

# **Texas Divorce Laws**

## **TITLE 1. THE MARRIAGE RELATIONSHIP**

### **SUBTITLE A. MARRIAGE**

#### **CHAPTER 1. GENERAL PROVISIONS**

##### **Sec. 1.003. SUIT FOR DISSOLUTION OF MARRIAGE.**

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

#### **SUBCHAPTER B. PUBLIC POLICY**

##### **Sec. 1.101. EVERY MARRIAGE PRESUMED VALID.**

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

##### **Sec. 1.102. MOST RECENT MARRIAGE PRESUMED VALID.**

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

### **SUBTITLE B. PROPERTY RIGHTS AND LIABILITIES**

#### **CHAPTER 3. MARITAL PROPERTY RIGHTS AND LIABILITIES**

##### **SUBCHAPTER A. GENERAL RULES FOR SEPARATE AND COMMUNITY PROPERTY**

##### **Sec. 3.001. SEPARATE PROPERTY.**

A spouse's separate property consists of:

- (1) the property owned or claimed by the spouse before marriage;
- (2) the property acquired by the spouse during marriage by gift, devise, or descent; and
- (3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.

##### **Sec. 3.002. COMMUNITY PROPERTY.**

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

##### **Sec. 3.003. PRESUMPTION OF COMMUNITY PROPERTY.**

- (a) Property possessed by either spouse during or on dissolution of marriage is presumed to be community property.
- (b) The degree of proof necessary to establish that property is separate property is clear and convincing evidence.

##### **Sec. 3.004. RECORDATION OF SEPARATE PROPERTY.**

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

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

## **CHAPTER 4. PREMARITAL AND MARITAL PROPERTY AGREEMENTS**

### **SUBCHAPTER A. UNIFORM PREMARITAL AGREEMENT ACT**

#### **Sec. 4.001. DEFINITIONS.**

In this subchapter:

(1) "Prenuptial 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.

#### **Sec. 4.002. FORMALITIES.**

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

#### **Sec. 4.003. CONTENT.**

(a) The parties to a prenuptial 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 prenuptial agreement.

#### **Sec. 4.004. EFFECT OF MARRIAGE.**

A prenuptial agreement becomes effective on marriage.

#### **Sec. 4.005. AMENDMENT OR REVOCATION.**

After marriage, a prenuptial 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.

#### **Sec. 4.006. ENFORCEMENT.**

(a) A prenuptial 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.

#### **Sec. 4.007. ENFORCEMENT: VOID MARRIAGE.**

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

#### **Sec. 4.008. LIMITATION OF ACTIONS.**

A statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

#### **Sec. 4.009. APPLICATION AND CONSTRUCTION.**

This subchapter shall be applied and construed to effect its general purpose to make uniform the law with respect to the subject of this subchapter among states enacting these provisions.

### **SUBTITLE C. DISSOLUTION OF MARRIAGE**

#### **CHAPTER 6. SUIT FOR DISSOLUTION OF MARRIAGE**

##### **SUBCHAPTER A. GROUNDS FOR DIVORCE AND DEFENSES**

#### **Sec. 6.001. INSUPPORTABILITY.**

On the petition of either party to a marriage, the court may grant a divorce without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marital relationship and prevents any reasonable expectation of reconciliation.

#### **Sec. 6.002. CRUELTY.**

The court may grant a divorce in favor of one spouse if the other spouse is guilty of cruel treatment toward the complaining spouse of a nature that renders further living together insupportable.

#### **Sec. 6.003. ADULTERY.**

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

#### **Sec. 6.004. CONVICTION OF FELONY.**

(a) The court may grant a divorce in favor of one spouse if during the marriage the other spouse:

(1) has been convicted of a felony;

(2) has been imprisoned for at least one year in the 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.

**Sec. 6.005. ABANDONMENT.**

The court may grant a divorce in favor of one spouse if the other spouse:

- (1) left the complaining spouse with the intention of abandonment; and
- (2) remained away for at least one year.

**Sec. 6.006. LIVING APART.**

The court may grant a divorce in favor of either spouse if the spouses have lived apart without cohabitation for at least three years.

**Sec. 6.007. CONFINEMENT IN MENTAL HOSPITAL.**

The court may grant a divorce in favor of one spouse if at the time the suit is filed:

- (1) the other spouse has been confined in a state mental hospital or private mental hospital, as defined in Section 571.003, Health and Safety Code, in this state or another state for at least three years; and
- (2) it appears that the hospitalized spouse's mental disorder is of such a degree and nature that adjustment is unlikely or that, if adjustment occurs, a relapse is probable.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 6.008. DEFENSES. (a) The defenses to a suit for divorce of recrimination and adultery are abolished.

(b) Condonation is a defense to a suit for divorce only if the court finds that there is a reasonable expectation of reconciliation.

**SUBCHAPTER B. GROUNDS FOR ANNULMENT**

**Sec. 6.101. 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.

**Sec. 6.102. 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.

**Sec. 6.103. 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.

**Sec. 6.104. 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.

**Sec. 6.105. UNDER INFLUENCE OF ALCOHOL OR NARCOTICS.**

The court may grant an annulment of a marriage to a party to the marriage if:

(1) at the time of the marriage the petitioner was under the influence of alcoholic beverages or narcotics and as a result did not have the capacity to consent to the marriage; and

(2) the petitioner has not voluntarily cohabited with the other party to the marriage since the effects of the alcoholic beverages or narcotics ended.

**Sec. 6.106. IMPOTENCY.**

The court may grant an annulment of a marriage to a party to the marriage if:

(1) either party, for physical or mental reasons, was permanently impotent at the time of the marriage;

(2) the petitioner did not know of the impotency at the time of the marriage; and

(3) the petitioner has not voluntarily cohabited with the other party since learning of the impotency.

**Sec. 6.107. FRAUD, DURESS, OR FORCE.**

The court may grant an annulment of a marriage to a party to the marriage if:

(1) the other party used fraud, duress, or force to induce the petitioner to enter into the marriage; and

(2) the petitioner has not voluntarily cohabited with the other party since learning of the fraud or since being released from the duress or force.

**Sec. 6.108. MENTAL INCAPACITY.**

(a) The court may grant an annulment of a marriage to a party to the marriage on the suit of the party or the party's guardian or next friend, if the court finds it to be in the party's best interest to be represented by a guardian or next friend, if:

(1) at the time of the marriage the petitioner did not have the mental capacity to consent to marriage or to understand the nature of the marriage ceremony because of a mental disease or defect; and

(2) since the marriage ceremony, the petitioner has not voluntarily cohabited with the other party during a period when the petitioner possessed the mental capacity to recognize the marriage relationship.

(b) The court may grant an annulment of a marriage to a party to the marriage if:

(1) at the time of the marriage the other party did not have the mental capacity to consent to marriage or to understand the nature of the marriage ceremony because of a mental disease or defect;

(2) at the time of the marriage the petitioner neither knew nor reasonably should have known of the mental disease or defect; and

(3) since the date the petitioner discovered or reasonably should have discovered the mental disease or defect, the petitioner has not voluntarily cohabited with the other party.

**Sec. 6.109. CONCEALED DIVORCE.**

(a) The court may grant an annulment of a marriage to a party to the marriage if:

(1) the other party was divorced from a third party within the 30-day period preceding the date of the marriage ceremony;

(2) at the time of the marriage ceremony the petitioner did not know, and a reasonably prudent person would not have known, of the divorce; and

- (3) since the petitioner discovered or a reasonably prudent person would have discovered the fact of the divorce, the petitioner has not voluntarily cohabited with the other party.
- (b) A suit may not be brought under this section after the first anniversary of the date of the marriage.

