

PUBLICATION UPDATE

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HIGHLIGHTS

- **2015 Statutory Changes Incorporated Throughout Publication**
- **U.S. Supreme Court Holds That Same-Sex Marriage Is Legal**

This release updates *Texas Litigation Guide* with recent Texas Supreme Court and court of appeals decisions, federal cases, 2015 statutory changes, and rule amendments. Many of the significant developments in this release are summarized below.

Statutory Updates

Amendments to **Tex. Civ. Prac. & Rem. Code § 73.005** to provide that in a defamation action against a newspaper or other periodical or broadcaster, the truth defense applies to an accurate reporting of allegations made by a third party regarding a matter of public concern. This amendment appears to reject the rule of *Neely v. Wilson*, 418 S.W.3d 52, 64–65 (Tex. 2013), that a media defendant who reports third-party allegations must show that the alle-

gations are true. See Ch. 333, *Libel and Slander*, § 333.21[1].

Amendments to **Tex. Civ. Prac. & Rem. Code § 74.001** that exclude from the statutory definition of a health care liability claim any claims under Labor Code Sections 406.033(a) or 408.001(b) against an employer by an employee or the employee’s surviving spouse or heir. This amendment appears to effectively overrule *Texas W. Oaks Hosp. v. Williams*, 371 S.W.3d 171 (Tex. 2012), which held that in a suit against an employer that does not subscribe to workers’ compensation, the injured employee must comply with the requirements of Chapter 74 if the claim falls within the statutory definition of an HCLC. See Ch. 321, *Medical Malpractice*, § 321.02[2]; and Ch. 340, *Workers’ Compensation*, § 340.40[4][a].

Amendments to **Chapter 41 of the Civil Practices and Remedies Code governing exemplary damages** to provide: (1) a definition of the defendant’s “net worth” for purposes of the statute; and (2) a procedure that limits discovery into that issue by

requiring the claimant to demonstrate a substantial likelihood of success on the merits of a claim for exemplary damages. See Ch. 20, *Damages in Tort*, § 20.01[2][d].

Amendments to **Property Code Chapter 51** to give a mortgagee or trustee the right to rescind a nonjudicial foreclosure sale of certain residential real property that occurs on or after Sept. 1, 2105. Rescission restores the mortgagee and the debtor to their respective rights and obligations that existed immediately prior to the sale. See Ch. 255, *Real Property Security Interests*, § 255.03[4][d].

Adding **Tex. Civ. Prac. & Rem. Code § 16.038** to govern how a lender may waive or rescind prior acceleration of a debt secured by a lien on real property. If acceleration is waived or rescinded under the statute, the original maturity date of the note or obligation is restored, and the obligations of the parties are determined as if no acceleration had occurred. See Ch. 255, *Real Property Security Interests*, § 255.03[2].

Adding **Property Code Chapter 66** to address the effect of foreclosure on or after January 1, 2016 on an existing oil or gas lease on the property. With some exceptions, the statute provides that the lease remains in effect after foreclosure if it has not terminated or expired on its own terms, and was executed and recorded in county deed records before the foreclosure sale. See Ch. 255, *Real Property Security Interests*, § 255.05[5]; and Ch. 283, *Oil and Gas Leases*, § 283.03[7].

Amendments to the **Education Code** to clarify that an open-enrollment charter school is immune from both liability and suit, is a government unit for purposes of the Tort Claims Act, and that its employees and volunteers are immune to the same

extent as a school district's employees and volunteers. See Ch. 293, *Claims Against Governmental Entities*, §§ 293.10[3][a], 293.13[2][f].

Amendments to **Insurance Code Chapter 252** to require an insurer writing either personal automobile insurance or residential property insurance to deliver a policy issued by the insurer to the policyholder within certain stated times. See Ch. 341, *Liability Insurance*, § 341.03[1]; and Ch. 343, *Property Insurance*, § 343.04.

Amendments to **Labor Code Chapter 401** governing worker's compensation to: (1) provide that a franchisor is not the employer of either a franchisee, or a franchisee's employees; (2) confirm that the travel of emergency medical personnel or a firefighter en route to an emergency call is considered to be in the course and scope of employment; and (3) raise the amount of temporary income benefits and burial benefits. See Ch. 340, *Workers' Compensation*, §§ 340.02, 340.04[3], 340.10[2], 340.12[4].

Adding **Chapter 94 of the Civil Practices and Remedies Code** to limit the liability of certain sports officials and organizations. See Ch. 290, *Negligence*, § 290.20[4][f].

Adding **Chapter 75A of the Civil Practices and Remedies Code** to limit the liability of an agritourism entity involved in an agritourism activity to a participant in the activity. See Ch. 290, *Negligence*, § 290.20[4][f].

