

PUBLICATION UPDATE

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DORSANEO, TEXAS LITIGATION GUIDE

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HIGHLIGHTS

- Adoption of Chapter 150E of the Civil Practices and Remedies Code to comprehensively address the potential vicarious liability of Uber, Lyft, or a similar transportation network company (“TNC”) for the acts of one of its drivers using the company’s digital network. Notably, the statute bars liability unless the claimant proves by clear and convincing evidence that the TNC was grossly negligent with respect to the subject claim. *See* Ch. 302, *Liability of Owners and Others*, § 302.02[1].
- Amendments to the Texas Citizens Participation Act to exempt a legal malpractice claim brought by a client or former client from the coverage of the statute. *See* Ch. 333, *Libel and Slander*, § 333.42[2][b].
- Adoption of Chapter 31 of the Property Code to create a cause of action for the bad faith washout of an overriding royalty interest in an oil and gas lease that occurred on or after Sept. 1, 2023. *See* Ch. 283, *Oil & Gas Leases*, § 283.03[15].
- Adoption of Chapter 89A of the Civil Practices and Remedies Code to limit the liability of individuals and organizations for the donation and distribution of feminine hygiene products. *See* Ch. 290, *Negligence*, § 290.20[4][f].
- Adoption of Chapter 75B of the Civil Practices and Remedies Code to bar liability of a recreational vehicle park or campground entity for a covered participant injury if the warning prescribed the statute was posted. *See* Ch. 290, *Negligence*, § 290.20[4][f].
- Amendments to Section 551.105 of the Insurance

Code to raise the time period for cancellation by the insurer of a covered policy to 60 days for any insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2024. *See* Ch. 341, *Liability Insurance*, § 341.03[3].

- Amendments to Section 401.026 of the Labor Code to clarify that a peace officer en route to an emergency call is considered to be in the course and scope of employment for purposes of the workers' compensation laws. *See* Ch. 340, *Workers' Compensation*, § 340.04[3][b].
- Adoption of Chapter 261 of the Property Code to create a procedure for extending or amending restrictions for certain older subdivisions in the city of Houston, including the removal of any restriction relating to race, religion, or national origin that is void and unenforceable under state and federal law. *See* Ch. 285, *Restrictions*, § 285.04[14].
- Addition of Section 74.552 of the Civil Practices and Remedies Code to provide an affirmative defense to liability when a physician or health care provider exercised reasonable medical judgment in providing medical treatment to a pregnant woman in response to: (1) an ectopic pregnancy at any location; or (2) a previable premature rupture of membranes. *See* Ch. 321, *Medical Malpractice*, § 321.09[2].
- Amendments to Section 75.006 of the Civil Practices and Remedies Code to ex-

pand the liability protections of owners and lessees for certain livestock related injuries related to the removal of fences. *See* Ch. 300, *Operator's Liability*, §§ 300.02[4], 300.141; Ch. 310, *Premises Liability*, § 310.08.

- Amendments to Section 150.001 of the Civil Practices and Remedies Code to provide that certain third-party claimants and cross-claimants alleging professional malpractice by an engineer or architect are not required to file a certificate of merit in conjunction with the assertion of the claim. *See* Ch. 322, *Professional Malpractice*, § 322.04[2][d].
- Amendments to Section 16.009 of the Civil Practices and Remedies Code to alter the repose periods for claims against contractors arising out of the design, construction, or repair of a new residence, of an alteration of or repair or addition to an existing residence. *See* Ch. 270, *Improvement Contracts*, § 270.42[2].

This release updates Texas Litigation Guide with recent legislation as well as Texas Supreme Court and court of appeals decisions and federal cases. Many of the significant developments in this release are summarized below.

ATTORNEYS

- **Attorney's Fees.** New Tex. Prop. Code § 61.006 allows the prevailing party in an action to enforce a motor vehicle mortgagee's lien to recover reasonable attorney's fees. *See* Ch. 132, *En-*

forcement of Judgments,
§ 132.21[2][b].

PRETRIAL, TRIAL, AND APPELLATE PRACTICE

- **Unconscionable Arbitration Agreement.** In *Houston AN USA, LLC v. Shattenkirk*, 669 S.W.3d 392, 399 (Tex. 2023), the Texas Supreme Court held that a party opposing arbitration failed to meet his burden of proving the likelihood he would incur prohibitive arbitration costs when the agreement was silent regarding how the parties would pay the costs. See Ch. 44, *Arbitration*, § 44.02[1][b].
- **Parties Agreement Regarding Who Decides Arbitrability.** In *TotalEnergies E&P USA, Inc. v. MP Gulf of Mex., LLC*, 667 S.W.3d 694, 708 (Tex. 2023), the Texas Supreme Court held that, as a general rule, an agreement to arbitrate in accordance with the AAA or similar rules constitutes the parties' clear and unmistakable agreement that the arbitrator would decide whether the parties' disputes must be resolved through arbitration. See Ch. 44, *Arbitration*, § 44.02[2].
- **Declaratory Relief Ripeness Question.** In *Perez v. Turner*, 653 S.W.3d 191, 197 (Tex. 2022), the Texas Supreme Court held that a party's request for a declaration regarding an ordinance's invalidity was ripe if the ordinance was currently injuring the party, even if a court had not yet adjudged the ordinance invalid. See Ch. 45, *Declaratory Relief*, § 45.02[1].
- **Joinder in Declaratory Relief Actions.** In *In re Kappmeyer*, 668 S.W.3d 651, 655 n.3 (Tex. 2023), the Texas Supreme Court held that when declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration must be made parties; however, unlike Tex. R. Civ. P. 39(a), joinder is not compelled in a declaratory relief action, rather, a declaration does not prejudice the rights of nonparties. See Ch. 45, *Declaratory Relief*, § 45.05[3].
- **Costs.** An amendment to Tex. Gov't Code 57.002 provides that a party who files a statement of inability to afford payment of court costs is not required to provide an interpreter or pay costs associated with the services of a court interpreter. See Ch. 30 *Commencement of Actions*, § 30.04[4].
- **Jury Selection.** Revisions to the Texas Government Code make various changes to the jury selection process, including allowing the court clerk to summon the jurors directly, changing the age exemption from 70 to 75, and changing the amount of juror compensation; the

Rules of Civil Procedure have also been amended to indicate that the clerk as well as the sheriff or constable may summon jurors. See Ch. 120, *Jury Selection*, § 120.01.

