**Lubbock County**

**Office of Dispute Resolution**



**Helpful Information for Understanding**

**Texas Family Law and Domestic Relations Issues**

INTRODUCTION

This packet is an informational guide to help you understand some of the practical and legal issues faced during separation or divorce, including parenting and child custody. In no way is this guide exhaustive because legislation and legislative changes are fluid. Instead, it is meant to introduce people who are facing issues in family law and domestic relations to some of the matters which arise. Additionally, this guide does not address unanswered questions regarding same-sex marriage and parenting. This is general information and should not replace the guidelines and the advice given by your attorney.

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***PLEASE BE AWARE THAT THIS INFORMATION GUIDE DOES NOT CONSTITUTE LEGAL ADVICE. IT IS SOLELY MEANT TO PROVIDE A GENERAL OVERVIEW OF FAMILY LAW AND DOMESTIC RELATIONS CONCEPTS. YOU SHOULD SEEK INDEPENDENT COUNSEL FOR LEGAL ADVICE.***

The Office of Dispute Resolution in Lubbock County

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# GETTING DIVORCED[[1]](#footnote-1)

Thousands of people divorce every year in the United States. Divorce can cause confusion, anger, fear, panic, and resentment towards your spouse. Couples can choose to make divorce an amicable process or a drawn out legal battle. Some major issues that divorcing couples worry about are lawyers, courts, money, and children.

Marital problems and divorce can trigger depression, feelings of vulnerability, powerlessness, anger, and sleep disturbances, which can impede clear thinking and sound decision making. For some people, the best way to deal with these problems is to see a mental health expert.[[2]](#footnote-2)

Please note that a legal divorce is not the same thing as “separation” for unmarried couples. Couples that separate, but were never legally married, may face other obstacles when it comes to issues such as property distribution and child custody.

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# INTRODUCTION TO THE TEXAS COURT SYSTEM FOR DIVORCES

When a spouse decides to file for divorce, it is important to be aware of how the process works in Texas. A divorce can be rather lengthy and complex, depending on the circumstances. The parties to a divorce may wish to be represented by an attorney. However, parties may represent themselves; this is referred to as *pro se* representation.

The spouse who files for divorce is called the “petitioner.” The petitioner files a document, called a “Petition for Divorce,” with the proper court. The proper court is one that can hear the petitioner’s case. Either the petitioner or the respondent must have been domiciled in Texas for the preceding 6 months before the petition is filed and must have been a resident of the county in which the petition is filed for the preceding 90-day period.[[3]](#footnote-3) In addition, with some exceptions, after the Petition for Divorce is filed, there is a 60-day waiting period before a Final Order may be entered.[[4]](#footnote-4) This waiting period gives divorcing couples time to reflect on the possibility of reconciliation.

The spouse who does not file the initial Petition for Divorce is called the “respondent.” The respondent is required to respond to the petition after he or she is served with notice of the divorce. The respondent can also sue for divorce, which is called a “counterclaim.”

After the petition is filed, the court can enter temporary orders, which set the ground rules for the conduct of the parties until the divorce is final. Temporary orders include protective orders and temporary orders on conservatorship (discussed later).

A Suit-Affecting the Parent-Child Relationship (SAPCR) is a suit requesting appointment of a managing or possessory conservator(s), access to or support of a child, or establishment or termination of the parent-child relationship. Generally, if there are no custody disputes, the case will be titled “In the Matter of the Marriage of \_\_\_” (IMMO). On the other hand, if there are custody disputes, the case will generally be titled “In the Interest of \_\_\_” (ITIO) children.

Divorce cases can be settled by agreement of both parties, referred to mediation or arbitration (discussed later), or sent to trial. At trial, the case can be tried by a judge and some issues can be tried in front of a jury.[[5]](#footnote-5)

In order to encourage the peaceable resolution of disputes, courts can refer cases to alternative dispute resolution (ADR), an alternative to a trial.[[6]](#footnote-6) Some ADR procedures include arbitration and mediation. By referring cases to ADR, the courts are encouraging divorcing parties to create their own agreements. Attorneys may attend ADR procedures, but this is not required. If a party is represented by an attorney who is not present at the mediation, the party should take any agreements created in mediation to his or her attorney to review before signing.

In arbitration, a neutral third party or panel renders a specific award.[[7]](#footnote-7) The parties themselves are not involved in the decision-making process. Exchanges between the parties are limited, and there are specific evidence rules which must be followed. Arbitration is binding by agreement only (the award stands), but it can also be non-binding (only serve as a basis for further negotiations). Details about the mediation process are discussed later.

### COMMON LAW MARRIAGES

To have a common law marriage, three elements must be present:

1. You must have “agreed to be married”;
2. You must have “held yourselves out” as husband and wife; and
3. You must have lived together in Texas as husband and wife.[[8]](#footnote-8)

To prove the existence of a common law marriage in court, you must present evidence as to each of these three elements[[9]](#footnote-9). Your own testimony can be used as evidence. For example, you can testify that your partner introduced you to other people as his or her spouse. Other people can testify to this as well.

Documents can also reflect that you and your partner held yourselves out as husband and wife. A lease signed as husband and wife, tax returns filed jointly as a married couple, or insurance policies listing one person as the other’s spouse can be used as evidence.

Though living together is one required element, this cannot create a common law marriage on its own. The other two elements must still be satisfied. Additionally, having children together cannot create a common law marriage in itself. All three elements must still be satisfied even if you live together and have children together.

If your partner has been introducing you as a spouse, but you have not introduced them as your spouse, you may still have a common law marriage. If you have tried to correct the impression that you were married, you may have an argument that you did not agree to be married. However, if you knew that you were being introduced as a spouse and did not try to correct the impression, you may be common-law married. Similarly, even one instance of publicly declaring yourself a married couple may be sufficient evidence to create a common law marriage. You do not have to hold yourselves out to be married on a consistent basis.

Once a common law marriage is established and in existence, it has the same legal effect as being in a marriage with a license and ceremony.

To end a common law marriage, a formal divorce should be used if there are children or if property and debts remain undivided. With a formal divorce, child custody, child support, and visitation can be decided along with the division of community property. Either partner in a common law marriage has 2 years after separation to file an action to prove the marriage did exist.

### SURVEY OF DIVORCING FAMILIES[[10]](#footnote-10)

Between 1989 and 2002, the Office of Dispute Resolution conducted a survey focusing on over 1,000 participants to determine how well mediation actually helped families. Participants answered questions about their divorcing family as it was currently functioning and included ranking factors that the participants thought caused the divorce. Participants were presented with the survey at a mediation orientation session.

Females made up 52.3% of the sample. The mean number of previous marriages was 1.45 for females and 1.58 for males. 52.5% of the participants were petitioners (those who had instigated the proceeding) and of those petitioners, 63.2% were female.

The participants were asked to select the top three factors that caused their divorce, and their responses were as follows:

1. Communication: 81.0% of women and 73.1% of men
2. Money: 50.9% of women and 55.5% of men
3. Affair: 42.8% of women and 45.0% of men
4. Sex: 38.0% of women and 35.1% of men
5. Substance Abuse: 34.4% of women and 20.7%of men
6. In-laws: 27.1% of women and 26.2% of men.
7. Career: 21.7% of women and 23.3% of men.
8. Religion: 8.8% of women and 11.1% of men.

These results show that divorcing couples and mediators should try to find underlying problems associated with poor communication, since that was found to be the main cause of divorce according to the participants in the survey.

Results from recent literature on divorce in America, which were released in 2013, showed similar results.[[11]](#footnote-11) In listing multiple reasons for divorce, 53.8% stated too much conflict and arguing, and 70.6% said lack of commitment by one or both persons to make the marriage work. Both of these issues are rooted in poor communication.

# INTRODUCTION TO MEDIATION[[12]](#footnote-12)

Mediation is a process in which a trained neutral third party assists disputing parties in communicating their positions and exploring possible solutions. Mediation is characterized by an informal atmosphere and cooperative climate and sets the stage for constructive communication in the future.

Mediation is advantageous to both the client and the court system because the process decreases delays caused by an overcrowded court docket. Mediated cases are often settled faster and are usually less expensive than long courtroom battles. Mediation assists in settling disputes promptly and confidentially and minimizes the expensive costs of litigation. Additionally, research shows that parties who work out their own agreement tend to get along better in the future.

The length of time needed for mediation depends on the complexity of the dispute, the commitment and communication of the parties, and the orientation and limitations of the mediator. Many disputes can be resolved in one mediation session lasting two to four hours; other cases may require multiple sessions.

The mediator does not render any decision or provide any evaluation of the cases; rather, the mediator’s job is to facilitate the exchange of information and settlement alternatives between the parties. Throughout the proceeding, the mediator acts as an agent of reality, helping parties think through their claims and ensuring that all parties participate in creating a settlement agreement. Most importantly, the mediator establishes and enforces procedures which are equitable and impartial, allowing all parties the chance to be heard. Mediation also provides an opportunity to express and address emotions or frustrations that may be hindering negotiations in a controlled environment.

