapter 9, Family Code, before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SUBCHAPTER B.
POST-DECREE QUALIFIED DOMESTIC RELATIONS ORDER

§ 9.101. Jurisdiction for Qualified Domestic Relations Order.

(a) Notwithstanding any other provision of this chapter, the court that rendered a final decree of divorce or annulment or another final order dividing property under this title retains continuing, exclusive jurisdiction to render an enforceable qualified domestic relations order or similar order permitting payment of pension, retirement plan, or other employee benefits divisible under the law of this state or of the United States to an alternate payee or other lawful payee.

(b) Unless prohibited by federal law, a suit seeking a qualified domestic relations order or similar order under this section applies to a previously divided pension, retirement plan, or other employee benefit divisible under the law of this state or of the United States, whether the plan or benefit is private, state, or federal.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.102. Procedure.

(a) A party to a decree of divorce or annulment may petition the court for a qualified domestic relations order or similar order.

(b) Except as otherwise provided by this code, a petition under this subchapter is governed by the Texas Rules of Civil Procedure that apply to the filing of an original lawsuit.

(c) Each party whose rights may be affected by the petition is entitled to receive notice by citation and shall be commanded to appear by filing a written answer.

(d) The proceedings shall be conducted in the same manner as civil cases generally.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.103. Prior Failure to Render Qualified Domestic Relations Order.

A party may petition a court to render a qualified domestic relations order or similar order if the court that rendered a final decree of divorce or annulment or another final order dividing property under this chapter did not provide a qualified domestic relations order or similar order permitting payment of benefits to an alternate payee or other lawful payee.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.104. Defective Prior Domestic Relations Order.

If a plan administrator or other person acting in an equivalent capacity determines that a domestic relations order does not satisfy the requirements of a qualified domestic relations order or similar order, the court retains continuing, exclusive jurisdiction over the parties and their property to the extent necessary to render a qualified domestic relations order.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.1045. Amendment of Qualified Domestic Relations Order.

(a) A court that renders a qualified domestic relations order retains continuing, exclusive jurisdiction to amend the order to correct the order or clarify the terms of the order to effectuate the division of property ordered by the court.

(b) An amended domestic relations order under this section must be submitted to the plan administrator or other person acting in an equivalent capacity to determine whether the amended order satisfies the requirements of a qualified domestic relations order. Section 9.104 applies to a domestic relations order amended under this section.

Added by Acts 2005, 79th Leg., c. 481, § 1, eff. June 17, 2005.

Section 2 of Acts 2005, 79th Leg., c. 481, provides:

The change in law made by this Act applies to a qualified domestic relations order issued before, on, or after the effective date of this Act.

§ 9.105. Liberal Construction.

The court shall liberally construe this subchapter to effect payment of retirement benefits that were divided by a previous decree that failed to contain a qualified domestic relations order or similar order or that contained an order that failed to meet the requirements of a qualified domestic relations order or similar order.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.106. Attorney's Fees.

In a proceeding under this subchapter, the court may award reasonable attorney's fees incurred by a party to a divorce or annulment against the other party to the divorce or annulment. The court may order the attorney's fees to be paid directly to the attorney, who may enforce the order for fees in the attorney's own name by any means available for the enforcement of a judgment for debt.

Added by Acts 2009, 81st Leg., R.S., c. 768, § 9, eff. Sept. 1, 2009.

Section 14 of Acts 2009, 81st Leg., R.S., c. 768, provides:

The changes in law made by this Act to Chapter 9, Family Code, apply only to a proceeding commenced under that chapter on or after the effective date of this Act. A proceeding commenced under Chapter 9, Family Code, before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SUBCHAPTER C.
POST-DECREE DIVISION OF PROPERTY

§ 9.201. Procedure for Division of Certain Property Not Divided on Divorce or Annulment.

(a) Either former spouse may file a suit as provided by this subchapter to divide property not divided or awarded to a spouse in a final decree of divorce or annulment.

(b) Except as otherwise provided by this subchapter, the suit is governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.202. Limitations.

(a) A suit under this subchapter must be filed before the second anniversary of the date a former spouse unequivocally repudiates the existence of the ownership interest of the other former spouse and communicates that repudiation to the other former spouse.

(b) The two-year limitations period is tolled for the period that a court of this state does not have jurisdiction over the former spouses or over the property.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.203. Division of Undivided Assets When Prior Court Had Jurisdiction.

(a) If a court of this state failed to dispose of property subject to division in a final decree of divorce or annulment even though the court had jurisdiction over the spouses or over the property, the court shall divide the property in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage.

(b) If a final decree of divorce or annulment rendered by a court in another state failed to dispose of property subject to division under the law of that state even though the court had jurisdiction to do so, a court of this state shall apply the law of the other state regarding undivided property as required by Section 1, Article IV, United States Constitution (the full faith and credit clause), and enabling federal statutes.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.204. Division of Undivided Assets When Prior Court Lacked Jurisdiction.

(a) If a court of this state failed to dispose of property subject to division in a final decree of divorce or annulment because the court lacked jurisdiction over a spouse or the property, and if that court subsequently acquires the requisite jurisdiction, that court

may divide the property in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage.

(b) If a final decree of divorce or annulment rendered by a court in another state failed to dispose of property subject to division under the law of that state because the court lacked jurisdiction over a spouse or the property, and if a court of this state subsequently acquires the requisite jurisdiction over the former spouses or over the property, the court in this state may divide the property in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.205. Attorney's Fees.

In a proceeding to divide property previously undivided in a decree of divorce or annulment as provided by this subchapter, the court may award reasonable attorney's fees. The court may order the attorney's fees to be paid directly to the attorney, who may enforce the order in the attorney's own name by any means available for the enforcement of a judgment for debt.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997. Amended by Acts 2009, 81st Leg., R.S., c. 768, § 10, eff. Sept. 1, 2009.

Section 14 of Acts 2009, 81st Leg., R.S., c. 768, provides:

> The changes in law made by this Act to Chapter 9, Family Code, apply only to a proceeding commenced under that chapter on or after the effective date of this Act. A proceeding commenced under Chapter 9, Family Code, before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SUBCHAPTER D.
DISPOSITION OF UNDIVIDED BENEFICIAL INTEREST

§ 9.301. Pre-Decree Designation of Ex-Spouse as Beneficiary of Life Insurance.

(a) If a decree of divorce or annulment is rendered after an insured has designated the insured's spouse as a beneficiary under a life insurance policy in force at the time of rendition, a provision in the policy in favor of the insured's former spouse is not effective unless:

(1) the decree designates the insured's former spouse as the beneficiary;

(2) the insured redesignates the former spouse as the beneficiary after rendition of the decree; or

(3) the former spouse is designated to receive the proceeds in trust for, on behalf of, or for the benefit of a child or a dependent of either former spouse.

(b) If a designation is not effective under Subsection (a), the proceeds of the policy are payable to the named alternative beneficiary or, if there is not a named alternative beneficiary, to the estate of the insured.

(c) An insurer who pays the proceeds of a life insurance policy issued by the insurer to the beneficiary under a designation that is not effective under Subsection (a) is liable for payment of the proceeds to the person or estate provided by Subsection (b) only if:

(1) before payment of the proceeds to the designated beneficiary, the insurer receives written notice at the home office of the insurer from an interested person that the designation is not effective under Subsection (a); and

(2) the insurer has not interpleaded the proceeds into the registry of a court of competent jurisdiction in accordance with the Texas Rules of Civil Procedure.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

§ 9.302. Pre-Decree Designation of Ex-Spouse as Beneficiary in Retirement Benefits and Other Financial Plans.

(a) If a decree of divorce or annulment is rendered after a spouse, acting in the capacity of a participant, annuitant, or account holder, has designated the other spouse as a beneficiary under an individual retirement account, employee stock option plan, stock option, or other form of savings, bonus, profit-sharing, or other employer plan or financial plan of an employee or a participant in force at the time of rendition, the designating provision in the plan in favor of the other former spouse is not effective unless:

(1) the decree designates the other former spouse as the beneficiary;

(2) the designating former spouse redesignates the other former spouse as the beneficiary after rendition of the decree; or

(3) the other former spouse is designated to receive the proceeds or benefits in trust for, on behalf of, or for the benefit of a child or dependent of either former spouse.

(b) If a designation is not effective under Subsection (a), the benefits or proceeds are payable to the named alternative beneficiary or, if there is not a named alternative beneficiary, to the designating former spouse.

(c) A business entity, employer, pension trust, insurer, financial institution, or other person obligated to pay retirement benefits or proceeds of a financial plan covered by this section who pays the benefits or proceeds to the beneficiary under a designation of the other former spouse that is not effective under Subsection (a) is liable for payment of the benefits or proceeds to the person provided by Subsection (b) only if:

(1) before payment of the benefits or proceeds to the designated beneficiary, the payor receives written notice at the home office or principal office of the payor from an interested person that the designation of the beneficiary or fiduciary is not effective under Subsection (a); and

(2) the payor has not interpleaded the benefits or proceeds into the registry of a court of competent jurisdiction in accordance with the Texas Rules of Civil Procedure.

(d) This section does not affect the right of a former spouse to assert an ownership interest in an undivided pension, retirement, annuity, or other financial plan described by this section as provided by this subchapter.

(e) This section does not apply to the disposition of a beneficial interest in a retirement benefit or other financial plan of a public retirement system as defined by Section 802.001, Government Code.

Added by Acts 1997, 75th Leg., c. 7, § 1, eff. April 17, 1997.