- **Superseding a Judgment.** Tex. Civ. Prac. & Rem. Code § 52.007 creates a procedure for posting alternative security when posting a cash bond would require the judgment debtor to liquidate interests in real or personal property necessary to the normal course of the judgment debtor's business. See Ch. 148, *Suspending Enforcement of the Judgment*, § 148.04[2][e].
- **Appeal of Interlocutory Orders.** Tex. Civ. Prac. & Rem. Code § 51.014 has been amended to make clear that courts of appeals do not have unfettered discretion whether to allow or deny a permissive appeal from an interlocutory order under § 51.014; rather, the court of appeals decision denying appeal is subject to de novo review by the Texas Supreme Court; this statutory change overrules the holding of *Indus. Specialists, LLC v. Blanchard Ref. Co. LLC*, 652 S.W.3d 11 (Tex. 2022); the Texas Supreme Court also amended Appellate Rule 28.3 to conform to this change, and eliminated Appellate Rule 28.2. See Ch. 2, *Jurisdiction of Texas Courts*, § 2.01[2][b][ii][K]; Ch. 153, *Accelerated Ap-*

peals, §§ 153.02[1][b] 153.04.

ADMINISTRATIVE LAW

- **Compliance With Administrative Procedure Act.** In *Tex. Comm'n on Env't Quality v. Friends of Dry Comal Creek*, 669 S.W.3d 506, 519–521 (Tex. App.—Austin 2023, pet. filed), the court of appeal held that an agency's guidance document was not considered a "rule" and did not have to be promulgated in compliance with the Administrative Procedure Act because it was not binding. See Ch. 421, *Administrative Rules*, § 421.05[1].
- **Proper Notice of New Regulation.** In *RWE Renewables Ams., LLC v. PUC of Tex.*, 669 S.W.3d 566, 577 (Tex. App.—Austin 2023, pet. filed), the court of appeal held that notice of a new regulation on the agency's website did not comply with the Administrative Procedure Act which required publication in the Texas Register. See Ch. 421, *Administrative Rules*, § 421.05[2][c].

BUSINESS AND COMMERCIAL LAW

- **Business Court.** This release discusses the Legislature's creation of a business court that will have jurisdiction, beginning in September 1, 2024, to hear cases regarding business entities, securities regulations, and issues arising out of the

Texas Business Organizations Code. See Ch. 160, *Texas Business Organizations Code*, § 160.04.

- **Establishing Securities Fraud.** In *Slack Techs., LLC v. Pirani*, ___ U.S. ___, 143 S. Ct. 1433, 1439, 216 L. Ed. 2d 18 (2023), the U.S. Supreme Court held that to bring a claim for securities fraud under 15 U.S.C. § 77k(a), the plaintiff must be able to trace the securities at issue to the particular registration statement alleged to be false or misleading. See Ch. 171, *Securities Fraud*, § 171.05[1][a].
 - **Ratification of Void or Voidable Acts or Transactions.** This release includes new Tex. Bus. Orgs. Code § 154.205, under which a partnership may ratify any act or transaction taken by the partnership that is void or voidable, and may waive the failure to comply with any requirements of the partnership agreement. See Ch. 180, *Partner's Liability*, § 180.07.
 - **TCHRA Statute of Limitations Jurisdictional.** In *United Indep. Sch. Dist. v. Mayers*, 665 S.W.3d 775, 782 (Tex. App.—San Antonio 2023, no pet. h.), the court of appeal held that governmental immunity under the TCHRA is waived only if the plaintiff complies with all of the procedures of the TCHRA, including the statute of limitations; there-
- fore, if a plaintiff is suing the government under the TCHRA, the two-year limitations period is jurisdictional. See Ch. 203, *Employer-Employee Relations*, § 203A.64[6][a].
- **Force Majeure Clauses.** This release includes *Point Energy Partners Permian, LLC v. MRC Permian Co.*, 669 S.W.3d 796, 2023 Tex. LEXIS 343, **15–16 (Tex. April 21, 2023), in which the Texas Supreme Court discussed force majeure clauses, noting that the scope and effect of a force majeure clause depends on the specific language in the contract at issue and not on any traditional definition of the term. See Ch. 210A, *Contracts*, § 210A.41[5][c].
 - **Contract Damages.** In *MSW Corpus Christi Landfill, Ltd. v. Gulley-Hurst, L.L.C.*, 664 S.W.3d 102, 106 (Tex. 2023), the Texas Supreme Court held that when a property's market value at the time of breach exceeds the contract price, the correct measure of benefit of the bargain damages is the difference between the promised contract price and what the seller received. See Ch. 217, *Contract Damages*, § 217.10[2].
 - **Recovery in Quantum Meruit.** In *Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc.*, 659 S.W.3d 424, 436 (Tex. 2023), the Texas Supreme Court held that to

recover damages in quantum meruit, the plaintiff's efforts must have been undertaken specifically for the person sought to be charged. See Ch. 218, *Actions in Quasi Contract*, § 218.03[1][c].