Mediators encourage and often require the parties to seek independent counsel at some time during the mediation process. During actual mediation, the lawyer may help with evaluations, clarification of the issues, legal questions, development of opinions, consideration of the range of possible judicial rulings for particular issues, and development of trade-offs.

Mediation is used extensively in family disputes, particularly those involving child custody issues. During the crisis of divorce, change inevitably occurs. A gentler more cooperative atmosphere allows additional energy for constructive changes. The divorce mediation process allows the parties the opportunity to discuss what they feel is important. The parties' creation of the solution in the process uniquely responds to the needs of the parties and their problems. Solutions initiated by the couple can be more flexible than those imposed by other mechanisms.

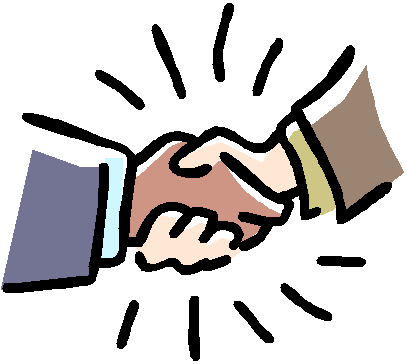
A mediated settlement agreement (MSA) is binding on the parties if the agreement provides, in a prominently displayed statement that is in boldfaced type or capital letters or underlined, that the agreement is not subject to revocation; is signed by each party to the agreement; and is signed by the party's attorney, if any, who is present at the time the agreement is signed.[[13]](#footnote-13) If the MSA 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.[[14]](#footnote-14)[[15]](#footnote-15)

INFORMAL SETTLEMENT CONFERENCE

Since September 1, 2005, the State of Texas allows informal settlement conferences for parties to a suit for divorce. The parties may agree to one or more informal settlement conferences[[16]](#footnote-16). By agreement, the settlement conferences may be conducted with or without the presence of the parties’ attorneys.

A written settlement agreement reached at a conference can be binding upon the parties if the agreement 1) provides that the agreement is not subject to revocation in a prominently displayed statement that is in boldface type, capital letters, or underlined, 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. The court is bound by the settlement agreement if the terms are just and right.

The difference between mediation and an informal settlement conference is the presence of the neutral third party, the mediator. An informal settlement conference can consist of the divorcing parties, by themselves, sitting down and negotiating to come up with an agreement.

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### COLLABORATIVE LAW

The State of Texas allows the dissolution of a marriage through collaborative law. 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.

While collaborative law is similar to mediation, one major difference exists. In collaborative law, the parties' counsel may not serve as litigation counsel except to ask the court to approve the settlement agreement. This means that if a settlement is not agreed upon by the parties after trying collaborative law, the attorneys must withdraw from the case. The parties can then hire new counsel to represent them in court or they can proceed *Pro Se* (without a lawyer) if they choose.

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.[[17]](#footnote-17)

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### REPRESENTING YOURSELF IN A DIVORCE: *PRO SE*

A divorce is a legally intensive process. Although having an attorney is advised in a divorce proceeding, you have a legal right to represent yourself. If you choose to appear in court on your own behalf without an attorney, you are considered a *Pro Se* litigant. A *Pro Se* party is required to follow the same rules as a litigant who is represented by an attorney including deadlines, filing requirements, and waiting periods.

There are numerous things that may complicate a divorce proceeding, but some more common examples are acts of domestic violence, large amounts of property involved, child custody, and contested divorce. If you choose to represent yourself, you should familiarize yourself with current versions of the Texas Rules of Civil Procedure, the Texas Civil Practice and Remedies Code, the Texas Family Code, and local rules for the county where your divorce is pending. These resources are available online at [www.capitol.state.tx.us](http://www.capitol.state.tx.us).

# LIMITED SCOPE REPRESENTATION

If you don’t want to represent yourself throughout the entire process, consider hiring an attorney to help with certain issues. Limited Scope Representation offers a resource to clients who might otherwise be unable to afford the assistance of counsel. Limitations may be placed on tasks to be completed or on subject matter to be addressed, or both. For more information regarding Limited Scope Representation, contact the Office of Dispute Resolution.

### THE UNCONTESTED DIVORCE PROCESS

An uncontested divorce occurs when you and your spouse agree on how to divide the property and debts accumulated during your marriage. If you have children, an uncontested divorce also means you both agree on issues such as custody, visitation, and child support. You can file your uncontested divorce with or without the assistance of an attorney. There are 7 basic steps in the uncontested divorce process:

1. Write your Original Petition for Divorce.
2. File your Petition with the District Clerk’s Office and pay the filing fee.
3. Give your spouse legal notice of the divorce using service of citation, waiver of citation, or service by publication/posting (only if you are unable to locate your spouse).
4. Wait the mandatory 60 days after your Petition is filed.
5. Write your Final Decree of Divorce.
6. Finalize your Divorce at the Uncontested Docket.
7. File the Final Decree in the District Clerk’s Office.

For more information or to find divorce forms online, go to [www.texaslawhelp.org](http://www.texaslawhelp.org). You may also contact the Office of Court Administration on their website at: <http://www.txcourts.gov/rules-forms/forms.aspx>.

# DISPOSITION OF PROPERTY

According to Section 3 of the Family Code, Texas operates under a community property system. This means that there are two separate types of property a party may hold during marriage: separate and community. As a result of this, one critical question during a divorce is whether certain property is community property or separate property.

### SEPARATE PROPERTY

Separate property generally consists of 1) any property a spouse owned or claimed before marriage, 2) any inheritance or gift a spouse received during marriage, and 3) any money a spouse gets as a result of a personal injury suit not related to the loss of earning capacity or income.[[18]](#footnote-18) For example, if Spouse A owned a condo before the couple got married, then when the couple divorces that condo would not be community property and still belong to Spouse A.[[19]](#footnote-19)

Also, the definition of a gift may include a gift made from one spouse to the other and would include any and all income that may arise from that gift.[[20]](#footnote-20) This could happen if Spouse A gave Spouse B the condo as a wedding present. If Spouse B rented it to college students, that income would be Spouse B’s and would not be considered community property. If the property cannot be identified as separate property, then “property possessed by either spouse during or on dissolution of marriage is presumed to be community property.”[[21]](#footnote-21)

### COMMUNITY PROPERTY

Community property, however, is very different. Community property is acquired as soon as you say “I do.” Community property generally consists of anything that is not considered separate property that is acquired by either spouse during the marriage 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.[[22]](#footnote-22)

Basically, community property is any money you make while you are married (even from separate property except gifts), any property you buy while you are married, and any money you get from lawsuits. For example, if only one spouse works, all the money that was made is considered community property and each spouse has a right to manage it, control it, and use it. Using the condo example, if Spouse A owned a condo before marriage and then rented it out after marriage all the rental income is community property, even though the condo is still personal property. Even if each spouse owns separate bank accounts, each spouse deposits separate checks into them, and the money is never mingled, all of the funds may be considered community property.

While a couple is married, each spouse has the sole management, control, and disposition of the community property that the spouse would have owned if single. So while you are married, each spouse has a right to the community property to manage it, control it, and use it. Separate property gives the owner exclusive rights of management; it is not subject to be divided at the time of divorce.[[23]](#footnote-23)

### PROPERTY DISPUTES DURING DIVORCE

Certain kinds of property are more likely to be at issue in divorces than others, for example, insurance proceeds from damage to property owned by a spouse during marriage. Property disputes can be about mineral rights, real estate, furniture, life insurance policies and retirement plans. The only exception to these rules is if the couple has entered into an agreement by power of attorney, commonly known as a pre-nuptial agreement.[[24]](#footnote-24) A valid pre-nuptial agreement will likely affect the division of property and should be taken into consideration when discussing distribution.

During a divorce, questions may arise as to how the property is to be split between the two parties. Although the court has the ability to oversee the division of the estate in a manner it deems just and right, it is the policy of the State of Texas to promote amicable settlements in a suit for divorce.[[25]](#footnote-25) As a result, Texas allows spouses to enter into a written agreement concerning the division of their property, liabilities, and maintenance.[[26]](#footnote-26) These agreements may vary from the traditional community property rules. It is important, however, that each party still know the community property rules to fully appreciate what property rights, if any, they may be forfeiting. Once the parties have come up with this agreement, the court must find that the terms of the agreement are “just and equitable”. If the court has found that the terms are “just and equitable”, the agreement is binding upon the court and the parties, and it can be set forth in full or incorporated into a final decree.[[27]](#footnote-27) If, however, the court does not find the terms satisfactory, it may ask the spouses to submit a revised agreement or may set the case for a hearing.[[28]](#footnote-28)

### RECONSTITUTED ESTATE

When a spouse has removed or concealed assets from the community estate, they have committed fraud against the estate and may face consequences when the community property is divided. After the fraud, the court must imply the value of the community property if not for the fraud. The statute defines the “reconstituted estate” as the value of the estate that would have been present if it were not for the actual or constructive fraud.