**Sec. 6.110. MARRIAGE LESS THAN 72 HOURS AFTER ISSUANCE OF LICENSE.**

- (a) The court may grant an annulment of a marriage to a party to the marriage if the marriage ceremony took place in violation of Section 2.204 during the 72-hour period immediately following the issuance of the marriage license.
- (b) A suit may not be brought under this section after the 30th day after the date of the marriage.

**Sec. 6.111. 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.

**SUBCHAPTER C. DECLARING A MARRIAGE VOID**

**Sec. 6.201. CONSANGUINITY.**

A marriage is void if one party to the marriage is related to the other as:

- (1) an ancestor or descendant, by blood or adoption;
- (2) a brother or sister, of the whole or half blood or by adoption;
- (3) a parent's brother or sister, of the whole or half blood or by adoption; or
- (4) a son or daughter of a brother or sister, of the whole or half blood or by adoption.

**Sec. 6.202. MARRIAGE DURING EXISTENCE OF PRIOR MARRIAGE.**

- (a) A marriage is void if entered into when either party has an existing marriage to another person that has not been dissolved by legal action or terminated by the death of the other spouse.
- (b) The later marriage that is void under this section becomes valid when the prior marriage is dissolved if, after the date of the dissolution, the parties have lived together as husband and wife and represented themselves to others as being married.

**Sec. 6.203. CERTAIN VOID MARRIAGES VALIDATED.**

Except for a marriage that would have been void under Section 6.201, a marriage that was entered into before January 1, 1970, in violation of the prohibitions of Article 496, Penal Code of Texas, 1925, is validated from the date the marriage commenced if the parties continued until January 1, 1970, to live together as husband and wife and to represent themselves to others as being married.

**Sec. 6.204. RECOGNITION OF SAME-SEX MARRIAGE OR CIVIL UNION.**

- (a) In this section, "civil union" means any relationship status other than marriage that:
- (1) is intended as an alternative to marriage or applies primarily to cohabitating persons; and
  - (2) grants to the parties of the relationship legal protections, benefits, or responsibilities granted to the spouses of a marriage.
- (b) A marriage between persons of the same sex or a civil union is contrary to the public policy of this state and is void in this state.
- (c) The state or an agency or political subdivision of the state may not give effect to a:
- (1) public act, record, or judicial proceeding that creates, recognizes, or validates a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction; or
  - (2) right or claim to any legal protection, benefit, or responsibility asserted as a result of a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction.

**SUBCHAPTER D. JURISDICTION, VENUE, AND RESIDENCE QUALIFICATIONS**

**Sec. 6.301. GENERAL RESIDENCY RULE FOR DIVORCE SUIT.**

A suit for divorce may not be maintained in this state unless at the time the suit is filed either the petitioner or the respondent has been:

- (1) a domiciliary of this state for the preceding six-month period; and
- (2) a resident of the county in which the suit is filed for the preceding 90-day period.

**Sec. 6.302. SUIT FOR DIVORCE BY NONRESIDENT SPOUSE.**

If one spouse has been a domiciliary of this state for at least the last six months, a spouse domiciled in another state or nation may file a suit for divorce in the county in which the domiciliary spouse resides at the time the petition is filed.

**Sec. 6.303. ABSENCE ON PUBLIC SERVICE.**

Time spent by a Texas domiciliary outside this state or outside the county of residence of the domiciliary while in the service of the armed forces or other service of the United States or of this state is considered residence in this state and in that county.

**Sec. 6.304. ARMED FORCES PERSONNEL NOT PREVIOUSLY RESIDENTS.**

A person not previously a resident of this state who is serving in the armed forces of the United States and has been stationed at one or more military installations in this state for at least the last six months and at a military installation in a county of this state for at least the last 90 days is considered to be a Texas domiciliary and a resident of that county for those periods for the purpose of filing suit for dissolution of a marriage.

**Sec. 6.305. ACQUIRING JURISDICTION OVER NONRESIDENT RESPONDENT.**

(a) If the petitioner in a suit for dissolution of a marriage is a resident or a domiciliary of this state at the time the suit for dissolution is filed, the court may exercise personal jurisdiction over the respondent or over the respondent's personal representative although the respondent is not a resident of this state if:

- (1) this state is the last marital residence of the petitioner and the respondent and the suit is filed before the second anniversary of the date on which marital residence ended; or
- (2) there is any basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction.

(b) A court acquiring jurisdiction under this section also acquires jurisdiction over the respondent in a suit affecting the parent-child relationship.

**Sec. 6.306. JURISDICTION TO ANNUL MARRIAGE.**

(a) A suit for annulment of a marriage may be maintained in this state only if the parties were married in this state or if either party is domiciled in this state.

(b) A suit for annulment is a suit in rem, affecting the status of the parties to the marriage.

**Sec. 6.307. JURISDICTION TO DECLARE MARRIAGE VOID.**

(a) Either party to a marriage made void by this chapter may sue to have the marriage declared void, or the court may declare the marriage void in a collateral proceeding.

(b) The court may declare a marriage void only if:

- (1) the purported marriage was contracted in this state; or
- (2) either party is domiciled in this state.

(c) A suit to have a marriage declared void is a suit in rem, affecting the status of the parties to the purported marriage.

**Sec. 6.308. EXERCISING PARTIAL JURISDICTION.**

(a) A court in which a suit for dissolution of a marriage is filed may exercise its jurisdiction over those portions of the suit for which it has authority.

(b) The court's authority to resolve the issues in controversy between the parties may be restricted because the court lacks:

- (1) the required personal jurisdiction over a nonresident party in a suit for dissolution of the marriage;
- (2) the required jurisdiction under Chapter 152; or
- (3) the required jurisdiction under Chapter 159.

## **SUBCHAPTER E . FILING SUIT**

### **Sec. 6.401. CAPTION.**

(a) Pleadings in a suit for divorce or annulment shall be styled "In the Matter of the Marriage of \_\_\_\_\_ and \_\_\_\_\_."

(b) Pleadings in a suit to declare a marriage void shall be styled "A Suit To Declare Void the Marriage of \_\_\_\_\_ and \_\_\_\_\_."

### **Sec. 6.402. PLEADINGS.**

(a) A petition in a suit for dissolution of a marriage is sufficient without the necessity of specifying the underlying evidentiary facts if the petition alleges the grounds relied on substantially in the language of the statute.

(b) Allegations of grounds for relief, matters of defense, or facts relied on for a temporary order that are stated in short and plain terms are not subject to special exceptions because of form or sufficiency.

(c) The court shall strike an allegation of evidentiary fact from the pleadings on the motion of a party or on the court's own motion.

### **Sec. 6.403. ANSWER.**

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

### **Sec. 6.4035. WAIVER OF SERVICE.**

(a) A party to a suit for the dissolution of a marriage may waive the issuance or service of process after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt of a copy of the filed petition.

(b) The waiver must contain the mailing address of the party who executed the waiver.

(c) The waiver must be sworn but may not be sworn before an attorney in the suit.

(d) The Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

### **Sec. 6.405. 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.

### **Sec. 6.406. MANDATORY JOINDER OF SUIT AFFECTING PARENT-CHILD RELATIONSHIP.**

(a) The petition in a suit for dissolution of a marriage shall state whether there are children born or adopted of the marriage who are under 18 years of age or who are otherwise entitled to support as provided by Chapter 154.