PERSONAL INJURY LITIGATION

- **Tort Claims Act; Status as Governmental Unit.** The Electric Reliability Council of Texas (“ERCOT”) is: (1) a governmental unit under the Tort Claims Act and can take an interlocutory appeal from the denial of its plea to the jurisdiction; and (2) also an arm of the state and is entitled to sovereign immunity. *CPS Energy v. Elec. Reliability Council of Tex.*, 66 Tex. Sup. Ct. J. 1222, 2023 Tex. LEXIS 577, at *9-*15, at *22-*34 (Tex. 2023). See Ch. 293, *Claims Against Governmental Units*, § 293.10[3][a].
- **Tort Claims Act; Special Defect.** A shallow ditch near a T-shaped intersection was not on the roadway and therefore was not a special defect because a ditch adjacent to a roadway does not impair or obstruct the ordinary course of travel on the roadway. *Fraley v. Tex. A&M Univ. Sys.*, 664 S.W.3d 91, 98–100 (Tex. 2023).
- **Tort Claims Act; Discretionary Function Exception.** When a city authorizes sidewalk cafes and del-egates sidewalk maintenance responsibilities to their operators, the mere fact that it retains the contractual right to enforce or monitor the operator's compliance does not require the city to do so, and therefore does not remove the city's conduct from the discretionary function exception. *City of Austin v. Quinlan*, 66 Tex. Sup. Ct. J. 996, 2023 Tex. LEXIS 459, at *7-*13 (Tex. 2023).
- **Negligence; Duty.** When a driver was killed by the collapse of a highway overpass after it was struck by an oversize load, the equipment rental company had a duty in negligence to ensure that its equipment was properly loaded and secured onto the appropriate flat-bed trailers before the vehicles traveled on the highway. *United Rentals N. Am., Inc. v. Evans*, 668 S.W.3d 627 (Tex. 2023). See Ch. 290, *Negligence*, § 290.02[2][b].
- A third-party contractor that conducts drug testing for an employer has no negligence duty owed to the tested employees because imposing it would both burden third-party testing entities, and undermine the employment-at-will doctrine. *Houston Area Safety Council, Inc. v. Mendez*, 66 Tex. Sup. Ct. J. 1192, 2023 Tex. LEXIS 576, at *11-*19 (Tex. 2023). See Ch. 290, *Negligence*, § 290.02[2][b].

- **Negligence; Res Ipsa Loquitur.** In an action arising from the abrupt stop of a hotel elevator at the wrong floor, a jury instruction on res ipsa loquitur was error because there was no evidence to support a finding that an elevator ordinarily does not malfunction in that way in the absence of negligence. *Schindler Elevator Corp. v. Ceasar*, 66 Tex. Sup. Ct. J. 1136, 2023 Tex. LEXIS 525, at *7–*11 (Tex. 2023). See Ch. 290, *Negligence*, § 290.33[4][b].
- **Vehicles; Railroad Crossing.** A federal statute as to railroads did not preempt a common law negligence claim against a railroad for creating and maintaining a “humped crossing” above the level of the roadway because: (1) the claim is general state law that does not “regulate” rail transportation as required by the statute for express preemption; and (2) the railroad did not carry its burden to establish the kind of unreasonable burden or interference with its operations necessary to trigger implied preemption. *Horton v. Kan. City Southern Ry.*, 66 Tex. Sup. Ct. J. ___, 2023 Tex. LEXIS 635, at *16–*33 (Tex. 2023). See Ch. 300, *Operator’s Liability*, § 300.120.
- **Medical Malpractice; Health Care Liability Claim.** The gravamen of the claim based on all operative facts in the full record of the case was that an employee’s negligence in using a walker to transport a resident of an assisted living facility caused the incident on a sidewalk outside the center’s premises, so the claim was a safety-related HCLC and the claimant could not escape the coverage of Chapter 74 by “artfully pleading” the claim as one for premises liability only. *Collin Creek Assisted Living Ctr., Inc. v. Faber*, 66 Tex. Sup. Ct. J. ___, 2023 Tex. LEXIS 631, at *5–*7, *13–*25 (Tex. 2023). See Ch. 321, *Medical Malpractice*, § 321.02[2][c], [f].
- **Medical Malpractice; Future Damages.** A request for periodic payments of future damages may be made post-trial and need not be made in the requesting party’s pleadings or other pre-trial submissions. *Virlar v. Puente*, 664 S.W.3d 53, 62–63 (Tex. 2023). See Ch. 321, *Medical Malpractice*, § 321.19[2].
- **Professional Malpractice; Limitations.** The *Hughes* rule that limitations for a legal malpractice claim is tolled until all appeals on the underlying claim are exhausted or the litigation is otherwise finally concluded does not apply to toll limitations as to professional malpractice claims against architects or engineers. *Levinson Alcoser Assocs., L.P. v. El Pistolón II, Ltd.*, 66 Tex. Sup. Ct. J. 1128,

2023 Tex. LEXIS 526, at *11–*15 (Tex 2023). *See* Ch. 322, *Professional Malpractice*, § 322.04[2][c].

- **Proportionate Responsibility; Third-Party Designee.** In an action arising from a multi-vehicle accident, the trial court committed a harmful error in striking the designation of a responsible third-party truck driver who encountered the crash site because the defendant produced some evidence that the driver’s negligence both exacerbated the severity of the accident and prevented other drivers from avoiding it. *Gregory v. Chohan*, 66 Tex. Sup. Ct. J. 1086, 2023 Tex. LEXIS 528, at *38–*46 (Tex. 2023). *See* Ch. 291, *Proportionate Responsibility; Contribution and Indemnity*, § 291.03[2][a].
- **Proportionate Responsibility; Settlement Credit.** In a medical malpractice suit brought by both a mother and her minor daughter, settlement between a defendant and the daughter must be credited against the mother’s eventual recovery against the other defendants because each is a “claimant” under Chapter 33, and the daughter’s settlement recovery is for the injury suffered by the mother. *Virlar v. Puente*, 664 S.W.3d 53, 59–60 (Tex. 2023). *See* Ch. 102, *Settlement*, § 102.05[1]; Ch. 291, *Proportionate Responsibility; Contribution and Indemnity*, § 291.03[3][c]; Ch. 321, *Medical Malpractice*, § 321.13[5].
- **Damages in Tort; Wrongful Death.** To survive a legal-sufficiency challenge to an award of noneconomic damages, a wrongful death plaintiff bears the burden of demonstrating both (1) the existence of compensable mental anguish or loss of companionship and (2) a rational connection, grounded in the evidence, between the injuries suffered and the amount awarded. *Gregory v. Chohan*, 66 Tex. Sup. Ct. J. 1086, 2023 Tex. LEXIS 528, at *30–*31 (Tex. 2023). *See* Ch. 292, *Death Actions*, § 292.02[3]; Ch. 294, *Damages in Tort*, § 294.53[1].
- **Intentional Tort Claims; TCPA.** Under the original or amended TCPA, the “common interest” necessary to show that the right of association is implicated must be a communal or public interest at large, and one shared only between the communicating parties is insufficient. *McLane Champions, LLC v. Houston Baseball Partners LLC*, 66 Tex. Sup. Ct. J. ___, 2023 Tex. LEXIS 632, at *24–*26 (Tex 2023). *See* Ch. 333, *Libel and Slander*, § 333.42[3][b].
- **Intentional Tort Claims; Defamation.** Statements that “abortion is murder”

and entities advocating for it are “criminal organizations” were made in the context of society’s ongoing debate about abortion and whether *Roe v. Wade* should be overruled, so a reasonable person hearing those statements would understand them as opinion, not false statements of fact. *Lilith Fund for Reprod. Equity v. Dickson*, 662 S.W.3d 355, 363–369 (Tex. 2023). *See* Ch. 333, *Libel and Slander*, § 333.21[2].

