

**PUBLICATION UPDATE**

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# Texas Family Law Practice and Procedure

Publication 705

Release 76

November 2017

## HIGHLIGHTS

### Pub Update

- This release updates the set to incorporate amendments to the Texas Family Code made by the 85th Texas Legislature as well as recent case law developments.

**Underage marriage.** Starting September 1, 2017, a marriage is void if either party to the marriage is younger than 18, unless a court has removed the party’s disabilities of minority for general purposes. See Task B1, Establishing the Marriage Relationship, § B1.01[3].

**Findings of fact.** A party who wishes to obtain findings of fact in connection with a possession order that varies from the standard possession order now has 20 days from the date the judgment is signed to file a request. See Task B2, Determining Custody of Children, § B2.05[2][a].

**Authorization agreements.** The statutes governing authorization agreements have been revised to expand the pool of potential

parties from relatives to “adult caregivers.” The mailing procedures for notifying the nonparticipating parent have been simplified. See Task B2, Determining Custody of Children, § B2.12.

**Temporary authorization orders.** New statutes allow a nonparent caregiver to obtain a court order granting temporary authorization to take specified actions for the child’s benefit. See Task B2, Determining Custody of Children, § B2.13.

**Appointment of receiver.** When a trial court appoints a receiver while divorce proceedings are pending, the court must issue written findings of fact and conclusions of law in support of the appointment within seven days. See Task B7, Dividing Community Property, § B7.05[4].

**Protective orders.** Divorce and SAPCR petitions must now state whether there is a protective order under Family Code Title 4 or Code of Criminal Procedure Chapter 7A or an order for emergency protection under Code of Criminal Procedure Article 17.292 in effect or pending with regard to the

parties or a party's child. If so, a copy of the order must be attached to the petition. See Task C3, Drafting the Petition and SAPCR, §§ C3.04, C3.104; Task R3, Initiating Paternity Suit, §§ R3.06[1], R3.100[1][b].

#### **Temporary orders during appeal.**

Family Code Section 6.709 has been substantially revised to clarify the procedures for obtaining, modifying, and enforcing temporary orders while an appeal is pending. See Task C7, Modifying Temporary Orders, § C7.01; Task G3, Bringing Appeal in Court of Appeals, §§ G3.02[3], G3.02[3A].

**Mediated settlement agreements.** A court may decline to render judgment on a mediated settlement agreement in a SAPCR if the agreement would permit a sex offender or a person who otherwise has a history or pattern of abuse to reside in the same household as the child or otherwise have unsupervised access to the child. See Task E2, Settling the Case; Agreements Incident to Divorce, § E2.03[2].

**Associate judge's power to render final order.** Amendments to the Family Code have clarified and expanded an associate judge's power to render a final order. Orders signed by an associate judge before May 1, 2017, but never signed by the referring court have been ratified retroactively. See Task 5, Pretrial Motions and Preliminary Matters, § E5.09[2][b][ii].

**Acceptance-of-benefits doctrine.** In *Kramer v. Kastleman* [508 S.W.3d 211 (Tex. 2017)], the Texas Supreme Court has provided detailed guidance for applying the acceptance-of-benefits doctrine in the context of divorce. See Task F2, Concluding Client Matters, § F2.07[2][c][ii].

#### **Court's jurisdiction over modification**

**suit while appeal is pending.** The courts of appeals are divided on the issue of whether a trial court has jurisdiction to hear a petition to modify a SAPCR order while an appeal of an earlier SAPCR order is pending. See Task H1, Determining SAPCR Modification Jurisdiction, § H1.02[1].

**Child support arrearages.** In *Ochsner v. Ochsner* [517 S.W.3d 717 (Tex. 2016)], the Texas Supreme Court has held that, in a child-support enforcement action, the trial court may consider direct payments to the other parent or to a third party in deciding whether an arrearage exists, even if the original support order specifies a different manner of payment. See Task J1, Choosing Which Remedies To Seek, § J1.03[1][a].

**Defenses to termination under Subsection (O).** When termination of parental rights is sought on the ground of failure to comply with a court order, the parent avoids termination by proving that he or she made a good faith effort to comply with the order but was unable to do so through no fault of his or her own. See Task S3, Establishing Grounds for Termination, § S3.02[12][b].

**Termination and child's best interest.** A new Family Code provision states that a court may not base a finding that termination is in a child's best interest on a finding that the parent home-schooled the child; is economically disadvantaged; has been charged with a nonviolent misdemeanor offense other than family violence; provided low THC cannabis to a child for whom it was prescribed; or declined immunization for the child for reasons of conscience, including a religious belief. See Task S3, Establishing Grounds for Termination, § S3.03[1].

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# Texas Family Law Practice and Procedure

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Publication 705    Release 76

November 2017

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## VOLUME 1

### Revision

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