



# CLIENT HANDBOOK

***Disclaimer:***

*This client notebook is designed to give our clients a general overview of steps or aspects of a family law case. It is not a substitute for case specific questions which you should pose during a one on one attorney client meeting.*

***Table of Contents***

<b>I.</b>	<b>General Information.....</b>	<b>5</b>
<b>II.</b>	<b>Decision to Divorce .....</b>	<b>5</b>
	a. Attorney, Client and Staff .....	6
	b. Your Role as Client .....	6
	c. Attorney-Client Relationship .....	9
	d. Attorney-Client Privilege .....	9
	e. Contract .....	10
	f. Other Professionals .....	10
<b>III.</b>	<b>Issues in Divorce.....</b>	<b>10</b>
	a. Grounds for Divorce .....	5

b.	Domicile and Residence.....	5
c.	Property and Debts.....	6
d.	Alimony and Spousal Maintenance .....	6
e.	Children .....	6
f.	Additional Causes of Action in Divorce Cases.....	7
<b>IV.</b>	<b>Issues in Suits Affecting Parent Child Relationship.....</b>	<b>9</b>
a.	Allocation of Rights and Duties of Joint Managing Conservators .....	9
b.	Allocation of Rights and Duties of Sole Managing Conservators and Possessory Conservators .....	10
c.	Standard Possession Order in Texas .....	11
d.	Child’s Choice- Mandatory and Discretionary Interview .....	12
e.	Possession of Child Age 3 and Under.....	13
f.	Preparing for Psychological Testing and Custody Evaluation .....	15
g.	Child Support and Health Insurance .....	18
<b>V.</b>	<b>Attorney’s Fees, Costs, and Expenses .....</b>	<b>20</b>
<b>VI.</b>	<b>Steps in a Divorce .....</b>	<b>21</b>
a.	Generally .....	21
b.	Initiating a Divorce.....	22
c.	Temporary Orders .....	23
d.	Discovery of Evidence .....	24
e.	Depositions.....	25
f.	Settlement .....	26
g.	Trial if No Settlement.....	27
<b>VII.</b>	<b>Assisting Your Attorney with Discovery .....</b>	<b>28</b>
<b>VIII.</b>	<b>Things to Avoid Doing During a Divorce.....</b>	<b>29</b>
a.	Your Conduct During the Divorce .....	30
b.	Appropriate and Inappropriate Communications .....	31
c.	Email & Technology .....	32
d.	Recording of Phone Calls .....	32
e.	Videotaping .....	32
f.	Invasion of Privacy .....	33
g.	Reestablishing Privacy .....	34
h.	Using Social Media .....	35
<b>IX.</b>	<b>Spoliation of Evidence .....</b>	<b>36</b>

<b>X.</b>	<b>Surveilling your Spouse .....</b>	<b>36</b>
	a. Using a Private Investigator .....	37
	b. Using Tracking or Other Recording Devices.....	37
<b>XI.</b>	<b>Common Questions .....</b>	<b>38</b>
<b>XII.</b>	<b>Special Issues .....</b>	<b>39</b>
	a. Violence .....	39
	b. Child Abuse .....	39
	c. Temporary Injunctions Affecting Right to Carry Firearms .....	40
	d. The Nature of Divorce .....	41
<b>XIII.</b>	<b>Homework and Necessary Information .....</b>	<b>42</b>
	a. Homework Instructions for Clients.....	43
	b. Custody Worksheet .....	44
	c. Modification Worksheet.....	44
	d. Sensitive Topics .....	45
<b>XIV.</b>	<b>Your Monthly Income &amp; Expenses .....</b>	<b>46</b>
	a. General Instructions .....	47
	b. Child Support .....	47
	c. Monthly Living Expenses .....	47
	d. Copies of Documents to be Returned.....	47
	e. Monthly Expenses Worksheet.....	47
<b>XV.</b>	<b>Marital Property, Assets, Debts and Liabilities .....</b>	<b>49</b>
	a. Instructions for Preparation of Inventory and Appraisalment .....	50
	b. Preparation of Inventory and Appraisalment.....	51
	c. Preliminary Documents and Information for Typical Valuation of Corporation .....	52
<b>XVI.</b>	<b>Texas Lawyers Creed .....</b>	<b>55</b>

## **1. General Information**

The following are basic rules and guidelines regarding divorce. It is extremely important that you understand them completely so please study them carefully. Keep this document and refer to it throughout the course of your case. However, it should be noted that the information in this document should not constitute a substitute for detailed discussions with your attorney. This document contains basic rules and guidelines only. Accordingly, should you have any questions, do not hesitate to ask.

## **2. Decision to Divorce**

Before hiring our firm, you should be absolutely certain that your marriage is beyond saving and that your objective is to obtain a divorce. If you are uncertain, you should seek the assistance of an individual counselor or encourage your spouse to join you in marriage counseling with a qualified counselor acceptable to both of you.

*Caution: Some people hope that filing for a divorce will shock their spouse into reality and therefore save the marriage. While filing for a divorce sometimes has this outcome, it is a rarity. More often, filing for divorce causes the other spouse to become more hostile and the relationship even more strained. Therefore, the filing of a divorce should be filed only if divorce is your objective.*

## **3. Teamwork Approach**

Our office works as a team, each performing those tasks which they can do most efficiently. A paralegal bills at a lower rate than an attorney and will handle a large amount of the time-consuming tasks involved in gathering information and day-to-day contact, however, we are all available for you.

#### **4. Client Responsibilities**

This is your case. There are a great number of things that you must do during your case that are outlined in more detail below.

##### **A. Be Informed**

You should be as informed and as involved in your case as possible.

Ask any questions you have at any time. We are here for you.

You should always read and fully understand all documents that are sent to you or which are produced in your case.

You should seek updates when you need them.

Although we will provide periodic updates regarding changes in the case, upcoming deadlines, and substantive issues, there will be times when the case is relatively quiet and you may not hear from us. If you grow anxious or want to know the status of your case at any time, you should reach out and ask us. We strive to always be accessible and available to provide a more detailed explanation.

##### **B. Keep an Email and Electronic File**

We suggest that you create a litigation email address and keep a separate electronic file of all of your documents so you can refer to them frequently. All correspondence and documents produced in your case will be forwarded to you.

##### **C. Complete Truth About All Of the Facts**

You should be completely honest with your attorney on every aspect of your case and share all information about anything of importance. This includes not only information that you deem helpful to your case, but also all facts which might be harmful to your case. Your spouse's attorney will likely know or find out about the negative facts anyway so please do not let your attorney be the last person to know.

Oftentimes, "bad facts" may not be as harmful as you may think if your attorney can take proactive steps to mitigate the impact of the

“bad facts” or prepare you for how to handle them under pressure.

Any time you are placed under oath at a deposition or a trial, you will be required to tell the truth, the whole truth, and nothing but the truth. If you do not, you subject yourself to criminal perjury charges. Likewise, Texas law requires your attorney to ensure you tell the truth; therefore, when you are under oath, your attorney cannot and will not condone any testimony by you which is less than the whole truth.

#### **D. Gathering Information**

Facts are the heart of your lawsuit. You will be given information sheets to complete and you will be requested to gather information and documents.

*Note:* We understand that this is very frustrating, time-consuming and very tedious work, but it is extremely important.

Keep in mind that, as the client, you have more knowledge of and access to this factual information than your attorney. Further, as you research and piece together this information, you will begin to develop the necessary understanding of your case.