(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.

**Sec. 6.407. TRANSFER OF SUIT AFFECTING PARENT-CHILD RELATIONSHIP TO DIVORCE COURT.**

(a) If a suit affecting the parent-child relationship is pending at the time the suit for dissolution of a marriage is filed, the suit affecting the parent-child relationship shall be transferred as provided by Section 103.002 to the court in which the suit for dissolution is filed.

(b) If the parties are parents of a child, as defined by Section 101.003, and the child is under the continuing jurisdiction of another court under Chapter 155, either party to the suit for dissolution of a marriage may move that court for transfer of the suit affecting the parent-child relationship to the court having jurisdiction of the suit for dissolution. The court with continuing jurisdiction shall transfer the proceeding as provided by Chapter 155. On the transfer of the proceedings, the court with jurisdiction of the suit for dissolution of a marriage shall consolidate the two causes of action.

(c) After transfer of a suit affecting the parent-child relationship as provided in Chapter 155, the court with jurisdiction of the suit for dissolution of a marriage has jurisdiction to render an order in the suit affecting the parent-child relationship as provided by Title 5.

**Sec. 6.408. SERVICE OF CITATION.**

Citation on the filing of an original petition in a suit for dissolution of a marriage shall be issued and served as in other civil cases. Citation may also be served on any other person who has or who may assert an interest in the suit for dissolution of the marriage.

**Sec. 6.409. CITATION BY PUBLICATION.**

(a) Citation in a suit for dissolution of a marriage may be by publication as in other civil cases, except that notice shall be published one time only.

(b) The notice shall be sufficient if given in substantially the following form:

"STATE OF TEXAS

To (name of person to be served with citation), and to all whom it may concern (if the name of any person to be served with citation is unknown), Respondent(s),

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you. The petition of \_\_\_\_\_, Petitioner, was filed in the Court of \_\_\_\_\_ County, Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, against \_\_\_\_\_, Respondent(s), numbered \_\_\_\_\_, and entitled 'In the Matter of Marriage of \_\_\_\_\_ and \_\_\_\_\_. The suit requests \_\_\_\_\_ (statement of relief sought).'

"The Court has authority in this suit to enter any judgment or decree dissolving the marriage and providing for the division of property that will be binding on you.

"Issued and given under my hand and seal of said Court at \_\_\_\_\_, Texas, this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

".....

Clerk of the \_\_\_\_\_ Court of \_\_\_\_\_ County, Texas

By \_\_\_\_\_, Deputy."

(c) The form authorized in this section and the form authorized by Section 102.010 may be combined in appropriate situations.

(d) If the citation is for a suit in which a parent-child relationship does not exist, service by publication may be completed by posting the citation at the courthouse door for seven days in the county in which the suit is filed.

(e) If the petitioner or the petitioner's attorney of record makes an oath that no child presently under 18 years of age was born or adopted by the spouses and that no appreciable amount of property was accumulated by the spouses during the marriage, the court may dispense with the appointment of an attorney ad litem. In a case in which citation was by publication, a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the suit as a part of the record.

**Sec. 6.410. REPORT TO ACCOMPANY PETITION.**

Text of section as added by Acts 2003, 78th Leg., ch. 1128, Sec. 4

At the time a petition for divorce or annulment of a marriage is filed, the petitioner shall also file a completed report that may be used by the district clerk, at the time the petition is granted, to comply with Section 194.002, Health and Safety Code.

**Sec. 6.410. CONFIDENTIALITY OF PLEADINGS.**

Text of section as added by Acts 2003, 78th Leg., ch. 1314, Sec. 1

(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.

**SUBCHAPTER F. TEMPORARY ORDERS**

**Sec. 6.501. TEMPORARY RESTRAINING ORDER.**

(a) After the filing of a suit for dissolution of a marriage, on the motion of a party or on the court's own motion, the court may grant a temporary restraining order without notice to the adverse party for the preservation of the property and for the protection of the parties as necessary, including an order prohibiting one or both parties from:

(1) intentionally communicating 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.

**Sec. 6.502. TEMPORARY INJUNCTION AND OTHER TEMPORARY ORDERS.**

(a) While a suit for dissolution of a marriage is pending and on the motion of a party or on the court's own motion after notice and hearing, the court may render an appropriate order, including

the granting of a temporary injunction for the preservation of the property and protection of the parties as deemed necessary and equitable and including an order directed to one or both parties:

- (1) requiring a sworn inventory and 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.

### **Sec. 6.503. AFFIDAVIT, VERIFIED PLEADING, AND BOND NOT REQUIRED.**

- (a) A temporary restraining order or temporary injunction under this subchapter:
- (1) may be granted without an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result before notice can be served and a hearing can be held; and
  - (2) need not:
    - (A) define the injury or state why it is irreparable;
    - (B) state why the order was granted without notice; or
    - (C) include an order setting the suit for trial on the merits with respect to the ultimate relief sought.
- (b) In a suit for dissolution of a marriage, the court may dispense with the issuance of a bond between the spouses in connection with temporary orders for the protection of the parties and their property.

### **Sec. 6.504. PROTECTIVE ORDERS.**

On the motion of a party to a suit for dissolution of a marriage, the court may render a protective order as provided by Subtitle B, Title 4.

### **Sec. 6.505. COUNSELING.**

- (a) While a divorce suit is pending, the court may direct the parties to counsel with a person named by the court.
- (b) The person named by the court to counsel the parties shall submit a written report to the court and to the parties before the final hearing. In the report, the counselor shall give only an opinion as to whether there exists a reasonable expectation of reconciliation of the parties and, if so, whether further counseling would be beneficial. The sole purpose of the report is to aid the court in determining whether the suit for divorce should be continued pending further counseling.
- (c) A copy of the report shall be furnished to each party.
- (d) If the court believes that there is a reasonable expectation of the parties' reconciliation, the court may by written order continue the proceedings and direct the parties to a person named by the court for further counseling for a period fixed by the court not to exceed 60 days, subject to any terms, conditions, and limitations the court considers desirable. In ordering counseling, the court shall consider the circumstances of the parties, including the needs of the parties' family and the availability of counseling services. At the expiration of the period specified by the court, the counselor to whom the parties were directed shall report to the court whether the parties have complied with the court's order. Thereafter, the court shall proceed as in a divorce suit generally.
- (e) If the court orders counseling under this section and the parties to the marriage are the parents of a child under 18 years of age born or adopted during the marriage, the counseling shall include counseling on issues that confront children who are the subject of a suit affecting the parent-child relationship.

**Sec. 6.506. CONTEMPT.**

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

**Sec. 6.507. INTERLOCUTORY APPEAL.**

An order under this subchapter, except an order appointing a receiver, is not subject to interlocutory appeal.

**SUBCHAPTER G. ALTERNATIVE DISPUTE RESOLUTION**

**Sec. 6.601. ARBITRATION PROCEDURES.**

- (a) On written agreement of the parties, the court may refer a suit for dissolution of a marriage to arbitration. The agreement must state whether the arbitration is binding or nonbinding.
- (b) If the parties agree to binding arbitration, the court shall render an order reflecting the arbitrator's award.