After it is determined that there has been an actual or constructive fraud, the court will determine the following: (1) the loss to the community estate as a result of the fraud and find the monetary value of the reconstituted estate, and (2) the just and right division of the value of the reconstituted estate between the spouses. The court can grant any legal or equitable relief necessary to obtain a just and right division of the property. Examples of this relief include: (1) an award of an appropriate share remaining from the community property to the innocent spouse, (2) an award of money to the wronged party and against the spouse who committed the fraud, or (3) an award of a combination of the previously mentioned relief options.[[29]](#footnote-29)

### ISSUES TO CONSIDER

* Real Property and Oil & Gas
* Public Benefits and Retirement
* Life Insurance and Estate Planning

### COMMENTS & QUESTIONS TO CONSIDER

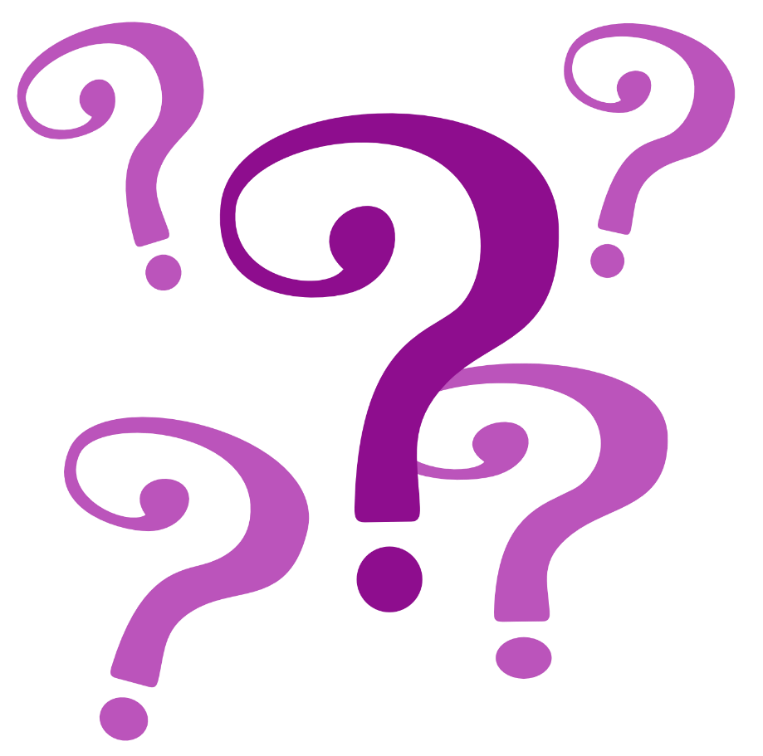
Separate and community property can quickly get confusing and intermingled so that a couple must discuss how to divide the property fairly when they get divorced. It is important for spouses to understand what type of property they have and what they are able to do with it during a divorce. In some cases, the judge may order spouses to identify what property they own together and separately, how much it is worth, and if they have disposed of it during the divorce proceeding. Knowing what you have will help you decide how to fairly divide it during a divorce.

For example, even though Spouse A owns the condo separately and the rental income may be community property, if the condo burned in a fire, the money from the insurance would be separate property just like the condo was. But what if Spouse A only owned the condo for four months before the couple got married, and community property has been paying the mortgage for ten years? Consider what happens if Spouse A buys Spouse B a $5,000 car as a birthday present. Initially the car becomes Spouse B’s separate property unless Spouse B uses community property (income) to replace the engine and transmission for $4,000 two years later. Who gets to keep the money when the car is sold for $2,000 six months later?

Generally, unmarried couples do not enjoy the same rights as married couples. Cohabitating couples may face legal difficulties if they decide to separate but do not have a written agreement concerning property. Marital property laws and other family laws related to marriage do not apply to unmarried couples, even those who are in long-term relationships. Some property may be owned jointly by unmarried couples, but it may be difficult to divide property upon separation. If cohabitants cannot come to an agreement concerning property distribution, they may face a long battle in court.

Questions to consider:

1. Can you identify separate property between you and your spouse/domestic partner?
2. Have you kept and maintained careful records in regards to mixed property?
3. Can you provide bank statements, income tax returns, copies of premarital agreements, deeds to real estate, and vehicle titles to your attorney?
4. Do you know the value of your home and other important property or assets?
5. **NOTE:** Either or both parties may be required to file a sworn inventory and appraisal of all property.

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# MAINTENANCE & HOW TO GET SPOUSAL MAINTENANCE

The Texas Family Code describes spousal maintenance (commonly known as alimony) as an award in a suit for divorce of periodic payments from the future income of one spouse for the support of the other spouse. [[30]](#footnote-30) Unless rebutted, the law presumes that spousal maintenance is not needed unless the spouse seeking spousal maintenance is diligently looking for suitable income or developing skills necessary to provide for their “minimum reasonable needs” during a period of separation and during the time the suit for dissolution of the marriage is pending. [[31]](#footnote-31)

For a spouse to obtain maintenance, the court must find that the party lacks sufficient property including separate property to support his or her minimum reasonable needs after the marriage. [[32]](#footnote-32) Also, the court must find one of the following:

1. The party from whom maintenance is requested has been convicted of or received deferred adjudication for a criminal offense against the other spouse or the spouse’s child during the marriage, and the offense would be an act of family violence under Section 71.004 of the Family Code. Also, the act must occur:
2. within two years before the date of filing for divorce; or
3. while the suit is pending; **or**
4. The spouse seeking maintenance:
5. is unable to earn sufficient income to provide for the spouse's minimum reasonable needs because of an incapacitating physical or mental disability;
6. 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
7. 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.[[33]](#footnote-33)

### FACTORS IN DETERMING MAINTENANCE

A court that determines that a spouse is eligible to receive maintenance 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 divorce;
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 practicability 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.[[34]](#footnote-34)

### DURATION OF MAINTENANCE

The length of maintenance is determined by **duration** of marriage and spousal need.[[35]](#footnote-35) A court may order maintenance which lasts for a maximum of 5 to 10 years, depending on the circumstances. The court shall limit the duration of the maintenance to the shortest reasonable period that gives the spouse seeking maintenance time to earn sufficient income to provide for his/her reasonable needs unless, however, the spouse’s ability to provide for his/her reasonable needs is substantially or totally diminished.

On its own motion or on the request of either party, the court may order the periodic review of the maintenance order. The duration of the maintenance order is subject to a motion to modify as provided for by Section 8.057.

Also, the court will terminate a maintenance obligation when it is determined that circumstances have changed after the date of the order of decree, such as the spouse seeking maintenance cohabits continually and permanently with another person with whom he/she maintains a romantic relationship after a hearing on the matter.[[36]](#footnote-36)

If the spouse providing maintenance is current with his/her maintenance payments when termination of the obligation occurs, the spouse seeking maintenance must return any amount that exceeds the amount ordered.[[37]](#footnote-37) The spouse providing maintenance may file a suit to recover the overpayment. [[38]](#footnote-38)

### AMOUNT OF MAINTENANCE

Spousal maintenance is capped at the lesser of either $5,000 or 20 percent of the paying spouse's average monthly gross income.[[39]](#footnote-39) The court will set the amount that the paying spouse is required to pay in a maintenance order to provide for the minimum reasonable needs of the spouse receiving the maintenance under the order.

### ENFORCEABILITY

An agreed order for maintenance is enforceable through the courts against the obligor.[[40]](#footnote-40) The divorcing couple may voluntarily agree for the payment of maintenance under the terms of the Texas Family Code. The court may enforce the order by contempt; however, the court cannot enforce by contempt beyond the maintenance periods in the Family Code. An obligee may bring suit against an obligor who has failed or refused to comply with the terms of the order. The court may enforce a judgment “by any means available for the enforcement of judgment for debts.”[[41]](#footnote-41)

# WHEN CHILDREN ARE INVOLVED: conservatorship

Custody issues in Texas are managed through the use of “conservatorships.” A managing conservator (MC) is the custodial parent and a possessory conservator (PC) is the visiting or non-custodial parent.

