

Texas Divorce Laws

Family Code

Chapter 3. Marital Property Rights And Liabilities

§ 3.001 FAM. 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.

§ 3.002 FAM. Community Property

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

§ 3.003 FAM. 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.

Chapter 4. Premarital And Marital Property Agreements

§ 4.001 FAM. 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.

§ 4.002 FAM. Formalities

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

§ 4.003 FAM. 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.

§ 4.004 FAM. Effect of Marriage

A premarital agreement becomes effective on marriage.

§ 4.005 FAM. 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.

§ 4.006 FAM. 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.

§ 4.007 FAM. 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.

§ 4.008 FAM. 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.

§ 4.009 FAM. 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.

§ 4.010 FAM. Short Title

This subchapter may be cited as the Uniform Premarital Agreement Act.

§ 4.102 FAM. Partition or Exchange of Community Property

At my 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 includes future earnings and income arising from the property as the separate property of the owning spouse unless the spouses agree in a record that the future earnings and income will be community property after the partition or exchange.

§ 4.103 FAM. 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.

§ 4.104 FAM. Formalities

A partition or exchange agreement must be in writing and signed by both parties.

§ 4.105 FAM. 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.

§ 4.106 FAM. 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.

§ 4.202 FAM. 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.

§ 4.203 FAM. 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.

§ 4.204 FAM. 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.

§ 4.205 FAM. 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.

§ 4.206 FAM. 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.

CHAPTER 6. SUIT FOR DISSOLUTION OF MARRIAGE

§ 6.001 FAM. 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.

§ 6.002 FAM. 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.

§ 6.003 FAM. Adultery

The court may grant a divorce in favor of one spouse if the other spouse has committed adultery.

§ 6.004 FAM. 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 state penitentiary, 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.

§ 6.005 FAM. 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.

§ 6.006 FAM. 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.

§ 6.007 FAM. 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.

§ 6.008 FAM. 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.

§ 6.101 FAM. Annulment of Marriage of Person Under Age 14

(a) The court may grant an annulment of a licensed marriage of a person under 14 years of age unless a court order has been obtained as provided in Subchapter B, Chapter 2.

(b) A petition for annulment under this section may be filed by a next friend for the benefit of a person under 14 years of age or on the petition of the parent or the judicially designated managing conservator or guardian, whether an individual, authorized agency, or court, of the person.

(c) A suit by a parent, managing conservator, or guardian of the person may be brought at any time before the person is 14 years of age.

(d) A suit under this section to annul the marriage of a person 14 years of age or older that was entered into before the person was 14 years of age is barred unless the suit is filed within the later of:

(1) 90 days after the date the petitioner knew or should have known of the marriage; or

(2) 90 days after the date of the 14th birthday of the underage party.

§ 6.102 FAM. Annulment of Marriage of Person Under Age 18

(a) The court may grant an annulment of a licensed or informal marriage of a person 14 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.

§ 6.103 FAM. Underage Annulment Barred by Adulthood

A suit to annul a marriage may not be filed under Section 6.101 or 6.102 by a parent, managing conservator, or guardian of a person after the 18th birthday of the person.

§ 6.104 FAM. Discretionary Annulment of Underage Marriage

(a) An annulment under Section 6.101 or 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.

§ 6.105 FAM. 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.

§ 6.106 FAM. 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.

§ 6.107 FAM. 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.

§ 6.108 FAM. 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.

§ 6.109 FAM. 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.

§ 6.110 FAM. 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.

§ 6.111 FAM. Death of Party to Voidable Marriage

A marriage subject to annulment may not be challenged in a proceeding instituted after the death of either party to the marriage.

§ 6.201 FAM. 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.

§ 6.202 FAM. 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.

§ 6.203 FAM. 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.

§ 6.204 FAM. 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.

§ 6.301 FAM. 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.

§ 6.302 FAM. 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.

§ 6.303 FAM. 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 is considered residence in this state and in that county.

§ 6.305 FAM. 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.

§ 6.306 FAM. 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.

§ 6.307 FAM. 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.

§ 6.308 FAM. 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.

§ 6.401 FAM. 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 _____."