*Money Saver-* Also, keep in mind that you can do this work at no charge to yourself, whereas if we do it, we are forced to charge you for the time.

For all of these reasons, you should do as much of the information gathering as possible with direction from your attorney and staff. You should also consider providing as many things as possible in a very organized fashion on a password protected thumb drive.

#### **E. Review Your Spouse's Documents**

We will provide you with copies of all documents supplied by your spouse's attorney. It is very important that you review these documents and familiarize yourself with them so you can detect anything important or unusual in the documents (e.g., checks written for unusually high amounts or to unfamiliar persons or sources). Our goal is to ensure that voluminous documents be bates labeled so that you can easily reference the page number for any important documents.

## **F. Making Decisions**

Client Decisions- No final settlement of your case will be made without your approval and consent. Other major decisions will also be made with your approval and consent (e.g., to demand a jury or not, to seek child custody or not, etc.).

Attorney Decisions- However, you will need to allow your attorney the authority to make other decisions which bear on your case but which involve professional judgment or courtesy. For example, your attorney should decide how to phrase allegations contained in your pleadings and when to file the pleading.

Another common example is when the other attorney asks for a continuance or postponement of a hearing or deposition, etc. Resistance to a legitimate request of this nature is often not in your best interest. For example, your attorney may know that your side will need to make a similar request in the future. Your attorney should be the decision-maker for these procedural matters.

## **G. Be Wary of Outside Advice**

As you go through the divorce process, you may receive advice and input from people outside your legal team such as friends, family members, or the internet. No matter how pure their intentions, these people usually do not know all the facts of your case, have knowledge of the court, the law, the opposing counsel, the strategy of your case, or the current posture of your case. If you have ideas that you heard about and want to run them by us, we are always willing to listen. We want you to trust us to guide you through this process.

## **5. Attorney-Client Relationship**

You, your attorney, and their support staff are in an attorney-client relationship which is recognized by law to be a very special relationship. Your attorney and their staff owe you a 100 percent allegiance to you and your case and owe no allegiance to your spouse. Your attorney is required to represent you zealously but within the bounds of the law.

Do not be misled if you find your attorney dealing with your spouse's attorney on a friendly basis. Professional and common courtesy dictates this. Good lawyers are perfectly capable of zealously defending and promoting their clients' best interest without becoming personal enemies. Attorneys are in fact trained to be advocates without becoming emotionally involved. One of the very reasons you hire a lawyer is to have someone on your behalf that not only has legal expertise, but who will not become emotionally involved. You want your lawyer to use knowledge and experience to guide you through the process and advocate for your interests. You should expect your lawyer to be objective and to remain unemotional on your behalf because it will often be hard for you to do so.

## **6. Attorney-Client Privilege**

By virtue of the attorney-client relationship, there automatically arises what is known as the attorney-client privilege. This privilege prohibits disclosure of any information, whether communicated orally or in writing, between the attorney and the client, as long as the communication was intended to be confidential.

For example, this very information sheet you are reading is protected from disclosure to your spouse's attorney under the attorney-client privilege.

Such communication also includes all correspondence or documents from your attorney/staff to you, and vice versa (e.g., information sheets you prepare for us), as well as all telephone conversations and in-person conferences between you and your attorney and staff.

Caution: The attorney-client privilege exists only between you and your attorney and his or her immediate, in-house staff. The attorney-client privilege can be waived if the otherwise confidential information is disclosed to persons other than your attorney and their immediate staff. For example, if you tell your spouse something that your attorney has told you, then that information will lose its privilege from disclosure and may have to be disclosed by you in court. Also, the privilege does not exist between you and other persons who may be involved in your case to assist you (e.g., CPAs, appraisers, etc.). Therefore, be very careful what you say to



these persons because anything you do or say may be required to be disclosed to your spouse's attorney.

## **7. Other Professionals in Your Case**

Besides your attorney and his or her immediate, in-house staff, other outside professionals are sometimes hired to assist in divorce cases. It may be necessary to engage an appraiser, a tax expert, CPA, or other professionals. Your attorney will discuss the necessity of these experts with you and hire only those that are necessary in your case and only with your consent. Once you approve of the expense, you will be responsible for paying the third party directly.

Caution: Again, even though these persons are hired on your behalf, information provided to them is not protected from disclosure by the attorney-client privilege (as discussed above).

## **8. Grounds for Divorce**

A divorce may be granted on one or more "fault" or "no-fault" grounds expressly set out in the Texas Family Code. Most divorces are founded on the no-fault ground of "insupportability" (i.e. incompatibility), which can be granted to either spouse if that spouse feels that the marriage has become insupportable because of discord or conflict in personalities, which makes any reasonable expectation of reconciliation impossible.

Common fault grounds for divorce include adultery and cruel treatment. Other fault grounds are conviction of a felony and imprisoned for at least a year; abandoned and remained away for at least a year; lived apart without cohabitation for at least three years; or confined in a mental hospital for at least three years. A court may consider fault in the breakup of a marriage as a factor in deciding how to divide the property and debts. You should always take a careful look at the cost/benefit analysis before pursuing a fault based grounds to make sure it's the best decision for you.

## **9. Domicile & Residence**

At least one spouse must have been domiciled in Texas for six months and a resident of the county where the suit is filed for 90 days before the petition

may be filed. Even if a spouse lives outside the state, that spouse can file in Texas and in the county where the other spouse resides as long as the other spouse has resided in Texas for six months and in the county for 90 days. The terms "domicile" and "residence" have different legal meanings, which can be explained to you if needed.

## **10. Property & Debts**

This subsection is an elementary discussion of some of the basic rules underlying Texas marital property law.

### **A. Types of Property**

In the context of divorce law in Texas, all property, both real and personal is characterized as one of two different types of property: (1) separate property and (2) community property. Property may be both separate property and community property in some instances if properties have been commingled or mixed together.

### **B. Separate Property**

Separate property is property that was (1) owned by a spouse before marriage, (2) acquired by a spouse during marriage by either gift or inheritance, or (3) funds received as a result of personal injury sustained by a spouse. It is the date of acquisition and the source of the property that controls the characterization. If you believe that you or your spouse may have separate property, you must discuss this with your attorney immediately so that the proper documentation can be secured in a timely manner to address it.

For example, if one spouse owned a house or a car before marriage, it will be characterized at the time of divorce as that spouse's separate property, even if it was paid off in whole or in part during marriage. (However, there may be a reimbursement claim here as discussed below).

A gift includes, for example, any Christmas or birthday gifts from one spouse to another during marriage, even if purchased with community funds. If a gift or inheritance goes to both spouses (e.g., wedding gifts), then each spouse has an undivided fifty percent separate property interest in that property.

Separate property can change form without changing its character as separate property (this is often referred to as a "mutation"). For example, if wife has \$5,000 in cash which is her separate property and she uses that \$5,000 cash to purchase in full a \$5,000 boat, then the boat would likewise be her separate property. These types of mutations require tracing of the purchase and funds which can be time-consuming and expensive. A court has no authority to take a spouse's separate property from him or her at the time of divorce.

*Caution: Any property owned by either spouse at the time of divorce is, by law, presumed to be "community property" unless otherwise proven to be separate property; therefore, a spouse must (1) specifically plead and (2) prove by clear and convincing evidence each item of real or personal property claimed to be his separate property is in fact that spouse's separate property.*

### **C. Community Property**

Community property is any property acquired by either or both spouses during marriage and which is not separate property. This includes virtually everything purchased during marriage. It is important to remember that a marriage legally endures even after separation; therefore, anything earned, purchased, or even merely contracted for purchase, during your separation will be characterized as community property.