The public policy in Texas is to assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child and who provide a safe, stable, and non-violent environment for the child. This is in order to encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage.[[42]](#footnote-42) Co-parenting is encouraged because it allows children the love, care and support of both of their parents. The best interest of the child will always be the court’s main consideration in determining issues of conservatorship and possession of and access to the child.[[43]](#footnote-43)

In a suit, the court may appoint a sole managing conservator or joint managing conservators.[[44]](#footnote-44) If a managing conservator is appointed, the court may additionally appoint one or more possessory conservators.[[45]](#footnote-45) The possessory conservator is the parent who is not appointed as sole or joint managing conservator. Joint Managing Conservatorship means the sharing of the rights and duties of a parent by two parties, ordinarily the parents, even if the exclusive right to make certain decisions may be awarded to one party.[[46]](#footnote-46) The rights and duties of both the managing and possessory conservators are set by statute according to the Texas Family Code.[[47]](#footnote-47)

If the parents are or will be separated, the court will appoint at least one managing conservator.[[48]](#footnote-48)  The court may render an order appointing the parents joint managing conservators only if the appointment is in the best interest of the child. If the court finds that naming parents as joint managing conservators is in the best interest of the child, the court will then designate which conservator has the exclusive right to determine the primary physical residence of the child.[[49]](#footnote-49) However, if both parents can agree on a specific geographic area, appointing a conservator who has the right to exclusively designate primary residence is no longer a required element of the parenting plan.[[50]](#footnote-50) Joint managing conservatorship does not require the award of equal or nearly equal periods of physical possession of and access to the child to each of the joint conservators.[[51]](#footnote-51)

### MEDIATED SETTLEMENT AGREEMENTS

On the written agreement of the parties or on the court’s own motion, the court may refer a suit affecting the parent-child relationship to mediation.[[52]](#footnote-52) Parents, whether unmarried or married and divorcing, can meet with a third party neutral to make decisions. A party may at any time prior to the final mediation order file a written objection to mediation on the basis of family violence having been committed by another party against the objecting party or a child who is the subject of the suit. After an objection is filed, the suit may not be referred to mediation unless, on the request of a 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 must order appropriate measures be taken to ensure the physical and emotional safety of the party who filed the objection.[[53]](#footnote-53) Generally, a court will enter judgment on a mediated settlement agreement. However, Texas Family Code Section 153.0071(e-1) authorizes a court to decline to enter judgment on a statutorily compliant MSA if it finds that (1) a party to the agreement was a victim of family violence, (2) such circumstance impaired the party's ability to make decisions, AND (3) the agreement was not in the child's best interests.51

A party may at any time prior to the final mediation order file a written objection to the referral of a suit affecting the parent-child relationship to mediation on the basis of family violence having been committed by another party against the objecting party or a child who is the subject of the suit. After an objection is filed, the suit may not be referred to mediation unless, on the request of a 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. In other words, a court cannot refuse to enter judgment on a statutorily compliant MSA on best interest grounds unless the court also finds that the family violence elements are met.[[54]](#footnote-54)

### PARENTING PLANS

A parenting plan can be a formal legal document or an informal plan agreed by both parents. Though some conservatorships are determined primarily by the court, the parties may enter into a written parenting agreement containing provisions for conservatorship and possession of the child and for modification of the agreement, including variations from the standard possession order.[[55]](#footnote-55) This promotes the amicable settlement of disputes between the parties to a suit. Parents can change anything about a parenting plan as long as both sides agree.

The basic elements of a parenting plan include the following:

* When the kids will spend time with each parent on a normal basis.
* How parents will split important vacation and holiday times, including school breaks and birthdays.
* How parents will make changes to the parenting plan.
* Who will make day-to-day decisions, and how parents will discuss and make important decisions together.
* How parents will split costs for financial and medical support.
* How the exchange of kids will take place.
* What to do if one parent moves to a new town or state.
* How parents will resolve a future conflict to avoid going to court.

If the court finds that a parenting plan is in the child's best interest, the court will accept the agreement and incorporate it into a final order.[[56]](#footnote-56)  However, if the court finds the agreement is not in the child's best interest, the court may request the parties to revise their agreement or render its own order for the conservatorship and possession of the child.[[57]](#footnote-57) Remember that parents may make decisions that are slightly different than a legal order, but both sides must agree to any changes. Some parents find it helpful to work with a mediator or shared parenting coordinator to work out their parenting plans. Parenting coordinators and parenting facilitators are discussed later in this packet.

### RIGHTS OF PARENT AT ALL TIMES

Unless limited by a court order, a parent appointed as managing, possessory, or joint conservator has the right at all times to:

1. Receive information from the other parent concerning the health, education, and welfare of the child;
2. Confer with the other parent to the extent possible before making a decision concerning health, education, and welfare of the child;
3. Access to medical, dental, psychological, and educational records of the child;
4. Consult with a physician, dentist, or psychologist of the child;
5. Consult with school officials concerning the child's welfare and educational status, including school activities;
6. At all times parents have the right to attend school activities, including school lunches, performances, and field trips;
7. Be designated on the child's records as a person to be notified in case of an emergency;
8. Consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and
9. Manage the estate of the child to the extent the estate has been created by the parent or the parent's family.[[58]](#footnote-58)

### RIGHTS AND DUTIES DURING PERIOD OF POSSESSION

Unless limited by court order, a parent appointed as a conservator of a child has the following rights and duties while the parent has possession of the child:

1. Duty of care, control, protection, and reasonable discipline of the child;
2. Duty to support the child, including providing the child with clothing, food, shelter, and medical and dental care not involving an invasive procedure;
3. Right to consent for the child to medical and dental care not including an invasive procedure;
4. Right to consent for the child to receive medical, dental, and surgical treatment during an emergency involving immediate danger to the health and safety of the child; and
5. Right to direct the moral and religious training of the child.[[59]](#footnote-59)

### DETERMINING CONSERVATORSHIP

Conservatorship is determined on the basis of what is in the best interest of the child. Relevant factors might include any of the following:

* Child's relationship with the parents, siblings, and other people who significantly affect the child;
* Parents’ wishes;
* Child's wishes, depending on the age and maturity of that child;
* Mental and physical health of all those involved;
* Ability and willingness of each parent to care for the child;
* Respect each parent shows for the parental rights of the other parent;
* Adherence to a time-sharing schedule;
* Suitability of parenting plans submitted by each party;
* Geographic distance between the parties; and
* Willingness and ability of each parent to cooperate.

To determine which party to appoint as sole managing conservator, whether to appoint joint managing conservators, and which specific terms and conditions will apply regarding possession of an access to the child, the court will consider qualifications of the parties without regard to their marital status or to the sex of the party or the child.[[60]](#footnote-60)

### CONDITIONS OF BECOMING JOINT MANAGING CONSERVATORS

The judicial system presumes that appointing a child’s parents as joint managing conservators is in the best interest of the child. If it can be shown that this arrangement is not in the child’s best interest, then the presumption no longer exists. For example, a history of family violence involving the child’s parents could remove the presumption.[[61]](#footnote-61)

For those who choose joint managing conservatorship, some requirements, set out in the parenting plan, must be met. The parenting plan must: (1) designate which joint conservator has the exclusive right to designate the primary residence of the child (2) set geographical limits (or state that no limits exist) to where the conservator who maintains the child’s primary residence may live (3) specify the rights and duties of each parent regarding the child's physical care, support, and education, and (4) include provisions to minimize disruption of the child's education, daily routine, and association with friends.[[62]](#footnote-62) Additionally, the agreed parenting plan may contain an alternative dispute resolution procedure that both parties agree to use before either may initiate an action requesting enforcement or attempting to change the terms of the parenting plan through litigation.[[63]](#footnote-63) A recent addition specifies that, if the parenting plan provides that the child’s primary residence shall be within a specified geographic area, the designation of the conservator who has the exclusive right to designate the primary residence of the child is no longer a required prerequisite.[[64]](#footnote-64)

A court will generally order a joint managing conservatorship if the court feels that such an arrangement is in the best interest of the child. Before doing this, the court considers, among other factors, if the child will benefit from this arrangement, physically, psychologically, and emotionally; the ability of each conservator to give priority to the welfare of the child and reach shared decisions in the child’s best interest; and the past involvement of the conservators in all aspects of child rearing.[[65]](#footnote-65) In this case, the court will dictate the required terms of the parenting plan mentioned above.

In both court ordered and agreed-upon joint managing conservatorships, the arrangement does not require equal or nearly equal periods of physical possession of and access to the child to each of the joint conservators.[[66]](#footnote-66)  Also, the appointment of joint managing conservators does not impair or limit the ability of a court to order child support payments from one conservator to the other.[[67]](#footnote-67)

### RIGHTS AND DUTIES OF PARENT APPOINTED

### SOLE MANAGING CONSERVATOR

Unless limited by court order, a parent appointed as sole managing conservator of a child has the following exclusive rights:

1. To designate the primary residence of the child;
2. To consent to medical, dental, and surgical treatment involving invasive procedures;
3. To consent to psychiatric and psychological treatment;
4. To receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child;
5. To represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
6. To consent to marriage and to enlistment in the armed forces of the United States;
7. To apply for a passport for the child, renew the child’s passport, and maintain possession of the child’s passport.
8. To make decisions concerning the child's education;
9. To the services and earning of the child; and
10. Except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government.[[68]](#footnote-68)

### POSSESSION OF CHILD UNDER THREE YEARS OF AGE

The court will render an order appropriate under the circumstances for possession of a child who is less than 3 years of age.[[69]](#footnote-69) Additionally, the court will render a prospective order to take effect on the child's 3rd birthday, which presumptively will be the standard possession order.[[70]](#footnote-70)  In determining possession under an order, the court will consider all relevant factors including the following:

1. The caregiving provided to the child before and during the current suit;
2. The effect on the child that may result from separation from either party;
3. The availability of the parties as caregivers and the willingness of the parties to personally care for the child;
4. The physical, medical, behavioral, and developmental needs of the child;
5. The physical, medical, emotional, economic, and social conditions of the parties;
6. The impact and influence of individuals, other than the parties, who will be present during periods of possession;
7. The presence of siblings during periods of possession;
8. The child's need to develop healthy attachments to both parents;
9. The child's need for continuity of routine;
10. The location and proximity of the residences of the parties;
11. The need for a temporary possession schedule that incrementally shifts to the schedule provided in the prospective order under Subsection (d) based on:
    1. the age of the child; or
    2. minimal or inconsistent contact with the child by a party;
12. The ability of the parties to share in the responsibilities, rights, and duties of parenting; and
13. Any other evidence of the best interest of the child.[[71]](#footnote-71)

The court shall make findings in support of the order when a party makes a request in writing no later than 10 days after the date of the hearing or makes an oral request during the hearing. The court will make the findings no later than 15 days from when the request was made.[[72]](#footnote-72)

**right of a child to designate residence**

In a nonjury trial or at a hearing, on the application of a party, the amicus attorney, or the attorney, or the attorney ad litem for the child, the court shall interview in chambers a child 12 years of age or older and may interview in chambers a child under 12 years of age to determine the child’s wishes as to conservatorship or as to the person who shall have the exclusive right to determine the child’s primary residence.