Secondary Sources

The following paper, co-authored by Pamela E. George and Kim C. Thibodeaux, was presented by Pamela E. George at the 32nd Annual Advanced Family Law Course, State Bar of Texas, August 2006, San Antonio, Texas.

"When Handshakes Won't Do"—Rule 11, Stipulations and MSAs[1]

I. Introduction.

A handshake is an honorable means of settling a dispute; however, it is not the best way to obtain an ironclad deal for your client or to protect yourself from legal malpractice claims. Texas rules and statutes provide a number of tools to enable and enforce settlement agreements which should be used in addition to, if not in lieu of, the traditional handshake.

Agreements appurtenant to the trial of a family law case come in varied forms, arising from varied authorities, which apply to varied circumstances. Texas Rule of Civil Procedure 11 governs agreements, admissions, and concessions which can limit or exclude issues to be tried in a judicial proceeding. The Texas Civil Practice & Remedies Code, at Title 7, Alternate Methods of Dispute, §154.071, establishes the effect, the enforceability, of written settlement agreements. Texas Family Code § 7.006 promotes amicable settlement of disputes in cases of divorce or annulment, while Texas Family Code § 153.007 provides for the amicable settlement of disputes regarding conservatorship and possession of a child, including modification of the agreement and variations from the standard possession order. The section governing divorce or annulment provides that the terms are binding on the trial court if the terms are found to be just and right, if not the trial court may request the spouses submit a revised agreement or may set the cause for contested hearing. Similarly, in cases of conservatorship or possession, the court must render an order in accordance with the agreement if the court finds the order to be in the child's best interest, if not, the trial court may render any order for the conservatorship and possession of the child. Mediated Settlement Agreements in divorce are governed by Texas Family Code § 6.602 and in parent-child relationships by Texas Family Code § 153.0071.

This paper is an attempt to compare and distinguish these various rule based and statutory settlement tools. Repudiation and enforceability of agreements reached under any one of these means will be addressed, in depth.

II. Rule 11.

Unless otherwise provided in the Texas Rules of Civil Procedure, no agreement between attorneys or parties touching any suit pending is enforceable unless it is in writing, signed and filed with the papers as part of the record, or unless is made in open court and entered of record. Tex. R. Civ. P. 11.

A. Requisites of Stipulations.

1. Agreement.

A stipulation, or agreement between the parties, in order to suffice under Rule 11, must be "an agreement, admission, or concession made in a judicial proceeding by the parties or their attorneys," and limits or excludes the issues that can be tried. *Rosenboom Machine & Tool, Inc. v. Machala*, 995 S.W. 2d 817, 821 (Tex. App.—Houston [1st Dist.] 1999, pet. denied) (quoting *Hanson v. Academy Corp*., 961 S.W.2d 329 335-36 (Tex. App.—Houston [1st Dist.] 1997, writ denied)). Thus, a stipulation "obviates the need for proof on [the] litigable issue." *Id*.

2. Writing.

The Rule requires that agreements, stipulating to certain facts, "between attorneys or parties concerning a pending suit to be in writing, signed and filed in the record of the cause" to be enforceable. *London Mkt. Cos. v. Schattman*, 811 S.W.2d 550, 552 (Tex. 1991). Rule 11 exists because verbal agreements of counsel respecting the disposition of cases are likely to be misconstrued and forgotten and to lead to misunderstandings and controversies, *Padilla v. LaFrance*, 907 S.W.2d 454, 460 (Tex. 1995); *Kosowska v. Kahn*, 929 S.W.2d 505, 507 (Tex. App.—San Antonio 1996, writ denied). For example, a settlement agreement dictated during a deposition that was transcribed, filed, and signed by the court reporter, but not by the parties or attorneys, was found not enforceable as a Rule 11 agreement. *Tindall v. Bishop, Peterson and Sharp*, 961 S.W. 2d 248, 251 (Tex. App.—Houston [1st Dist.] 1997, no writ). The court specifically found that the agreement was neither "(1) in writing, signed and filed with the papers as part of the record, nor was it (2) made in open court and entered of record." *Id.* Conversely, another court held that an agreement between the parties and counsel that was dictated to the court reporter was enforceable as a Rule 11 agreement. *Kosowska v. Kahn*, 929 S.W.2d 505, 507-08 (Tex. App.—San Antonio 1996, writ denied). Thus, if this type of situation presents itself, it is strongly

[1] Special thanks to Warren Cole and Anne Turner Beletic who gave permission to use and borrow from the papers they authored for the 2000 New Frontiers in Marital Property Course sponsored by the State Bar of Texas. Warren's paper, *Enforcing Stipulations and Rule 11 Agreements* and Anne's, *Family Law Mediated Settlement Agreements: An Update*, provided a solid foundation for the work of your authors.

suggested that the complete agreement, containing all salient terms, be read verbatim to the court reporter. All parties and counsel should then acknowledge the stipulation so dictated as the agreement, and that all parties intend to be bound by it. Then, as soon as possible after the deposition, a written Rule 11 agreement, memorializing the agreement, should be prepared and signed by each party. Alternatively, immediately secure a transcript of the agreement from the court reporter and attach a Rule 11 cover sheet for signature purposes. When signed by all parties, promptly file the document with the court.

The landmark case relevant to the requirement of written stipulations is *Kennedy v. Hyde*, 682 S.W.2d 525 (1984). This multipart suit involved a stock sale, and all of the parties, except Kennedy, signed a Rule 11 agreement in regard to their respective claims. The settling parties then amended their pleadings and alleged that Kennedy, who refused to sign the Rule 11 agreement, had orally agreed to the settlement. *Id*. at 526. In response, the trial court severed the causes and proceeded with a jury trial on the issue of enforcement of Kennedy's alleged oral contract to settle. The Texas Supreme Court reversed, holding that once it was determined that Kennedy had not signed the Rule 11 agreement, the lower courts had erred by permitting a trial on the enforceability of the alleged oral agreement to settle. The Court specifically rejected the Court of Appeals statement that "the purpose of Rule 11 is to authorize rendition of agreed judgments." *Id.* at 528. The Court stated that, if the case proceeded to trial, it should have been on the original issue, and not on the issue of whether Kennedy orally had agreed to the Rule 11 agreement. In conclusion the Supreme Court stated, "[t]he oral agreement was disputed and unenforceable at the moment its existence was denied in the pleadings; Rule 11 prohibits further inquiry." *Id.* at 531. *See also Banda*, 955 S.W.2d at 272 (relating to pre-suit oral agreements).

3. Open Court.

When made in open court, the Rule is satisfied if the terms of the agreement are dictated before a certified reporter, and the record reflects who was present, the settlement terms, and the parties' acknowledgement of the settlement. *Cantu v. Moore*, 90 S.W. 821, 824 (Tex. App.—San Antonio 2002, pet. denied). Be mindful, however, that the overall purpose of Rule 11 is "to avoid disputes over the existence or terms of an oral agreement between counsel." *Londen Mkt. Cos,* 811 S.W.2d at 552 (citing *Kennedy*, 682 S.W.2d at 526-27). "To have a binding, open-court stipulation, the parties must dictate into the record all material terms of the agreement and their assent thereto." *Herschbach v. City of Corpus Christi*, 883 S.W.2d 720, 734 (Tex. App.—Corpus Christi 1994, writ denied). The "made in open court" option in the Rule has been construed to provide an alternative way to establish an agreement between the parties when it is not practical to have a written agreement prepared. *See City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 677 (Tex. 1979).

In *Enber v. First State Bank of Smithville*, the parties had drafted an assignment and agreed to it beforehand, but neither side presented it to the court or filed at a hearing. 27 S.W.3d 287, 295-96 (Tex. App.—Austin 2000, pet. denied). The bank argued that, since the parties' lawyers agreed to the settlement in open court, they thereby entered the settlement of record. *Id.* at 296. The court of appeals held that the record of the hearing in question failed to establish as a matter of law that the parties entered into an oral Rule 11 agreement. *Id*. In so doing, however, it noted that "to allow a written statement to be 'supplemented' by the parties or their attorneys' subsequent in-court oral statements lead to the very mischief that the rule seeks to prevent." *Id.*

4. Material Terms

To be enforceable, all the terms of a settlement agreement need not be contained in the judgment. *Compania Financiara Libano v. Simmons*, 53 S.W. 3d 365, 368 (Tex. 2001). Rather, a settlement agreement is enforceable as a contract even though its terms are not incorporated in the judgment. *Id.* But the Rule does require that the agreement must be complete "as to every material detail" and must contain "all the essential elements of the agreement so that the contract can be ascertained from the writing, without resort to oral testimony." *CherCo Props. v. Law, Snakard & Gambill, P.C.*, 985 S.W.2d 262, 265 (Tex. App. —Fort Worth 1999, no pet.). A stipulation must be clear enough so that enforcement of the agreed terms can be accurately reflected in a judgment. A trial court has no power to supply terms, provisions, or details not previously agreed to by the parties. *Tinney v. Willingham*, 897 S.W.2d 543, 545 (Tex. App.—Fort Worth 1995, no writ). If a judgment does not conform to the settlement agreement, it will be rendered unenforceable. *Nuno v. Pulido*, 946 S.W.2d 448, 451 (Tex. App.—Corpus Christi 1997, no writ).