Amendments to **Tex. Civ. Prac. & Rem. Code § 16.0045** that extend the statute of limitations to 15 years for child victims of sexual assault, aggravated sexual assault, human trafficking, compelling prostitution, indecency, and continuous sexual abuse. See Ch. 290, *Negligence*, § 290.20[3][a]; and Ch. 330, *Assault and Battery*, § 330.03.

Amendments to **Property Code Chapter 5** to further regulate executory contracts for the purchase of real property, including a provision that filing the contract in the county deed records converts it into a deed with a vendor's lien requiring conventional foreclosure. See Ch. 252, *Real Estate Sales Contracts*, § 252.01[3][b].

Amendments to **Property Code Chapter 92** that: (1) provide that a residential tenant's right to a jury trial may not be waived in a lease or other written agreement; (2) limit a landlord's liability for leasing to a tenant with a criminal record in certain circumstances; and (3) provide that a final judgment in an eviction suit entered on or after Jan. 1, 2016, may not be appealed on the issue of possession unless the premises are being used for residential purposes only. See Ch. 282, *Landlord and Tenant*, §§ 282.01[3], 282.26[12], 282.41[6][c].

Amendments to **Chapter 103 of the Civil Practices and Remedies Code** to permit a wrongfully convicted person to elect reduced annuity payments to provide for a spouse or designated beneficiaries in lieu of the standard annuity payments. See Ch. 331, *False Imprisonment*, § 331.08[3].

Amendments to **Tax Code Chapter 34** to: (1) permit a tax sale to be conducted by online auction; and (2) permit a commissioner court to require that all potential purchasers at a tax sale be registered with the county assessor-collector before the sale begins. See Ch. 260, *Real Property Tax Suits*, § 260.03[6][b].

Adding **Tex. Tax Code § 23.01(g)** to provide that property owners representing themselves in judicial review actions of tax determinations are entitled to offer an opinion of and present argument and evidence related to the market and appraised value or the inequality of appraisal of the owner's

property. See Ch. 260, *Real Property Tax Suits*, § 260.04[3][b].

Pretrial, Trial, and Appellate Practice

Standing of Multiple Plaintiffs. In *Patel v. Tex. Dep't of Licensing & Regulation*, 2015 Tex. LEXIS 617 (Tex. 2015), the Texas Supreme Court held that when there are multiple plaintiffs in a case who seek injunctive or declaratory relief (or both), who sue individually, and who all seek the same relief, the court need not analyze the standing of more than one plaintiff—as long as that plaintiff has standing to pursue as much or more relief than any of the other plaintiffs. See Ch. 12, *Pleading the Parties*, § 12.01.

Proper Issuance, Service, and Return of Citation Not Presumed. In *Bank of N.Y. v. Chesapeake 34771 Land Trust*, 456 S.W.3d 628 (Tex. App.—El Paso 2015, pet. denied), the court of appeal held that if the record fails to show strict compliance with the rules relating to the issuance, service, and return of citation, error is apparent on the face of the record, and the attempted service of process is invalid. See Ch. 31, *Service on Residents*, § 31.05[1].

Personal Jurisdiction Analysis. In *Dresser-Rand Group, Inc. v. Centauro Capital, S.L.U.*, 448 S.W.3d 577 (Tex. App.—Houston [14th Dist.] 2014, no pet.), the court of appeal held that when all of a plaintiff's claims are based on the defendant's same purported contacts, a claim-by-claim jurisdictional analysis is not required. See Ch. 32, *Personal Jurisdiction and Service on Nonresidents*, § 32.04[1][a].

Nonsignatory May Enforce Forum Selection Clause. In *Smith v. Kenda Capital, LLC*, 451 S.W.3d 453 (Tex. App.—Houston [14th Dist.] 2014, no pet.), the court of appeals held that a nonsignatory to a contract may be allowed to enforce a

forum selection clause against a signatory based upon direct benefits estoppel. See Ch. 32, *Personal Jurisdiction and Service on Nonresidents*, § 32.07[3].

Service on Defendant in Garnishment Proceeding. In *Jacobs v. Jacobs*, 448 S.W.3d 626 (Tex. App.—Houston [14th Dist.] 2014, no pet.), the court of appeals held that that constructive service on a defendant is sufficient where the garnishor attempted service of the garnishment proceedings as authorized by Tex. R. Civ. P. 21a, but the debtor avoided and refused service. See Ch. 42, *Garnishment*, § 42.03[8].

Challenging Arbitration Provision as Unconscionable. In *Royston, Rayzor, Vickery & Williams, L.L.P. v. Lopez*, 2015 Tex. LEXIS 622 (Tex. 2015), the Texas Supreme Court held that challenges relating to an entire contract will not invalidate an arbitration provision in the contract; challenges to an arbitration provision in a contract must be directed specifically to that provision. See Ch. 44, *Arbitration*, § 44.02[1][b].