All property which exists in whole or in part in the name of either spouse at the time of divorce is presumed by law to be community property. This is referred to as the "community property presumption." Therefore, if you have any separate property or if you are in possession of property which

does not belong to either you or your spouse, you must identify this property for your attorney.

In Texas, earnings from separate property are also community property. For example, if husband has \$5,000 in a bank account at the date of marriage, the \$5,000 remains his separate property, but all interest earned on the \$5,000 is community property. Unlike separate property, a court has the authority to divide community property in any manner that it deems to be "just and right" as discussed in more detail below.

#### **D. Out-of-State Real Property**

Real estate located outside of Texas, which was purchased while either or both spouses were domiciled outside of Texas, is treated somewhat differently than "community property" or "separate property." If real estate outside of Texas exists, please let your attorney know.

#### **E. Debts & Liabilities**

Debts and liabilities incurred before marriage, if still in existence at the time of divorce, shall remain the debt or liability of the party who incurred it.

Debts incurred during the marriage will be divided by the court between the parties at the time of divorce, including debts incurred after separation.

One spouse may be required to assume a debt incurred solely by another spouse during the marriage, but this is not common. Decisions will also need to be made regarding contingent liabilities such as past income tax liabilities which may arise in the future if the parties are audited as well as tax liabilities for the year of divorce. As a general rule, the court will award a debt that is tied to property to the spouse awarded the property. For example, if a spouse is awarded a vehicle, it is very likely the court will award that spouse the car loan secured by that vehicle.

Caution: Although a court will order each spouse to be solely responsible for certain debts and to pay them immediately when due, this is binding only as between the parties and is not binding upon the third-party creditors who are not parties to the lawsuit. The only protection is by way of indemnification, that is, if Spouse A is obligated to pay a bill, but does not do so and the creditor goes after Spouse B, Spouse B then has the right to sue Spouse A to recoup funds Spouse B paid to the creditor. While this is not a very good solution, other than seeking a different division, it is the only practical one available.

## **11.Reimbursement**

Pursuant to the rules above, there may be three different estates: (1) husband's separate property estate; (2) wife's separate property estate; and (3) the community estate.

Each of these estates may have a "claim for reimbursement" against the other estate or estates.

For example, if husband owned a car, as well as a note on that car, before marriage, then at the time of the divorce the car will belong to husband's separate estate, but the community estate would have a right to ask a court to order the husband i.e., his separate estate, to "reimburse" the community estate for community funds used to pay off the principal on the car loan for his separate property car. This is one very simple example of the doctrine of "reimbursement." To prove a reimbursement claim like this, we would seek evidence of the debt on the car at the time of marriage and proof of the source and amount of funds expended by the community estate.

Since reimbursement is an equitable doctrine, a court is not required to order reimbursement but may choose to do so if the court considers it equitable under all of the circumstances of the case.

It should be noted that to prove reimbursement, it often requires a great deal of time, accounting, tracing of funds, and expense to prove the claim. Whether reimbursement should be sought is a decision you and your attorney will make after weighing all of the factors.

## **12.Tracing**

To determine title to property as being separate property and/or community property and to determine rights to reimbursement between the different marital estates, an accounting method referred to as "tracing" is often employed in divorce cases.

For example, one bank account may contain funds, which consists of both separate property and community property. Or, community property funds may be used to pay off a balance of a separate property debt.

Tracing may be employed in these scenarios to determine the title to property or the amount of reimbursement.

Doctrine of commingling: If an account contains both separate property funds and community property funds and these funds have been so commingled as to defy segregation by means of tracing, then the entire account will be characterized as community property because of the community property presumption discussed above.

## **13.Division of Property and Debts**

The parties by settlement, or a court after a trial, will divide all existing property and debts. While the parties may agree to any type of division (e.g., give to husband certain separate property belonging to wife, agree to contractual alimony, etc.), a court in litigation does not have such flexibility as it is bound by the rules of law.

A court is required to award each party his or her separate property and separate debts and then divide the community property and debts in a manner that the court deems to be "just and right."

The court is not required to divide the property 50/50, but may if it finds such a division to be just and right.

If a spouse pleads for a disproportionate division of the community estate, and then proves why a disproportionate division would be just and right, the court may divide the community estate 55/45, 60/40, 70/30, etc.

As a general rule of thumb, to accomplish a just and right division of the community estate, the court usually begins by presuming that a 50/50 division would be equitable then varies the division based upon a number of factors including the length of marriage, a disparity in the earning capacity of the parties, whether there are minor or adult children being taken care of by a spouse, fault in the breakup of the marriage, etc. As discussed in some detail below, the very nature of divorce cases makes it difficult to accurately predict how a given court will divide the property in a given case on any given day.

#### **14. Spousal Maintenance**

Spousal maintenance is when funds are paid by one spouse for the support of the other spouse after the divorce. (A court can also order temporary spousal support while the case is pending). It is most often taxable to the receiving spouse and deductible for the paying spouse.

Texas courts may order spousal maintenance to be paid post-divorce under certain circumstances. The eligibility requirements for spousal maintenance are somewhat demanding and the amount and duration of payments, if ordered, are limited. (There are special rules if there is a disabled spouse or disabled child involved). Further, in most cases, a spouse must show that he or she has been diligent looking for a job to earn income to pay their bills or has been diligent in acquiring skills to find

employment. Unlike contractual alimony, spousal maintenance may be modified after the divorce if either spouse experiences a material and substantial change in circumstance, such as a decrease or increase in income.

### **15. Additional Causes of Action in Divorce Proceedings**

In filing for divorce, one spouse is filing a suit to dissolve their marriage. As discussed above, a spouse may allege that the divorce was filed because of the fault of the other spouse. Other causes of action may be included in the petition for divorce, if applicable, and each must be plead. Some causes of action include actual or constructive fraud by the other spouse; assault; intentional infliction of emotional distress; transmitting sexual disease; intrusion on seclusion (invasion of privacy); tortious interference with a business relationship; and interference with child custody. The spouse asserting these claims must prove each element to the court at the time of the final hearing. If the court finds that the cause of action has been proven, the requesting spouse may be awarded additional money for actual damages, exemplary damages, and/or attorneys' fees.

### **16. Children and Suits Affecting Parent-Child Relationship**

The Texas Family Code refers to issues involving the children in terms of conservatorship, possession and access, and support.

Conservatorship simply establishes how major decisions for the child will be made

The court will appoint the parents joint managing conservators or appoint one parent a sole managing conservator and the other parent a possessory conservator.

Joint Managing Conservator is an individual who shares the rights and duties of a parent, even if the exclusive right to make certain decisions is awarded to only one person.

A Sole Managing Conservator (SMC) is a person who is granted certain exclusive rights to make decisions for the child. If one parent is named SMC, the other parent is named a Possessory Conservator (PC).



A Possessory Conservator is a person who has the right to possession of a child at specified times and under specified conditions and who also has the right to exercise certain parental rights during periods of possession.

**A. Presumption of Joint Managing Conservators**

The Texas Family Code contains a rebuttable presumption that parents should be appointed Joint Managing Conservators (JMC) unless good cause is shown otherwise.

Even in the scenario wherein the parties are named Joint Managing Conservators, unless there is an agreement to the contrary, only one of the parents typically has the exclusive right to establish the primary residence and the exclusive right to receive child support. (i.e. Parent A in online videos)

Additionally, except in special circumstances, all parents have the right to attend school activities and the right to consult with teachers and medical providers.