INSURANCE LITIGATION

- **Workers’ Compensation; Venue of Action.** A professional football player who signed a three-year contract and stated his intent to live in a hotel in Dallas County while performing that contract established that the hotel was his residence at the time of the injury, so venue was mandatory in that county under Tex. Lab. Code § 410.252(b)(1). *Fortenberry v. Great Divide Ins. Co.*, 664 S.W.3d 807, 813–815 (Tex. 2023). *See* Ch. 340, *Workers’ Compensation*, §§ 340.30[4][b], 340.120, 340.150[1].
- **Enforceability of Insurance Policy; Effect of Misrepresentation by Insured.** Although the intent to deceive is a common law element of a claim for avoiding liability on a policy based on an insured’s misrepresentations, that requirement continues to apply under the

Insurance Code statutes governing the effect of an insured’s misrepresentations. *Am. Nat’l Ins. Co. v. Arce*, 66 Tex. Sup. Ct. J. 760, 2023 Tex. LEXIS 365, at *12–*19 (Tex. 2023). *See* Ch. 341, *Liability Insurance*, §§ 341.03[5], 341.08[3]; Ch. 344, *Life, Health, and Accident Insurance*, § 344.08[3].

- **Scope of Insurance Policy; External Documents.** An umbrella policy often defines who is insured by reference to a primary policy or an underlying service agreement, but the policy or payout limits of those external documents are not incorporated into the umbrella policy unless that intent is clearly manifested in the umbrella policy itself. *Exxonmobil Corp. v. Nat’l Union Fire Ins. Co.*, 66 Tex. Sup. Ct. J. 622, 2023 Tex. LEXIS 316, at *6–*11 (Tex. 2023). *See* Ch. 341, *Liability Insurance*, § 341.07[2].

FAMILY LAW

- **Temporary Orders.** A family violence protective order is now available without a showing that family violence is likely to occur in the future. A finding that family violence has occurred is sufficient. *See* Ch. 360A, *Temporary Orders*, § 360A.01[4].
- **Temporary Orders.** Standardized forms for applications for protective orders, temporary ex parte orders,

and protective orders will be in use starting September 1, 2024. The forms will be available on the website of the Office of Court Administration of the Texas Judicial System. See Ch. 360A, *Temporary Orders*, § 360A.01[4].

- **Temporary Orders.** Temporary orders may now prohibit either or both spouses from tracking or monitoring personal property or a motor vehicle in the other party's possession, either by using a tracking app or by physically following the other party or causing another to physically follow the other party. See Ch. 360A, *Temporary Orders*, § 360A.02[2][a]; Ch. 363, *Division of Property*, § 363.155[2].
- **Divorce.** If the court on its own motion refers a dissolution suit or a SAPCR to mediation while a motion for a temporary order is pending, the court may not postpone the initial hearing on the pending motion to a date that is later than the 30th day after the date set for the hearing. See Ch. 362, *Divorce*, § 362.41[2].
- **Reimbursement.** The statutes governing reimbursement have been revised for clarity and to incorporate established case law. See Ch. 363, *Division of Property*, § 363.55.
- **Guardian and Attorney ad Litem.** New provisions re-

quire a guardian ad litem and an attorney ad litem to take additional steps when a child is or may be placed in a residential treatment center. See Ch. 370, *SAPCR Procedures*, §§ 370.07[2][a], [c][i].

- **Child Custody Evaluation.** A new provision clarifies that a rebuttal expert may challenge the qualifications, methodology, or relevance of the information obtained by a person who has conducted a child custody evaluation. In addition, a child custody evaluator is now required to create an audiovisual recording of each interview with a child who is the subject of a suit seeking conservatorship or possession of, or access to, the child. See Ch. 370, *SAPCR Procedures*, § 370.08[2].
- **In Camera Interview of Child.** The Texas Supreme Court has held that when an *in camera* interview of a child is mandatory on timely request, a court's failure to conduct the interview is error. The error is harmful if the parent would have pursued a jury trial but for the interview request, and there were material fact issues for the jury to resolve. See Ch. 371, *Conservatorship*, § 371.03[5][a].
- **Child Support.** New statutory language clarifies that the guideline amount of child support is not affected

by a child's receipt of a lump-sum payment as a result of the obligor's disability. The payment may be applied as a credit against arrearages only. See Ch. 371A, *Child Support*, § 371A.03[3][d].

- **Child Support.** When establishing, modifying, or enforcing a child support obligation, a court may require an unemployed or underemployed obligor to either (1) participate in a program that provides employment assistance, skills training, or job placement services; or (2) work, have a plan to pay child support, or participate in work activities appropriate to pay the support obligation. See Ch. 371A, *Child Support*, § 371A.03[8].
- **Make-Up Visitation.** If a denial of court-ordered possession has resulted from a DFPS investigation that did not result in a finding of abuse or neglect, a court must order additional periods of possession to compensate. See Ch. 373, *Modification of SAPCR Orders*, § 373.04[7].
- **Modification of Child Support for Incarcerated Obligor.** When a child support obligor is incarcerated, the Title IV-D agency may administratively adjust the obligor's child support obligations. See Ch. 373, *Modification of SAPCR Orders*, § 373.07[6].
- **Parentage.** The court may

not delay an adjudication of parentage with respect to an individual over whom the court does have personal jurisdiction solely due to the lack of jurisdiction over another individual. Ch. 380, *Paternity*, § 380.06[3].