It is particularly important in family law matters to reduce any stipulations to writing, even if it is scratched out on a notepad. The stipulation should include all aspects of the agreement, including a listing of the obligations of each party. The attorney may omit the parent-child issues (*i.e*., support, possession and access, rights and duties), all property issues, and financial obligations of both parties; but, the attorney must remember that any omitted issue remains contested.

B. Uses for Stipulations.

Stipulations are useful tools that can be used for many purposes. They can be utilized to narrow complex issues, alleviated the need to call witnesses, and resolve the entire lawsuit. But if not properly implemented, another lawsuit inevitably follows. There is a fundamental different between an agreement concerning a law suit and a suit concerning an agreement. The remedy for a failed stipulated agreement is a suit for breach of contract. In that situation, not only is the suit in regard to family matters not resolved, but a whole new suit must be initiated to enforce the attempted agreement. This generates more fees and expenses for the parties, and escalated the hard feelings and mistrust among all those involved. It is therefore imperative that the applicable rules be followed and statutes read carefully for strict compliance.

Stipulations—Facts Only.

Stipulations pursuant to Rule 11 refer only to agreements in regard to facts; legal conclusions cannot be stipulated. A stipulation of a legal conclusion is not binding on a court or the parties. *Cartwright v. Mbank Corpus Christi, N.A.*, 865 S.W.2d 546, 549 (Tex. App.—Corpus Christi 1993, writ denied). For example, in *Caprock Investment Corp. v. Federal Deposit Insurance Co.,* the court noted that the question of whether Caprock was the proper plaintiff was a question of law, so the stipulation could not be determinative. 17 S.W.2d 707, 713 (Tex. App.—Eastland 2000, pet. denied).

C. Clear and Unambiguous

Further, a stipulation that is ambiguous or unclear should be disregarded by the court. *Am. Nat'l Petroleum Co. v. Transcontinental Gas Pipe Line Corp.*, 798 S.W.2d 274, 281 (Tex. 1990); *Rosenboom Mac. & Tool, Inc. v. Machala*, 995 S.W.2d 817, 821 (Tex. App.—Houston [1st Dist. 1999, pet. denied). To construe a stipulation, a court must "determine the intent of the parties from the language used in the entire agreement, examining the surrounding circumstances, including the state of the pleadings, the allegations made therein, and the attitude of the parties with respect to the issue. *Am. Nat'l Petroleum Co.*, 798 S.W.2d at 281; *Rosenboom*, 995 S.W.2d at 821. But a stipulation should not be given greater effect than the parties intended, nor should it be construed as an admission of fact intended to be controverted. *Am. Nat'l Petroleum Co.*, 798 S.W.2d at 281; *Rosenboom*, 995 S.W.2d at 822.

D. Filing with the Court.

Rule 11 does not require a writing to be filed in the trial court before the other party withdraws their consent; the filing requirement is satisfied so long as the agreement is filed before enforcement is sought. *Padilla v. LaFrance*, 907 S.W.3d 454, 461 (Tex. 1995). *Padilla* involved a dispute about whether a series of letters between the parties' representatives were enforceable as a written settlement agreement under Rule 11 even though plaintiffs withdrew their consent before the papers were filed with the court and before judgment was rendered on the agreement. *Id.* at 455. The Supreme Court noted that "[a]lthough Rule 11 requires the writings to be filed in the court record, is does not say *when* it must be filed." *Id*. at 461. To require that the papers be filed before consent is withdrawn would not further the purpose of the rule—to avoid disputes over the terms of oral settlement agreements. *Id.* The purpose of the rule is to put the agreement before the judge so that he could determine its importance and proceed with the orderly progression of the suit. *Id.* The Court held that "[t]his purpose is satisfied so long as the agreement is filed before it is sought to be enforced. *Id.*

Although the law appears to be clear in regard to the timing of filing a Rule 11 agreement, the better practice is to file the agreement as soon as it is signed. It is also advisable to provide a signature blank for the judge to sign evidencing the court's approval. This practice will remove any doubt of the agreement's validity and enforceability.

E. Approval by the Court.

A settlement agreement upon which an eventual judgment will be based when entered into the record is subject to withdrawal by either party until judgment is rendered by the court. In other words, party may revoke consent to a settlement agreement at any time before judgment is rendered. *San Antonio Rest. Corp. v. Leal*, 892 S.W.2d 855, 857 (Tex. 1995). In *San Antonio Restaurant Corp.*, after the settlement agreement was read into the record, the defendants attempted to withdraw consent based on newly discovered evidence. The trial court refused to consider the new evidence and signed the judgment based on the previously entered settlement agreement. The court of appeals affirmed, but the Texas Supreme Court reversed, holding that because there was no clear language in the record of the trial court's intention to render judgment when the agreement was read into the record, the settlement agreement was subject to revocation. *Id*. at 858. The Court noted that the operative language of the trial court was "…once this judgment is signed and I approve it, … it's full, final and complete … I'll approve the settlement." *Id*. The Supreme Court held that this language was not sufficient to express a clear intent to render judgment in the case. Therefore, the agreement could still be revoked and judgment could not be rendered based on the agreement.

In a similar case, the parties filed a stipulation resolving their divorce case. *Keim v. Anderson*, 943 S.W.2d 938 (Tex. App.—El Paso 1997, no writ). After reviewing the agreement, the trial court pronounced, "I will grant the divorce as of this time on June 30, 1995." *Id.* at 942. There was no mention in the stipulation in regard to the resolution of any outstanding temporary orders, or prior award of attorney's fees granted to wife's attorney as discovery sanctions. Later that same day, the wife's prior attorney filed an intervention for attorney's fees previously awarded as a discovery sanction. *Id.* at 940. At the entry hearing the court found that the Rule 11 agreement entered into the record did not seek to withdraw or vacate by the stipulation the prior order award of interim attorney's fees therefore they should be included in the decree. *Id.* at 941. In remanding the case, the appellate court held that the trial court could consider the intervention, filed after rendition, only if it had set aside the prior judgment. *Id.* at 945. The trial court had no authority to modify the agreement. *Id.*

In an injunction suit, the parties announced to the Court that they had reached a settlement. *Samples Exterminators v. Samples*, 640 S.W.2d 873, 874 (Tex. 1982). Based on this announcement, the Court stated on the record that "all of you did agree in open Court to this settlement, the Court approves the settlement … and orders all parties to sign any and all papers necessary to carry out this agreement and … the agreement that was … dictated into the record." *Id*. at 874. The day after the stipulation, the defendant revoked consent to the agreement. The Supreme Court held that the revocation was too late because the court's statement on the record constituted a rendition of judgment. *Id.* at 875.

1. Modification of a Rule 11 Agreement.

In *In re Nolder*, a court of appeals modified a provision of a Rule 11 settlement agreement that awarded the wife 55% of the husband's stock options where the husband failed to disclose that he had already exercised the options and sold the stock. 48 S.W.3d 432, 434-35 (Tex. App.—Texarkana 2001, no pet.). The court held that because it was impossible for the trial court to enforce the terms of the agreement, it was entitled to modify the agreement and render a judgment that awarded the wife 55% of the cash value of the in-kind options. *Id.*

2. Actions of an Associate Judge.

An associate judge has only limited authority to render and sign a final judgment. The associate judge may only sign a judgment that is "agreed to in writing as to both form and substance by all parties" or they may sign "a final default judgment." TEX. FAM. CODE ANN. § 201.007(a)(14)(A),(B). But it must be a final order from the associate judge in order to be enforceable. *See In re Lausch*, 177 S.W.3d 144, 151 (Tex. App.—Houston [1st Dist.] 2005, no pet.) (holding that an associate judge's oral pronouncements from the bench, combined with a handwritten report do not constitute a final order of enforcement)). In *Stein v. Stein*, the parties entered into a settlement agreement that was initialed but not signed by an associate judge. 868 S.W.2d 902, 903 (Tex. App.—Houston [1st Dist.] 1994, no writ). Before the referring court could sign the settlement, one of the parties revoked consent to the agreement. *Id.* The court of appeals determined the associate judge never generated a *signed* report and therefore the provisions of former section 54.010 of the Government Code did not apply. *Stein*, 868 S.W.2d at 904. The court of appeals further held no rendition of judgment occurred until the referring court signed the settlement agreement, and because this came after one of the parties had revoked consent, the judgment was void. *Id*.

This rule comports with the previous discussion that judgment cannot be entered on a Rule 11 agreement where one side as withdrawn consent.

An associate judge entering an agreement into the record can likewise constitute entering a Rule 11 agreement into the record. For example, in *Clanin v. Clanin*, the appeals court upheld a Rule 11 agreement that had been entered by an associate judge. 918 S.W.2d 673 (Tex. App.—Fort Worth 1996, no writ). The parties in *Clanin* entered into a Rule 11 agreement that was filed in court with the associate judge. *Id.* at 675. Three months later, the referring court signed a final order on the matter. *Id.* Afterwards, one of the parties attempted to repudiate the agreement, which the trial court denied. *Id.* On appeal, the court found that "the statement of facts clearly shows that the parties and attorneys announced in open court they had reached an agreement and that the agreement was dictated into the record in the form of sworn testimony of the parties. Further, the handwritten statement styled 'Rule 11 Agreement,' announcing their agreement and that the terms of the agreement had been entered of record, was signed by the parties and attorneys and filed with the papers as part of the record. Clearly, there was sufficient evidence for the court to conclude the existence of a valid Rule 11 agreement." *Clanin*, 918 S.W.2d at 677.