**Sec. 6.602. MEDIATION PROCEDURES.**

- (a) On the written agreement of the parties or on the court's own motion, the court may refer a suit for dissolution of a marriage to mediation.
- (b) A mediated settlement agreement is binding on the parties if the agreement:
  - (1) provides, in a prominently displayed statement that is in boldfaced type or capital letters or underlined, that the agreement is not subject to revocation;
  - (2) is signed by each party to the agreement; and
  - (3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.
- (c) If a mediated settlement agreement meets the requirements of this section, a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law.
- (d) A party may at any time prior to the final mediation order file a written objection to the referral of a suit for dissolution of a marriage to mediation on the basis of family violence having been committed against the objecting party by the other party. After an objection is filed, the suit may not be referred to mediation unless, on the request of the other party, a hearing is held and the court finds that a preponderance of the evidence does not support the objection. If the suit is referred to mediation, the court shall order appropriate measures be taken to ensure the physical and emotional safety of the party who filed the objection. The order shall provide that the parties not be required to have face-to-face contact and that the parties be placed in separate rooms during mediation.

**Sec. 6.603. 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.

## **SUBCHAPTER H. TRIAL AND APPEAL**

### **Sec. 6.701. FAILURE TO ANSWER.**

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

### **Sec. 6.702. 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.

### **Sec. 6.703. JURY.**

In a suit for dissolution of a marriage, either party may demand a jury trial unless the action is a suit to annul an underage marriage under Section 6.101 or 6.102.

### **Sec. 6.704. TESTIMONY OF HUSBAND OR WIFE.**

(a) In a suit for dissolution of a marriage, the husband and wife are competent witnesses for and against each other. A spouse may not be compelled to testify as to a matter that will incriminate the spouse.

(b) If the husband or wife testifies, the court or jury trying the case shall determine the credibility of the witness and the weight to be given the witness's testimony.

### **Sec. 6.705. TESTIMONY BY MARRIAGE COUNSELOR.**

(a) The report by the person named by the court to counsel the parties to a suit for divorce may not be admitted as evidence in the suit.

(b) The person named by the court to counsel the parties is not competent to testify in any suit involving the parties or their children.

(c) The files, records, and other work products of the counselor are privileged and confidential for all purposes and may not be admitted as evidence in any suit involving the parties or their children.

**Sec. 6.706. CHANGE OF NAME.**

(a) In a decree of divorce or annulment, the court shall change the name of a party specifically requesting the change to a name previously used by the party unless the court states in the decree a reason for denying the change of name.

(b) The court may not deny a change of name solely to keep the last name of family members the same.

(c) A change of name does not release a person from liability incurred by the person under a previous name or defeat a right the person held under a previous name.

(d) A person whose name is changed under this section may apply for a change of name certificate from the clerk of the court as provided by Section 45.106.

**Sec. 6.707. TRANSFERS AND DEBTS PENDING DECREE.**

(a) A transfer of real or personal community property or a debt incurred by a spouse while a suit for divorce or annulment is pending that subjects the other spouse or the community property to liability is void with respect to the other spouse if the transfer was made or the debt incurred with the intent to injure the rights of the other spouse.

(b) A transfer or debt is not void if the person dealing with the transferor or debtor spouse did not have notice of the intent to injure the rights of the other spouse.

(c) The spouse seeking to void a transfer or debt incurred while a suit for divorce or annulment is pending has the burden of proving that the person dealing with the transferor or debtor spouse had notice of the intent to injure the rights of the spouse seeking to void the transaction.

**Sec. 6.708. 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.

**Sec. 6.709. 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.

**Sec. 6.710. COPY OF DECREE.**

The clerk of the court shall mail a copy of the final decree of dissolution of a marriage to the party who waived service of process under Section 6.4035 by mailing the copy of the decree to the party at the mailing address contained in the waiver or to the office of the party's attorney of record.

**Sec. 6.711. FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

(a) In a suit for dissolution of a marriage in which the court has rendered a judgment dividing the estate of the parties, on request by a party, the court shall state in writing its findings of fact and conclusions of law concerning:

(1) the characterization of each party's assets, liabilities, claims, and offsets on which disputed evidence has been presented; and

- (2) the value or amount of the community estate's assets, liabilities, claims, and offsets on which disputed evidence has been presented.
- (b) A request for findings of fact and conclusions of law under this section must conform to the Texas Rules of Civil Procedure.

## **SUBCHAPTER I. REMARRIAGE**

### **Sec. 6.801. REMARRIAGE.**

- (a) Except as otherwise provided by this subchapter, neither party to a divorce may marry a third party before the 31st day after the date the divorce is decreed.
- (b) The former spouses may marry each other at any time.

### **Sec. 6.802. WAIVER OF PROHIBITION AGAINST REMARRIAGE.**

For good cause shown the court may waive the prohibition against remarriage provided by this subchapter as to either or both spouses if a record of the proceedings is made and preserved or if findings of fact and conclusions of law are filed by the court.

## **CHAPTER 7. AWARD OF MARITAL PROPERTY**

### **Sec. 7.001. GENERAL RULE OF PROPERTY DIVISION.**

In a decree of divorce or annulment, the court shall order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage.

### **Sec. 7.002. 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.

### **Sec. 7.003. DISPOSITION OF RETIREMENT AND EMPLOYMENT BENEFITS AND OTHER PLANS.**

In a decree of divorce or annulment, the court shall determine the rights of both spouses in a pension, retirement plan, annuity, individual retirement account, employee stock option plan, stock option, or other form of savings, bonus, profit-sharing, or other employer plan or financial plan of an employee or a participant, regardless of whether the person is self-employed, in the nature of compensation or savings.

**Sec. 7.004. DISPOSITION OF RIGHTS IN INSURANCE.**

In a decree of divorce or annulment, the court shall specifically divide or award the rights of each spouse in an insurance policy.

**Sec. 7.005. INSURANCE COVERAGE NOT SPECIFICALLY AWARDED.**

(a) If in a decree of divorce or annulment the court does not specifically award all of the rights of the spouses in an insurance policy other than life insurance in effect at the time the decree is rendered, the policy remains in effect until the policy expires according to the policy's own terms.

(b) The proceeds of a valid claim under the policy are payable as follows:

(1) if the interest in the property insured was awarded solely to one former spouse by the decree, to that former spouse;

(2) if an interest in the property insured was awarded to each former spouse, to those former spouses in proportion to the interests awarded; or

(3) if the insurance coverage is directly related to the person of one of the former spouses, to that former spouse.

(c) The failure of either former spouse to change the endorsement on the policy to reflect the distribution of proceeds established by this section does not relieve the insurer of liability to pay the proceeds or any other obligation on the policy.

(d) This section does not affect the right of a former spouse to assert an ownership interest in an undivided life insurance policy, as provided by Subchapter D, Chapter 9.

**Sec. 7.006. AGREEMENT INCIDENT TO DIVORCE OR ANNULMENT.**

(a) To promote amicable settlement of disputes in a suit for divorce or annulment, the spouses may enter into a written agreement concerning the division of the property and the liabilities of the spouses and maintenance of either spouse. The agreement may be revised or repudiated before rendition of the divorce or annulment unless the agreement is binding under another rule of law.

(b) If the court finds that the terms of the written agreement in a divorce or 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.