Additionally, the court may also interview a child in chambers on the court’s own motion for a purpose specified by this subsection.[[73]](#footnote-73)

In a nonjury trial or at a hearing, on the application of a party, the amicus attorney, or the attorney ad litem for the child or on the court’s own motion, the court may interview the child in chambers to determine the child’s wishes as to possession, access, or any other issue in the suit affecting the parent-child relationship. Subsequently, interviewing a child does not diminish the discretion of the court in determining the best interest of the child.

However, in a jury trial, the court may not interview the child in chambers regarding an issue on which a party is entitled to a jury verdict. Although, in any trial or hearing, the court may permit the attorney for a party, the amicus attorney, the guardian ad litem for the child, or the attorney ad litem for the child to be present at the interview.[[74]](#footnote-74)

### MODIFICATION OF CONSERVATORSHIP

While a suit for modification is pending, the court may not render a temporary order that has the effect of changing the designation of the person who has the exclusive right to designate the primary residence of the child under the final order unless the temporary order is in the best interest of the child and:

1. The order is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development;
2. The person designated in the final order has voluntarily relinquished the primary care and possession of the child for more than six months; or
3. The child is 12 years of age or older and has expressed to the court in chambers the name of the person who is the child's preference to have the exclusive right to designate the primary residence of the child.

This, however, does not apply to a conservator who has the exclusive right to designate the primary residence of the child and who has temporarily relinquished the primary care and possession of the child to another person during the conservator's military deployment, military mobilization, or temporary military duty.[[75]](#footnote-75) Additionally, the death of a conservator justifies a temporary order and modification.[[76]](#footnote-76)

### MUTUAL AGREEMENT

The court may render an order for periods of possession of a child that varies from the standard possession order based on the agreement of the parties.[[77]](#footnote-77)

The court shall specify in a standard possession order that the parties may have possession of the child at times mutually agreed to in advance by the parties and, in the absence of mutual agreement, shall have possession of the child under the specified terms set out in the standard possession order.[[78]](#footnote-78)

### GRANDPARENTS AND OTHER NON-PARENT RELATIVES

If both parents of the child are no longer living, the court may consider placing a grandparent, uncle, or aunt with authority over the child’s affairs.[[79]](#footnote-79) Additionally, a natural or adoptive grandparent may request possession of or access to a grandchild by filing an original suit or a suit for modification whether or not the placing of authority to a relative is an issue in the suit.[[80]](#footnote-80) The court may order reasonable possession of or access to a grandchild by a grandparent only if:

* 1. At the time of the request, at least one biological or adoptive parent of the child has not had his or her parental rights terminated;
  2. The grandparent requesting possession has established that a parent acts in the best interest of his or her child by proving that denial of possession of or access to the child will, more likely than not, impair the child’s physical or emotional well-being; and
  3. The grandparent is a parent of one of the child’s parents, who has been incarcerated during the three-month period before the filing of the grandparent’s request, has been found incompetent by the court, is dead, or does not have actual or court-ordered possession of or access to the child.[[81]](#footnote-81)

A natural or adoptive grandparent may not request possession of or access to a grandchild if:

1. Each of the natural parents of the grandchild had died, had his or her parental rights terminated, or has waived interest in the child to an authorized agency, or a person other than the child’s stepparent as one with authority over the child’s affairs, and

2. The grandchild has been adopted, or is the subject of a pending suit for adoption, by a person other than the child’s stepparent.[[82]](#footnote-82)

A parent or both parents of a child may enter into an authorization agreement with a select relative of the child to authorize the relative to perform the following acts in regard to the child:[[83]](#footnote-83)

1. To authorize medical, dental, psychological, or surgical treatment and immunization of the child, including executing any consents or authorizations for the release of information as required by law relating to the treatment or immunization;
2. To obtain and maintain health insurance coverage for the child and automobile insurance coverage for the child, if appropriate;
3. To enroll the child in a day-care program or preschool or in a public or private elementary or secondary school;
4. To authorize the child to participate in age-appropriate extracurricular, civic, social, or recreational activities, including athletic activities;
5. To authorize the child to obtain a learner’s permit, driver’s license, or state-issued identification card;
6. To authorize employment of the child; and
7. To apply for and receive public benefits on behalf of the child.

### ANNUAL REPORT BY NONPARENT MANAGING CONSERVATOR

A nonparent appointed as a managing conservator of a child shall each 12 months after the appointment file with the court a report of facts concerning the child’s welfare, including the child’s whereabouts and physical condition.[[84]](#footnote-84)

### PARENTS WHO RESIDE 50 MILES OR LESS APART

If the possessory conservator (PC) resides 50 miles or less from the primary residence of the child, she or he has the right to possession of the child as follows:

1. On weekends throughout the year beginning at 6 p.m. on the 1st, 3rd, and 5th Friday of each month and ending at 6 p.m. on the following Sunday; and
2. On Thursdays of each week during the regular school term beginning at 6 p.m. and ending at 8 p.m., unless the court finds that visitation under this subdivision is not in the best interest of the child.
3. The following provisions govern possession of the child for vacations and certain specific holidays and supersede conflicting weekend or Thursday periods of possession. The possessory conservator and managing conservator shall have rights of possession of the child as follows:
   1. Spring Break: 6 p.m. last school day until 6 p.m. day before school begins; even years with PC and odd years with MC.
   2. Mother's Day: 6 p.m. Friday - 6 p.m. Sunday with Mother.
   3. Father's Day; 6 p.m. Friday - 6 p.m. Sunday with Father.
   4. Child's Birthday: 6 p.m. - 8 p.m. with parent not in possession, provided that parent not in possession picks up the child and returns the child to same place
   5. Thanksgiving: Day dismissed from school 6 p.m. - Sunday at 6 p.m.; *even years* with MC and *odd years* with PC.
   6. Christmas: *Even years.* Day school out at 6 p.m. - Dec. 28th at noon with PC; Dec. 28th at noon - 6 p.m. day before school begins with MC.

*Odd years:* Day school out at 6 p.m. – Dec. 28th at noon with MC; and Dec. 28th at noon - 6 p.m. day before school begins with PC.

* 1. Summer Schedule: Options are available for summer visitation. Refer to Texas Family Code for detailed alternatives.[[85]](#footnote-85)

1. NOTE: Beginning September 1st, 2021, the court shall automatically alter the standard possession order to provide that the conservator shall have rights of possession of the child as if the conservator had made the elections for alternative beginning and ending possession times under Section 153.317.[[86]](#footnote-86) However, the possessory conservator may ***opt out*** of one or more of the alternative beginning and ending times specified under Section 153.317(a).[[87]](#footnote-87) Increasing parenting time means increasing responsibility; the possessory conservator is responsible for understanding the law and opting out of their rights to possession so the needs of the child are met.
   1. When the possessory conservator lives more than 50 but not more than 100 miles from the child’s primary residence, ***the law will not change***: that parent may still ***opt into*** the extended standard possession order (ESPO), but it will not be automatic.
   2. This change applies to custody cases ***pending*** on September 1, 2021 and those filed on or after that date.