It is important, however, to note the distinction between *Stein* and *Clanin*. In *Stein*, it was held that one party repudiated before final rendition of judgment, so no valid judgment could be entered based on the agreement. On the other hand, the party in *Clanin* attempted to repudiate only **after** a final judgment had been rendered. Therefore the agreement was upheld. *See also Sohocki v. Sohocki*, 897 S.W.2d 422 (Tex. App.—Corpus Christi 1995, no writ) (holding that entering decree based on Rule 11 agreement improper where wife had revoked consent before the special master made his recommendation to the trial court and trial court adopted the recommendation).

F. Motion to Enforce a Rule 11 Versus a Motion to Enter Judgment.

A trial court is not authorized and cannot render a judgment on a Rule 11 stipulation if it is repudiated before rendition of judgment. *Davis v. Wickham*, 917 S.W.2d 414, 417 (Tex. App.—Houston [1st Dist.] 1996, no writ). In *Davis*, the parties had reached a settlement that was reduced to a Rule 11 agreement and signed by all parties. Prior to rendition of judgment, the husband repudiated the agreement based on newly discovered evidence. The wife's attorney filed a motion to enter final judgment based upon the agreement between the parties. *Id.* at 417. The trial court granted the motion and entered judgment. The Court of Appeals reversed, holding that because the husband revoked the agreement, the court was without power to enter a binding final judgment. It held further that the sole issue before the trial court was whether to enter, or not to enter, the agreement as a final judgment. The issue of whether the Rule 11 agreement should or should not be enforced was not before the court. Citing *Padilla*, the court opined that, before the trial court could have considered the enforcement issue, the wife would have to have proper pleadings on file, and would have to introduce proper proof. *Id.* at 417.

Padilla is the leading Supreme Court case to provide guidance, and provides a warning not to "confuse the requirements for an agreed judgment with those for an enforceable settlement agreement." *Padilla*, 907 S.W.2d at 461. The Court explained:

> Although a court cannot render a valid agreed judgment absent consent at the time it is rendered, this does not preclude the court, after proper notice and hearing, from enforcing a settlement agreement complying with Rule 11 even though one side no longer consents to the settlement. The judgment in the latter case is not an agreed judgment, but rather is a judgment enforcing a binding contract.

Id.

In *CherCo Prop., Inc. v. Law, Snakard, & Gambill, P.C.*, 985 S.W.2d 262 (Tex. App.—Fort Worth 1999, no pet.), the parties reached an agreement in a malpractice case. Plaintiffs refused to approve the formal agreed settlement and withdrew consent because the agreement did not include a time for performance. Defendants filed a motion to enforce the agreement, together with a motion for summary judgment in support of their contention, which the trial court granted. In upholding the trial court's ruling, the appellate court stated that "although withdrawal of CherCo's consent to the agreement may have been fatal to an agreed judgment, it has no effect on Law's motion to enforce the settlement as a contract," and "under the facts of this case, a time for performance is not a material term, and this its omission does not render the parties' settlement agreement unenforceable." *Id*. at 266.

G. Judicial Admission from Stipulation

Once a clear and unambiguous stipulation is made as to a specific facts issued pursuant to Rule 11, that stipulation becomes a judicial admission and is conclusive on all parties, which estops the complaining party from further disputing the stipulated facts.

Shepherd v. Ledford, 962 S.W.2d 28, 34 (Tex. 1998). A judicial admission is a formal waiver of proof usually found in pleadings or the stipulations of the parties. *Hennigan v. I.P. Petroleum Co.*, 858 S.W.2d 371, 372 (Tex. 1993). A true judicial admission is conclusive on the party making the admission and not only relieves the opposing party from making proof of the fact admitted, but also bars the admitting party from disputing that the admission made. *Id.*; *Gevinson v. Manhattan Const. Co. of Okla.*, 449 S.W.2d 458, 467 (Tex. 1969). In contrast, a Rule 11 stipulation is sometimes a contractual agreement, which must include the following—express or implied: an offer, acceptance, and consideration. At other times, it is a mere concession or admission made by one or both parties to save time and expense, requiring none of the usual contractual elements. *Discovery Operating, Inc. v. Baskin*, 855 S.W.2d 884, 887 (Tex. App.—El Paso 1993, orig. proceeding). The actual stipulation filed with the court or dictated into the record which meets the requirements of Rule 11 is controlling, not the erroneous recitation by the trial court of the agreement. *Herschbach v. City of Corpus Christi*, 883 S.W.2d 720, 734 (Tex. App.—Corpus Christi 1994, writ denied); *Tinney v. Willingham,* 897 S.W.2d 543, 544 (Tex. App.—Fort Worth 1995, no writ).

H. Applicable Only to Pending Lawsuits.

A stipulation is only valid if it is entered in a pending lawsuit. A compromise and settlement of a claim prior to the filing of a suit does not fall within the ambit of Rule 11. *See, e.g., Estate of Pollack v. McMurrey*, 858 S.W.2d 388, 393 (Tex. 1993). There is a difference between an agreement concerning a pending lawsuit, which falls under Rule 11, and a lawsuit concerning an agreement, which is merely a suit on a contract. *Id.* This distinction is illustrated in *Banda v. Garcia*, 955 S.W.2d 270 (Tex. 1997). Although *Banda* does not address Rule 11 directly it does shed light on the enforceability of oral pre-suit agreements.

In *Banda*, Garcia's attorney made an offer to settle with Banda's attorney prior to suit being filed. The offer was evidenced by a letter that set out the offer and stated that, if the offer was not accepted by a certain deadline, then the offer would be withdrawn. *Id*. at 271. The deadline passed, and Garcia withdrew the offer and filed suit to enforce the agreement. *Id.* The trial court found that an oral agreement existed, but the court of appeal reversed, stating the unsworn testimony of the attorney was not enough to support a finding of an enforceable settlement agreement. *Id.* The Supreme Court reversed the court of appeals, holding that the attorney's comments were some evidence of an enforceable pre-suit settlement agreement. *Id.* at 272. Thus, Rule 11 requires settlement agreements in a pending lawsuit to be in writing, but is silent on the issue of settlement offers. TEX. R. CIV. P. 11; *Trinity Univ. Ins. Co. v. Bleeker*, 944 S.W.2d 672, 675 (Tex. App.—Corpus Christ 1997), *rev'd in part on other grounds*, 966 S.W.2d 489 (Tex. 1998). *See also Carter v. Allstate Ins.*, 962 S.W.2d 268, 271 (Tex. App.—Houston [1st Dist.] 1998, pet denied) (holding that a pre-suit oral settlement agreement between an insurer and a claimant against its insured is not rendered unenforceable by Rule 11); *Recio v. Recio*, 666 S.W.2d 645 (Tex. App.—Corpus Christi 1984, no writ) (holding that Rule 11 did not bar ex-wife's suit because the alleged agreement was not made as an incident to the suit, but rather as a defense to it, so Rule 11 had no application in that instance).

III. Settlement Agreements under Family Code Sections 7.006 and 153.007.

To promote amicable settlement of disputes in a suit for divorce or annulment, spouses may enter into a written agreement concerning the division of the property and the liabilities of the spouses and maintenance of either spouse. *Engineer v. Engineer*, 187 S.W.3d 625, 626 (Tex. App.—Houston [14th Dist.] 2006, no pet.); TEX. FAM. CODE ANN. § 7.006(a). The agreement may be revised or repudiated at any time before rendition of the divorce or annulment unless the agreement is binding under another rule of law. TEX. FAM. CODE ANN. § 7.006(a). But remember, it is still enforceable under contract law. Thus, a written settlement agreement can be enforceable even though one party withdraws consent before judgment is rendered on the agreement. *See, e.g.*, *Michael Mantas, M.D. v. The Fifth Court of Appeals*, 925 S.W.2d 656, 658 (Tex. 1996); *Padilla v. LaFrance*, 907 S.W.2d 454, 461 (Tex. 1995).

If the trial court finds that the terms of the agreement are just and right, those terms are binding on the court. *Engineer*, 187 S.W.3d at 626; TEX. FAM. CODE ANN. § 7.006(b). If the trial court approves the agreement, the court may set forth the agreement in full, or incorporate the documents by reference in the final decree. *Engineer,* 187 S.W.3d at 626; TEX. FAM. CODE ANN. § 7.006(b). But if the trial court finds that the terms of the agreement are not just and right, it may either request that the spouses submit a revised agreement or set the case for a contested hearing. TEX. FAM. CODE ANN. § 7.006(c). A trial court is not bound to accept the parties' agreement. *In re McFarland*, 176 S.W.3d 650, 659 (Tex. App.—Texarkana 2005, no pet.). So a trial court has only two options when it finds that the terms are not just and right: it can request the parties to revise the agreement or set a hearing on the matter. There is no discretion to do otherwise; it cannot change an agreement before entering it. If an appellate court determines that a decree contains terms and provisions that were never agreed upon by the parties, it must reverse the judgment and remand the case. *Engineer,* 187 S.W.3d at 626.

In *Engineer*, appellant complained that the trial court omitted certain provisions of the settlement agreement in the final decree. *Id.* at 625. In its findings, the trial court stated that there was no trial on the merits, nor were there independent findings as to the property division. *Id.* at 626. The trial court's conclusions stated that the decree incorporated the agreement as modified and clarified by arbitration, and further modified by the court. In reversing the case, the appellate court conceded that certain provisions in the agreement were ambiguous, noted that the Family Code does not authorize a trial court to modify an agreement before incorporating it into the decree. *Id.* The case was remanded back to the trial court for further proceedings.