- **Termination of Parental Rights.** New grounds for termination of parental rights have been added to Family Code Section 161.001(b)(1): criminal solicitation of a minor under Penal Code Section 15.031, and online solicitation of a minor under Penal Code Section 33.021. See Ch. 381, *Termination of Parent-Child Relationship*, § 381.02[21].
- **Termination of Parental Rights.** In a DFPS case, the trial court may extend the mandatory one-year dismissal deadline if it finds that extraordinary circumstances exist and the extension is in the child's best interest. The Texas Supreme Court has held that these findings are mandatory, but not jurisdictional, and as a result, a parent cannot complain for the first time on appeal that the trial court failed to make both findings when it granted an extension. See Ch. 381, *Termination of Parent-Child Relationship*, § 381.20[6][b][ii].
- **Termination of Parental Rights.** In DFPS cases, when a court terminates parental rights under Family

Code Section 161.001(b)(1), the court must set out in a separate section of its order its findings regarding DFPS's efforts to return the child to the parent or the court's waiver of the reasonable efforts requirement. See Ch. 381, *Termination of Parent-Child Relationship*, § 381.21[2][c].

- **Adoption.** When placing a child for adoption, DFPS or a licensed child-placing agency may not set a maximum age for any prospective adoptive parent, but may consider the person's health and expected lifespan. See Ch. 382, *Adoption*, § 382.02[1][a].
- **Adoption.** The court may waive the adoption evaluation requirement in uncontested stepparent adoptions. See Ch. 382, *Adoption*, § 382.05[1].

PROBATE LITIGATION

- **Heirship.** A distributee who is 16 years of age or older may waive citation required by this subchapter to be served on the distributee [Tex. Estates Code § 202.056(a), eff. Sept. 1, 2023]. A parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a distributee who is younger than 16 years of age may waive citation to be served on the distributee [Tex. Estates Code § 202.056(b), eff. Sept. 1, 2023]. See Ch. 391, *Decent*

and Distribution, § 391.07[4].

- **Surviving Spouse.** The undivided one-half interest that the surviving spouse owned in community property that was by law under the sole management, control, and disposition of the deceased spouse during marriage is subject to the liabilities of the surviving spouse on the death of the deceased spouse [Tex. Estates Code § 101.052 (a-1), eff. Sept. 1, 2023]. The undivided one-half interest that the deceased spouse owned in community property that was by law under the sole management, control, and disposition of the surviving spouse during marriage passes to the deceased spouse's heirs or devisees charged with the liabilities of the deceased spouse [Tex. Estates Code § 101.052 (b), eff. Sept. 1, 2023]. See Ch. 393, *Appointment of Personal Representative*, § 393.10 [3].
- **Personal Representative Oath.** The Oath of Personal Representatives has been updated to reflect requirements of Texas Estates Code Sections 305.051, amended effective September 1, 2023 (oath or declaration of executor or administrator with will annexed), 305.052, amended effective September 1, 2023 (oath or declaration of administrator), and 305.053, amended effective September 1, 2023

(oath or declaration of temporary administrator)]. The oath or declaration is sworn to or signed and filed with the clerk of the court. See Ch. 393, *Appointment of Personal Representative*, § 393.150.

- **Ward Incapacity.** If an intellectual disability is the basis of a ward’s alleged incapacity, instead of the letter or certificate required under Section 1202.152(a), the court shall, subject to Subsection (c), consider a written letter or certificate the applicant presents from a physician or psychologist licensed in Texas which states: in the physician’s or psychologist’s opinion, whether the ward has the capacity, or sufficient capacity with supports and services, to do any of the activities listed in Section 1202.152(b)(1); how the ward’s ability to make or communicate reasonable decisions is affected by the ward’s mental capacity; and any other information required by the court. [Tex. Estates Code § 1202.1521(a)–(b), eff. Sept. 1, 2023]. The physician or psychologist who provides a letter or certificate under this section must preferably have experience examining individuals with an intellectual disability, or has an established patient-provider relationship with the ward [Tex. Estates Code § 1202.1521(d), eff. Sept. 1,

2023]. See Ch. 410, *Appointment of Guardian*, § 410.10[4].

REAL ESTATE LITIGATION

- **Condemnation; Government-Owned Property.** Any property owned by a government unit may be condemned because sovereign and governmental immunity are simply inapplicable in condemnation actions. *Hidalgo Cty. Water Improvement Dist. No. 3 v. Hidalgo Cty. Irrigation Dist. No. 1*, 669 S.W.3d 178 (Tex. 2023). See Ch. 261, *Condemnation*, §§ 261.04[2], 261.11[3], 261.100[1].
- **Oil and Gas Leases; Force Majeure Clause.** When a drilling operation to continue a lease was erroneously scheduled to occur after the contract’s deadline, a force majeure event that occurred before that deadline did not save the lease from termination because it was the scheduling error that caused the lease to terminate, not any delay occasioned by the force majeure event. *Point Energy Partners Permian, LLC v. MRC Permian Co.*, 66 Tex. Sup. Ct. J. 686, 2023 Tex. LEXIS 343, at *17–*24 (Tex. 2023). See Ch. 283, *Oil & Gas Leases*, § 283.03[17].
- **Oil and Gas Leases; Costs of Production.** Parties to an oil and gas lease may enter into a “proceeds plus” provision that employs a two-

prong calculation of the royalty base. First, the producers must determine their gross proceeds from selling the production, which is free of postproduction costs. Second, when the producers' contracts, sales, or dispositions state that enumerated postproduction costs or expenses have been deducted in setting the sales prices, those costs and expenses are to be added to the gross proceeds to properly calculate the royalty. *Devon Energy Prod. Co., L.P. v. Sheppard*, 668 S.W.3d 353 (Tex. 2023). *See* Ch. 283, *Oil & Gas Leases*, § 283.03[8][a].