Role of Courts and Arbitrators. In *G.T. Leach Builders, LLC v. Sapphire V.P., L.P.*, 458 S.W.3d 502 (Tex. 2015), the Texas Supreme Court held that whether a party has waived its right to arbitration through its litigation conduct is a question of arbitrability for the courts to decide, whereas whether an arbitration deadline in a contract applied is a question for the arbitrators. See Ch. 44, *Arbitration*, § 44.02[2].

McCarran-Ferguson Act Inapplicable to FAA. In *Fredericksburg Care Co., L.P. v. Perez*, 2015 Tex. LEXIS 221 (Tex. 2015), the Texas Supreme Court held that the federal McCarran-Ferguson Act does not prevent the FAA from preempting a state statutory notice requirement regarding the arbitration of health care liability

claims. See Ch. 44, *Arbitration*, § 44.07[3][c][iii].

Attorney's Fees in Declaratory Judgment Action. In *Devon Energy Prod. Co., L.P. v. KCS Res., LLC*, 450 S.W.3d 203 (Tex. App.—Houston [14th Dist.] 2014, pet. denied), the court of appeals held that a court may award attorney's fees to a party defending against a declaratory judgment action over which the trial court has determined that it lacks subject matter jurisdiction over the plaintiff's claim. See Ch. 45, *Declaratory Relief*, § 45.06[1].

Discretion to Award Fees under Uniform Declaratory Judgments Act. In *Kachina Pipeline Co. v. Lillis*, 2015 Tex. LEXIS 549 (Tex. June 12, 2015), the Texas Supreme Court held that when an appellate court reverses a declaratory judgment, it may reverse an attorney's fee award, but it is not required to do so. See Ch. 45, *Declaratory Relief*, § 45.06[4].

Forum Non Conveniens Dismissal. Ch. 61, *Venue*, has been updated with discussion of changes to the Texas forum non conveniens statute, Tex. Civ. Prac. & Rem. Code § 71.051; the changes address the exception to the statute for Texas residents, and generally narrow the definition of persons who are protected from dismissal under this exception. See § 61.30[2][b].

Affirmative Defenses. A Texas Supreme Court decision discussing the difference between affirmative defenses and pleas in avoidance, *Zorrilla v. Aypco Constr. II, LLC*, 2015 Tex. LEXIS 555 (Tex. 2015), has been added to Ch. 70, *Answer*, § 70.05[1].

Statutes of Limitation. Discussion of a new 15-year statute of limitation for personal injury claims based on sexual offenses involving children (Tex. Civ. Prac. & Rem. Code § 16.0045(b)) has been

added to Ch. 72, *Limitation of Actions*, § 72.02[1][e].

Discovery Rule. A Texas Supreme Court case discussing the application of the discovery rule in cases involving fraudulent inducement, *Hooks v. Samson Lone Star, Ltd. P'ship*, 457 S.W.3d 52 (Tex. 2015), has been added to Ch. 72, *Limitation of Actions*, § 72.03[3][c][ii].

Discovery of Defendant's Net Worth. Ch. 90, *Discovery: Scope and Limitations*, has been updated with discussion of Tex. Civ. Prac. & Rem. Code § 41.0115, which governs discovery of net worth and allows a court to authorize discovery on this issue only when the court find that the claimant has demonstrated a substantial likelihood of success on the merits of a claim for exemplary damages. *See* § 90.02[6].

Evidentiary Privileges. Changes to Tex. R. Evid. 511, which limit waiver of the lawyer-client privilege and work product protection and were intended to align Texas law with federal law on waiver of privilege by voluntary disclosure, have been added to Ch. 90, *Discovery: Scope and Limitations*, § 90.06[5][a].

Recusal and Disqualification. Changes to the procedures for recusal or disqualification of statutory probate court judges (Tex. Gov't Code § 25.00255) have been added to Ch. 110A, *Disqualification of Judge or Counsel*, § 110A.03[5].

Enforcement of Judgments. The statutory exemption from forced sale for personal property, see Tex. Prop. Code § 42.001(a), has been raised from \$30,000 to \$50,000 for a single adult, and from \$60,000 to \$100,000 for a family; this change has been added to Ch. 132, *Enforcement of Judgments*, § 132.11[1][a].

Business and Commercial Litigation

Ratification of Defective Corporate

Acts or Shares. New procedures have been added to the Tex. Bus. Orgs. Code §§ 21.901–21.917 for ratifying a defective corporate act. See Ch. 160A, *Corporate Management*, § 160A.13.

Power of Attorney for Partnerships. An irrevocable power of attorney can now be created for a partnership under Tex. Bus. Orgs. Code § 154.204. See Ch. 180, *Partner's Liability*, § 180.26.

Annual Report Required for Limited Liability Partnerships. Limited liability partnerships are now required by Tex. Bus. Orgs. Code § 152.806 (eff. 1/1/16) to file annual reports with the secretary of state. See Ch. 180, *Partner's Liability*, § 180.44.

Power of Attorney for Limited Liability Companies. An irrevocable power of attorney can now be created for a limited liability company under Tex. Bus. Orgs. Code § 101.055. See Ch. 183, *Limited Liability Company*, § 183.04[4].