Section 153.007 is almost a mirror image of section 7.006, but deals with child conservatorship and possession. Texas Family Code section 153.007 encourages parties to settle their disputes amicably and allows parties to enter into agreements to modify orders concerning possession of their children. TEX. FAM. CODE ANN. § 153.007(a); *Wyatt v. Wyatt*, 104 S.W.3d 337, 339 (Tex.

App.—Dallas 2003, no pet.). Such an agreement must be in writing or be made part of the record in open court. *Id.; Skidmore v. Glenn,* 781 S.W.2d 672, 674-75 (Tex. App.-Dallas 1989, no writ). If the trial court finds the agreement is in the children's best interest, then the court is to render an order in accordance with the agreement. TEX. FAM. CODE ANN. § 153.007(b); *Wyatt*, 104 S.W.2d at 339.

An important distinction between section 153.007 and section 7.006 is that, under Texas Family Code section 153.007, an agreement regarding child support is not enforceable as a contract. TEX. FAM. CODE ANN. § 153.007(c); *In re T.J.K.*, 62 S.W.3d 830 832-33 (Tex. App.—Texarkana 2001, no pet.). As such, child support agreements are construed differently than other property settlement agreements, which are construed under the law of contracts. *Hill v. Hill,* 819 S.W.2d 570, 572 (Tex. App.—Dallas 1991, writ denied). But the parties can contract apart from section 153.007, and a contract made as part of divorce judgment under section 153.007 is, in absence of fraud, accident or mistake, enforceable and not subject to alteration, modification or cancellation merely because conditions or circumstances have changed, notwithstanding custody or support provisions of divorce decree might be subject to modification because of changed circumstances. *Kolb v. Kolb,* 479 S.W.2d 81 (Tex. Civ. App.—Dallas 1972, no writ). If the court finds the agreed parenting plan is not in the child's best interest, the court may request the parties to submit a revised parenting plan or the court may render an order for the conservatorship and possession of the child. TEX. FAM. CODE ANN. § 153.007(d).

IV. Settlement Agreements under Texas Civil Practice & Remedy Code § 154.071.

If the parties in a suit reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract. TEX. CIV. PRAC. & REM. CODE ANN. § 154.071. In *Compania Financiara Libano, S.A. v. Simmons*, the underlying lawsuit claimed a fraudulent transfer of property interests. 53 S.W.3d 365, 366 (Tex. 2001). The parties subsequently entered into an agreed settlement, which was filed as a Rule 11 and signed by the court; however, the judgment did not refer to all the provisions of the agreement, and it also contained a "Mother Hubbard" clause. *Id. Compania Financiara Libano* filed a timely motion to modify the judgment but it was never ruled upon and was overruled by operation of law. *Id.* Later, *Compania Financiara Libano* filed suit against Simmons to compel performance of the agreement, claiming breach of contract, fraud, tortuous interference and specific performance. *Id.*

The trial court granted *Compania Financiara Libano* summary judgment and ordered Simmons to specifically comply and pay attorney fees. *Id.* The court of Appeals reversed, holding that the action was an impermissible collateral attack, and that the agreement had been merged into the agreed judgment based on the Mother Hubbard clause. *Id.* The Supreme Court reversed, holding that nothing in the settlement agreement stated that all the terms were intended to be in the judgment. *Id.* at 367. The statute set out that the agreement may be enforced as a contract. *Id.* The Court concluded that all settlement terms are not required to be incorporated into a judgment to be enforceable. *Id.*

V. Settlement Agreement v. Mediated Settlement Agreement.

When does an agreement fall under the provisions of section 7.006 and when does an agreement fall within the more restrictive provisions of sections 6.602 or 153.0071?

For example, in *Lee v. Lee*, the parties met and negotiated an agreement to settle their divorce case. 158 S.W.3d 612 (Tex. App.—Fort Worth 2005, no pet.). Except for the first page, which was prepared by the husband's attorney, the entire document was prepared by the husband. *Id.* at 612. The agreement was titled "Binding Settlement Agreement" and contained following statement on the first page: "PURSUANT TO SECTION 6.602 OF THE TEXAS FAMILY CODE, THIS AGREEMENT IN [SIC] NOT SUBJECT TO REVOCATION." *Id.* Both parties signed the agreement. *Id.* Before rendition of the divorce and the property division, however, the husband attempted to revoke his consent. *Id.* But the trial court refused and found the agreement between the parties to be a valid settlement agreement and not revocable under section 6.602 of the Family Code. *Id*. at 612-13.

On review, the appellate court noted that the ordinary meaning of the word "mediation" was "[a] method of nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution." *Id*. at 613. The court of appeals reversed, holding that "[b]ecause there was no third party present at the settlement conference between [the parties], there was no mediated settlement agreement." *Id.* at 614. In doing so, the court reasoned that "[g]iven that section 7.006(a) of the Texas Family Code, which has been in force for many years, already allows divorcing parties to enter into written agreements without requiring mediation concerning the division of the community assets and liabilities as well as spousal maintenance," and "decline[d] to carve a common-law exception into section 6.602(b) that allows an unmediated settlement agreement to morph into a mediated settlement agreement based on mere form." *Id.* at 613-14. The document in dispute was then held to be "an agreement under section 7.006(a)," which can be "revised or repudiated before the divorce is rendered unless the agreement is binding under another rule of law." *Id.* at 614. The effect of the ruling was to require that a separate suit be filed for a breach of contract claim to enforce the signed agreement.

VI. Mediated Settlement Agreements.

A written mediated settlement agreement in a suit affecting the parent-child relationship is enforceable notwithstanding Rule 11. *See* TEX. FAM. CODE ANN. § 153.0071(d),(e). A written mediated settlement agreement in a suit for divorce is enforceable in the

same manner. *See* TEX. FAM. CODE ANN. § 6.602(b). Under these provisions, a mediated settlement agreement ("MSA") is binding in a suit if it:

> (1) provides, in a prominently displayed statement that is in boldfaced type **or** capital letters **or** underlined, that the agreement is not subject to revocation; (2) is signed by each party to the agreement; and (3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

Id. §§ 6.602(b); 153.0071(d) (emphasis added). If a mediated settlement agreement meets these requirements, a party is entitled to judgment on the mediated agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law. *Id.* §§ 6.602(c); 153.0071(e). Notwithstanding the preceding subsections, a court may decline to enter a judgment on a mediated settlement agreement under section 153.0071 if the court finds that (1) a party to the agreement was a victim of family violence, and that circumstance impaired the party's ability to make decisions; **and** (2) the agreement is not in the child's best interest. *Id.* § 153.0071(e-1) (emphasis added).

Sections 6.602(b) and 153.0071(d) are virtually identical and are construed the same way. *See*, *e.g.*, *In re Joyner*, __S.W.3d__, 2006 WL 1788202 (Tex. App.—Texarkana 2006, no pet. h.); *Beyers v. Roberts*, __ S.W.3d __, 2006 WL 1116049 (Tex. App.—Houston [1st Dist.] 2006, no pet.); *In re Calderon,* 96 S.W.3d 711 (Tex. App.—Tyler 2003, no pet.); *Boyd v. Boyd*, 67 S.W.3d 398 (Tex. App.—Fort Worth 2002, no pet.).

A. Strict Compliance.

At the outset, it is important to reiterate that, under section 6.602 and 153.0071, the statutory language clearly set out that, if the terms of either section 6.602(b) or 153.0071(d) are complied with, a party is **entitled to judgment on the mediated settlement agreement.** Clearly, this means that there is no requirement for a separate suit to enforce the agreement, and that it cannot be repudiated to prevent judgment on the matter. *See Byers*, __ S.W.3d at ___, 2006 WL 1116049 at * 2. Additionally, "[a] fundamental principle of statutory construction is that a more specific statute controls over a more general one." *Id.* at *3 (citing *Horizons/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000)). Thus, sections 6.602 and 153.0071 of the Family Code will control over any over general provision in regard to settlement agreements. *See id*. (holding that section 153.0071(d) controls over section 153.133, which deals with agreed parental plan that create joint managing conservatorships); *Garcia-Udall v. Udall*, 141 S.W.3d 323, 331 (Tex. App.—Dallas 2004, no pet.) (holding that section 153.0071 controls over 153.007, because section 153.0071 deals specifically with mediated settlement agreements, while section 153.007 deals generally with agreements for joint managing conservatorships).

A mediated settlement agreement must meet all of the requirements of the Family Code in order to bind the parties. *See* TEX. FAM. CODE ANN. § 153.0071(d), (e); *Beyers v. Roberts*, __ S.W.3d __, 2006 WL 1116049 (Tex. App.—Houston [1st Dist.] 2006, no pet.). In *Vickery v. American Youth Camps, Inc.*, the Texas Supreme Court held that a final judgment founded upon a mediated settlement agreement must be in strict and literal compliance with the agreement. 532 S.W.2d 292, 292 (Tex. 1976).