- **Real Property Taxes; Attorney's Fees.** Tax Code Section 6.30(c) authorizes contingent-fee contracts only to enforce the collection of delinquent taxes as the Code uses that term, which means taxes that have already been imposed and have become delinquent. *Pecos Cnty. Appraisal Dist. v. Iraan-Sheffield Indep. Sch. Dist.*, 66 Tex. Sup. Ct. J. 944, 2023 Tex. LEXIS 422, at *7-*17 (Tex. 2023). *See* Ch. 260, *Real Property Taxes*, § 260.02[3].

- **Real Property Liens; Equitable Subrogation.** Equitable subrogation does not put the party receiving the lien interest in a better position than the original lender from whom it was transferred, so any claim to foreclosure accrues when the refinanced note is accelerated and is barred by limitations when brought more than four years after the date of acceleration. *PNC Mortg. v. Howard*, 668 S.W.3d 644 (Tex. 2023). *See* Ch. 255, *Real Property Security Interests*, §§ 261.04[2], 261.11[3], 261.100[1].
- **Restrictions; Compulsory Joinder.** In a declaratory judgment suit seeking to invalidate deed restrictions by one resident against a property owner's association, status as necessary parties requires that each lot owner affirmatively *claim* an interest relating to the subject of the action, so the mere fact that absentee lot owners might *have* such an interest does not implicate compulsory joinder. *In re Kappmeyer*, 668 S.W.3d 651 (Tex. 2023). *See* Ch. 285, *Restrictions*, § 285.02[6][b].

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Publication 719 Release 151

November 2023

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VOLUME 1

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- | | | |
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| <input type="checkbox"/> | 1 thru 11 | 1 thru 11 |
| <input type="checkbox"/> | Title page thru xv | Title page thru xv |
| <input type="checkbox"/> | 2-21 | 2-21 thru 2-22.1 |

VOLUME 2

Revision

- | | | |
|--------------------------|---------------------|--------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 30-17. | 30-17 thru 30-18.1 |

VOLUME 3

Revision

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|--------------------------|--------------------------------|-----------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 42-121 thru 42-123 | 42-121 thru 42-123 |
| <input type="checkbox"/> | 43-23 thru 43-24.1 | 43-23 thru 43-24.1 |
| <input type="checkbox"/> | 43-43 thru 43-49 | 43-43 thru 43-45 |
| <input type="checkbox"/> | 44-19 thru 44-36.1 | 44-19 thru 44-36.1 |
| <input type="checkbox"/> | 44-61 thru 44-62.1 | 44-61 thru 44-62.2(1) |
| <input type="checkbox"/> | 44-71 thru 44-73 | 44-71 thru 44-73 |
| <input type="checkbox"/> | 44-135 thru 44-152.1 | 44-135 thru 44-152.3 |
| <input type="checkbox"/> | 45-13 thru 45-34.1 | 45-13 thru 45-34.1 |
| <input type="checkbox"/> | 45-89 thru 45-91 | 45-89 thru 45-91 |

VOLUME 7

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- | | | |
|--------------------------|----------------------------------|------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 102-34.1 thru 102-34.3 | 102-34.1 thru 102-34.3 |
| <input type="checkbox"/> | 102-42.1 thru 102-43 | 102-43 thru 102-44.1 |
| <input type="checkbox"/> | 102-99 | 102-99 thru 102-100.1 |

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VOLUME 8

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| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 120-7 thru 120-16.1 | 120-7 thru 120-16.1 |

VOLUME 9

Revision

- | | | |
|--------------------------|--------------------------------|----------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 132-86.1 thru 132-87 | 132-87 thru 132-88.1 |
| <input type="checkbox"/> | 132-141 thru 132-147 | 132-141 thru 132-147 |
| <input type="checkbox"/> | 134-23 | 134-23 thru 134-24.1 |

VOLUME 10

Revision

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|--------------------------|--------------------------------|----------------------|
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| <input type="checkbox"/> | 145-23 thru 145-29 | 145-23 thru 145-30.1 |
| <input type="checkbox"/> | 145-68.17 thru 145-69. | 145-69 thru 145-70.3 |
| <input type="checkbox"/> | 148-1 thru 148-4.1 | 148-1 thru 148-3 |
| <input type="checkbox"/> | 148-21 | 148-21 thru 148-22.1 |
| <input type="checkbox"/> | 153-3 thru 153-8.1 | 153-3 thru 153-8.1 |
| <input type="checkbox"/> | 153-30.1 | 153-30.1 |
| <input type="checkbox"/> | 153-49 thru 153-81 | 153-49 thru 153-83 |

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- | | | |
|--------------------------|----------------------------------|------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 160-1 thru 160-3 | 160-1 thru 160-3 |
| <input type="checkbox"/> | 160-13 thru 160-22.1 | 160-13 thru 160-22.3 |
| <input type="checkbox"/> | 160A-41 thru 160A-44.1. | 160A-41 thru 160A-44.1 |
| <input type="checkbox"/> | 161-8.1 thru 161-23 | 161-9 thru 161-24.1 |
| <input type="checkbox"/> | 162-31 thru 162-32.5 | 162-31 thru 162-32.5 |
| <input type="checkbox"/> | 163-3 thru 163-10.1 | 163-3 thru 163-9 |
| <input type="checkbox"/> | 163-25 | 163-25 |
| <input type="checkbox"/> | 170-7 thru 170-11 | 170-7 thru 170-12.1 |
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VOLUME 12

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	180-1.	180-1 thru 180-2.1
<input type="checkbox"/>	180-15 thru 180-22.1	180-15 thru 180-22.1
<input type="checkbox"/>	181-9 thru 181-27.	181-9 thru 181-27
<input type="checkbox"/>	181-43	181-43 thru 181-44.1
<input type="checkbox"/>	181-53	181-53
<input type="checkbox"/>	182-9 thru 182-23.	182-9 thru 182-24.1
<input type="checkbox"/>	182-47	182-47 thru 182-48.1
<input type="checkbox"/>	183-1.	183-1 thru 183-2.1
<input type="checkbox"/>	183-13 thru 183-31	183-13 thru 183-32.3
<input type="checkbox"/>	183-59 thru 183-65	183-59 thru 183-65

VOLUME 13

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	203A-193.	203A-193 thru 203A-194.1
<input type="checkbox"/>	203A-249.	203A-249 thru 203A-250.1