**Sec. 7.007. 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.

## **CHAPTER 8. MAINTENANCE**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **Sec. 8.001. DEFINITIONS. In this chapter:**

- (1) "Maintenance" means an award in a suit for dissolution of a marriage of periodic payments from the future income of one spouse for the support of the other spouse.
- (2) "Notice of application for a writ of withholding" means the document delivered to an obligor and filed with the court as required by this chapter for the nonjudicial determination of arrears and initiation of withholding for spousal maintenance.
- (3) "Obligee" means a person entitled to receive payments under the terms of an order for spousal maintenance.
- (4) "Obligor" means a person required to make periodic payments under the terms of an order for spousal maintenance.
- (5) "Writ of withholding" means the document issued by the clerk of a court and delivered to an employer, directing that earnings be withheld for payment of spousal maintenance as provided by this chapter.

### **SUBCHAPTER B. COURT-ORDERED MAINTENANCE**

#### **Sec. 8.051. 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.

#### **Sec. 8.052. FACTORS IN DETERMINING MAINTENANCE.**

A court that determines that a spouse is eligible to receive maintenance under this chapter shall determine the nature, amount, duration, and manner of periodic payments by considering all relevant factors, including:

- (1) 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.

**Sec. 8.053. 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.

**Sec. 8.054. DURATION OF MAINTENANCE ORDER.**

(a) Except as provided by Subsection (b), a court:

(1) may not order maintenance that remains in effect for more than 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.

**Sec. 8.055. AMOUNT OF MAINTENANCE.**

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

- (1) \$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.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Renumbered from Sec. 8.006 and amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1138, Sec. 1, eff. Sept. 1, 2003.

Sec. 8.056. TERMINATION. (a) The obligation to pay future maintenance terminates on the death of either party or on the remarriage of the obligee.

(b) After a hearing, the court shall terminate the maintenance order if the obligee cohabits with another person in a permanent place of abode on a continuing, conjugal basis.

#### **Sec. 8.057. MODIFICATION OF MAINTENANCE ORDER.**

(a) The amount of maintenance specified in a court order or the portion of a decree that provides for the 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.

#### **Sec. 8.058. MAINTENANCE ARREARAGES.**

A spousal maintenance payment not timely made constitutes an arrearage.

#### **Sec. 8.059. 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.

**Sec. 8.060. PUTATIVE SPOUSE.**

In a suit to declare a marriage void, a putative spouse who did not have knowledge of an existing impediment to a valid marriage may be awarded maintenance if otherwise qualified to receive maintenance under this chapter.

**Sec. 8.061. UNMARRIED COHABITANTS.**

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

**SUBCHAPTER C. INCOME WITHHOLDING**

**Sec. 8.101. INCOME WITHHOLDING; GENERAL RULE.**

(a) In a proceeding in which periodic payments of spousal maintenance are ordered, modified, or enforced, the court may order that income be withheld from the disposable earnings of the obligor as provided by this chapter.

(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.

**Sec. 8.102. WITHHOLDING FOR ARREARAGES IN ADDITION TO CURRENT SPOUSAL MAINTENANCE.**

(a) The court may order that, in addition to income withheld for current spousal maintenance, income be withheld from the disposable earnings of the obligor to be applied toward the liquidation of any arrearages.

(b) The additional amount withheld to be applied toward arrearages must be whichever of the following amounts will discharge the arrearages in the least amount of time:

- (1) an amount sufficient to discharge the arrearages in not more than two years; or
- (2) 20 percent of the amount withheld for current maintenance.

**Sec. 8.103. WITHHOLDING FOR ARREARAGES WHEN CURRENT MAINTENANCE IS NOT DUE.**

A court may order income withholding to be applied toward arrearages in an amount sufficient to discharge those arrearages in not more than two years if current spousal maintenance is no longer owed.

**Sec. 8.104. WITHHOLDING TO SATISFY JUDGMENT FOR ARREARAGES.**

The court, in rendering a cumulative judgment for arrearages, may order that a reasonable amount of income be withheld from the disposable earnings of the obligor to be applied toward the satisfaction of the judgment.

**Sec. 8.105. PRIORITY OF WITHHOLDING.**

An order or writ of withholding under this chapter has priority over any garnishment, attachment, execution, or other order affecting disposable earnings, except for an order or writ of withholding for child support under Chapter 158.

**Sec. 8.106. MAXIMUM AMOUNT WITHHELD FROM EARNINGS.**

An order or writ of withholding must direct that an obligor's employer withhold from the obligor's disposable earnings the lesser of:

- (1) the amount specified in the order or writ; or
- (2) an amount that, when added to the amount of income being withheld by the employer for child support, is equal to 50 percent of the obligor's disposable earnings.

**Sec. 8.107. ORDER OR WRIT BINDING ON EMPLOYER DOING BUSINESS IN THIS STATE.**

An order or writ of withholding issued under this chapter and delivered to an employer doing business in this state is binding on the employer without regard to whether the obligor resides or works outside this state.

**Sec. 8.108. VOLUNTARY WRIT OF WITHHOLDING BY OBLIGOR.**

(a) An obligor may file with the clerk of the court a notarized or acknowledged request signed by the obligor and the obligee for the issuance and delivery to the obligor's employer of a writ of withholding. The obligor may file the request under this section regardless of whether a writ or order has been served on any party or whether the obligor owes arrearages.

(b) On receipt of a request under this section, the clerk shall issue and deliver a writ of withholding in the manner provided by this subchapter.

(c) An employer who receives a writ of withholding issued under this section may request a hearing in the same manner and according to the same terms provided by Section 8.205.

(d) An obligor whose employer receives a writ of withholding issued under this section may request a hearing in the manner provided by Section 8.258.

(e) An obligee may contest a writ of income withholding issued under this section by requesting, not later than the 180th day after the date on which the obligee discovers that the writ was issued, a hearing to be conducted in the manner provided by Section 8.258 for a hearing on a motion to stay.

(f) A writ of withholding under this section may not reduce the total amount of spousal maintenance, including arrearages, owed by the obligor.

**SUBCHAPTER D. PROCEDURE**

**Sec. 8.151. TIME LIMIT.**

The court may issue an order or writ for withholding under this chapter at any time before all spousal maintenance and arrearages are paid.

**Sec. 8.152. CONTENTS OF ORDER OF WITHHOLDING.**

(a) An order of withholding must state:

- (1) the style, cause number, and court having jurisdiction to enforce the order;

- (2) the name, address, and, if available, the social security number of the obligor;
  - (3) the amount and duration of the spousal maintenance payments, including the amount and duration of withholding for arrearages, if any; and
  - (4) the name, address, and, if available, the social security number of the obligee.
- (b) The order for withholding must require the obligor to notify the court promptly of any material change affecting the order, including a change of employer.
- (c) On request by an obligee, the court may exclude from an order of withholding the obligee's address and social security number if the obligee or a member of the obligee's family or household is a victim of family violence and is the subject of a protective order to which the obligor is also subject. On granting a request under this subsection, the court shall order the clerk to:
- (1) strike the address and social security number required by Subsection (a) from the order or writ of withholding; and
  - (2) maintain a confidential record of the obligee's address and social security number to be used only by the court.

**Sec. 8.153. REQUEST FOR ISSUANCE OF ORDER OR WRIT OF WITHHOLDING.**

An obligor or obligee may file with the clerk of the court a request for issuance of an order or writ of withholding.

**Sec. 8.154. ISSUANCE AND DELIVERY OF ORDER OR WRIT OF WITHHOLDING.**

- (a) On receipt of a request for issuance of an order or writ of withholding, the clerk of the court shall deliver a certified copy of the order or writ to the obligor's current employer or to any subsequent employer of the obligor. The clerk shall attach a copy of Subchapter E to the order or writ.
- (b) Not later than the fourth working day after the date the order is signed or the request is filed, whichever is later, the clerk shall issue and deliver the certified copy of the order or writ by:
- (1) certified or registered mail, return receipt requested, to the employer; or
  - (2) service of citation to:
    - (A) the person authorized to receive service of process for the employer in civil cases generally; or
    - (B) a person designated by the employer by written notice to the clerk to receive orders or notices of income withholding.