In *Spinks v. Spinks*, the parties reached an agreement through court-ordered mediation. 939 S.W.2d 229, 229 (Tex. App.—Houston [1st Dist.] 1997, no writ). The agreement was signed by parties, their attorneys, and the mediator. *Id.* The agreement provided for custody, property division, child support, alimony and insurance. *Id.* It also contained statement that the parties stipulated and agreed that the agreement was not subject to revocation. *Id.* The appellant repudiated the agreement while testifying at trial, but the trial court rendered a decree based on the mediated settlement. *Id.* Appellant appealed, and because the stipulation by the parties that the agreement was not revocable was not underlined, which was the statutory requirement at the time, the case was reversed and remanded. *Id.*

In *In re A.H.*, the appellant argued that a mediated settlement agreement was not in strict compliance because the statement, "This is a binding and IRREVOCABLE agreement" that was located in paragraph eight of the agreement was insufficient to meet the statutory requirements. 114 S.W.3d 750, 752-53 (Tex. App.—Dallas 2003, no pet.). The court dismissed this argument, however, because in addition to the language above, the bottom of pages two and three also contained that following statement: "THE PARTIES AGREE THAT THIS SETTLEMENT AGREEMENT IS BINDING AND NOT SUBJECT TO REVOCATION. THIS AGREEMENT MEETS THE REQUIREMENTS OF SECTION 153.0071 OF THE TEXAS FAMILY CODE." *Id.* at 753. The court held that this statement clearly complied with statutory requirements regardless of the statement made in the body of the agreement. *Id.*

Apparently, it also does not matter whether the court orders the parties to mediation or the parties attend at their own initiative. *See In re J.A.W.-N.*, 94 S.W.3d 119 (Tex. App.—Corpus Christi 2002, no pet.). In *J.A.W.-N.*, the parties agreed to meet with a mediator to discuss their concerns regarding an agreed order in a SAPCR proceeding. *Id.* at 120. Following the meeting, they signed a "Mediated Settlement Agreement" that modified the terms of support and possession of and access to the child. *Id.* The agreement was signed by the parties, their attorneys, was initialed on each page, and recited the required language from the Family Code section 153.0071. *Id.* Later, appellant repudiated the agreement, but at a hearing held after that, the trial court signed a written order on the agreement. *Id.* On appeal, appellant argued that the agreement was not a statutory mediation agreement because the court did not refer the parties to the mediation as set out in section 153.0071(c). *Id.* The appellate court rejected that argument, holding that nothing in that section requires a written request or written order of referral based in either the parties' or the court's own motion in order for parties to mediate their differences and execute a mediated settlement agreement. *Id.* at 121. The court stated that there was no authority for such a proposition and to hold so "would have a chilling effect on the mediation process." *Id.* In overruling appellant's point, the court noted that "the plain language . . . of the agreement indicated that the parties intended their agreement to be final." *Id.*

Likewise, it does not matter if the dispute is in regard to a suit or a post-suit dispute. *In re J.A.W.-N.* involved a dispute about terms and conditions of a pre-existing order. 94 S.W.3d at 119 (Tex. App.—Corpus Christi 2002, no pet.). To address these concerns, the parties agreement to meditation. *Id.* at 120. The result was an agreement that was signed by the parties, attorneys, and the mediator. *Id.* When appellant refused to sign an agreed order based on the mediated agreement, appellee filed a motion for judgment, which the trial court granted and signed a written order on the agreement. *Id.* On appeal, appellant complained that section 153.0071 applies to suits only and did not apply to post-suit disputes. As support for this argument, he pointed to the language of section 153.0071(c), which states that "the court may refer a suit affecting a parent-child relationship to mediation." *Id.* at 123. The court stated that, as the parties had "agreed to mediation without court intervention" and also "came within the statute by satisfying the elements of section 153.0071(d)," the section applied to the case and the appellate court affirmed the judgment of the trial court. *Id.* at 121. *See also Kilroy v. Kilroy*, 137 S.W.3d 780, 789 (Tex. App.—Houston [1st Dist.] 2004, no pet.) (holding that because the parties' Rule 11 agreement did not require that they petition the trial court before initiating arbitration proceedings, there was no requirement under section 153.0071(c) or any other rule to do so).

B. Cannot Withdraw Consent.

In *In re Circone*, it was argued that the appellant should be able to withdraw consent after the requirements of the Family Code had been met. 122 S.W.3d 403, 404 (Tex. App.—Texarkana 2003, no pet.). Appellant contended that the trial court erred in its application of the alternative dispute resolution procedures of the Family Code. *Id.* at 405. To support that position, appellant argued that the court erred when it refused to permit him to introduce evidence about the actions or inaction of the attorney ad litem who represented the children. *Id.* at 407. But the court pointed out that the Code provides for this within the context of a binding arbitration proceeding under section 153.0071(b) of the Family Code, and the *Circone* case dealt with mediation under section 153.0071 (c)-(e). As the requirements under that provision were met, the court held that "the trial court had no authority to go behind the signed agreement of the parties, which explicitly … stated in underlined capital letters that agreement was not subject to revocation." *Id.* at 407.

In making this determination, the court noted that the language of the statute at that time differed from that which existed at the time of another case that was frequently cited and had analyzed the statute, *Davis v. Wickham*, 917 S.W.2d 414, 416 (Tex. App.—Houston [14th Dist.] 1996, no writ). The *Davis* court held in that case that, if the parties reach a settlement through alternative resolution procedures and execute a written agreement pursuant to Rule 11 disposing of the dispute, the agreement is enforceable in the same manner as any other written contracts. *Id.* at 406 n.4. The Texarkana Court noted that it had since been recognized that the *Davis* case did not address mediation agreements that meet the requirements of either section 6.602 or 153.0071 of the Family Code and so provided no guidance for those provisions. *Id.* (citing *Cayan v. Cayan*, 38 S.W.3d 161 (Tex. App.—Houston [14th Dist.] 2000, no pet.)). The Court pointed out that two other courts had reviewed the current statute and applied it as written. The Corpus Christi court held that a trial court is required to enter judgment on a mediated settlement agreement even if the mediation is not under the direction of the court. *In re J.A.W.-N.*, 94 S.W.3d 119, 121 (Tex. App.—Corpus Christi 2002, no pet.). Likewise, the Eastland court analyzed a similar case and held that, in a mediated settlement agreement context under the statute, even if one party did withdraw consent, the trial court was required to enter judgment on the agreement. *Alvarez v. Reiser*, 958 S.W.2d 232, 233-34 (Tex. App.—Eastland 1997, pet. denied).

C. Best Interest of the Child.

A best interest hearing is not required before entering an order pursuant to a mediated settlement agreement. *Beyers v. Roberts*, __ S.W.3d __, 2006 WL 1116049 (Tex. App.—Houston [1st Dist.] 2006, no pet.). In *Beyers*, the appellant contended that the Family Code and the common law created a duty on the trial court to conduct an evidentiary hearing to determine whether the parents' custody agreements were in the a child's best interest in every case. *Id.* The court noted that "[n]othing in the statute requires that a trial court conduct a best interest hearing before entering an order pursuant to a mediated settlement agreement. Subsection (e) of section 153.0071 states that a party is entitled to judgment on a mediated settlement agreement so long as it satisfies the requirements of subsection (d)." *Id.* (citing TEX. FAM. CODE. ANN. § 153.0071(e)). The court pointed out that subsection (d) does provide a trial court with the discretion to modify a proposed order in the event that the court determines it is not in the child's best interest, but nowhere does it require the court to do so. *Id.* The court also held that nothing in the common law creates such a duty. *Id.*

Further, several courts have held that a trial court does not err in failing to conduct a best interest hearing where the parties waived their right to challenge best interest in a binding arbitration agreement. *Beyers v. Roberts*, __ S.W.3d __, 2006 WL 1116049 (Tex. App.—Houston [1st Dist.] 2006, no pet.); *In re T.B.H.-H.*, 188 S.W.3d 312, 314 (Tex. App.—Waco 2006, no pet.); *In the Interest of C.A.K.*, 155 S.W.3d 554, 560 (Tex. App.—San Antonio 2004, pet. denied). The court in *C.A.K.* also held that allowing parties to contract away their right to challenge best interest did not violate public policy given that alternate policy of encouraging "peaceful resolution of disputes, particularly those involving the parent-child relationship, including mediation of issues involving conservatorship, possession and child support." *In the Interest of C.A.K.*, 155 S.W.3d at 560. In this manner, the court rejected the argument that trial courts have an independent duty to hold a best interest hearing. *Id.* In 2005, the legislature added subsection (e-1)(2) to section 153.0071 of the statute, which provides that "[n]otwithstanding Subsections (d) and (e), a court may decline to enter a judgment on a mediated settlement agreement if the court finds that the agreement is not in the child's best interest." TEX. FAM. CODE ANN. § 153.0071 (e-1)(2). The *Beyers* court stated that this provision expressly allows a trial court to conduct a best

hearing only at its own discretion.[2] 2006 WL 1116049 at *5. The court noted that "the agreement is 'subject to the Court's approval,' but not 'subject to the court determining the agreement is in the children's best interest.'" *Id.* The court concluded that "'[i]f parties were free to repudiate their agreements, disputes would not be finally resolved and traditional litigation would recur … but if a voluntary agreement that disposes of the dispute is reached, the parties should be required to honor the agreement.'" *Id.* (quoting *In the Matter of the Marriage of Ames,* 860 S.W.2d 590, 592 (Tex. App.—Amarillo 1993, no writ)).

D. Deviation or Modification.

Modifications to settlement agreements are typically grounds for reversal only if they add terms, significantly alter the original terms or undermine the intent of the parties. *Beyers v. Roberts*, __ S.W.3d __, 2006 WL 1116049 (Tex. App.—Houston [1st Dist.] 2006, no pet.); *See In the Matter of Ames*, 860 S.W.2d 590, 592-93 (Tex. App.—Amarillo 1993, no writ) (holding that the trial court erred where it added terms that "differed significantly").

