

PUBLICATION UPDATE

Route to: _____ _____ _____ _____
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Texas Family Law Practice and Procedure

Publication 705 Release 68 November 2013

HIGHLIGHTS

Pub Update

- This release updates the set in light of the changes to the Family Code enacted by the 83rd Legislature as well as recent case law developments.

History of sexual abuse. The restrictions on conservatorship, possession, and access that apply to a parent with a history of family violence have now been extended to a parent who has a history or pattern of sexual abuse against the other parent, a spouse, or a child. See Task B2, Determining Custody of Children, § B2.04[2][c.1]; Task H4, Establishing Grounds for Modification of Conservatorship, § H4.01[7].

Veterans disability benefits. For purposes of calculating an obligor’s net resources available to pay child support, gross income includes United States Department of Veterans Affairs disability benefits other than non-service-connected disability pension benefits. See Task B3, Calculating Child Support, § B3.02[2][a].

Statutory “cap” for net resources. For purposes of applying the child support guidelines, the statutory “cap” on net resources has increased from \$7,500 to \$8,550. See Task B3, Calculating Child Support, § B3.02[5].

Contempt enforcement of agreed spousal maintenance. Agreed spousal maintenance is enforceable by contempt, but only up to the amount and duration the court could have ordered. See Task B4, Determining Spousal Support and Maintenance, § B4.02[8][a].

Income withholding for agreed spousal maintenance. An income withholding order is available for agreed spousal maintenance, but only up to the amount and duration the court could have ordered. See Task B4, Determining Spousal Support and Maintenance, § B4.02[8][c].

Reimbursement. The dollar-for-dollar and enhancement-of-value measures of reimbursement are discussed in Task B7, Dividing Community Property, § B7.04[4].

Waiver of service. In a dissolution suit,

a waiver of service must still be sworn before a notary public who is not an attorney in the suit. The procedures for an unsworn declaration under penalty of perjury are not available. See Task C4, Filing and Serving the Petition, § C4.08.

De novo hearing. The deadline for requesting a de novo hearing in the referring court has been changed from seven working days to three working days after receipt of notice of the associate judge's report. See Task E5, Making Pretrial Motions and Preliminary Matters, § E5.09[3][b][i].

Attorney's fees. Task E7, Obtaining Court-Ordered Attorney's Fees and Costs, has been revised to incorporate new Family Code Section 6.708(c), which authorizes a trial court to order attorney's fees in dissolution suits, and to discuss the effect of the new statute on the Texas Supreme Court's holding in *Tedder v. Gardner Aldrich, LLP* [2013 Tex. LEXIS 393 (Tex. May 17, 2013)]. In *Tedder*, the Court held that a spouse is not personally liable for the other spouse's attorney's fees because attorney's fees are not necessities. See § E7.01.

Intervening for attorney's fees. The propriety of an attorney intervening in a dissolution suit to obtain payment of attorney's fees has been called into question by a footnote in *Tedder v. Gardner Aldrich, LLP* [2013 Tex. LEXIS 393 (Tex. May 17, 2013)]. See Task E7, Obtaining Court-Ordered Attorney's Fees and Costs, § E7.04[2].

Acceptance of benefits. The acceptance of benefits doctrine, which is being used with increasing frequency to block divorce appeals, is discussed in Task F2, Concluding Client Matters, § F2.07[2][c].

Attorney ad litem in DFPS case. Attorneys ad litem in DFPS cases have additional duties under the 2013 amendments to

the Family Code. See Task H3, Conducting SAPCR Modification Proceedings, § H3.03[2][c][ii]; Task S2, Conducting Termination Suit, § S2.03[4][c].

Contempt for nonpayment of child support. The 83rd Legislature repealed the statute allowing a child support obligor to avoid being held in contempt by getting current on arrearages before the enforcement hearing. See Task J2, Bringing Motion for Contempt and Other Remedies, § J2.09[3].

License suspension. An obligor in arrears must now make an immediate payment of at least \$200 in order to obtain a stay of a license suspension. See Task J6, Suspending License, § J6.03[1][b].

Estoppel in child support enforcement. The Texas Supreme Court has held that estoppel is not an affirmative defense to a child support enforcement action [*Office of Attorney General of Texas v. Scholer*, 2013 Tex. LEXIS 519 (June 28, 2013)]. See Task N1, Defending Against SAPCR Enforcement, § N1.08[2].

Family violence protective order. An application for a protective order may now be filed in any county in which the family violence is alleged to have occurred. See Task P2, Following Procedure to Obtain Protective Order, § P2.02[1][a].

Limitation for paternity fraud. The statute of limitation for filing a termination petition alleging mistaken paternity has been extended from one year to two years. See Task S1, Initiating Termination Suit, § S1.07[b].

Child support after termination. If a parent's rights are terminated and DFPS is appointed as the child's managing conservator, the court may order the terminated parent to pay child support if he or she is

financially able to do so. See Task S5, Obtaining Final Order in Termination Suit, § S5.02[2].

Uniform Forms—Divorce Set One.

Volume 5 now includes the set of forms recently developed by the Texas Supreme Court for use by pro se litigants in uncontested divorces where the parties have no children or real property.

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Publication 705 Release 68

November 2013

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VOLUME 1

Revision

<input type="checkbox"/>	Publication Table of Contents 1 thru 7	Publication Table of Contents 1 thru 7
<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	B1-9 thru B1-25	B1-9 thru B1-25
<input type="checkbox"/>	B2-1 thru B2-5	B2-1 thru B2-5
<input type="checkbox"/>	B2-29 thru B2-38.1	B2-29 thru B2-38.3
<input type="checkbox"/>	B2-67 thru B2-75	B2-67 thru B2-76.3
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<input type="checkbox"/>	B5-59	B5-59 thru B5-63
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<input type="checkbox"/>	C3-35 thru C3-37	C3-35 thru C3-37
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<input type="checkbox"/>	C8-17 thru C8-19	C8-17 thru C8-20.1
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<input type="checkbox"/>	D4-12.1 thru D4-17	D4-13 thru D4-17

VOLUME 2

Revision

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<input type="checkbox"/>	E1-41 thru E1-47	E1-41 thru E1-48.1
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<input type="checkbox"/>	E1-91	E1-91
<input type="checkbox"/>	E1-101 thru E1-103	E1-101 thru E1-103

Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
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<input type="checkbox"/>	F2-67	F2-67

VOLUME 3

Revision

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<input type="checkbox"/>	L1-20.1 thru L1-26.3	L1-21 thru L1-26.5

VOLUME 4

Revision

Check As Done	<i>Remove Old Pages Numbered</i>	<i>Insert New Pages Numbered</i>
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VOLUME 5

Revision

- | | | |
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Special Alert

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| <input type="checkbox"/> | TS-1 thru TS-83 | TS-1 thru TS-85 |
| <input type="checkbox"/> | I-1 thru I-187 | I-1 thru I-187 |
| <input type="checkbox"/> | TAX-1 thru TAX-7 | TAX-1 thru TAX-9 |

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| <input type="checkbox"/> | No Material removed | APPENDIX 1 Tab Card (file after page TAX-9) |
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