§ 6.402 FAM. 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.

§ 6.403 FAM. Answer

The respondent in a suit for dissolution of a marriage is not required to answer on oath or affirmation.

§ 6.405 FAM. Protective Order

(a) The petition in a suit for dissolution of a marriage must state whether a protective order under Title 4 is in effect or if an application for a protective order is pending with regard to the parties to the suit.

(b) The petitioner shall attach to the petition a copy of each protective order issued under Title 4 in which one of the parties to the suit was the applicant and the other party was the respondent without regard to the date of the order. If a copy of the protective 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.

§ 6.406 FAM. 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.

(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.

§ 6.410 FAM. 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.

§ 6.501 FAM. 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 by telephone or in writing 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;
- (2) threatening the other, by telephone or in writing, to take unlawful action against any person, intending by this action to annoy or alarm the other;
- (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;
- (4) intentionally, knowingly, or recklessly causing bodily injury to the other or to a child of either party;
- (5) threatening the other 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 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 property of the parties or either party;

(9) intentionally or knowingly damaging or destroying the tangible property of the parties or either party; or

(10) intentionally or knowingly tampering with the tangible property of the parties or either party and causing pecuniary loss or substantial inconvenience to the other.

(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.

§ 6.502 FAM. 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 appraisal 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).
- (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.

§ 6.503 FAM. 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.

§ 6.504 FAM. 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.

§ 6.505 FAM. 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.

§ 6.506 FAM. Contempt

The violation of a temporary restraining order, temporary injunction, or other temporary order issued under this subchapter is punishable as contempt.

§ 6.601 FAM. 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.

§ 6.602 FAM. 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.

§ 6.603 FAM. Collaborative Law

(a) On a written agreement of the parties and their attorneys, a dissolution of marriage proceeding may be conducted under collaborative law procedures.

(b) Collaborative law is a procedure in which the parties and their counsel agree in writing to use their best efforts and make a good faith attempt to resolve their dissolution of marriage dispute on an agreed basis without resorting to judicial intervention except to have the court approve the settlement agreement, make the legal pronouncements, and sign the orders required by law to effectuate the agreement of the parties as the court determines appropriate. The parties counsel may not serve as litigation counsel except to ask the court to approve the settlement agreement.

(c) A collaborative law agreement must include provisions for:

- (1) full and candid exchange of information between the parties and their attorneys as necessary to make a proper evaluation of the case;
- (2) suspending court intervention in the dispute while the parties are using collaborative law procedures;
- (3) hiring experts, as jointly agreed, to be used in the procedure;
- (4) withdrawal of all counsel involved in the collaborative law procedure if the collaborative law procedure does not result in settlement of the dispute; and
- (5) other provisions as agreed to by the parties consistent with a good faith effort to collaboratively settle the matter.

(d) Notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule or law, a party is entitled to judgment on a collaborative law settlement agreement if the agreement:

- (1) provides, in a prominently displayed statement that is boldfaced, capitalized, or underlined, that the agreement is not subject to revocation; and
- (2) is signed by each party to the agreement and the attorney of each party.

(e) Subject to Subsection (g), a court that is notified 30 days before trial that the parties are using collaborative law procedures to attempt to settle a dispute may not, until a party notifies the court that the collaborative law procedures did not result in a settlement:

- (1) set a hearing or trial in the case;
- (2) impose discovery deadlines;

(3) require compliance with scheduling orders; or

(4) dismiss the case.

(f) The parties shall notify the court if the collaborative law procedures result in a settlement. If they do not, the parties shall file:

(1) a status report with the court not later than the 180th day after the date of the written agreement to use the procedures; and

(2) a status report on or before the first anniversary of the date of the written agreement to use the procedures, accompanied by a motion for continuance that the court shall grant if the status report indicates the desire of the parties to continue to use collaborative law procedures.

(g) If the collaborative law procedures do not result in a settlement on or before the second anniversary of the date that the suit was filed, the court may:

(1) set the suit for trial on the regular docket; or

(2) dismiss the suit without prejudice.

§ 6.701 FAM. Failure to Answer

In a suit for divorce, the petition may not be taken as confessed if the respondent does not file an answer.