Debit and Stored Value Card Surcharges. In sales of goods or services, merchants are prohibited by Tex. Bus. & Com. Code §§ 604A.001–604A.003 from imposing a surcharge on buyers who use a debit or stored value card instead of cash, a credit card, a check, or a similar method of payment. See Ch. 220A, *Improper Business Practices*, § 220A.15[1].

Action for Making Bad Faith Claim of Patent Infringement. The attorney general has authority under Tex. Bus. & Com. Code §§ 17.951–17.955 to bring an action against a person who makes a bad faith claim of patent infringement. See Ch. 220A, *Improper Business Practices*, § 220A.16.

Employment Litigation

Franchisors Are Not Employers Under Wage Laws. The legislature has clarified that a franchisor is not normally considered

the employer of the franchisee or the franchisee's employees for purposes of statutory provisions relating to payment of wages and the Texas Minimum Wage Act. See Ch. 203, *Employer-Employee Relations*, §§ 203.21[1][c], 203.22[2][e].

Security Screenings and Compensation Under the FLSA. The U.S. Supreme Court held in *Integrity Staffing Solutions, Inc. v. Busk*, 135 S. Ct. 513 (2014) that the time warehouse employees spend waiting for and undergoing security screenings before leaving the workplace is not compensable under the FLSA because these screenings are not integral and indispensable to the employees' duties. See Ch. 203, *Employer-Employee Relations*, § 203.22[1][c][ii].

Personal Injury Litigation

Statutory Cap on Exemplary Damages. *Zorrilla v. AYPACO Constr. II, LLC*, 58 Tex. Sup. Ct. J. 1140 (Tex. 2015) held that the statutory cap on the recovery of exemplary damages is not an affirmative defense that must be raised by the defendant; instead, it automatically applies in all cases in which the claimant does not plead and prove an exception to the cap. See Ch. 20, *Damages in Tort*, §§ 20.01[2][d], 20.140[1].

Recovery of Medical Expenses. *Metro. Transit Auth. v. McChristian*, 449 S.W.3d 846 (Tex. App.—Houston [14th Dist.] 2014, no pet.) held that although Tex. Civ. Prac. & Rem. Code § 41.0105 limits the recovery of medical expenses to the health care provider's reimbursement rate, when the claimant was uninsured so that no reimbursement rate applies, the claimant can recover full list rates to the extent the claimant remains liable for their payment. See Ch. 20, *Damages in Tort*, § 20.02[1][b]; § 321.13[1].

Evidentiary in TCPA Cases. *In re*

Lipsky, 58 Tex. Sup. Ct. J. 707 (Tex. 2015) addressed the provision of the Texas Citizens Participation Act (TCPA) that a claimant may avoid dismissal by establishing through "clear and specific evidence" a prima facie case for each essential element of the claim in question [Tex. Civ. Prac. & Rem. Code § 27.005(c)]. The Court held that this phrase does not impose a heightened evidentiary standard, and does not limit or preclude the use of circumstantial evidence; instead, it replaces the traditional notice pleading rules applied to initial pleadings, and requires the claimant to offer clear and specific evidence as to each element of the claim asserted. Ch. 333, *Libel and Slander*, § 333.42[1], [2][e].

Communications under TCPA. *Lippincott v. Whisenhunt*, 58 Tex. Sup. Ct. J. 705 (Tex. 2015) (per curiam) held that whether a communication falls within the protections of the TCPA is determined by its content, not the form or manner in which it was made, so there is no requirement that the communication be public. Ch. 333, *Libel and Slander*, § 333.42[1].

Attorney's Fees under TCPA. *Cruz v. Van Sickle*, 452 S.W.3d 503 (Tex. App.—Dallas 2014, pet. filed) held that: (1) the affidavit procedure provided by Chapter 18 of the Civil Practices and Remedies Code for establishing the cost and necessity of services rendered may be employed to obtain an award of attorney's fees under the TCPA; and (2) because an award is limited to those that were "incurred," a party that was represented pro bono cannot recover an award. Ch. 333, *Libel and Slander*, § 333.42[2][f].

Privilege in Criminal Investigations. *Shell Oil Co. v. Witt*, 58 Tex. Sup. Ct. J. 956 (Tex. 2015) held that when the target of a criminal investigation provides evidence to the investigating authorities, any

allegedly defamatory statements in those materials are absolutely privileged. Ch. 333, *Libel and Slander*, § 333.20[1][a].

Evidence in Apportioning Responsibility. *Nabors Well Servs. v. Romero*, 456 S.W.3d 553 (Tex. 2015) held that relevant evidence of any conduct of the claimant that precedes an auto accident, including the use or nonuse of seat belts, is admissible for the purpose of apportioning responsibility, provided that the conduct caused or was a cause of the claimant's damages. In submitting the seat belt issue to the jury, a single apportionment question combining any and all of the claimant's alleged fault prior to the accident is sufficient. See Ch. 291, *Proportionate Responsibility; Contribution and Indemnity*, § 291.03[2][a]; and Ch. 300, *Operator's Liability*, § 300.03[2].

