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# Texas Family Law Practice and Procedure

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Publication 705    Release 62    November 2010

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**HIGHLIGHTS**

**Pub Update**

- This release updates the set in light of recent case law developments.

**Geographic residency restriction.** A trial court may impose a geographic residency restriction on a sole managing conservator’s right to designate the child’s primary residence. See Task B2, Determining Custody of Children, § B2.03[3].

**Authorization agreement for nonparent relative.** Many Texas children live with a relative but not with either parent. In such situations, the care-providing relative may encounter difficulties in obtaining medical services for the child, enrolling the child in school, obtaining insurance coverage for the child, and the like. To address this problem, Family Code Chapter 34 now provides for an authorization agreement whereby one or both parents may authorize a grandparent, an adult sibling, or an adult aunt or uncle to perform specified actions on the child’s behalf. See Task B2, Determining Custody of Children, § B2.03[7].

**Annuity payments included in net resources.** When a child support obligor receives annuity payments, only the interest portion of the payments is included in the obligor’s net resources for purposes of calculating child support. See Task B3, Calculating Child Support, § B3.02[2][a].

**Overpayment of child support.** If an obligor voluntarily pays more child support than required by court order and intends the payments to be applied to current support, the obligor is not entitled to a credit against his or her future support obligation. See Task B3, Calculating Child Support, § B3.02[16].

**Military retirement benefits.** A trial court may award the spouse a minimum amount or a percentage of the service member’s disposable retirement pay if, as and when received without restricting the service member’s right to elect disability benefits in lieu of military retirement pay. See Task B5, Characterizing Property of Parties, § B5.05[1][a][ii].

**Fraud on the community.** The awardee is not entitled to prejudgment interest on a money judgment based on constructive fraud. See Task B7, Dividing Community Property, § B7.03[13].

**Homestead.** Regardless of whether a homestead is separate or community property, it may not be conveyed or encumbered without the joinder of both spouses. See Task B7, Dividing Community Property, § B7.05[1][b].

**New trial.** When a trial court sets aside a jury verdict in granting a new trial, the trial court must specify its reasons for doing so. See Task G1, Moving for New Trial.

**Amicus attorney.** An amicus attorney has no role in a habeas proceeding. See Task H3, Conducting SAPCR Modification

Proceedings, § H3.03[2][d][ii].

**Child support arrearage.** The obligor is not entitled to a credit against arrearages for payments to the obligee or the child for such things as personal loans or money for Christmas gifts, an amusement park season pass, photographs, insurance, a car, or a class ring. See Task J1, Choosing Which Remedies To Seek, § J1.03[1][a].

**Contempt orders.** For purposes of drafting a contempt order, providing an electronic image number that refers to a scanned document available online at the district court clerk's website is the equivalent of giving the volume and page numbers in the court's minutes. See Task J3, Preparing and Implementing Contempt and Other Enforcement Orders, § J3.02[1][a].

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# Texas Family Law Practice and Procedure

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Publication 705 Release 62

November 2010

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