Finally, there are rights and duties that are allocated between the parents in one of these ways:

Independently by each parent;

Independently after consulting with the other parent;

Joint agreement of the parents; or **(most common)**

Exclusively by one parent exclusively.

Some of the most contested rights and duties are which parent has the exclusive right to determine the primary residence of the child; which parent has the right to make educational decisions for the child; and which

parent has the right to make invasive, non-emergency medical decisions for the child.

The following are different ways to allocate of the right to consent to invasive, non- emergency medical procedure:

#### **Example for Independent Decision Making**

A parent may consent to the invasive, non-emergency, medical procedure without the other parent's consent.

#### **Example of Independent After Consulting Decision Making**

A parent may consent to the invasive non-emergency medical procedure after consulting with the other parent but it does not require the other's parent's consent.

#### **Example of Joint Agreement Decision Making**

The invasive non-emergency medical procedure may only occur if both parents agree.

#### **Example of Exclusive Decision Making**

The parent who has the exclusive right to make the decision can consent to the invasive non-emergency medical procedure without the other parent's consent and without consulting with them

### **B. Each Major Decision Making Power Can Be Allocated Differently**

Each right and duty can be allocated in a different manner. For example, Parent A might have the exclusive right to determine the primary residence of the child. However, both parents must agree to the invasive non-emergency medical procedure.

If JMCs are appointed, unless agreed to otherwise, the court must designate one JMC as the parent who has the exclusive right to determine the child's primary residence. This parent is often referred to as the Primary Joint Managing Conservator (PJMC).

### **C. Geographic Restriction**

It is common for courts to restrict the child's primary residence to a specified geographic area such as the county or surrounding counties around a JMCs residence or a specific school district.

Although the parties may agree not to designate a parent with the exclusive right to determine the primary residence, the parties must agree on a geographic restriction.

### **D. General Rights of Parents at All Times (Unless ordered otherwise)**

Right to receive information from any other conservator of the children concerning the health, education, and welfare of the children;

Right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the children;

Right of access to medical, dental, psychological, and educational records of the children;

Right to consult with a physician, dentist, or psychologist of the children;

Right to consult with school officials concerning the children's welfare and educational status, including school activities;

Right to attend school activities;

Right to be designated on the children's records as a person to be notified in case of an emergency;

Right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the children; and

Right to manage the estates of the children to the extent the estates have been created by the parent or the parent's family.

#### **E. Duties of A Parent At All Times**

Duty to inform the other conservator of the children in a timely manner of significant information concerning the health, education, and welfare of the children;

Duty to inform the other conservator of the children if the conservator resides with for at least thirty days, marries, or intends to marry a person who the conservator knows is registered as a sex offender under chapter 62 of the Code of Criminal Procedure or is currently charged with an offense for which on conviction the person would be required to register under that chapter;

Duty to inform the other conservator of the children if the conservator establishes a residence with a person who the conservator knows is the subject of a final protective order sought by an individual other than the conservator that is in effect on the date the residence with the person is established, or the conservator resides with or allows unsupervised access to a child, by a person who is the subject of a final protective order sought by the conservator after the expiration of 60-day period following the date the final protective order is issued, or the conservator is the subject of a final protective order issued after the date of the order establishing conservatorship.

#### **F. Rights & Duties Of Parent During Possession**

Duty of care, control, protection, and reasonable discipline of the children;

Duty to support the children, including providing the children with clothing, food, shelter, and medical and dental care not involving an invasive procedure;

Right to consent for the children to medical and dental care not involving an invasive procedure; and

Right to direct the moral and religious training of the children.

### **G. Right and Duties Allocated Between the Parties**

Right to designate the primary residence of the children with or without a geographic restriction; (*See special description herein*)

Right to consent to medical, dental, and surgical treatment involving invasive procedures;

Right to consent to psychiatric and psychological treatment of the child;

Right to receive and give receipt for periodic payments for the support of the children and to hold or disburse these funds for the benefit of the child;

Right to represent the children in legal action and to make other decisions of substantial legal significance concerning the child;

Right to consent to marriage and to enlistment in the armed forces of the United States;

Right to make decisions concerning the child's education;

Right to the services and earnings of the child;

Right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government; and

Duty to manage the estates of the child to the extent the estates have been created by community property or the joint property of the parent.

## **17. Standard Possession Order**

It is the public policy of Texas to encourage frequent contact between a child and each parent for periods of possession that optimize the development of a close and continuing relationship between each parent and the child.

Accordingly, the legislature has adopted what is referred to as the Standard Possession Order (SPO). It is intended to act as a guideline when a court is determining the possession of a child by a PC or the minimum possession for a JMC.

The SPO is presumed to be in the best interest of children age three and older. When a child is less than three years of age, the court must render a possession order appropriate to the circumstances and which is in the child's best interest.

The Texas Family Code contains a non-exclusive list of factors the court must consider when rendering a possession order for a child under the age of three. The court will apply these factors on a case by case basis.

### **A. Standard Possession for Parents Who Reside 50 Miles or Less Apart**

When parents live 50 miles or less apart, the (SPO) gives one parent possession of the child on the first, third and fifth weekend of each month from 6:00 p.m. on Friday to 6:00 p.m. on the following Sunday and during the school year, they get every Thursday from 6: 00 p.m. to 8:00 p.m.

## **Expanded Standard Possession Order**

The Family Code assumes that the parent awarded the possession schedule would elect alternate starting times during the school year for the possession and access. This is referred to the Expanded Standard Possession Order (ESPO).

Under the ESPO, the weekend possession during the school year begins when the child is dismissed from school on Friday and ends when school resumes the following Monday. Additionally, the Thursday period of possession during the school year begins when school is dismissed on Thursday and ends when school resumes on Friday.

If the child has a Friday holiday during school on the weekend of visitation, the visit will begin on the Thursday. If the Monday after the weekend possession is a holiday, the visitation will end at a different time.

## **B. Standard Possession for Parents Who Reside More Than 100 Miles Apart**

When parents live more than 100 miles apart, the weekend portion of the SPO still applies, however, the Thursday period of possession is eliminated and the weekends will begin on Friday at 6:00 p.m. and end on Sunday at 6:00 p.m.

Additionally, the parent exercising possession may elect to have possession of the child one weekend per month (that could be a different weekend each month) instead of the first, third and fifth weekends. The parent exercising possession also receives every spring break and 42 days in the summer instead of 30.

### **C. Holidays Possession Regardless of Distance Between Parents**

Holiday possession and access is also set out in the Texas Family Code, and it remains the same regardless of how far the parents live from each other. Thanksgiving break alternates between the parents each year. Winter break is divided between the parents with one parent's period of possession beginning when the child(ren) start their school break until December 28<sup>th</sup>

If Parent "A" has Thanksgiving break in a year, Parent "B" will have the first half of the Winter break that contains Christmas Eve and Christmas day. The next year, the possession schedules will be reversed.

Mother's Day and Father's Day weekend are standard holidays.

Child's Birthday - Whichever parent is not in possession of the child on the child's birthday may have possession of the child from 6-8pm.

#### **Spring Break and Summer Possession**

Spring Break and Extended Summer Possession of the child vary depending on whether the parents live 100 miles or less apart or over 100 miles apart. To some extent parents can choose their periods of summer possession if they follow the specific procedures and notice requirements set forth in the Texas Family Code. Otherwise, the Code sets out default periods of summer possession.

When parents live 100 miles or less apart, Spring Break alternates between the parents each year. If parents live more than 100 miles apart, the parent exercising the SPO typically has Spring Break every year.