### DIFFERENCES FOR PARENTS WHO RESIDE OVER 100 MILES APART

* Follow either the weekend schedule (above) or one weekend a month schedule selected by PC notifying MC 14 days in advance of a designated monthly plan.
* Spring vacation will always be spent with PC instead of alternating with MC.
* Follow the same holiday schedule for Christmas, Thanksgiving, Child's birthday, Mother's Day, and Father’s Day.
* Summer vacation period (June - August):
  1. *Increase extended possession time with PC:*
     1. With written notice by April 1, PC shall have possession of the child for 42 days to begin no earlier than the day after school dismisses for summer and end no later than 7 days before school resumes.
     2. Without written notice by April 1, PC shall have possession of the child for 42 consecutive days from June 15 at 6 p.m. to July 27 at 6 p.m.
  2. MC can select 21 days other than Father's Day and PC's extended summer period to have child in no more than 2 periods with a minimum 7 days at a time. Written notice must be provided by April 15th of each year.[[88]](#footnote-88)

**GENERAL GUIDELINES FOR VISITATION**

1. PC picks up the child at the home of MC and either returns child to MC's home or MC picks up child at PC's home.
2. All personal belongings that the child arrives with must be returned with the child.
3. Parent must give notice to the other parent if unable to take possession of the child according to the plan.
4. Deadline for written notices means when received or postmarked.
5. If a child is unable to go to school for any reason, the parent in possession should notify the school and the other parent that the child is not in school.
6. Either parent responsible for transportationmay designate a competent adult to transport the child.
7. Restricting the method of transportation between parents can be ordered by the judge only after showing justification.
8. Weekend possession times can be extended by court order from the time school is out on Friday until school begins on Monday.[[89]](#footnote-89)
9. The court must state the reason for all deviations from the standard order made by a court ruling.
10. Exceptions to the standard order:
    1. Temporary orders
    2. Families with conflicting work schedules (make as close as possible)
    3. Agreements made by parents.
    4. Supervised visitation
11. Having a prior order which is substantially different from the standard order can justify a modification.[[90]](#footnote-90)

### CHILDREN’S BILL OF RIGHTS

Divorce impacts the entire family, and children experience stress and pain along with their parents. Divorcing parents have a responsibility to limit the amount of pain their children experience due to the dissolution of the family. Children and their feelings cannot be forgotten. Attorney Rob V. Robertson has composed a Bill of Rights for Children that details the minimum rights that children deserve during the difficulty of divorce. You can find this Bill of Rights on the Travis County Domestic Relations website at [**https://www.traviscountytx.gov/dro/children-rights**](https://www.traviscountytx.gov/dro/children-rights). You may want to consider adopting this Bill of Rights or something similar if you are a parent going through a divorce.

### QUESTIONS/COMMENTS TO CONSIDER

* Can you and your spouse agree to a plan that includes provisions to minimize disruption of the child's schooling, daily routine, and association with friends?
* If you are determined to maintain joint conservatorship, can you communicate with your spouse and make joint decisions regarding the child?
* Once a managing conservator is appointed, rights otherwise established relating to inheritance are not affected.
* The court may not deny possession of or access to a child unless it finds that parental possession or access would endanger physical health or significantly impair the emotional development of the child.
* The court shall consider qualifications of the parties without regard to their marital status or to the sex of the party or the child in determining conservatorship and possession of and access to the child.[[91]](#footnote-91)
* MCBD05706_0000[1]Can a terminated parent’s rights be restored? APPOINTMENT OF A PARENTING COORDINATOR

In a suit affecting the parent-child relationship (other than a proceeding in a case relating to the determination of parentage or concerning a child-support or medical-support obligation), the court may, on its own motion or on a motion or agreement of the parties, appoint a parenting coordinator or assign a Domestic Relations Office to appoint an employee or other person as a parenting coordinator. If the parties request a parenting coordinator on their own, the court will then decide if the appointment of a parenting coordinator is necessary. If one of the parties objects to the appointment of a parenting coordinator, the appointment will stand only if the court decides that the case is likely to be a “high conflict case” or if the court believes that the appointment of the parenting coordinator is in the best interest of any minor child involved in the dispute, and the person appointed meets the minimum qualifications required, unless those requirements have been waived by the court with the agreement of the parties.[[92]](#footnote-92)

The parenting coordinator may not modify any order, judgment, or decree. The court shall specify the duties of a parenting coordinator in the appointment order and are limited to matters that will help the parties to identify disputed issues, reduce misunderstandings, list priorities, find ways to solve problems and facilitate cooperation, understand parenting plans, reach agreements about parenting issues to be included in a parenting plan, help comply with the terms of any court orders, implementing parenting plans, obtaining training regarding problem solving, conflict management, and parenting skills, and settling disputes regarding parenting issues and reaching a resolution regarding those disputes.

The parenting coordinator must keep all information confidential and cannot be required to disclose any information or be required to testify in court.[[93]](#footnote-93) This helps the parties feel comfortable that anything they discuss will not be used against them if they are unable to come to an agreement during consultations with a parenting coordinator.

The court may remove a parenting coordinator at any time at the court’s discretion. The parenting coordinator shall be removed on the request and agreement of all parties, on the request of the parenting coordinator, on the motion of a party, if good cause is shown, or if the parenting coordinator ceases to satisfy the minimum qualifications.[[94]](#footnote-94)

The court may not appoint a parenting coordinator unless the court finds that the parties have the ability to pay the fees charged by the parenting coordinator. Public funds may not be used to pay a parenting coordinator, although a court can appoint the Domestic Relations Office, or a comparable county agency to act as a parenting coordinator if qualified personnel are available in your county.[[95]](#footnote-95)

# APPOINTMENT OF A PARENTING FACILITATOR

In a suit affecting the parent-child relationship (other than a proceeding in a case relating to the determination of parentage or concerning a child-support or medical-support obligation), the court may, on its own motion or on a motion or agreement of the parties, appoint a parenting facilitator or assign a Domestic Relations Office to appoint an employee or other person as a parenting facilitator. However, the court may not appoint a parenting facilitator unless, after notice and hearing, the court makes a specific finding that: the case is a high-conflict case or there is good cause shown for the appointment of a parenting facilitator and the appointment is in the best interest of any minor child in the suit. The court must also find that the person appointed has the minimum qualifications required by Family Code §153.6101, and the parenting facilitator shall comply with the standard of care applicable to the professional license held by the person in performing the parenting facilitator's duties.

A parenting facilitator is an impartial third party whose duties are limited to those matters described with regard to a parenting coordinator, except that the parenting facilitator may also monitor compliance with court orders and make recommendations to the parties and attorneys to implement or clarify provisions of an existing court order, as long as the recommendations are consistent with the substantive intent of the existing order and are in the best interest of the child(ren).[[96]](#footnote-96)

It is important to note that a parenting facilitator, unlike a parenting coordinator, resolves matters through nonconfidential procedures. Any communication made by a party in a parenting facilitation is subject to disclosure and can be offered in any judicial or administrative proceeding so long as it is otherwise admissible under the rules of evidence.[[97]](#footnote-97)

The appointment of a parenting facilitator does not divest the court of the exclusive jurisdiction to determine issues of conservatorship, support, and possession of and access to the child. Additionally, the parenting facilitator may not modify any order, judgment, or decree. Meetings with the parenting facilitator may be informal and are not required to follow specific procedures unless otherwise provided by the Family Code.[[98]](#footnote-98)

A party may at any time file an objection to the appointment of a parenting facilitator on the basis of family violence having been committed by another party against the objecting party or a child who is the subject of the suit. After an objection is filed, a hearing is held. If the court finds that the evidence does not support the objection and a parenting facilitator is appointed, the court shall order appropriate measures be taken to ensure the physical and emotional safety of the party who filed the objection. [[99]](#footnote-99)

# CHILD SUPPORT

Each parent has the duty to support a child 1) until either the child’s 18th birthday or graduation from high school (whichever is later); 2) until the child is emancipated through marriage, through removal of the disabilities of minority by court order, or by other operation of law; 3) until the child’s death; or 4) if the child is disabled under Chapter 154 of the Texas Family Code, for as long as the disability continues.[[100]](#footnote-100) Child support guidelines assist the courts in determining what constitutes a fair and reasonable amount of child support.[[101]](#footnote-101) The guidelines are meant to apply to paying parents who have monthly net resources not greater than the maximum amount that are applicable to the guidelines, and will be adjusted for inflation every 6 years.[[102]](#footnote-102) A court considers various grounds for modification of child support. For example, incarceration of a child support obligor that exceeds 180 days would be a material and substantial change of circumstances.[[103]](#footnote-103)

If the obligor's net resources are equal to or exceed $1,000 per month, the court will presumptively apply the following schedule in rendering the child support order:

### CHILD SUPPORT GUIDELINES BASED ON THE MONTHLY NET RESOURCES OF THE OBLIGOR

1 child 20% of Obligor's Net Resources

2 children 25% of Obligor's Net Resources

3 children 30% of Obligor's Net Resources

4 children 35% of Obligor's Net Resources

5 children 40% of Obligor’s Net Resources

6+ children Not less than the amount for 5 children

If the obligor's net resources are less than $1,000 per month, the court will presumptively apply the following schedule in rendering the child support order:

### LOW-INCOME CHILD SUPPORT GUIDELINES BASED ON THE MONTHLY NET RESOURCES OF THE OBLIGOR

1 child 15% of Obligor's Net Resources

2 children 20% of Obligor's Net Resources

3 children 25% of Obligor's Net Resources

4 children 30% of Obligor's Net Resources

5 children 35% of Obligor’s Net Resources

6+ children Not less than the amount for 5 children

Without further reference to the percentage recommended by these guidelines, the court may order additional amounts of child support as appropriate, depending on the income of the parties and the proven needs of the child.[[104]](#footnote-104)