Property Owner Liability. *Abutahoun v. Dow Chem. Co.*, 58 Tex. Sup. Ct. J. 879 (Tex. 2015), held that when Tex. Civ. Prac. & Rem. Code § 95.003 applies, it protects a property owner from all negligence claims regardless of the identity of the negligent actor, and therefore bars claims for the owner's own negligence. Moreover, the owner is protected from liability on any negligence theory, including both negligent activity and premises liability. See Ch. 290, *Negligence*, § 290.32[1][b]; and Ch. 310, *Premises Liability*, § 310.02[3][d].

Employer's Responsibilities to Employees for Premises Liability. *Austin v. Kroger Tex. L.P.*, 58 Tex. Sup. Ct. J. 1154 (Tex. 2015) held that: (1) an employer that does not subscribe to workers' compensation has the same duty to its employees as other landowners have to invitees on their premises; and (2) an owner has no duty to warn of a dangerous condition that is open and obvious or known to the invitee unless either the criminal-activity or necessary-

use exception applies. See Ch. 310, *Premises Liability* § 310.05[1], [2][d].

Premises Liability in Hospital. *Ross v. St. Luke's Episcopal Hosp.*, 58 Tex. Sup. Ct. J. 766 (Tex. 2015) held that a slip-and-fall claim by a visitor to a publicly accessible area of a hospital may be brought as a routine premises liability claim, not as a health care liability claim (HCLC), when it has no connection to health care other than the fact that the premises at issue is a hospital. There must be a nexus between the safety standards allegedly violated by a provider and the provision of health care to make a safety-related claim an HCLC. See Ch. 321, *Medical Malpractice*, § 321.02[2][c], [f].

Pharmacist Is Health Care Provider. *Randol Mill Pharm. v. Miller*, 58 Tex. Sup. Ct. J. 733 (Tex. 2015) held that when a pharmacist fills an order placed by a doctor for compounded medication to be used in the doctor's office on unidentified patients, the pharmacist is acting as a "health care provider," and a claim of negligent compounding or inadequate instructions on the drug's use is an HCLC. See Ch. 321, *Medical Malpractice*, § 321.02[3].

Arbitration Clause in Retainer Agreement. *Royston, Rayzor, Vickery & Williams, LLP v. Lopez*, 58 Tex. Sup. Ct. J. 1422 (Tex. 2015) held that: (1) including an arbitration clause in a retainer agreement between an attorney and client does not violate public policy; and (2) the clause was enforceable because it was neither substantively nor procedurally unconscionable. See Ch. 322, *Professional Malpractice*, §§ 322.01[1], 322.02[1][a].

Independent Contractors and Governmental Immunity. *Brown & Gay Eng'g, Inc. v. Olivares*, 58 Tex. Sup. Ct. J. 678 (Tex. 2015) held that when a government unit hires an independent contractor to

provide services that the unit could have performed itself, the unit's sovereign or governmental immunity does not extend to the contractor when the unit retains no control over the contractor's work. See Ch. 293, *Claims Against Governmental Entities*, § 293.10[3][b].

Design Defects. *Genie Indus., Inc. v. Matak*, 58 Tex. Sup. Ct. J. 832 (Tex. 2015) reversed a jury verdict on a design defect claim because there was no evidence that the product was unreasonably dangerous as designed. Though risk-utility analysis is often for the jury, it may be resolved as a matter of law when reasonable minds could not differ on the relevant considerations. See Ch. 320, *Products Liability*, § 320.03[4].

Insurance Litigation

Premises Liability in Employment Cases. *Austin v. Kroger Tex. L.P.*, 58 Tex. Sup. Ct. J. 1154 (Tex. 2015) concerned a claim for negligence against a nonsubscribing employer and held that: (1) the employer has the same premises liability duty as other owners have to invitees on their premises; (2) there is no duty to remedy or warn of a dangerous condition that is open and obvious or known to the employee unless the criminal-activity or necessary-use exceptions apply; (3) while the employee's knowledge cannot be used to show either contributory negligence or proportionate responsibility, it can be considered on the more fundamental issue of whether the employer had a duty to begin with; (4) there is no exception to these rules for instances in which the employee is injured by a condition of the premises while performing a task that the employer specifically assigned to the employee; and (5) when it is alleged that the failure to provide necessary equipment caused the injury due to a dangerous condition of the premises, the employee is not restricted to a premises

liability theory, but may instead bring an instrumentalities claim. See Ch. 340, *Workers' Compensation*, § 340.40[4][b].