## **Deviating from the SPO and Agreements**

The court may deviate from the SPO if it is in the child's best interest, to protect the child, or if the SPO is unworkable.

For example, if a parent uses illegal drugs, the court may order that visitation to be supervised until the parent is no longer using drugs. The court may limit a parent's possession to a child to the extent necessary to protect the child.

Some parents have occupations that do not follow a typical nine to five, Monday through Friday work schedule. This is common for professionals such as doctors, nurses, police officers, firefighters, and airline pilots.

Because of this State's policy to encourage frequent contact between each parent and the child, the court may deviate from the SPO and tailor a possession schedule for each case's unique circumstances.

Additionally, parents may agree to any deviation of the possession and access schedule set forth in the Texas Family Code so long as it is in the child's best interest.

In fact, parents are encouraged to work together and reach agreements. For example, if one parent's family always celebrates Christmas on Christmas Eve and the other parent's family always celebrates Christmas on Christmas Day, a possession schedule can be structured that accommodates these family traditions.

Other provisions may be modified in the SPO depending on religious holidays, important family days, etc.

## **18. Child's Choice- Mandatory and Discretionary Interviews**

Many clients ask when a child can choose with whom they live or how often they visit the other parent. It's not that simple.

The Texas Family Code provides that a child who is 12 years of age or older may express their desire regarding which parent he/she would like to have the exclusive right to determine the child's primary residence in an in-chambers interview with the Court. If an interview is requested, the Court must interview the child.

However, the child's desire is not binding on the Court.

The Court still must make a "best interest" determination regarding which parent should be awarded the exclusive right to designate the primary residence of the child. Further, a parent can only request this interview if the pending case is a non-jury case. If a party has requested a jury trial, the interview will not be conducted.

Contrary to the impression some clients have, a child may not merely choose whether or not he or she wants to visit a parent for that parent's periods of possession. However, when a case is pending, a party may request that the court interview the child to determine the child's wishes as to possession, access, or any other issue. The Court is not required to conduct this type of interview.

The Court may permit a party's attorney, the amicus attorney, the attorney ad litem, or the guardian ad litem to be present during the interview.

If requested, the Court is required to make a record of the interview when the child is 12 years of age or older, and the record of the interview shall be part of the record in the case.

## **19. Possession of a Child Under the Age of Three**

The Standard Possession Order in the Texas Family Code is only presumed to be in the best interest of a child three years of age or older. The Texas Family Code only provides a non-exclusive list of factors for a Court to consider when determining a possession schedule for a child younger than three which are:

- (1) the caregiving provided to the child before and during the current suit;
- (2) the effect on the child that may result from separation from either party;
- (3) the availability of the parties as caregivers and the willingness of the parties to personally care for the child;
- (4) the physical, medical, behavioral, and developmental needs of the child;
- (5) the physical, medical, emotional, economic, and social conditions of the parties;
- (6) the impact and influence of individuals, other than the parties, who will be present during periods of possession;
- (7) the presence of siblings during periods of possession;
- (8) the child's need to develop healthy attachments to both parents;
- (9) the child's need for continuity of routine;
- (10) the location and proximity of the residences of the parties;

(11) the need for a temporary possession schedule that incrementally shifts to the schedule provided in the prospective order under Subsection (d) based on:

- (A) the age of the child; or
- (B) minimal or inconsistent contact with the child by a party;

(12) the ability of the parties to share in the responsibilities, rights, and duties of parenting; and

(13) any other evidence of the best interest of the child.

As you can see, the Court will handle each and every child/family on a case by case basis. Please prepare to provide facts to the attorney that center around these factors if you have a child or children under the age of three.

Further, the Court's use of these factors does not prohibit a Court from awarding a party a Standard Possession Order before a child reaches three years of age. Rather, a Standard Possession Order is not the presumptive possession schedule before then.

## **20. Psychological Testing and Custody Evaluations**

Child custody evaluations and psychological testing are useful tools that provide evidence for courts to consider when making decisions regarding child custody in a contested case. The Texas Family Code identifies the credentials required of the individuals conducting the testing and preparing the child custody evaluation. In some instances, parties may agree to participate in testing and an evaluation. In others, it is ordered by the court after a contested hearing.

The issues of any particular case and the training of the evaluator may determine which tests are best suited for each individual case. Health insurance does not typically cover the cost of psychological testing or child custody evaluations for litigation. Your attorney will discuss the costs associated with these types of testing.

## **21. Child Support and Health Insurance**

### **A. Child Support**

Parents owe a legal obligation to financially support their children, and for parents who are divorcing, one means of accomplishing that obligation is through child support.

Texas provides a guideline calculation intended as a presumed, minimum support amount. Generally, the guideline amount is insufficient to cover expenses of child care, extracurricular activities, educational assistance, braces, vehicles, insurance, and all the costs that come with raising a child.

In Texas, guideline child support is calculated on a percentage of net resources (up to \$9,200 of net resources)(This amount changes every few years). Guideline support for an obligor who is only paying for the children before the court is based on the following percentages:

1 child= 20% 2 children=25% 3 children=30% 4 children=35%

Net income is calculated by deducting the following from gross pay:

- 1) Social Security taxes;
- 2) Federal Income Tax based on the tax rate for a single person claiming one personal exemption and the standard deduction;
- 3) State income tax;
- 4) Union dues; and
- 5) Expenses for health insurance coverage for the obligor's child.

You may also hear the following terms when we talk about child support:

“Temporary support” is the child support paid during the period between filing the petition for divorce and the final decree being entered.

“Retroactive support” is child support that a parent was not ordered to pay at the time, but has been applied for a period of time prior to the order that is now legally due.

“Arrearage” is child support that was ordered to be paid by the Court but was not paid.

“Enforcement” is when you file a suit to request the court order a judgment for unpaid support, a time frame for it to be paid, and potentially, punishment for the failure to pay.

“Obligor” is the person ordered to pay child support.

“Obligee” is the person receiving child support.

To assist your attorney, you should provide all documents requested by him or her which may include:

- 1) Any prior divorce decree of either party;
- 2) Any current orders for support;
- 3) Any signed acknowledgment of paternity;
- 4) Birth certificates of the children (if paternity is disputed);
- 5) Documents that reflect income of either parent;
  - a) Paycheck stubs
  - b) Tax returns
  - c) W-2s
  - d) Bank statements (only needed if Obligor deals in cash or income is otherwise not reflected in a reliable document)
- 6) Records of child support payment history; and

7) Documents that evidence justification for a variance from guideline support.

## **B. Health insurance**

Medical support is an amount paid by parents for a child's medical coverage. This can be in the form of paying for health insurance, reimbursing the other parent for health insurance, or enrollment in a government program. This is paid in addition to child support.

If the obligor has health insurance coverage available through their employer at a cost that does not exceed 9% of their annual gross income (referred to as "reasonable cost"), the parent will be ordered to maintain the child on the policy.

If the obligor parent cannot provide coverage through an employer at a reasonable cost, then the obligee should provide coverage available through their employer. Then, the obligor would be responsible to reimburse the obligee for the cost of the child's health insurance premium.

If neither parent has health insurance available through an employer, the Court can order the obligor to purchase a private policy.

In addition to the cost of premiums, the court (or the parents by agreement), will set an amount, usually designated by a percentage amount, that each parent will pay for uninsured and uncovered medical expenses like copays, the deductible, and prescriptions. While this is typically set at 50/50, the court can consider each parent's ability to pay these additional costs.