VOLUME 14

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	210A-21	210A-21 thru 210A-22.1
<input type="checkbox"/>	210A-41 thru 210A-48.1.	210A-41 thru 210A-48.3
<input type="checkbox"/>	210A-81 thru 210A-85	210A-81 thru 210A-86.1
<input type="checkbox"/>	210A-99	210A-99 thru 210A-100.1
<input type="checkbox"/>	210A-116.1 thru 210A-116.5.	210A-116.1 thru 210A-116.5
<input type="checkbox"/>	210A-140.15 thru 210A-140.19	210A-140.15 thru 210A-140.19
<input type="checkbox"/>	210A-172.1 thru 210A-177	210A-173 thru 210A-178.1
<input type="checkbox"/>	210A-187.	210A-187 thru 210A-188.1
<input type="checkbox"/>	210A-195 thru 210A-197	210A-195 thru 210A-197
<input type="checkbox"/>	211-5 thru 211-10.1	211-5 thru 211-10.1
<input type="checkbox"/>	216-45 thru 216-49	216-45 thru 216-49
<input type="checkbox"/>	217-17	217-17 thru 217-18.1
<input type="checkbox"/>	217-27	217-27 thru 217-28.1
<input type="checkbox"/>	217-73 thru 217-77	217-73 thru 217-78.1
<input type="checkbox"/>	217-89	217-89 thru 217-90.1

Check As Done	<i>Remove Old <u>Pages Numbered</u></i>	<i>Insert New <u>Pages Numbered</u></i>
<input type="checkbox"/>	217-103 thru 217-107	217-103 thru 217-107
<input type="checkbox"/>	218-9	218-9 thru 218-10.1
<input type="checkbox"/>	218-29	218-29 thru 218-30.1
<input type="checkbox"/>	218-41 thru 218-45	218-41 thru 218-45

VOLUME 15

Revision

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<input type="checkbox"/>	233-51 thru 233-53	233-51 thru 233-53
<input type="checkbox"/>	233-104.1 thru 233-104.3	233-104.1 thru 233-104.3
<input type="checkbox"/>	233-113	233-113 thru 233-114.1
<input type="checkbox"/>	233-175 thru 233-179	233-175 thru 233-179
<input type="checkbox"/>	234-43	234-43

VOLUME 16

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	240-9 thru 240-12.1	240-9 thru 240-12.1
<input type="checkbox"/>	240-117	240-117
<input type="checkbox"/>	250-9 thru 250-11	250-9 thru 250-12.1
<input type="checkbox"/>	251-12.1	251-12.1
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<input type="checkbox"/>	252-38.3 thru 252-38.5	252-38.3 thru 252-38.5
<input type="checkbox"/>	252-51 thru 252-52.1	252-51 thru 252-52.1
<input type="checkbox"/>	252-67 thru 252-69	252-67 thru 252-70.1
<input type="checkbox"/>	252-105 thru 252-109	252-105 thru 252-109

VOLUME 17

Revision

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<input type="checkbox"/>	253-23	253-23 thru 253-24.1
<input type="checkbox"/>	254-13	254-13 thru 254-14.1
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<input type="checkbox"/>	255-74.9 thru 255-74.11	255-74.9 thru 255-74.11
<input type="checkbox"/>	260-48.1 thru 260-48.2(1)	260-48.1 thru 260-48.2(1)
<input type="checkbox"/>	261-1.	261-1 thru 261-2.1
<input type="checkbox"/>	261-17 thru 261-18.1	261-17 thru 261-18.1

Check As Done	<i>Remove Old <u>Pages Numbered</u></i>	<i>Insert New <u>Pages Numbered</u></i>
<input type="checkbox"/>	261-29	261-29
<input type="checkbox"/>	261-108.1 thru 261-110.1	261-109 thru 261-110.3
<input type="checkbox"/>	261-155	261-155 thru 261-156.1
<input type="checkbox"/>	261-187	261-187 thru 261-188.1

VOLUME 18

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	270-38.1 thru 270-38.3	270-38.1 thru 270-38.3
<input type="checkbox"/>	270-81 thru 270-82.3	270-81 thru 270-82.3
<input type="checkbox"/>	280-27 thru 280-30.1	280-27 thru 280-30.1
<input type="checkbox"/>	280-43 thru 280-45	280-43 thru 280-46.1
<input type="checkbox"/>	282-81 thru 282-82.1	282-81 thru 282-82.1
<input type="checkbox"/>	282-157	282-157 thru 282-158.1
<input type="checkbox"/>	283-11 thru 283-12.1	283-11 thru 283-12.1
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<input type="checkbox"/>	283-83 thru 283-91	283-83 thru 283-92.7
<input type="checkbox"/>	285-3 thru 285-6.1	285-3 thru 285-6.1
<input type="checkbox"/>	285-17	285-17 thru 285-18.1
<input type="checkbox"/>	285-26.5 thru 285-26.8(3)	285-26.5 thru 285-26.8(5)
<input type="checkbox"/>	285-33 thru 285-37	285-33 thru 285-37
<input type="checkbox"/>	285-45 thru 285-46.12(1)	285-45 thru 285-46.12(3)

VOLUME 19

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	290-13 thru 290-16.1	290-13 thru 290-16.1
<input type="checkbox"/>	290-55 thru 290-56.1	290-55 thru 290-56.1
<input type="checkbox"/>	290-65 thru 290-66.17.	290-65 thru 290-66.19
<input type="checkbox"/>	290-108.1 thru 290-115	290-109 thru 290-116.5
<input type="checkbox"/>	291-19 thru 291-21	291-19 thru 291-22.1
<input type="checkbox"/>	291-40.3 thru 291-40.6(3)	291-40.3 thru 291-40.6(3)
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<input type="checkbox"/>	292-19 thru 292-27	292-19 thru 292-28.1
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<input type="checkbox"/>	293-35 thru 293-37	293-35 thru 293-38.1
<input type="checkbox"/>	293-52.1 thru 293-56.1	293-53 thru 293-56.1
<input type="checkbox"/>	293-78.1 thru 293-79	293-79 thru 293-80.1
<input type="checkbox"/>	293-97 thru 293-104.7.	293-97 thru 293-104.7
<input type="checkbox"/>	293-127 thru 293-128.3	293-127 thru 293-128.3