Beyers dealt, in part, with an argument that the settlement agreement specified that a child would attend Emmanuel Lutheran School starting in January 2004, while the court's order provided that the child would attend his current school through that year, and then attend Emmanuel Lutheran the next school year. *Beyers*, ___ S.W.3d at ___. Appellant argued that, when it was discovered that the child could not enter Emmanuel Lutheran until the next school year because the school was full and could not enroll more students, the settlement agreement should have been rescinded for mutual mistake. *Id.* The court noted that, when mutual mistake is alleged, the party who claims relief must show what the parties' true agreement was and that the instrument does not show that agreement because of the mutual mistake. *Id.* The court found no such attempt was made, but did point out that it was clearly the parties' intent that the child would enroll in school at Emmanuel Lutheran as soon as possible. *Id.* Because the court's order correctly reflected the parties' intent, the court held that the trial court did not err when it failed to rescind the entire agreement.

The court may abuse its discretion if it deviates from the terms of the mediated settlement agreement in the judgment. In *Garcia-Udall v. Udall*, temporary orders have one parent the exclusive right to consent to "invasive medical, dental, or surgical treatment." 141 S.W.3d 323, 327 (Tex. App.—Dallas 2004, no pet.). The parties subsequently executed a Section 153.0071 mediated settlement agreement that incorporated the temporary orders into the divorce decree, and also provided that one parent would have the final decision "in the event parties cannot agree on medical, dental or surgical treatment involving invasive procedures." *Id*. at 327-28. The appellant argued the provision in the mediated settlement agreement changed the decision on invasive treatment from appellee's exclusive right to a joint right of the parties, with appellee having the authority to make the decision if they cannot agree. *Id.* at 328. Recognizing that an unambiguous contract must be interpreted as a matter of law, and ambiguity does not arise merely because the parties advance differing interpretations, the court of appeals held that the adjectives "medical, dental or surgical" modified the same noun, "treatment" and the phrase "involving invasive procedures" modified the noun "treatment" and was not limited to surgical treatment. *Id.* The court of appeals reversed the trial court and modified the agreement to make the decree conform to the mediated agreement. *Id.* at 329. The court observed that "[t]he fact that the trial court interpreted the mediated settlement differently is irrelevant because the trial court has no discretion to misapply the law." *Id.*

The appellant in *In re J.A.W.-N.* contended that the terms of the mediated agreement were not compatible with the court's order, and were so vague, contradictory, ambiguous, and inherently incomplete that it could not be enforced by judgment. 94 S.W.3d 119, 121 (Tex. App.—Corpus Christi 2002, no pet.). Appellant further argued that the agreement was incomplete because it did not address unresolved disputes. *Id*. at 122. In rejecting all these arguments, the court noted that the appellant never complained that the provisions were incorrect. *Id*. The court further held that, "if there were any issues related to conservatorship, support, or possession of and access to his child that need to be revisited, appellant's remedy would be further modification or clarification of his rights, incident to the trial court's continuing jurisdiction, not a finding of trial court error on appeal." *Id.* (citing TEX. FAM. CODE ANN. § 156.101 (Vernon 2002)).

E. Fraud, Failure to Disclose.

"If a party fails to exercise diligence in investigating facts or law or otherwise enters into a section 6.602 agreement unadvisedly, he will not be rewarded for doing so with a reprieve from the agreement." *Cayan v. Cayan*, 38 S.W.3d 161, 167 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). In *Cayan*, the husband and wife attended mediation and entered into a Rule 11 agreement and mediated settlement agreement. *Id.* at 163. Both parties and their attorneys signed the agreement and it was approved by the court. *Id*. The wife filed a motion for the court to sign and enter a final decree based on the agreement. *Id*. On the day the motion was set, the husband filed a motion to revoke the agreement alleging mistake and misrepresentation. *Id*. He claimed that he relied on the representations of the wife's CPA in regard to his retirement benefits. *Id.* The trial court entered the decree and the husband appealed, claiming that the wife could only enforce the agreement via a contract claim. *Id*. The court of appeals stated that, "[t]he plain meaning of section 6.602 could hardly be more clear," that it is an agreement that is "binding, i.e., irrevocable, and a party to one is entitled to judgment based on the agreement." It further reasoned that "the purpose of alternative dispute measures is to keep parties out of the courtroom. Where a mediated settlement agreement is not summarily enforceable, the trial court is then faced with litigating the merits of not only the original action, but also the enforceability of the settlement agreement, thereby generating more, not less, litigation." *Id.* at 166 (citations omitted). In conclusion, that court noted that, if a party was wrongfully induced to

[2] It is important to note that statute actually provides that "a court may decline to enter a judgment on a mediated settlement agreement if the court finds that; (1) a party to the agreement was a victim of family violence, and that circumstances impaired the party's ability to make decisions; **and** (2) the agreement is not in the child's best interest. Tex. FAM. CODE ANN. § 153.0071 (e-1) (emphasis added). Thus, court may not decline to enter a judgment on a mediated settlement agreement if the court finds **only** that the agreement is not in the child's best interest.

sign a mediated settlement agreement that falls under section 6.602, they have the same recourse as one who discovered the same thing after the judgment was entered as a party who signed an agreement that did not fall under the statute. *Id*. at 167.

A material misrepresentation by one by one party to an agreement can support rescission or repudiation by the other party. *Boyd v. Boyd*, 67 S.W.3d 398 (Tex. App.—Fort Worth 2002, no pet.). A failure to disclose material information by one contracting party can lead to the rescission of an otherwise enforceable settlement agreement under what is essentially fraudulent inducement. *Id*. *Boyd* involved undisclosed retirement accounts, stock options, and an earned, unpaid bonus. After the parties entered into a mediated settlement agreement, the wife repudiated the agreement, contending that the husband failed to make proper disclosures. The trial court denied enforcement of the agreement because it failed to include substantial assets of the parties. The appellate court agreed, stating that a duty to speak exists where "the parties to a mediated settlement agreement have represented to one another that they have each disclosed the marital property known to them." *Id.* at 405. "'[W]hen one voluntarily discloses information, he has a duty to disclose the whole truth rather than making a partial disclosure that conveys a false impression.'" *Id.* (quoting *World Help v. Leisure Lifestyles, Inc.,* 977 S.W.2d 662, 670 (Tex. App.—Fort Worth 1998, pet. denied). The court further held that "inserting a catchall provision" like "[a]ny undisclosed property is specifically awarded in equal shares to the parties" into a mediated settlement agreement "while at the same time intentionally withholding information about substantial marital assets will not save the mediated settlement agreement from being held unenforceable." *Id.*

F. Illegal/Void Provisions.

It is possible that a settlement agreement can be found unenforceable, even though it meets the requirements of sections 6.602(c) or 153.0071(d). Contracts, including mediated settlement agreements, can be found void if the agreement results in fraud, or if its provisions are illegal, although contracts are generally voided for illegality only when performance requires fraud or a violation of criminal law. *Beyers*, 2006 WL 1116049 at *2 (citing *In re Kasschau*, 11 S.W.2d 305, 314 (Tex. App.—Houston [14th Dist.] 1999, pet. denied)). In *Kasschau*, a mandamus action was brought by the husband in regard to the trial court's refusal to enter judgment based upon a mediated settlement agreement that complied with the Family Code. The appellate court denied the mandamus on multiple grounds, even though it was undisputed that all the provisions of the code had been complied with. The court noted that, because the mediated settlement had certain contingencies, the court had discretion to review the agreement before entering the judgment. The court reasoned that, although the trial court had approved the settlement agreement, it had never rendered judgment on it. More importantly, the court found that particular provisions of the agreement were illegal and violated public policy. On this ground, the entire agreement was found to be void. In the agreement, the husband had agreed to turn over certain telephone recordings he had made of the wife, without her consent, with third parties. This would constitute an illegal act. The settlement also provided that these recordings would be destroyed. The trial court found, and was upheld on appeal, that these actions were illegal since it contemplated the destruction of evidence related to a possible criminal proceeding, and refused to enter judgment on the entire agreement.

Settlement agreements are subject to review for duress, coercion, or other dishonest actions. *Boyd*, 67 S.W.3d at 403. A settlement agreement will not be invalidated, however, if the duress or coercion emanates from a disinterested third party. *King v. Bishop*, 879 S.W.2d 222 (Tex. App.—Houston [14th Dist.] 1994, no writ).