**SUBCHAPTER E. RIGHTS AND DUTIES OF EMPLOYER**

**Sec. 8.201. ORDER OR WRIT BINDING ON EMPLOYER.**

- (a) An employer required to withhold income from earnings under this chapter is not entitled to notice of the proceedings before the order of withholding is rendered or writ of withholding is issued.
- (b) An order or writ of withholding is binding on an employer regardless of whether the employer is specifically named in the order or writ.

**Sec. 8.202. EFFECTIVE DATE AND DURATION OF INCOME WITHHOLDING.**

An employer shall begin to withhold income in accordance with an order or writ of withholding not later than the first pay period after the date the order or writ was delivered to the employer. The employer shall continue to withhold income as required by the order or writ as long as the obligor is employed by the employer.

**Sec. 8.203. REMITTING WITHHELD PAYMENTS.**

- (a) The employer shall remit to the person or office named in the order or writ of withholding the amount of income withheld from an obligor on each pay date. The remittance must include the date on which the income withholding occurred.
- (b) The employer shall include with each remittance:
- (1) the cause number of the suit under which income withholding is required;
  - (2) the payor's name; and

(3) the payee's name, unless the remittance is made by electronic funds transfer.

**Sec. 8.204. EMPLOYER MAY DEDUCT FEE FROM EARNINGS.**

An employer may deduct an administrative fee of not more than \$5 each month from the obligor's disposable earnings in addition to the amount withheld as spousal maintenance.

**Sec. 8.205. HEARING REQUESTED BY EMPLOYER.**

(a) Not later than the 20th day after the date an order or writ of withholding is delivered to an employer, the employer may file with the court a motion for a hearing on the applicability of the order or writ to the employer.

(b) The hearing under this section must be held on or before the 15th day after the date the motion is made.

(c) An order or writ of withholding is binding and the employer shall continue to withhold income and remit the amount withheld pending further order of the court.

**Sec. 8.206. LIABILITY AND OBLIGATION OF EMPLOYER FOR PAYMENTS.**

(a) An employer who complies with an order or writ of withholding under this chapter is not liable to the obligor for the amount of income withheld and remitted as required by the order or writ.

(b) An employer who receives, but does not comply with, an order or writ of withholding is liable to:

(1) the obligee for any amount of spousal maintenance not paid in compliance with the order or writ;

(2) the obligor for any amount withheld from the obligor's disposable earnings, but not remitted to the obligee; and

(3) the obligee or obligor for reasonable attorney's fees and court costs incurred in recovering an amount described by Subdivision (1) or (2).

(c) An employer shall comply with an order of withholding for spousal maintenance or alimony issued in another state that appears regular on its face in the same manner as an order issued by a tribunal of this state. The employer shall notify the employee of the order and comply with the order in the manner provided by Subchapter F, Chapter 159, with respect to an order of withholding for child support issued by another state. The employer may contest the order of withholding in the manner provided by that subchapter with respect to an order of withholding for child support issued by another state.

**Sec. 8.207. EMPLOYER RECEIVING MULTIPLE ORDERS OR WRITS.**

(a) An employer who receives more than one order or writ of withholding to withhold income from the same obligor shall withhold the combined amounts due under each order or writ unless the combined amounts due exceed the maximum total amount of allowed income withholding under Section 8.106.

(b) If the combined amounts to be withheld under multiple orders or writs for the same obligor exceed the maximum total amount of allowed income withholding under Section 8.106, the employer shall pay, until that maximum is reached, in the following order of priority:

(1) an equal amount toward current child support owed by the obligor in each order or writ until the employer has complied fully with each current child support obligation;

(2) an equal amount toward current maintenance owed by the obligor in each order or writ until the employer has complied fully with each current maintenance obligation;

(3) an equal amount toward child support arrearages owed by the obligor in each order or writ until the employer has complied fully with each order or writ for child support arrearages; and

(4) an equal amount toward maintenance arrearages owed by the obligor in each order or writ until the employer has complied fully with each order or writ for spousal maintenance arrearages.

**Sec. 8.208. EMPLOYER'S LIABILITY FOR DISCRIMINATORY HIRING OR DISCHARGE.**

(a) An employer may not use an order or writ of withholding as grounds in whole or part for the termination of employment of, or for any other disciplinary action against, an employee.

(b) An employer may not refuse to hire an employee because of an order or writ of withholding.

(c) An employer who intentionally discharges an employee in violation of this section is liable to that employee for current wages, other employment benefits, and reasonable attorney's fees and court costs incurred in enforcing the employee's rights.

(d) In addition to liability imposed under Subsection (c), the court shall order with respect to an employee whose employment was suspended or terminated in violation of this section appropriate injunctive relief, including reinstatement of:

- (1) the employee's position with the employer; and
- (2) fringe benefits or seniority lost as a result of the suspension or termination.

(e) An employee may bring an action to enforce the employee's rights under this section.

**Sec. 8.209. PENALTY FOR NONCOMPLIANCE.**

(a) In addition to the civil remedies provided by this subchapter or any other remedy provided by law, an employer who knowingly violates this chapter by failing to withhold income for spousal maintenance or to remit withheld income in accordance with an order or writ of withholding issued under this chapter commits an offense.

(b) An offense under this section is punishable by a fine not to exceed \$200 for each violation.

**Sec. 8.210. NOTICE OF TERMINATION OF EMPLOYMENT AND OF NEW EMPLOYMENT.**

(a) An obligor who terminates employment with an employer who has been withholding income and the obligor's employer shall each notify the court and the obligee of:

- (1) the termination of employment not later than the seventh day after the date of termination;
- (2) the obligor's last known address; and
- (3) the name and address of the obligor's new employer, if known.

(b) The obligor shall inform a subsequent employer of the order or writ of withholding after obtaining employment.

**SUBCHAPTER F. WRIT OF WITHHOLDING ISSUED BY CLERK**

**Sec. 8.251. NOTICE OF APPLICATION FOR WRIT OF WITHHOLDING; FILING.**

(a) An obligor or obligee may file a notice of application for a writ of withholding if income withholding was not ordered at the time spousal maintenance was ordered.

(b) The obligor or obligee may file the notice of application for a writ of withholding in the court that ordered the spousal maintenance under Subchapter B.

**Sec. 8.252. CONTENTS OF NOTICE OF APPLICATION FOR WRIT OF WITHHOLDING.**

The notice of application for a writ of withholding must be verified and:

- (1) state the amount of monthly maintenance due, including the amount of arrearages or anticipated arrearages, and the amount of disposable earnings to be withheld under a writ of withholding;
- (2) state that the withholding applies to each current or subsequent employer or period of employment;
- (3) state that the obligor's employer will be notified to begin the withholding if the obligor does not contest the withholding on or before the 10th day after the date the obligor receives the notice;
- (4) describe the procedures for contesting the issuance and delivery of a writ of withholding;
- (5) state that the obligor will be provided an opportunity for a hearing not later than the 30th day after the date of receipt of the notice of contest if the obligor contests the withholding;
- (6) state that the sole ground for successfully contesting the issuance of a writ of withholding is a dispute concerning the identity of the obligor or the existence or amount of the arrearages;
- (7) describe the actions that may be taken if the obligor contests the notice of application for a writ of withholding, including the procedures for suspending issuance of a writ of withholding; and
- (8) include with the notice a suggested form for the motion to stay issuance and delivery of the writ of withholding that the obligor may file with the clerk of the appropriate court.