Coverage of Additional Insureds. *In re Deepwater Horizon*, 58 Tex. Sup. Ct. J. 330 (Tex. 2015) held that when a policy endorsement or incorporated contractual terms makes a person an additional insured only as to certain types of claims, whether the person is entitled to coverage depends on the terms of the endorsement or incorporated contract. See Ch. 341, *Liability Insurance*, § 341.07[2][h].

Insurance Policy Interpretations. *RSUI Indem. Co. v. Lynd Co.*, 58 Tex. Sup. Ct. J. 854 (Tex. 2015) held that an ambiguity in insurance policy terms does not arise simply because the parties offer conflicting interpretations; instead, an ambiguity is present only when the conflicting interpretations are both reasonable constructions of the policy language. See Ch. 341, *Liability Insurance*, § 341.06; and Ch. 343, *Property Insurance*, § 343.04.

Property and Real Estate Litigation

Conflicts in Deeds. *Stribling v. Millican DPC Partners, LP*, 458 S.W.3d 17 (Tex. 2015) (per curiam) held that when a deed contains both a metes and bounds description of the property conveyed, and a reference to the property as previously described in a prior deed or other instrument, the former controls over the latter to the extent of any conflict. See Ch. 254, *Deeds and Conveyances*, § 254.03[2].

Mechanic's Liens and Homesteads. *Zorrilla v. Aypco Constr. II, LLC*, 58 Tex. Sup. Ct. J. 1140 (Tex. 2015) held that in a suit to foreclose a mechanic's lien, whether a property is a homestead is a fact question for the jury. When the owner did not request a jury instruction, the failure to conclusively establish homestead status waived any constitutional impediment to

foreclosure. See Ch. 271, *Mechanic's and Materialmen's Liens*, §§ 271.01[9], 271.02[8][c].

Good Faith in Royalty Agreements. *KCM Fin. LLC v. Bradshaw*, 457 S.W.3d 70 (Tex. 2015) held that an executive right holder's duty of the utmost good faith to nonparticipating royalty interest owners does not invariably require that the holder maximize the royalty terms in a mineral lease. Instead, in determining whether the holder has fulfilled its duty, all terms of the lease and the circumstances of its execution must be considered, and the failure to negotiate a royalty at market rates is simply one relevant factor in that analysis. See Ch. 281, *Oil and Gas Leases*, §§ 283.01[2][b], 283.03[3].

Estates Code Litigation

Disclaimers. Disclaimers of interests in or power over property that beneficiaries are entitled to receive by will or inheritance are now governed by the Texas Uniform Disclaimer of Property Interests Act (Tex. Prop. Code § 240.001 et seq.). See Ch. 391, *Descent and Distribution*, § 391.05[6]; Ch. 394, *Will Construction*, § 394.06[1].

Transfers of Real Property by Deed on Transferor's Death. Individuals may now transfer interests in Texas real property to one or more beneficiaries effective on the transferor's death by a transfer on death deed, as provided in Texas Estates Code §§ 114.001–114.151. See Ch. 391, *Descent and Distribution*, § 391.10.

Judicial Modification or Reformation of Wills. Courts have statutory authority under Texas Estates Code §§ 255.451–255.455 to modify or reform a will under specified circumstances. See Ch. 394, *Will Construction*, § 394.09.

Alternatives to Guardianship. Alternatives to guardianship are now specified in Texas Estates Code § 1002.0015. See Ch.

410, *Appointment of Guardians*, § 410.01A.

Costs in Guardianship Proceedings. The legislature has added extensive provisions regarding the payment of costs in guardianship proceedings. See Ch. 410, *Appointment of Guardians*, § 410.06[8][j].

Deposit of Guardianship Estate Assets. A court may require (Tex. Estates Code §§ 1101.155, 1101.156) the deposit for safekeeping in a financial institution of a ward's or proposed ward's cash, securities, or other assets. See Ch. 410, *Appointment of Guardians*, § 410.06[10].

Intervention in Guardianship Proceeding. Interested persons may, by Tex. Estates Code § 1055.003, intervene in a pending guardianship proceeding. See Ch. 410, *Appointment of Guardians*, § 410.06[11].

Relatives' Access to Adult Ward. An adult ward's relatives are entitled (Tex. Estates Code § 1151.055) to apply for an order for access to the ward. See Ch. 410, *Appointment of Guardians*, § 410.06[12].

Supported Decision-Making Agreements. Under the Supported Decision-Making Agreement Act (Tex. Estates Code § 1357.001 et seq.), an adult with a disability may enter into a supported decision-making agreement with a supporter, authorizing the supporter to take specified actions to support and assist the adult. See Ch. 410, *Appointment of Guardians*, § 410.16.

Wards' Bill of Rights. Texas Estates Code § 1151.351 sets forth a bill of rights for wards subject to a guardianship. See Ch. 411, *Administration of Guardianships*, § 411.

Family Law Proceedings Temporary Restraining Order. Family Code Section 6.501 has been amended to provide a more

comprehensive list of the kinds of property and protections a TRO may address. See Ch. 360A, *Temporary Orders*, § 360A.02[2][a].