There are also guidelines for obligors with children in more than one household.[[105]](#footnote-105) When this occurs, the court may also use the Multiple Family Adjusted Guidelines under Texas Family Code § 154.129:

### MULTIPLE FAMILY ADJUSTED GUIDELINES

(% of Net Resources)

**Number of Children Before the Court**

1 2 3 4 5 6 7

Number 0 20.00 25.00 30.00 35.00 40.00 40.00 40.00

of other 1 17.50 22.50 27.38 32.20 37.33 37.71 38.00

children 2 16.00 20.63 25.20 30.33 35.43 36.00 36.44

for whom 3 14.75 19.00 24.00 29.00 34.00 34.67 35.20

the obligor 4 13.60 18.33 23.14 28.00 32.89 33.60 34.18

has a duty 5 13.33 17.86 22.50 27.22 32.00 32.73 33.33

of support 6 13.14 17.50 22.00 26.60 31.27 32.00 32.62

7 13.00 17.22 21.60 26.09 30.67 31.38 32.00

If the obligor's net resources are less than $1,000 per month, the court may determine the child support amount for the children before the court by applying the percentages in the table below to the obligor’s net resources:

### LOW-INCOME MULTIPLE FAMILY ADJUSTED GUIDELINES

(% of Net Resources)

**Number of Children Before the Court**

1 2 3 4 5 6 7

Number 0 15.00 20.00 25.00 30.00 35.00 35.00 35.00

of other 1 13.50 18.33 23.13 27.90 32.96 33.25 33.47

children 2 12.50 17.00 21.50 26.50 31.50 31.94 32.28

for whom 3 11.63 15.80 20.63 25.50 30.41 30.92 31.33

the obligor 4 10.80 15.33 20.00 24.75 29.56 30.10 30.55

has a duty 5 10.63 15.00 19.53 24.17 28.88 29.43 29.90

of support 6 10.50 14.75 19.17 23.70 28.32 28.88 29.35

7 10.41 14.56 18.88 23.32 27.85 28.40 28.88

Remember that providing support and providing visitation are separate issues. *A mutual agreement to alter the visitation schedule does not change the child support obligation without a court order.*

### NET RESOURCES

For the purpose of determining child support liability, **Net Resources** are defined as:

* 100% of all wages and salary income and other compensation for personal services (including commission, overtime pay, tips, and bonuses);
* Interest, dividends, royalty income;
* Self-employment income;
* Net rental income (defined as rent after deducting operating expenses and mortgage payments, but not including non-cash items such as depreciation); and
* All other income actually being received, including severance pay, retirement benefits, pensions, trust income, annuities, capital gains, social security benefits other than supplemental security income, unemployment benefits, disability and workers' compensation benefits, interest income from notes regardless of the source, gifts and prizes, spousal maintenance, and alimony.
* Resources do not include return of principal or capital, accounts receivable, or benefits paid in accordance with federal public assistance programs, benefits paid in accordance with Temporary Assistance for Needy Families program, or payments for foster care of a child.[[106]](#footnote-106)

There are some **mandatory deductions** to determine net resources:

* Social Security Taxes;
* Federal Income Tax based on the tax rate for a single person claiming one personal exemption and the standard education;
* State Income Tax;
* Union Dues; and
* Expenses for cost of Health Insurance or cash medical support for Obligor’s Child.[[107]](#footnote-107)

Please be aware that net resources are not the same as net income. While net income may be reduced by payments into a retirement account, uniform costs, business expenses, or education expenses, net resources include all of these costs.

### CALCULATING CHILD SUPPORT PAYMENTS

When calculating child support payments, take the obligor’s net resources (not net income or “take home” pay) and apply the applicable percentage based on the number of children using either the child support guidelines or the multiple family guidelines.

### ADDITIONAL FACTORS FOR THE COURT TO CONSIDER

The court may order child support payments in an amount other than that established by the guidelines if evidence presented rebuts the presumption that application of the guidelines is in the best interest of the child and justifies variance from the guidelines. In determining whether application of the guidelines would be unjust or inappropriate under the circumstances, the court will consider evidence of all relevant factors, including the following:

1. The age and needs of the child;
2. The ability of the parents to contribute to the support of the child;
3. Any financial resources available for the support of the child;
4. The amount of time of possession of and access to a child;
5. The amount of the paying parent’s net resources,
   1. including the earning potential if his or her actual income is significantly less than what he or she could earn because the he or she is intentionally unemployed or underemployed and
   2. including an increase or decrease in the income of the obligee or income that may be attributed to the property and assets of the obligee;
6. Child care expenses incurred by either party in order to maintain gainful employment;
7. Whether either party has the managing conservatorship or actual physical custody of another child;
8. the amount of alimony or spousal maintenance actually and currently being paid or received by a party;
9. The expenses for a child for education beyond secondary school;
10. Whether the obligor or obligee has an automobile, housing, or other benefits furnished by his or her employer, another person, or a business entity
11. The amount of other deductions from the wage or salary income and from other compensation for personal services of the parties;
12. Provision for health care insurance and payment of uninsured medical expenses;
13. Special or extraordinary educational, health care or other expenses of the parties or of the child;
14. The cost of travel in order to exercise possession of and access to a child;
15. Positive or negative cash flow from any real and personal property and assets, including a business and investments;
16. Debts or debt service assumed by either party; and
17. Any other reason consistent with the best interest of the child, taking into consideration the circumstances of the parents.

### MEDICAL AND DENTAL SUPPORT

The court must also render an order for medical and dental support.[[108]](#footnote-108) The amount an obligor is ordered to pay for a child’s medical and dental support—including the costs of health insurance or cash medical support and dental insurance —is a child-support obligation that is in addition to the amount the obligor is required to pay for child support under the guidelines.[[109]](#footnote-109) As a child-support obligation, medical and dental support can be enforced by any means available for the enforcement of child support, including wage withholding under Family Code Chapter 158.[[110]](#footnote-110)

If a child receives medical and/or dental assistance under the state Medicaid program or another public benefit such as Temporary Assistance for Needy Families (TANF), the Office of the Attorney General may establish cash medical support orders.[[111]](#footnote-111) The Attorney General will maintain an interest in cash medical support even in cases where child support arrears are waived. Therefore, an obligor must remain current on cash medical support payments.

### MAKING CHILD SUPPORT PAYMENTS

If you are employed, your employer will take child support directly out of your paycheck and send it to the State Disbursement Unit in San Antonio. This is the simplest and fastest way to pay child support. You may also make your own payments by check or money order through the State Disbursement Unit.

State Disbursement Unit (SDU)

PO Box 659791

San Antonio, TX 78265-9671

For online payments, visit the child support section of [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) and click “Make a child support payment.” The OAG keeps track of the support you’ve paid. View your payment history on the OAG website or call (800) 252-8014 to request a copy of your statement.

If court ordered, a special needs trust may receive support payments directly for the benefit of an adult child with a disability rather than paying through the state disbursement unit.[[112]](#footnote-112)

If you fall behind on your child support payments, you should contact the Office of the Attorney General to work out a plan for repayment. The OAG is required by law to develop a program to publicly identify certain parents who fail to make child support payments and are delinquent in excess of $5,000. Child support evaders may face jail time.

# ADDITIONAL RESOURCES

Office of Dispute Resolution, Lubbock: [www.co.lubbock.tx.us](https://www.co.lubbock.tx.us/department/index.php?structureid=16)

Travis County Domestic Relations: [www.co.travis.tx.us/dro](http://www.co.travis.tx.us/dro)

Texas Young Lawyers Association: [www.tyla.org](http://www.tyla.org)

Texas Bar Association [www.texasbar.com](http://www.texasbar.com)

Texas Legislature: [https://capitol.texas.gov](https://capitol.texas.gov/)

Office of Court Administration: [www.txcourts.gov](http://www.txcourts.gov/)

Self-help Legal Resources: [www.texaslawhelp.org](http://www.texaslawhelp.org)

Texas Access and Visitation: [www.txaccess.org](http://www.txaccess.org)

Texas Association of Mediators: [www.txmediator.org](http://www.txmediator.org/)

Association of Family and Conciliation Courts: [www.texasafcc.org](http://www.texasafcc.org)

If you do not have internet access, you can go to the county law library to access additional information.

To report child abuse or neglect:

Texas Department of Family Protective Services – 800-252-5400

Texas Information and Referral Network:

Dial 2-1-1 for information on a variety of support services throughout Texas.

Co-Parenting Apps allow divorced parents to communicate effectively about schedules and share information about the child(ren).