G. Limitations on Settlement Agreements.

Parties cannot contract around the mandatory venue requirements in the Family Code. *See In re Calderon,* 96 S.W.3d 711 (Tex. App.—Tyler 2003, no pet.). In *Calderon*, the parties entered into a mediated settlement agreement. *Id*. at 714. The agreement provided that jurisdiction would remain in Smith County for three years. *Id.* at 715. The court approved the agreement and incorporated its terms into its order. *Id.* Seventeen month later, the wife filed a motion to transfer venue to Bexar County and sought modification of the trial court's order. *Id*. The husband contended that transfer would not be proper because the agreement expressly stated that jurisdiction would remain in Smith County for three years. *Id.* The trial court denied the motion to transfer and the wife filed a petition for writ of mandamus asking the appeal court to order the trial court to transfer the proceedings to Bexar County. *Id.* Citing *Cassidy v. Fuller*, 568 S.W.2d 845, 847 (Tex. 1978), the court of appeals first noted that the language of the venue statute in the Family Code was mandatory in a SAPCR suit. Thus, a trial court has no discretion but to transfer the proceeding if the child has resided in another county for six month or more, and there was no dispute in this case that this requirement was satisfied. *Id.* at 716. The court based its decision, in part, on *Leonard v. Paxson*, 654 S.W.2d 440 (Tex. 1983). The *Leonard* court held that despite an agreement to the contrary, a trial court has a mandatory duty to transfer such a proceeding. *Leonard*, 654 S.W.2d at 441. It noted that "the fixing of venue by contract, except in such instances as permitted by Article 1995, § 5 [inapplicable here] is invalid and cannot be the subject of private contract." *Id.* The *Calderon* court "found no indication in section 153.0071(e) or any other Family Code provision that the legislature, by adopting a policy favoring alternative dispute resolution, intended to abrogate its longstanding policy … that matters affecting the parent-child relationship be heard in the county where the child resides." *Id* at 719 (citing *Leonard*, 654 S.W.2d at 442). The *Calderon* court then held that "any attempt to supplant the mandatory transfer provision applicable in a SAPCR is void." *Calderon*, 96 S.W.3s at 719. The court further held that the mediated settlement provision did not constitute a waiver of venue because "a settlement agreement attempting to change venue contrary to the statutory law of the state cannot constitute a waiver of venue. *Id.* at 720 (citing *Johnson v. U.S. Indust*., *Inc.*, 469 S.W.2d 652, 654 (Tex. Civ. App.—Eastland 1971, no writ)). If the provision were allowed to contravene the statutory scheme, it would "defeat the legislature's intent that matters affecting the parent-child relationship be heard in the county where the child resides." *Id.* (citing *Leonard*, 654 S.W.2d at 442).

A court may also deny a motion to enforce a mediated settlement agreement if the agreement does not include substantial community assets. *Boyd v. Boyd*, 67 S.W.3d 398 (Tex. App.—Fort Worth 2002, no pet.). In *Boyd*, the husband failed to disclose retirement accounts, stock options, and an earned, unpaid bonus in a mediated settlement agreement. *Id.* at 401. The husband moved to enforce the M.S.A. based on sections 6.602 and 153.0071 of the family code. *Id.* The trial court held a hearing on Randall's motion and entered an order denying the motion. *Id.* The court concluded that the mediated settlement agreement was unenforceable and had to be set aside so the court could make a fair and just division of the marital property and enter enforceable orders for the protection and best interest of the couple's child. *Id.* The trial court denied enforcement of the agreement because it did not include substantial community assets. *Id.* On appeal, the appellant argued that the trial court had no discretion to deny his motion to enforce an agreement because it complied with statutory requirements. *Id.* at 401. The Fort Worth Court of Appeals disagreed, and held that the phrase "notwithstanding rule 11 […] or another rule of law" does not require a trial court to enforce a mediated settlement merely because it complies with statutory requirements. *Id.* at 403. The court reasoned that the appellant's argument, if taken to its logical end, could require "enforcement of an agreement that was illegal or that was procured by fraud or duress, coercion, or other dishonest means," which would be "an absurd result" and not one intended by the legislature. *Id.* Adopting a less restrictive interpretation, the court held that the quoted phrase means "the requirements of rule 11 and common law that ordinarily apply to the enforcement of settlement agreements do not apply to mediated settlement agreements", if the agreements meet statutory requirements. *Id.*

If the trial court enters a judgment based on a mediated settlement agreement, and the trial court did not have jurisdiction to do so, then that portion of the agreement judgment is void. *Seligman-Harris v. Hargis*, 186 S.W.3d 582, 586-87 (Tex. App.—Dallas 2006, no pet.). In that case, appellant filed suit in Texas although the entire family lived in Germany. *Id.* at 584. The parties entered into a mediated settlement agreement regarding custody, visitation, child support and division of property. *Id.* at 585. The parties agreed to have the decree registered in Germany. *Id.* Based on the agreement, the trial court entered an agreed final decree. *Id.* On appeal, the appellant contended that under the UCCJEA, the trial court did not have jurisdiction to include in its decree provisions regarding child custody because Texas was not the "home state" of the children. *Id.* The court initially noted that, although the mother agreed to the trial court's jurisdiction, subject-matter jurisdiction cannot be conferred by consent, waiver, or estoppel. *Id.* (citing *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 76 (Tex. 2000)). The court then reiterated that section 152.201(a) of the UCCJEA is the exclusive jurisdictional basis for making a child custody determination by a Texas court and the trial court could not acquire jurisdiction based on those statutory provisions. *Id.* at 585-86. It then concluded that under the plain terms of the UCCJEA, a Texas court lacked subject matter jurisdiction over child custody issues in this case. As such, those provisions pertaining to child custody issues were void. *Id.* at 586-87. The court also noted that the entire agreement would be void "if the contract is entire and indivisible." *Id*. at 587 (citing *In re Kasschau*, 11 S.W.3d 305, 311 (Tex. App.—Houston [14th Dist.] 1999, no pet.). But the court found that, in this instance, "the effect the trial court's lack of jurisdiction over the child custody has on the underlying settlement agreement is an issue that has not been presented to the trial court" because the Father was unable to raise them. *Id.* Therefore, the court of appeals reversed the provisions of the decree that dealt with the division of property and child support and remanded the case back for further development. *Id*. The child custody claims were dismissed for want of jurisdiction. *Id.*

H. Rendition.

Generally, a judgment is rendered when the decision is officially announced orally in open court, by memorandum filed with the clerk, or otherwise announced publicly. *Garza v. Tex. Alcoholic Beverage Comm'n,* 89 S.W.3d 1, 6 (Tex. 2002); *Comet Aluminum Co. v. Dibrell,* 450 S.W.2d 56, 58 (Tex. 1970); *Knox v. Long*, 257 S.W.2d 289, 292 (1953), *overruled in part on other grounds, Jackson v. Hernandez*, 285 S.W.2d 184 (1955); *Coleman v. Zapp*, 151 S.W. 1040, 1041 (1912). The entry of a written judgment is merely a ministerial act that reflects the court's action. *Cook v. Cook*, 888 S.W.2d 130 (Tex. App.—Corpus Christi 1994, no writ). A party can revoke his consent to settle a case at any time before the judgment is rendered. *Samples Exterminators v. Samples*, 640 S.W.2d 873, 874-75 (Tex. 1982). A judgment rendered after a party revokes his consent is void. *Id.* at 875.

When does the actual rendition occur? In *In re Joyner*, the trial court announced "your divorce is granted." __ S.W.3d __ 2006 WL 1788202 (Tex. App.—Texarkana 2006, no pet. h.). Was this pronouncement the rendition of the final judgment? Is such an oral rendition effective? In *Joyner,* the parties signed a mediated settlement agreement that addressed most of their property and provided for the conservatorship and support of their minor son. *Id*. at *1. The parties attended a "final hearing" to address the few remaining property issues they had not been able to resolve in mediation. *Id.* The next day, the husband purchased a lottery ticket, which won over two million dollars. *Id.* Almost a year later, the wife filed a motion for a final trial setting, claiming that the divorce had never been finalized. *Id.* At that time, the trial court signed a "Final Decree of Divorce," which set out that the divorce had been judicially pronounced at the earlier hearing. *Id.* The wife appealed claiming that the divorce was final at the later hearing. *Id.* The court of appeals disagreed.

The appeals court observed that a judgment can be rendered either orally or in writing. *Id.* (citing *James v. Hubbard*, 21 S.W.3d 558, 561 (Tex. App.—San Antonio, 2000, no pet.)). If rendered by oral pronouncement, the entry of the written judgment is merely a ministerial act. *Keim v. Anderson*, 943 S.W.2d 938, 942 (Tex. App.—El Paso 1997, no pet.). But in order to be an official judgment, the oral pronouncement must indicate intent to render a full, final and complete judgment when it is recited. *S & A Rest. Corp. v. Leal*, 892 S.W.2d 855, 858 (Tex. 1995). It cannot allude to a future act that will decide the issues before the court. *Woods v. Woods*, 167 S.W.3d 932, 933 (Tex. App.—Amarillo 2005, no pet.).

In this case, the *Joyner* court found that the intent of the trial court to render judgment was "undeniably there." *Id.* at *2. The court of appeals found that the trial court's statement was "made in open court while officiating as the presiding judge after all the evidence had been presented and in the presence of all parties and attorneys." *Id.* The trial judge expressly stated: "*your divorce*

is granted" in the midst of other statement indicating present intent. *Id.* He also referred to the wife as "former wife." *Id.* The court of appeals found the judge's statement to indicate a "clear, present intent" that the judge was going to "rule immediately" and then did so. *Id.*

VII. Conclusion.

Settlement agreements are useful tools to expedite proceedings, to narrow the issues, and to save time and energy that would be wasted in litigating irrelevant topics. But attorneys must know the rules, and they must know how those rules apply to each particular case. Rule 11 agreements should be written if at all possible, signed by all parties, and entered in the record at the earliest possible time. Settlement agreement should be treated likewise. For mediated settlement agreements, strict compliance is required. The key is to know the rules and review them frequently. The provisions under sections 6.602 and 153.0071 have been revised repeatedly and should be periodically studied for changes.

Finally, note that an executed Rule 11 agreement or an agreed settlement, if repudiated before entry of judgment, can generally be enforced by filing a separate suit to enforce the agreement as a **contract**. A properly executed mediated settlement agreement entitles a party to judgment, and to repudiate the agreement, suit must be filed to void the **judgment**; however, if the mediated settlement agreement was not rendered or properly executed, it too, can still be enforced as a **contract**.