§ 6.702 FAM. Waiting Period

(a) 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.

§ 6.703 FAM. 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 6.101 or 6.102.

§ 6.704 FAM. 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.

§ 6.705 FAM. 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.

§ 6.706 FAM. 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

§ 6.707 FAM. 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.

§ 6.708 FAM. Costs

- (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.

§ 6.709 FAM. Temporary Orders During Appeal

(a) Not later than the 30th day after the date an appeal is perfected, 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 necessary for the preservation of the property and for the protection of the parties during the appeal, including an order to:

- (1) require the support of either spouse;
- (2) require the payment of reasonable attorney's fees and expenses;
- (3) appoint a receiver for the preservation and protection of the property of the parties; or
- (4) award one spouse exclusive occupancy of the parties' residence pending the appeal.

(b) The trial court retains jurisdiction to enforce a temporary order under this section unless the appellate court, on a proper showing, supersedes the trial court's order.

§ 6.801 FAM. 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.

§ 6.802 FAM. 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.

§ 7.001 FAM. 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.

§ 7.002 FAM. Division and Disposition of Certain 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.

§ 7.003 FAM. 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-compensated, in the nature of compensation or savings.

§ 7.004 FAM. 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.

§ 7.005 FAM. 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.

§ 7.006 FAM. 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 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.

(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.

§ 7.007 FAM. Disposition of Claim for Economic Contribution or Claim for Reimbursement

(a) In a decree of divorce or annulment, the court shall determine the rights of both spouses in a claim for economic contribution as provided by Subchapter E, Chapter 3, and 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, shall:

(1) order a division of a claim for economic contribution of the community marital estate to the separate marital estate of one of the spouses;

(2) order that a claim for an economic contribution by one separate marital estate of a spouse to the community marital estate of the spouses be awarded to the owner of the contributing separate marital estate; and

(3) order that a claim for economic contribution of one separate marital estate in the separate marital estate of the other spouse be awarded to the owner of the contributing marital estate.

(b) 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.

§ 8.001 FAM. 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 a. 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.

§ 8.051 FAM. Eligibility for Maintenance; Court Order

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:

(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 under Title 4 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 duration of the marriage was 10 years or longer, the spouse seeking maintenance lacks sufficient property, including property distributed to the spouse under this code, to provide for the spouse's minimum reasonable needs, as limited by Section 8.054, and the spouse seeking maintenance:

(A) is unable to support himself or herself through appropriate employment because of an incapacitating physical or mental disability;

(B) is the custodian of a child who requires substantial care and personal supervision because a physical or mental disability makes it necessary, taking into consideration the needs of the child, that the spouse not be employed outside the home; or

(C) clearly lacks earning ability in the labor market adequate to provide support for the spouse's minimum reasonable needs, as limited by Section 8.054

§ 8.052 FAM. 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) the financial resources of the spouse seeking maintenance, including the community and separate property and liabilities apportioned to that spouse in the dissolution proceeding, and that spouse's ability to meet the spouse's needs independently;
- (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 find appropriate employment, the availability of that education or training, and the 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 ability of the spouse from whom maintenance is requested to meet that spouse's personal needs and to provide periodic child support payments, if applicable, while meeting the personal needs of the spouse seeking maintenance;
- (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 comparative financial resources of the spouses, including medical, retirement, insurance, or other benefits, and the separate property of each spouse;
- (8) the contribution by one spouse to the education, training, or increased earning power of the other spouse;
- (9) the property brought to the marriage by either spouse;
- (10) the contribution of a spouse as homemaker;
- (11) marital misconduct of the spouse seeking maintenance; and
- (12) the efforts of the spouse seeking maintenance to pursue available employment counseling as provided by Chapter 304, Labor Code.

§ 8.053 FAM. Presumption

(a) Except as provided by Subsection (b), it is presumed that maintenance is not warranted unless the spouse seeking maintenance has exercised diligence in:

- (1) seeking suitable employment; or
- (2) developing the necessary skills to become self-supporting during a period of separation and during the time the suit for dissolution of the marriage is pending.