Proceedings Before Associate Judge. A party may now seek *de novo* review of an associate judge's temporary orders. See Ch. 360A, *Temporary Orders*, § 360A.10[5].

Same-Sex Marriage. Under the United States Supreme Court's holding in *Obergefell v. Hodges*, 2015 U.S. LEXIS 4250 (2015), same-sex marriage is now legal in all 50 states. See Ch. 362, *Divorce*, § 362.01[1].

Waiver of Citation. The Family Code has been amended to provide that service of citation may be waived in a suit affecting the parent-child relationship. See Ch. 362, *Divorce*, § 362.101[1][a].

SAPCR Standing. When a child is separated from a sibling as the result of an action by the Department of Family and Protective Services, a sibling of any age has standing to file an original suit requesting access to the child. See Ch. 370, *SAPCR Procedures*, § 370.02[2][c].

Child Custody Evaluations. Child custody evaluations have replaced social studies, and a child custody evaluator must meet stringent new education and training requirements. Only a person who has conducted a child custody evaluation may offer an expert opinion relating to conservatorship, possession, or access. See Ch. 370, *SAPCR Procedures*, § 370.08.

SAPCR Orders. A SAPCR order that provides for child support must now include a statutory notice describing when child support may be modified. See Ch. 370, *SAPCR Procedures*, § 370.10[4][a].

Duty to Notify Conservator. A conservator has a duty to notify the other conservator if he or she lives with a person who is

the subject of a protective order or if he or she becomes the subject of a protective order. See Ch. 371, *Conservatorship*, § 371.03[3][b].

Waiver of Service for Name Change. Service of citation may be waived in a suit for change of name. See Ch. 371, *Conservatorship*, § 371.11[1].

Child Support. The minimum wage presumption for calculating child support in the absence of income evidence does not apply to incarcerated individuals. See Ch. 371A, *Child Support*, § 371A.03[3][b][ii].

Ordering Dental Support. The Family Code now requires courts to order dental support along with child support and medical support for a child. See Ch. 371A, *Child Support*, § 371A.03[5].

Modification of Conservatorship. When a person seeks a temporary order that has the effect of changing primary custody on the basis of impairing circumstances, the motion must include a supporting affidavit. See Ch. 373, *Modification of SAPCR Orders*, § 373.03[7][d].

UIFSA. The UIFSA statutes (Tex. Fam. Code § 159.001 et seq.) have been amended to clarify that, in addition to applying to out-of-state child support orders, they apply to child support orders from foreign countries that have not signed the 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. See Ch. 374, *Interstate SAPCR Issues*, § 374.05[2A], [3].

Termination of Parental Rights. An attorney ad litem may be appointed to represent a parent in a termination action before the court makes a determination as to the parent's indigence. See Ch. 381, *Termination of Parent-Child Relationship*, § 381.05[1][a.1], [2].

Right to Interpreter in Termination Proceedings. The First Court of Appeals has held that a non-English-speaking parent in a termination proceeding is entitled to an interpreter [M.M.V. v. Tex. Dep't of Family & Protective Servs., 455 S.W.3d 186 (Tex. App.—Houston [1st Dist. 2014, no pet. h.)]. See Ch. 381, *Termination of Parent-Child Relationship*, § 381.05B.

Adoption Evaluations. Adoption evaluations have replaced pre-adoptive and post-placement adoptive social studies. See Ch. 382, *Adoption*, § 382.05[1].

Temporary Restraining Order. Family Code Section 6.501 has been amended to provide a more comprehensive list of the kinds of property and protections a TRO may address. See Ch. 360A, *Temporary Orders*, § 360A.02[2][a].

Proceedings Before Associate Judge. A party may now seek *de novo* review of an associate judge's temporary orders. See Ch. 360A, *Temporary Orders*, § 360A.10[5].

Same-Sex Marriage. Under the United States Supreme Court's holding in *Obergefell v. Hodges* [2015 U.S. LEXIS 4250, *23-*51 (U.S. Supreme Court June 26, 2015)], same-sex marriage is now legal in all 50 states including Texas. See Ch. 362, *Divorce*, § 362.01[1].

Waiver of Citation. The Family Code has been amended to provide that service of citation may be waived in a suit affecting the parent-child relationship. See Ch. 362, *Divorce*, § 362.101[1][a].

Standing. When a child is separated from a sibling as the result of an action by the Department of Family and Protective Services, a sibling of any age has standing to file an original suit requesting access to the child. See Ch. 370, *SAPCR Procedures*, § 370.02[2][c].

Transfer. When a SAPCR is transferred,

the pleadings and orders must now be sent to the transferee court within 10 days after the transfer order is signed. See Ch. 370, *SAPCR Procedures*, § 370.05[2][d].