**Sec. 8.253. INTERSTATE REQUEST FOR WITHHOLDING.**

- (a) The registration of a foreign order that provides for spousal maintenance or alimony as provided in Chapter 159 is sufficient for filing a notice of application for a writ of withholding.
- (b) The notice must be filed with the clerk of the court having venue as provided in Chapter 159.
- (c) The notice of application for a writ of withholding may be delivered to the obligor at the same time that an order is filed for registration under Chapter 159.

**Sec. 8.254. ADDITIONAL ARREARAGES.**

If the notice of application for a writ of withholding states that the obligor has failed to pay more than one spousal maintenance payment according to the terms of the spousal maintenance order, the writ of withholding may include withholding for arrearages that accrue between the filing of the notice and the date of the hearing or the issuance of the writ.

**Sec. 8.255. DELIVERY OF NOTICE OF APPLICATION FOR WRIT OF WITHHOLDING; TIME OF DELIVERY.**

- (a) The party who files a notice of application for a writ of withholding shall deliver the notice to the obligor by:
  - (1) first-class or certified mail, return receipt requested, addressed to the obligor's last known address or place of employment; or
  - (2) service of citation as in civil cases generally.
- (b) If the notice is delivered by mail, the party who filed the notice shall file with the court a certificate stating the name, address, and date the party mailed the notice.
- (c) The notice is considered to have been received by the obligor:
  - (1) on the date of receipt, if the notice was mailed by certified mail;
  - (2) on the 10th day after the date the notice was mailed, if the notice was mailed by first-class mail; or
  - (3) on the date of service, if the notice was delivered by service of citation.

**Sec. 8.256. MOTION TO STAY ISSUANCE OF WRIT OF WITHHOLDING.**

- (a) The obligor may stay issuance of a writ of withholding by filing a motion to stay with the clerk of the court not later than the 10th day after the date the notice of application for a writ of withholding was received.
- (b) The grounds for filing a motion to stay issuance are limited to a dispute concerning the identity of the obligor or the existence or the amount of the arrearages.
- (c) The obligor shall verify that the statements of fact in the motion to stay issuance of the writ are correct.

**Sec. 8.257. EFFECT OF FILING MOTION TO STAY.**

If the obligor files a motion to stay as provided by Section 8.256, the clerk of the court may not deliver the writ of withholding to the obligor's employer before a hearing is held.

**Sec. 8.258. HEARING ON MOTION TO STAY.**

- (a) If the obligor files a motion to stay as provided by Section 8.256, the court shall set a hearing on the motion and the clerk of the court shall notify the obligor and obligee of the date, time, and place of the hearing.
- (b) The court shall hold a hearing on the motion to stay not later than the 30th day after the date the motion was filed unless the obligor and obligee agree and waive the right to have the motion heard within 30 days.
- (c) After the hearing, the court shall:
  - (1) render an order for income withholding that includes a determination of any amount of arrearages; or
  - (2) grant the motion to stay.

**Sec. 8.259. SPECIAL EXCEPTIONS.**

- (a) A defect in a notice of application for a writ of withholding is waived unless the respondent specially excepts in writing and cites with particularity the alleged defect, obscurity, or other ambiguity in the notice.
- (b) A special exception under this section must be heard by the court before hearing the motion to stay issuance.
- (c) If the court sustains an exception, the court shall provide the party filing the notice an opportunity to refile and shall continue the hearing to a specified date without requiring additional service.

**Sec. 8.260. WRIT OF WITHHOLDING AFTER ARREARAGES ARE PAID.**

- (a) The court may not refuse to order withholding solely on the basis that the obligor paid the arrearages after the obligor received the notice of application for a writ of withholding.
- (b) The court shall order that a reasonable amount of income be withheld and applied toward the liquidation of arrearages, even though a judgment confirming arrearages was rendered against the obligor.

**Sec. 8.261. REQUEST FOR ISSUANCE AND DELIVERY OF WRIT OF WITHHOLDING.**

- (a) If a notice of application for a writ of withholding is delivered and the obligor does not file a motion to stay within the time provided by Section 8.256, the party who filed the notice shall file with the clerk of the court a request for issuance of the writ of withholding stating the amount of current spousal maintenance, the amount of arrearages, and the amount to be withheld from the obligor's income.
- (b) The party who filed the notice may not file a request for issuance before the 11th day after the date the obligor received the notice of application for a writ of withholding.

**Sec. 8.262. ISSUANCE AND DELIVERY OF WRIT OF WITHHOLDING.**

The clerk of the court shall, on the filing of a request for issuance of a writ of withholding, issue and deliver the writ as provided by Subchapter D not later than the second working day after the date the request is filed. The clerk shall charge a fee in the amount of \$15 for issuing the writ of withholding.

**Sec. 8.263. CONTENTS OF WRIT OF WITHHOLDING.**

A writ of withholding must direct that an obligor's employer or a subsequent employer withhold from the obligor's disposable earnings an amount for current spousal maintenance and arrearages consistent with this chapter.

**Sec. 8.264. EXTENSION OF REPAYMENT SCHEDULE BY PARTY; UNREASONABLE HARDSHIP.**

A party who files a notice of application for a writ of withholding and who determines that the schedule for repaying arrearages would cause unreasonable hardship to the obligor or the obligor's family may extend the payment period in the writ.

**Sec. 8.265. REMITTANCE OF AMOUNT TO BE WITHHELD.**

The obligor's employer shall remit the amount withheld to the person or office named in the writ on each pay date and shall include with the remittance the date on which the withholding occurred.

**Sec. 8.266. FAILURE TO RECEIVE NOTICE OF APPLICATION FOR WRIT OF WITHHOLDING.**

- (a) Not later than the 30th day after the date of the first pay period after the date the obligor's employer receives a writ of withholding, the obligor may file an affidavit with the court stating that:
  - (1) the obligor did not timely file a motion to stay because the obligor did not receive the notice of application for a writ of withholding; and
  - (2) grounds exist for a motion to stay.

- (b) The obligor may:
  - (1) file with the affidavit a motion to withdraw the writ of withholding; and
  - (2) request a hearing on the applicability of the writ.
- (c) Income withholding may not be interrupted until after the hearing at which the court renders an order denying or modifying withholding.

**Sec. 8.267. ISSUANCE AND DELIVERY OF WRIT OF WITHHOLDING TO SUBSEQUENT EMPLOYER.**

- (a) After the clerk of the court issues a writ of withholding, a party authorized to file a notice of application for a writ of withholding under this subchapter may deliver a copy of the writ to a subsequent employer of the obligor by certified mail.
- (b) Except as provided by an order under Section 8.152, the writ of withholding must include the name, address, and signature of the party and clearly indicate that the writ is being issued to a subsequent employer.
- (c) The party shall file:
  - (1) a copy of the writ of withholding with the clerk not later than the third working day after the date of delivery of the writ to the subsequent employer; and
  - (2) the postal return receipt from the delivery to the subsequent employer not later than the third working day after the date the party receives the receipt.
- (d) The party shall pay the clerk a fee in the amount of \$15 for filing the copy of the writ.