You should discuss the child's current health (including dental and vision) with your attorney. You may be requested to supply the following:

- 1) Existing health insurance policies;
- 2) Existing premium and coverage amounts (Your employer will have a chart that sets out the cost for Employee, Employee and Spouse, Employee and Family, etc.);
- 3) Available health insurance options (including premium and coverage amounts);
- 4) Health savings account (HSA) information; and
- 5) Any extraordinary medical needs of a child subject of the suit.

### **C. Withholding Orders**

A withholding order requires an employer to withhold child support, cash medical support, or health insurance reimbursement from an employee's wages. The order is a separate order from the decree or suit affecting parent-child relationship order.

Either party or the Texas Attorney General's Office may request the court to sign and issue a withholding order.

The order is based on a required form that includes identifying information about the employer, the parties, the children, and the amounts to be withheld for different types of support (i.e., current child support, past due child support, current cash medical support, past-due cash medical support, and other types of spousal support).

The amount withheld in total in Texas may not exceed 50% of the disposable income of the obligor.

### **D. Payments Through the Child Support Division**

The Texas Attorney General's Office Child Support Division (OAG) is the official child support enforcement agency for the State of Texas. They can assist in establishing and enforcing child support and medical support orders, they can review and adjust child support payments, and they collect and distribute child support payments.



These services incur a small fee to the client and are funded by the federal government and the State of Texas. The State is mandated to provide these services through Title IV-D of the Social Security Act of 1975, so you may hear the OAG called the Title IV-D agency.

If an employer is not withholding child and medical support payments, the obligor can make payments on the OAG website. Both the obligor and obligee can check the status of payments and track a history of payments on the site with their personalized customer identification number (CIN).

### **E. Conclusion of Support Obligation**

The obligation to pay child support and medical support in Texas ends upon the later of the child turning 18 and graduating from high school. Support obligations also end if the child marries, is emancipated, or dies prior to that time.

Support for disabled adult children can continue indefinitely for so long as the disability continues. If your child has a disability, make sure you disclose this to your attorney early in your case.

## **22. Attorney's Fees, Costs, and Expenses**

In almost every family law petition, you will see a request at the conclusion that asks for the other side to be responsible to pay the attorney's fees, costs, and expenses.

Generally, such an award is discretionary with the court and can be awarded as the court deems reasonable, except for a few matters where the court is required to grant a judgment for fees and expenses to the prevailing party (i.e., child support enforcement).

Attorney fees are, quite obviously, the fees you pay to your attorney for representation. Costs are fees and charges required by law to be paid to the courts or some of their officers which include filing fees, service

fees, or amicus fees. Expenses are items paid in preparation for dissolution such as expert fees, copying fees, etc.

It is best to presume each side will be responsible for their own fees, costs, and expenses, but under certain circumstances, the court will award one party their fees and expenses.

## **23.Steps in Divorce**

### **A. Generally**

Upon hiring your attorney, the two of you will make a plan for the next several months while the divorce is pending. A petition for divorce must be on file for at least sixty days before being granted, and depending on the size of the marital estate and the willingness to negotiate of the parties, the case could be pending for much longer. Where are you going to live? How will you pay bills? Do you have a support system during this very stressful time?

### **B. Initiating the Divorce**

To begin, you should discuss with your attorney your goals and expectations, not only of what you want when the divorce is finalized, but what you expect of your attorney during the process. You will also need to help your attorney understand what assets and debts will be divided and how you want them to be divided. If children are involved, you should discuss your desires for the rights and duties of each parent and the possession schedule.

Next, your attorney will draft the petition for divorce and file it in the proper court. The petition must be filed in the county where at least one of the parties has been a resident for the preceding ninety days and has been a domiciliary of Texas for the preceding six months. Some counties have district courts designated specifically for family law matters.

You should prepare an inventory and appraisal of all of the assets and liabilities so that everything can be divided. Tell your attorney your goals and expectations for how you want the property and debt divided.

Discuss whether any marital property agreements exist. Also discuss with your attorney your goals and expectations for the children, if any. Remember that although you may be getting a divorce from your spouse, you will always be a parent with that person, so you will need to learn to work together for your children.

Once your petition for divorce has been filed, you will probably have a temporary orders hearing so that there are orders in place dictating how the parties will act and what will happen with the children pending the divorce.

You may try to settle the case by negotiating with the other party on how to divide the assets and custody issues. This may be in the form of mediation, which is a negotiation with a neutral third party who helps facilitate the negotiation.

If you cannot settle your case, you will have a final trial where the judge or jury will decide any issues you did not agree upon. If you are unhappy with the final judgment, you can appeal it and have the court of appeals review whether any error occurred. Appeals are rare and difficult and you will need to hire another attorney for this work.

The court cannot grant your divorce less than sixty days from the date the petition was filed. During this time, you may go through discovery, temporary orders, and settlement negotiations.

### **C. Temporary Orders**

A petition for divorce must be on file for sixty days before being granted, except in certain circumstances involving family violence.

While the divorce is pending, you and your spouse will probably no longer be living together which could disrupt living arrangements, payment of bills, and children's schedules. For this reason, courts can render temporary orders while the divorce is pending.

Temporary orders can be to restrain a party from doing something or require a party to do something, for example:

- Requiring a sworn inventory and appraisal;

- Requiring spousal support;
- Requiring the production of documents;
- Ordering payment of attorney's fees;
- Appointing a receiver for the preservation and protection of the property;
- Awarding one spouse the exclusive occupancy of the residence;
- Prohibiting parties from spending funds beyond an amount the court determines is reasonable for living expenses;
- Awarding one spouse exclusive control of a party's usual business or occupation; or
- Prohibiting acts set forth in a temporary restraining order discussed below.

Temporary orders may also provide for the safety and welfare of the children pending the divorce, for example:

- Temporary conservatorship of the child;
- Temporary possession of and access to the child;
- Temporary support of the child;
- Restraining a party from disturbing the peace of the child;
- Prohibiting a person from removing the child beyond a geographical area identified by the court; or
- Payment of reasonable attorney's fees and expenses

Parties may agree to temporary orders or may leave some or all of these issues up to the court to decide.

Temporary orders in a modification suit are more limited.

## **D. Preparing for Court**

The basics include knowing where the courthouse is, where to park, and where the courtroom is within the courthouse. If the court is virtual, make sure you have the link and have tested the software and your hardware with our office at least two business days prior to the hearing.

Double check the time and date of your hearing. If you have never been to court before, we suggest that you arrive early because you may be nervous.

Texas court proceedings are open to the public so you can go see where your hearing will take place beforehand to be more comfortable.

Temporary orders hearings are much shorter and more condensed than a final trial, although they both share many of the same qualities—evidence will be presented to the court, witnesses will testify, and your attorney will make legal arguments.

Temporary orders do not finalize anything in the case. They are only temporary; however, you can prepare for the hearing in substantially the same manner as you would prepare for final trial. Tell your attorney your goals and expectations for these temporary orders.

If you have responded to discovery or had your deposition taken, review your discovery responses and deposition before the hearing.

When going to court, dress conservatively and professionally to show the judge or jury that you take the case seriously and that you are responsible. Never bring children to the courthouse unless the judge requests it.

Your behavior during the hearing is just as important. Do not make faces or noises while someone else is testifying. While others are testifying, if you need to tell your lawyer something, write it down. Your

lawyer is listening to what is going on so that proper objections can be made. Your lawyer cannot make those proper objections if you are a distraction.