Check As Done	<i>Remove Old Pages Numbered</i>	<i>Insert New Pages Numbered</i>
<input type="checkbox"/>	293-136.10(7)	293-136.10(7) thru 293-136.10(9)
<input type="checkbox"/>	294-89 thru 294-95	294-89 thru 294-96.1
<input type="checkbox"/>	295-61	295-61

VOLUME 19A

Revision

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<input type="checkbox"/>	300-65 thru 300-72.1	300-65 thru 300-72.1
<input type="checkbox"/>	302-1 thru 302-3	302-1 thru 302-3
<input type="checkbox"/>	302-19 thru 302-20.5	302-19 thru 302-20.7
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<input type="checkbox"/>	321-3.	321-3 thru 321-4.1
<input type="checkbox"/>	321-18.1 thru 321-20.1	321-19 thru 321-20.1
<input type="checkbox"/>	321-29 thru 321-30.12(1)	321-29 thru 321-30.12(2)(a)
<input type="checkbox"/>	321-58.1 thru 321-59	321-59 thru 321-60.1
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<input type="checkbox"/>	321-116.1 thru 321-116.7	321-116.1 thru 321-116.7

VOLUME 20

Revision

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<input type="checkbox"/>	322-54.3 thru 322-54.8(1)	322-54.3 thru 322-54.8(1)
<input type="checkbox"/>	322-54.17 thru 322-54.18(1)	322-54.17 thru 322-54.18(1)
<input type="checkbox"/>	331-10.1 thru 331-14.1	331-11 thru 331-14.1
<input type="checkbox"/>	331-35 thru 331-36.1	331-35 thru 331-36.1
<input type="checkbox"/>	333-5.	333-5 thru 333-6.1
<input type="checkbox"/>	333-71	333-71 thru 333-72.1
<input type="checkbox"/>	333-99 thru 333-108.5.	333-99 thru 333-108.6(1)
<input type="checkbox"/>	333-108.17 thru 333-108.20(5)	333-108.17 thru 333-108.20(5)

VOLUME 21

Revision

<input type="checkbox"/>	Title page.	Title page
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<input type="checkbox"/>	340-81 thru 340-84.1	340-81 thru 340-84.1
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<input type="checkbox"/>	341-55 thru 341-56.3	341-55 thru 341-56.3
<input type="checkbox"/>	344-67 thru 344-69	344-67 thru 344-70.1
<input type="checkbox"/>	345-29	345-29

VOLUME 22

Revision

<input type="checkbox"/>	Title page.	Title page
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<input type="checkbox"/>	360-87	360-87
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<input type="checkbox"/>	362-129	362-129 thru 362-130.1
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<input type="checkbox"/>	363-97 thru 363-103.	363-97 thru 363-103
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<input type="checkbox"/>	371A-1 thru 371A-8.1.	371A-1 thru 371A-7
<input type="checkbox"/>	371A-45	371A-45
<input type="checkbox"/>	371A-59	371A-59 thru 371A-60.1
<input type="checkbox"/>	371A-93	371A-93 thru 371A-94.1
<input type="checkbox"/>	371A-103 thru 371A-107	371A-103 thru 371A-107

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VOLUME 23

Revision

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<input type="checkbox"/>	372-10.1 thru 372-11	372-11 thru 372-12.1
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<input type="checkbox"/>	382-19 thru 382-35	382-19 thru 382-36.1
<input type="checkbox"/>	382-83 thru 382-119.	382-83 thru 382-111

VOLUME 24

Revision

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<input type="checkbox"/>	392-131 thru 392-137	392-131 thru 392-138.1
<input type="checkbox"/>	393-1 thru 393-7	393-1 thru 393-7
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<input type="checkbox"/>	394-41 thru 394-47	394-41 thru 394-48.1
<input type="checkbox"/>	394-97	394-97 thru 394-98.1

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<input type="checkbox"/>	400-3 thru 400-7	400-3 thru 400-7
<input type="checkbox"/>	400-29 thru 400-37	400-29 thru 400-38.1
<input type="checkbox"/>	400-57 thru 400-59	400-57 thru 400-60.1
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<input type="checkbox"/>	401-17	401-17
<input type="checkbox"/>	401-27 thru 401-31	401-27 thru 401-32.1
<input type="checkbox"/>	410-11 thru 410-21	410-11 thru 410-21
<input type="checkbox"/>	410-31 thru 410-47	410-31 thru 410-48.1
<input type="checkbox"/>	410-61 thru 410-75	410-61 thru 410-76.1
<input type="checkbox"/>	410-87	410-87 thru 410-88.1
<input type="checkbox"/>	410-103	410-103 thru 410-104.1
<input type="checkbox"/>	410-115	410-115
<input type="checkbox"/>	411-9 thru 411-27	411-9 thru 411-28.1
<input type="checkbox"/>	411-41 thru 411-53	411-41 thru 411-54.1
<input type="checkbox"/>	411-67 thru 411-75	411-67 thru 411-75

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<input type="checkbox"/>	I-153 thru I-157	I-153 thru I-157
<input type="checkbox"/>	I-179 thru I-183	I-179 thru I-184.1
<input type="checkbox"/>	I-235	I-235
<input type="checkbox"/>	I-403 thru I-411	I-403 thru I-412.1
<input type="checkbox"/>	I-571 thru I-573	I-571 thru I-574.1
<input type="checkbox"/>	I-637	I-637 thru I-638.1
<input type="checkbox"/>	I-659 thru I-667	I-659 thru I-668.1
<input type="checkbox"/>	I-685	I-685 thru I-686.1
<input type="checkbox"/>	I-721	I-721
<input type="checkbox"/>	I-741 thru I-743	I-741 thru I-744.1
<input type="checkbox"/>	I-811	I-811 thru I-812.1
<input type="checkbox"/>	I-843 thru I-845	I-843 thru I-846.1

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<input type="checkbox"/>	I-877	I-877 thru I-878.1
<input type="checkbox"/>	I-965 thru I-969	I-965 thru I-970.1
<input type="checkbox"/>	I-1007	I-1007 thru I-1008.1

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