Child Custody Evaluations. Child custody evaluations have replaced social studies, and a child custody evaluator must meet stringent new education and training requirements. Only a person who has conducted a child custody evaluation may offer an expert opinion relating to conservatorship, possession, or access. See Ch. 370, *SAPCR Procedures*, § 370.08.

SAPCR Orders. A SAPCR order that provides for child support must now include a statutory notice describing when child support may be modified. See Ch. 370, *SAPCR Procedures*, § 370.10[4][a].

Duty to Notify. A conservator has a duty to notify the other conservator if he or she lives with a person who is the subject of a protective order or if he or she becomes the subject of a protective order. See Ch. 371, *Conservatorship*, § 371.03[3][b].

Name Change. Service of citation may be waived in a suit for change of name. See Ch. 371, *Conservatorship*, § 371.11[1].

Child Support. The minimum wage presumption for calculating child support in the absence of income evidence does not apply to incarcerated individuals. See Ch. 371A, *Child Support*, § 371A.03[3][b][ii].

Dental Support. The Family Code now requires courts to order dental support along with child support and medical support for a child. See Ch. 371A, *Child Support*, § 371A.03[5].

Modification of Conservatorship. When a person seeks a temporary order that has the effect of changing primary custody on the basis of impairing circumstances, the motion must include a supporting affidavit.

See Ch. 373, *Modification of SAPCR Orders*, § 373.03[7][d].

UIFSA. The UIFSA statutes [Tex. Fam. Code § 159.001 et seq.] have been amended to clarify that, in addition to applying to out-of-state child support orders, they apply to child support orders from foreign countries that have not signed the 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. Orders from countries that are signatories to the Convention may be recognized, enforced, and modified in Texas as provided by new Family Code Chapter 159, Subchapter H [Tex. Fam. Code § 159.701 et seq.]. See Ch. 374, *Interstate SAPCR Issues*, § 374.05[2A], [3].

Termination of Parental Rights. An attorney ad litem may be appointed to represent a parent in a termination action before the court makes a determination as

to the parent's indigence. The Family Code now requires a court to advise the parent of the right to an attorney and the right to a court-appointed attorney at the parent's first appearance in court. See Ch. 381, *Termination of Parent-Child Relationship*, § 381.05[1][a.1], [2].

Right to Interpreter in Termination Proceedings. The Houston First Court of Appeals has held that a non-English-speaking parent in a termination proceeding is entitled to an interpreter [M.M.V. v. Tex. Dep't of Family & Protective Servs., 455 S.W.3d 186, 189-190 (Tex. App.—Houston [1st Dist. 2014, no pet. h.)]. See Ch. 381, *Termination of Parent-Child Relationship*, § 381.05B.

Adoption Evaluations. Adoption evaluations have replaced pre-adoptive and post-placement adoptive social studies. See Ch. 382, *Adoption*, § 382.05[1].

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Publication 719 Release 119

December 2015

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<input type="checkbox"/>	261-81	261-81 thru 261-82.1

VOLUME 18

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	270-39 thru 270-41	270-39 thru 270-41
<input type="checkbox"/>	271-19	271-19 thru 271-20.1

Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
<input type="checkbox"/>	271-48.5 thru 271-49	271-49 thru 271-50.3
<input type="checkbox"/>	280-21 thru 280-23	280-21 thru 280-24.1
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<input type="checkbox"/>	282-35	282-35
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<input type="checkbox"/>	282-81 thru 282-109.	282-81 thru 282-110.5
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<input type="checkbox"/>	282-132.1 thru 282-133	282-133 thru 282-134.1
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<input type="checkbox"/>	283-25 thru 283-28.1	283-25 thru 283-28.1
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<input type="checkbox"/>	285-45 thru 285-46.15.	285-45 thru 285-46.16(3)

VOLUME 19

Revision

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<input type="checkbox"/>	293-121 thru 293-125	293-121 thru 293-126.5
<input type="checkbox"/>	293-136.2(1) thru 293-136.5	293-136.3 thru 293-136.6(1)
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<input type="checkbox"/>	310-35 thru 310-53	310-35 thru 310-54.3

VOLUME 20

Check As Done	<i>Remove Old <u>Pages Numbered</u></i>	<i>Insert New <u>Pages Numbered</u></i>
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Revision

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VOLUME 21

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<input type="checkbox"/>	345-57 thru 345-72.1	345-57 thru 345-72.1
<input type="checkbox"/>	345-94.1 thru 345-97	345-95 thru 345-98.1

Check
As
Done

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Pages Numbered

Insert New
Pages Numbered

VOLUME 22

Revision

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<input type="checkbox"/>	371A-27 thru 371A-41	371A-27 thru 371A-42.1
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VOLUME 23

Revision

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VOLUME 24

Revision

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VOLUME 25

Revision

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<input type="checkbox"/>	425-71	425-71

VOLUME 26

Revision

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<input type="checkbox"/>	I-905 thru I-937.	I-905 thru I-938.1
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