If you testify, you will be sworn in, meaning that the testimony you give will be given under penalty of perjury, which is a criminal offense. Tell the truth, and be consistent with your previous discovery or deposition answers. Be sure to answer the question that is asked. We have great videos on our website to help you with tips related to your testimony.

The discovery process is used by each side of a case to obtain information about the case and the parties. Discovery assists the attorneys and parties in the case to obtain information relevant to prepare the case for hearings, depositions, custody evaluations, settlement, and/or final trial, among other things.

Written discovery requests can include Mandatory Disclosures, Interrogatories, Requests for Admissions, and Requests for Production.

Written discovery is typically sent by a party's attorney to the attorney for the other side. Most written discovery requests have a response deadline of thirty (30) days.

Objections and privileges may also be claimed by the responding party in response to discovery requests.

In addition, in family law cases, the parties often agree or the court orders the parties to exchange Sworn Inventories and Appraisements which are another form of written discovery.

## **24. Forms of Discovery**

### **A. Mandatory Disclosures**

Mandatory for Disclosure in family law cases are required to automatically provide all documents you intend to use at the trial, the names of the parties to the lawsuit; the name, address, and phone number of potential parties; legal theories and factual bases of the parties' claims or defenses; the amount and method of calculating economic damages (if applicable); the name, address, and phone number of persons with knowledge of relevant facts and a statement of the person's connection with the case; and information regarding testifying experts. We can provide you a sample upon request.

## **B. Interrogatories**

Interrogatories are written questions asked by one party to the responding party and are prepared by the asking party's attorney. These questions range in subject matter, depending on the case, to cover such topics as financial information, information regarding children and parenting, information regarding fault in the breakup of the marriage, information regarding potential witnesses, information regarding the relief the responding party is seeking, and other information necessary to gather facts about the case and prepare the case.

The responding party must swear to the truth of their interrogatory responses in a written oath attached to their answers. It is important to note that there are limits on the number of interrogatories that may be requested by each party.

When sending discovery requests, it is important to be aware of these limitations and strategically decide which questions are most suitable to request of the other side in your case. We can provide you a sample upon request.

### **C. Request for Production**

Requests for Production are written requests for specific documents and inspection of tangible things. The documents and tangible things requested vary from case to case, but often include financial records, emails, text messages, social media records, tax returns, income records, photographs, and letters.

### **D. Requests for Admissions**

Requests for Admissions are written requests which ask the opposing party to admit or deny a specific fact.

## **Inventory and Appraisal**

A Sworn Inventory and Appraisal is a listing of a party's assets and debts, including community property and separate property.

A party's Sworn Inventory and Appraisal is made under oath.

Generally, your attorney will provide you a questionnaire to assist you in preparation of your Inventory and Appraisal. It is important to provide as much information as possible. You can save a lot of attorney's fees if you provide as much information and supporting documents in an organized manner on a usb thumb drive.

It is also helpful to provide documents supporting the information you have provided in your Inventory and Appraisal, including detailed account statements.

If a party or attorney for a party fails to respond to discovery, the side requesting the discovery may have other methods to obtain the information requested, including filing a motion to compel and asking



the court to order the opposing party to respond and/or rule on the objections and privileges asserted.

It is important to answer discovery by the deadline, as a failure to respond on the due date (unless extended) results in a waiver of objections.

## **E. Depositions**

There are two types of depositions that may be taken in family law cases, oral depositions and written depositions. A deposition is a formal question and answer process in a setting less formal than the courtroom. We have some videos on our website if you want to know more about depositions.

### **Oral Depositions**

Oral depositions are questions and answers of a party or witness held outside of the presence of the judge on a day and time arranged in advance.

Under some circumstances, the party whose deposition is being taken is asked to bring specific documents to the deposition. The party or witness whose deposition is being takes an oath to tell the truth.

Both attorneys have an opportunity to ask questions of the party or witness being deposed. A record of the deposition is usually made by a court reporter who prepares a deposition transcript. A videographer may also record the deposition. On some occasions, the deposition is recorded by video or audio only.

### **Deposition on Written Questions**

Depositions on Written Question are an alternative to oral depositions in which case a witness answers written questions under oath in the

presence of a deposition officer. The person whose deposition is being taken is given advanced notice. Depositions on written questions are often used to secure documents from a non-party.

### **Preparing For Depositions**

When preparing for your own deposition, practice makes perfect. You should meet with your lawyer to review possible questions you may be asked, practice your answers, and discuss the procedure of a deposition.

Remember, when having your deposition taken, listen carefully to the question, answer the question asked, and be honest. In addition, when preparing for your deposition, it is wise to review the following items (if applicable): your discovery responses, the opposing party's discovery responses, the documents and tangible things you have produced in discovery, the documents and tangible things the opposing party has produced in discovery, any expert reports and documents from experts, your Sworn Inventory and Appraisal, the opposing party's Sworn Inventory and Appraisal, transcripts from any prior depositions or hearings in the case, and pleadings filed in the case.

Many times, attorneys and parties find it helpful to prepare a timeline of significant events to refresh your memory of important dates.

When assisting your attorney in preparation for an opposing party or third-party witness deposition, send your attorney a list of topics and questions that you believe should be addressed.

Your attorney can discuss with you why or why not the questions or topics will be covered in the depositions.

## **25. Settlement**

The majority of family law cases settle before trial. Generally, family law cases are settled through an informal settlement or mediation.

Informal settlement occurs when the parties (usually through their attorneys) are able to resolve the issues in the case without trial.

This can occur in face-to face meetings, by telephone, by email, or by letter. In these circumstances, a settlement agreement or order containing the terms of the parties' agreement is usually drafted and signed by all parties and attorneys.

If a settlement agreement is prepared, the agreement is filed with the court and subsequently turned into a final order to be signed by the Judge.

The order may provide additional wording and detail about the parties' agreement.

The parties may also settle the case through mediation.

Mediation is a confidential process that occurs outside of court where the parties and attorneys work with a neutral third party mediator to reach a mutually agreeable resolution of the issues in the case.

Each mediator has a unique mediation style and process that they use, so it is important to visit with your attorney about what to expect from your mediator and the process.

It is advisable to prepare a mediation position statement for the mediator in advance of mediation to educate the mediator on the facts and circumstances of your case and provide any other documents that may be helpful for the mediator to get a picture of the issues in your case (including Sworn Inventories and Appraisements, any spreadsheets prepared, copies of custody evaluations, etc.).

In addition, there may be additional documentation requested by the mediator which should also be provided to the mediator in advance. If settlement is reached at mediation, a mediated settlement agreement is

prepared and signed by the attorneys and parties and may or may not be filed with the Court.

Once signed by all parties, the mediated settlement agreement is binding and not revocable.

If settlement is reached through informal settlement or mediation, then a final order and any other ancillary documents will need to be prepared. Once the final order is prepared and agreed upon by all parties, then it will be presented to the judge for signature.

Often a prove-up is required when obtaining the judge's signature on an agreed order. A prove-up is a brief hearing where questions are asked to one or both parties regarding the agreement.

## **26. Trial if No Settlement Reached**

If settlement is not reached, then you will begin to or continue to prepare for trial with your attorney. Trial preparation takes many forms, depending on the nature of your case. It is helpful to sit down with your attorney to discuss your trial goals, strategy, and preparation timeline in advance.

## **27. Assisting Your Attorney with Discovery**

You can assist your attorney in preparing to send discovery requests by creating a list of the information you would like your attorney to obtain from the other side and witnesses you would like to depose.