(b) This section does not apply to a spouse who is not able to satisfy the presumption in Subsection (a) because of an incapacitating physical or mental disability.

§ 8.054 FAM. 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 three years after the date of the order; and

(2) shall limit the duration of a maintenance order to the shortest reasonable period that allows the spouse seeking maintenance to meet the spouse's minimum reasonable needs by obtaining appropriate employment or developing an appropriate skill, unless the ability of the spouse to provide for the spouse's minimum reasonable needs through employment is substantially or totally diminished because of:

(A) physical or mental disability;

(B) duties as the custodian of an infant or young child; or

(C) another compelling impediment to gainful employment.

(b) If a spouse seeking maintenance is unable to support himself or herself through appropriate employment because of an incapacitating physical or mental disability, the court may order maintenance for an indefinite period for as long as the disability continues. The court may order periodic review of its order, on the request of either party or on its own motion, to determine whether the disability is continuing. The continuation of spousal maintenance under these circumstances is subject to a motion to modify as provided by Section 8.057.

§ 8.055 FAM. Amount of Maintenance

(a) A court may not order maintenance that requires an obligor to pay monthly more than the lesser of:

(1) \$2,500; or

(2) 20 percent of the spouse's average monthly gross income.

(b) The court shall set the amount that an obligor is required to pay in a maintenance order to provide for the minimum reasonable needs of the obligee, considering employment or property received in the dissolution of the marriage or otherwise owned by the obligee that contributes to the minimum reasonable needs of the obligee.

(c) Department of Veterans Affairs service-connected disability compensation, social security benefits and disability benefits, and workers' compensation benefits are excluded from maintenance.

(d) For purposes of this chapter, "gross income" means resources as defined in Sections 154.062(b) and (c), disregarding any deductions listed in Section 154.062(d) and disregarding those benefits excluded under Subsection (c) of this section.

§ 8.056 FAM. 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 terminate the maintenance order if the obligee cohabits with another person in a permanent place of abode on a continuing, conjugal basis.

§ 8.057 FAM. Modification of Maintenance Order

- (a) The amount of maintenance specified in a court order or the portion of a decree that provides for the support of a former spouse may be reduced 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 and the response, 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 on a proper showing of a material and substantial change in circumstances of either party. The court shall apply the modification only to payment accruing after the filing of the motion to modify.
- (d) A loss of employment or circumstances that render a former spouse unable to support himself or herself through appropriate employment 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.

§ 8.058 FAM. Maintenance Arrearages

A spousal maintenance payment not timely made constitutes an arrearage.

§ 8.059 FAM. Enforcement of Maintenance Order

- (a) The court may enforce by contempt the court's maintenance order or an agreement for the payment of maintenance voluntarily entered into between the parties and approved by the court.
- (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 carry out the terms of the order. The judgment may be enforced by any means available for the enforcement of judgment for debts.
- (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 unless evidence is admitted supporting the defense. If the issue of the existence of an affirmative defense arises, an obligor must prove the affirmative defense by a preponderance of the evidence.

(e) A court may enforce an order for spousal maintenance under this chapter by ordering garnishment of the obligor's wages or by any other means available under this section.

§ 8.060 FAM. 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.

§ 8.061 FAM. Unmarried Cohabitants

An order for maintenance is not authorized between unmarried cohabitants under any circumstances.

§ 8.101 FAM. 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.

(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.

§ 8.102 FAM. 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.

§ 8.103 FAM. 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.

§ 8.104 FAM. 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.

§ 8.105 FAM. 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.

§ 8.106 FAM. 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.

§ 8.108 FAM. 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.

§ 8.153 FAM. 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.

§ 8.301 FAM. 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.

§ 8.302 FAM. 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.

§ 8.303 FAM. 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.

§ 9.001 FAM. 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 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.

§ 9.006 FAM. 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 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 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.

§ 9.010 FAM. 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.

§ 9.011 FAM. 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.

§ 9.012 FAM. 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.

§ 9.014 FAM. Attorney's Fees

The court may award reasonable attorney's fees as costs 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.

Note: Laws may have changed since our last update. For the latest information on these divorce laws, speak to a local divorce lawyer in the state.