Some Co-Parenting apps that are available for free or low-cost are:

* AppClose – Free
* Cozi – Free but upgrades are available
* Talking Parents – Free online version
* The Family Core – $1.99 per month
* Reformatted

1. Divorce for Dummies [↑](#footnote-ref-1)
2. Bohaima, Paul. “The Six Stations of Divorce” From: Divorce and After (1970) [↑](#footnote-ref-2)
3. Texas Family Code § 6.301 [↑](#footnote-ref-3)
4. Texas Family Code § 6.702 [↑](#footnote-ref-4)
5. Texas Family Code § 6.703 [↑](#footnote-ref-5)
6. Texas Civil Practice and Remedies Code § 154.002 [↑](#footnote-ref-6)
7. Texas Family Code § 153.0071 [↑](#footnote-ref-7)
8. Principles involving same-sex marriage and parenting are not well established in Texas, so these issues should be discussed with your attorney [↑](#footnote-ref-8)
9. Texas Family Code § 2.401 [↑](#footnote-ref-9)
10. Survey conducted by the Office of Dispute Resolution of Lubbock County, 19-20 [↑](#footnote-ref-10)
11. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4012696/> [↑](#footnote-ref-11)
12. Handbook of Alternative Dispute Resolution, 3rd Edition, by the State Bar of Texas Standing Committee on Alternative Methods of Dispute Resolution [↑](#footnote-ref-12)
13. Texas Family Code § 6.602 [↑](#footnote-ref-13)
14. See page 24 [↑](#footnote-ref-14)
15. Texas Family Code § 6.602(c) [↑](#footnote-ref-15)
16. Texas Family Code § 6.604 [↑](#footnote-ref-16)
17. Texas Family Code § 15.105 [↑](#footnote-ref-17)
18. Texas Family Code § 3.001 [↑](#footnote-ref-18)
19. While the simple examples above are intended to help you understand community property in Texas, they do not replace the advice of an attorney especially in complicated matters or with large amounts of property. [↑](#footnote-ref-19)
20. Texas Family Code § 3.005 [↑](#footnote-ref-20)
21. Texas Family Code § 3.003(a) [↑](#footnote-ref-21)
22. Texas Family Code § 3.102(a) [↑](#footnote-ref-22)
23. Texas Family Code § 3.002 (*see comment*) [↑](#footnote-ref-23)
24. Texas Family Code §3.102(b)-(c) [↑](#footnote-ref-24)
25. Texas Family Code §7.001 [↑](#footnote-ref-25)
26. Texas Family Code §7.006 (a) [↑](#footnote-ref-26)
27. Texas Family Code §7.006(b) [↑](#footnote-ref-27)
28. Texas Family Code §7.006(c) [↑](#footnote-ref-28)
29. Texas Family Code §7.009 [↑](#footnote-ref-29)
30. Texas Family Code § 8.001(1) [↑](#footnote-ref-30)
31. Texas Family Code § 8.053(a) [↑](#footnote-ref-31)
32. Texas Family Code § 8.051 [↑](#footnote-ref-32)
33. *Id.* [↑](#footnote-ref-33)
34. Texas Family Code § 8.052 [↑](#footnote-ref-34)
35. Texas Family Code § 8.054 [↑](#footnote-ref-35)
36. Texas Family Code § 8.057(c) [↑](#footnote-ref-36)
37. Texas Family Code § 8.0591(a) [↑](#footnote-ref-37)
38. Texas Family Code § 8.0591(b) [↑](#footnote-ref-38)
39. Texas Family Code § 8.055 [↑](#footnote-ref-39)
40. Texas Family Code §8.059(a) [↑](#footnote-ref-40)
41. Texas Family Code at § 8.059(b) [↑](#footnote-ref-41)
42. Texas Family Code § 153.001 [↑](#footnote-ref-42)
43. Texas Family Code § 153.002 [↑](#footnote-ref-43)
44. Texas Family Code § 153.005 [↑](#footnote-ref-44)
45. Texas Family Code § 153.006 [↑](#footnote-ref-45)
46. Texas Family Code § 153.005 [↑](#footnote-ref-46)
47. Texas Family Code § 153.132 [↑](#footnote-ref-47)
48. Texas Family Code § 153.005 [↑](#footnote-ref-48)
49. Texas Family Code § 153.134 [↑](#footnote-ref-49)
50. Texas Family Code § 153.133(c) [↑](#footnote-ref-50)
51. Texas Family Code § 153.135 [↑](#footnote-ref-51)
52. Texas Family Code § 153.0071(d) [↑](#footnote-ref-52)
53. Texas Family Code § 153.0071(e-1) [↑](#footnote-ref-53)
54. In re Lee, 411 S.W.3d 445 (Tex. 2013) [↑](#footnote-ref-54)
55. Texas Family Code § 153.007(a) [↑](#footnote-ref-55)
56. Texas Family Code § 153.007(b) [↑](#footnote-ref-56)
57. Texas Family Code § 153.007(d) [↑](#footnote-ref-57)
58. Texas Family Code § 153.073 [↑](#footnote-ref-58)
59. Texas Family Code § 153.074 [↑](#footnote-ref-59)
60. Texas Family Code § 153.003 [↑](#footnote-ref-60)
61. Texas Family Code § 153.131 [↑](#footnote-ref-61)
62. Texas Family Code § 153.133 [↑](#footnote-ref-62)
63. Texas Family Code § 153.133 [↑](#footnote-ref-63)
64. Texas Family Code § 153.133(c) [↑](#footnote-ref-64)
65. Texas Family Code § 153.134 [↑](#footnote-ref-65)
66. Texas Family Code § 153.135 [↑](#footnote-ref-66)
67. Texas Family Code § 153.138 [↑](#footnote-ref-67)
68. Texas Family Code § 153.132 [↑](#footnote-ref-68)
69. Texas Family Code § 153.254(a) [↑](#footnote-ref-69)
70. Texas Family Code § 153.254(b) [↑](#footnote-ref-70)
71. Texas Family Code § 153.254 (a) [↑](#footnote-ref-71)
72. Texas Family Code § 153.254(b) [↑](#footnote-ref-72)
73. Texas Family Code § 153.009 [↑](#footnote-ref-73)
74. Texas Family Code § 153.009 [↑](#footnote-ref-74)
75. Texas Family Code § 156.006 [↑](#footnote-ref-75)
76. Texas Family Code § 156.106 [↑](#footnote-ref-76)
77. Texas Family Code § 153.255 [↑](#footnote-ref-77)
78. Texas Family Code § 153.311 [↑](#footnote-ref-78)
79. Texas Family Code § 153.432 [↑](#footnote-ref-79)
80. Texas Family Code § 153.432 [↑](#footnote-ref-80)
81. Texas Family Code § 153.433 [↑](#footnote-ref-81)
82. Texas Family Code § 153.434 [↑](#footnote-ref-82)
83. Texas Family Code § 34.002 [↑](#footnote-ref-83)
84. Texas Family Code § 153.375 [↑](#footnote-ref-84)
85. Texas Family Code § 153.312 [↑](#footnote-ref-85)
86. Texas Family Code § 153.3171(a). This provision alone provides the possessory conservator with a minimum of 46% of possession time. [↑](#footnote-ref-86)
87. *See* Texas Family Code § 153.3171(b). Note, under subsection (b)(3), the court can override the new law if it is not in the best interest of the child. [↑](#footnote-ref-87)
88. Texas Family Code § 153.313 [↑](#footnote-ref-88)
89. *E.g.*, Texas Family Code § 153.317(a)(9) (“. . . for weekend periods of possession that are extended . . . by a student holiday or teacher in-service day that falls on a Monday, ending at 8 a.m. Tuesday.”) [↑](#footnote-ref-89)
90. Texas Family Code § 153.316 [↑](#footnote-ref-90)
91. Texas Family Code § 153.003 [↑](#footnote-ref-91)
92. Texas Family Code § 153.605 [↑](#footnote-ref-92)
93. Texas Family Code § 153.605 [↑](#footnote-ref-93)
94. Texas Family Code § 153.607 [↑](#footnote-ref-94)
95. Texas Family Code § 153.609(c) [↑](#footnote-ref-95)
96. Texas Family Code §153.6082(e) [↑](#footnote-ref-96)
97. Texas Family Code §153.6083(a) [↑](#footnote-ref-97)
98. Texas Family Code § 153.6061 [↑](#footnote-ref-98)
99. Texas Family Code § 153.6051 [↑](#footnote-ref-99)
100. Texas Family Code § 154.001 [↑](#footnote-ref-100)
101. Texas Family Code § 154.121 [↑](#footnote-ref-101)
102. Texas Family Code § 154.125 [↑](#footnote-ref-102)
103. Texas Family Code § 154.401(c-1) [↑](#footnote-ref-103)
104. Texas Family Code § 154.126 [↑](#footnote-ref-104)
105. Texas Family Code § 154.128 [↑](#footnote-ref-105)
106. Texas Family Code § 154.062(c) [↑](#footnote-ref-106)
107. Texas Family Code § 154.062(d) [↑](#footnote-ref-107)
108. Texas Family Code § 154.008 [↑](#footnote-ref-108)
109. Texas Family Code § 154.183 (a)(1), (a)(2) [↑](#footnote-ref-109)
110. Texas Family Code § 154.183 (a)(3) [↑](#footnote-ref-110)
111. Texas Family Code § 231.306 [↑](#footnote-ref-111)
112. Texas Family Code § 154.302 [↑](#footnote-ref-112)