**SUBCHAPTER G. MODIFICATION, REDUCTION, OR TERMINATION OF WITHHOLDING**

**Sec. 8.301. AGREEMENT BY PARTIES REGARDING AMOUNT OR DURATION OF WITHHOLDING.**

- (a) An obligor and obligee may agree to reduce or terminate income withholding for spousal maintenance on the occurrence of any contingency stated in the order.
- (b) The obligor and obligee may file a notarized or acknowledged request with the clerk of the court under Section 8.108 for a revised writ of withholding or notice of termination of withholding.
- (c) The clerk shall issue and deliver to the obligor's employer a writ of withholding that reflects the agreed revision or a notice of termination of withholding.
- (d) An agreement by the parties under this section does not modify the terms of an order for spousal maintenance.

**Sec. 8.302. MODIFICATIONS TO OR TERMINATION OF WITHHOLDING IN VOLUNTARY WITHHOLDING CASES.**

- (a) If an obligor initiates voluntary withholding under Section 8.108, the obligee may file with the clerk of the court a notarized request signed by the obligor and the obligee for the issuance and delivery to the obligor of:
  - (1) a modified writ of withholding that reduces the amount of withholding; or
  - (2) a notice of termination of withholding.
- (b) On receipt of a request under this section, the clerk shall issue and deliver a modified writ of withholding or notice of termination in the manner provided by Section 8.301.
- (c) The clerk may charge a fee in the amount of \$15 for issuing and delivering the modified writ of withholding or notice of termination.
- (d) An obligee may contest a modified writ of withholding or notice of termination issued under this section by requesting a hearing in the manner provided by Section 8.258 not later than the 180th day after the date the obligee discovers that the writ or notice was issued.

**Sec. 8.303. TERMINATION OF WITHHOLDING IN MANDATORY WITHHOLDING CASES.**

- (a) An obligor for whom withholding for maintenance owed or withholding for maintenance and child support owed is mandatory may file a motion to terminate withholding. On a showing by the obligor that the obligor has complied fully with the terms of the maintenance or child support order, as applicable, the court shall render an order for the issuance and delivery to the obligor of a notice of termination of withholding.

(b) The clerk shall issue and deliver the notice of termination ordered under this section to the obligor.

(c) The clerk may charge a fee in the amount of \$15 for issuing and delivering the notice.

**Sec. 8.304. DELIVERY OF ORDER OF REDUCTION OR TERMINATION OF WITHHOLDING.**

Any person may deliver to the obligor's employer a certified copy of an order that reduces the amount of spousal maintenance to be withheld or terminates the withholding.

**Sec. 8.305. LIABILITY OF EMPLOYERS.**

The provisions of this chapter regarding the liability of employers for withholding apply to an order that reduces or terminates withholding.

**CHAPTER 9. POST-DECREE PROCEEDINGS**

**SUBCHAPTER A. SUIT TO ENFORCE DECREE**

**Sec. 9.001. ENFORCEMENT OF DECREE.** (a) A party affected by a decree of divorce or annulment providing for a division of property as provided by Chapter 7 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.

**Sec. 9.002. CONTINUING AUTHORITY TO ENFORCE DECREE.**

The court that rendered the decree of divorce or annulment retains the power to enforce the property division as provided by Chapter 7.

**Sec. 9.003. FILING DEADLINES.**

(a) A suit to enforce the division of tangible personal property in existence at the time of the decree of divorce or annulment must be filed before the second anniversary of the date the decree was signed or becomes final after appeal, whichever date is later, or the suit is barred.

(b) A suit to enforce the division of future property not in existence at the time of the original decree must be filed before the second anniversary of the date the right to the property matures or accrues or the decree becomes final, whichever date is later, or the suit is barred.

**Sec. 9.004. APPLICABILITY TO UNDIVIDED PROPERTY.**

The procedures and limitations of this subchapter do not apply to existing property not divided on divorce, which are governed by Subchapter C and by the rules applicable to civil cases generally.

**Sec. 9.005. NO JURY.**

A party may not demand a jury trial if the procedures to enforce a decree of divorce or annulment provided by this subchapter are invoked.

**Sec. 9.006. ENFORCEMENT OF DIVISION OF PROPERTY.**

(a) Except as provided by this subchapter and by the Texas Rules of Civil Procedure, the court may render further orders to enforce the division of property made 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.

**Sec. 9.007. LIMITATION ON POWER OF COURT TO ENFORCE.**

(a) A court may not amend, modify, alter, or change the division of property made or approved in the decree of divorce or annulment. An order to enforce the division is limited to an order to assist in the implementation of or to clarify the prior order and may not alter or change the substantive division of property.

(b) An order under this section that amends, modifies, alters, or changes the actual, substantive division of property made or approved in a final decree of divorce or annulment is beyond the power of the divorce court and is unenforceable.

(c) The power of the court to render further orders to assist in the implementation of or to clarify the property division is abated while an appellate proceeding is pending.

**Sec. 9.008. CLARIFICATION ORDER.**

(a) On the request of a party or on the court's own motion, the court may render a clarifying order before a motion for contempt is made or heard, in conjunction with a motion for contempt or on denial of a motion for contempt.

(b) On a finding by the court that the original form of the division of property is not specific enough to be enforceable by contempt, the court may render a clarifying order setting forth specific terms to enforce compliance with the original division of property.

(c) The court may not give retroactive effect to a clarifying order.

(d) The court shall provide a reasonable time for compliance before enforcing a clarifying order by contempt or in another manner.

**Sec. 9.009. DELIVERY OF PROPERTY.**

To enforce the division of property made in a decree of divorce or annulment, the court may make an order to deliver the specific existing property awarded, without regard to whether the property is of especial value, including an award of an existing sum of money or its equivalent.

**Sec. 9.010. REDUCTION TO MONEY JUDGMENT.**

(a) If a party fails to comply with a decree of divorce or annulment and delivery of property awarded in the decree is no longer an adequate remedy, the court may render a money judgment for the damages caused by that failure to comply.

(b) If a party did not receive payments of money as awarded in the decree of divorce or annulment, the court may render judgment against a defaulting party for the amount of unpaid payments to which the party is entitled.

(c) The remedy of a reduction to money judgment is in addition to the other remedies provided by law.

(d) A money judgment rendered under this section may be enforced by any means available for the enforcement of judgment for debt.

**Sec. 9.011. RIGHT TO FUTURE PROPERTY.**

(a) The court may, by any remedy provided by this chapter, enforce an award of the right to receive installment payments or a lump-sum payment due on the maturation of an existing vested or nonvested right to be paid in the future.

(b) The subsequent actual receipt by the non-owning party of property awarded to the owner in a decree of divorce or annulment creates a fiduciary obligation in favor of the owner and imposes a constructive trust on the property for the benefit of the owner.

**Sec. 9.012. CONTEMPT.**

(a) The court may enforce by contempt an order requiring delivery of specific property or an award of a right to future property.

(b) The court may not enforce by contempt an award in a decree of divorce or annulment of a sum of money payable in a lump sum or in future installment payments in the nature of debt, except for:

(1) a sum of money in existence at the time the decree was rendered; or

(2) a matured right to future payments as provided by Section 9.011.

(c) This subchapter does not detract from or limit the general power of a court to enforce an order of the court by appropriate means.

**Sec. 9.013. COSTS.**

The court may award costs in a proceeding to enforce a property division under this subchapter as in other civil cases.

**Sec. 9.014. 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.