You can include questions you would like your attorney to ask in written discovery and/or by deposition (as applicable) and list documents and information you would like to request.

You and your attorney can go through your list together to determine the best way to proceed with discovery in your case.

You can help assist your attorney in responding to discovery by compiling the information requested by your attorney in an organized and complete manner.

Do not wait until the last minute to provide your responses, documents, and information to your attorney. Usually there are tight time frames in responding to discovery (generally 30 days), so it is helpful to get all of your information to your attorney as quickly as possible.

Typically, several different forms of written discovery are sent together, so it is also important to be organized in your response and identify what you are responding to. This is your case and no one knows your life and story better than you do, so take time to respond to each request and gather documents responsive to the requests in the same order they are requested and label them as such. It is always helpful to provide as much detail and information as possible.

It is also helpful to number your responses as they are numbered in the requests. If you do not know the answer to a specific request, do not have a document responsive to that specific request, or have a question for your attorney about that request, make note of this as you are going through the requests so you can address these issues with your attorney.

When providing documents to your attorney, ask the attorney the best way to provide those documents (i.e. digitally, paper copies, with or without staples, etc.).

Following our process and providing your responses and documents in an organized manner can often save you a significant amount of attorney's fees.

If your attorney gives you homework sheets or forms to complete, take time to thoroughly respond to those homework sheets and forms and provide the information your attorney has requested.

## **28. Things to Be Aware of in a Divorce**

There are a number of very important things for you to carefully avoid throughout your entire divorce case.

Despite what your spouse may do, it is important that you keep a "white hat" on throughout these proceedings.

Violating any of the following rules can be very detrimental to your case.

### **A. Your Conduct During Divorce**

Tell your lawyer everything; the good, the bad and the ugly. Tell him or her if you have had an affair (including an "emotional affair"), any alcohol issues, any abuse of prescription or illegal drugs, and whether there has been physical violence in the relationship. Tell your lawyer the worst thing or things your spouse will say about you.

Tell your lawyer if there are inappropriate pictures or posts on social media.

You may not delete any inappropriate pictures or posts on social media. You may not destroy any potential evidence including pictures, letters, emails, journals, etc. If you do, this could be detrimental to your case.

Do not destroy, waste, hide, alter, collateralize or otherwise do anything to affect the title or the value of any property. Be sure to consult with your attorney regarding any questions that you have with respect to dealing with present property and existing documents.

Do not incur out-of-the-ordinary debts or liabilities (e.g., charge an unusually high amount of clothes, an expensive vacation, etc.). This will generally be considered against you by the judge and, more often than not, the judge will first make an overall "just and right" division of the property and debts and then, thereafter, order that you be solely responsible for any such unusual liabilities.

Even if you are separated and the divorce petition has been filed, you are still legally married, and any property purchased, even if it is on the day before the divorce, will be considered community property. If that property is not divided at the time of the divorce, then it could be considered undivided community property to which both parties have an interest. Even years after the divorce, the court can require you to partition that property or order it sold so that your spouse can own a share of the property. The same rule applies to the establishment of a business.

Before you purchase any property or enter into any contracts during the pendency of your divorce, consult your attorney.

## **B. Appropriate and Inappropriate Communications**

Lawyers are obligated to communicate with one another during a divorce and are specifically prohibited from communicating directly with the opposing party unless they represent themselves.

While lawyers have to communicate with each other, the parties may communicate with each other during a divorce unless there is a court order prohibiting it.

Generally, because of the heightened emotions during a divorce, it is better to consult with your attorney if you desire to communicate with your spouse BEFORE you initiate the conversation or send a text or e-mail.

Avoid reacting and responding to your spouse's texts and emails no matter how outrageous and hateful they may be. Although you

are not prohibited from discussing settlement with your spouse, it is recommended that you do not discuss settlement with your spouse unless authorized in advance by your attorney. It is not uncommon for the dominant spouse to try to take control of the case and bully the other spouse into settlement. You should not sign ANYTHING until your attorney approves it.

Judges and juries do not take kindly to one spouse belittling the other spouse to third persons and especially to the children. Everyone realizes that there are certain people with whom you will confide about your divorce and that some criticism of your spouse is natural; however, try to keep this to a minimum. These people may have to testify under oath concerning all of the negative remarks or threats you made against your spouse in a moment of anger. Your spouse's attorney could even take the deposition of your best friend who will have to testify to all of the horrible, mean things you said. These remarks may have extremely undesirable consequences for you.

Above all else, never criticize your spouse in front of or to the children. It cannot be emphasized enough how detrimental this will be to your case and your children. It has literally cost many a parent custody. Judges and juries are extremely critical of this behavior. In any event, you are strongly advised against making any criticism of the other parent or taking any action which could remotely tend to alienate the affections of the children for the other parent

### **C. Email and Text Messages, and Communication**

With advances in technology, emails are becoming more and more prevalent. Additionally, people are communicating more with texts and other cell-phone assisted communication.

A word to the wise: such communications can be preserved, reduced to writing, and offered as an exhibit at your trial.



Resist temptation to respond to every communication sent by your angry spouse no matter how insulting or untrue.

Many such communications may be sent as "teasers" to entice the receiving spouse to respond angrily. Such evidence often hurts and almost never helps.

However, if your spouse is a compulsive emailer, and cannot help him/herself, feel free to print out every such email and attachment and keep them for your lawyer. Remember, your responses, if any, may also come into evidence and be used.

A good guideline is never email, text, tweet, blog or post anything that you would feel uncomfortable reading in front of your grandmother in church.

Here are some tips regarding email –

- Change passwords and make sure any password questions (ie., mother's maiden name) are something the opposing party could not figure out.
- Consider getting an encrypted email account.
- Get a new email address for attorney-client communications.
- Do not ever break into the opposing party's account— it's illegal and you could get into big trouble.
- Be careful what you say and how you say it. If you are angry, wait to reply. Never reply to emails or texts after you have been drinking.
- Do not email, text, tweet, or blog about what is going on in court or what your attorney tells you even to your most trusted friends and closest family members.

#### **D. Recording of Phone Calls**

It is not unusual for one spouse to record the telephone conversations they have with the other spouse. These recordings are

admissible into evidence and have been the downfall of many irrational spouses.

Any time you speak to your spouse (or anyone else) on the phone, (or in person) you should presume that your conversation is being recorded. It is also not uncommon for one spouse to tell the other spouse that he/she has incriminating tapes when in fact no such tapes exist.

Some general rules regarding recording of phone calls:

a. It is critical that you do not record phone calls to which you are not a party, even if you own the house, the phone, the wires, and the kid talking on your phone is yours.

b. You can record conversations to which you are a party.

c. You may be asked to produce any such recordings during the discovery process so make sure you keep the copies and give them to your attorney for safekeeping and use. Recordings that seem to have gaps of time are considered suspect so if you are going to record your conversations, start the recorder at the beginning, and do not turn it off until the conversation is finished and the other person hangs up the phone.

d. If you record calls from your Texas telephone but want to use them in a court in another state, you may not be able to do so because of laws in that state.

The circumstances surrounding the recording will help the court determine whether a recording is admissible. For example, recordings that appear to consist of a child being coached or an adverse party being drawn into a fight may be excluded from evidence. Recording phone conversations is a double-edged sword, so it is wise to discuss this with your attorney before recording.

## **E. Videotaping**

Courts are frequently exposed to parties who bring videos of interactions between the other parent and the children. There is little doubt that the opposing party can produce equally convincing videos showing the complete opposite. You should ask your attorney before videoing your property, another person's property, or another person.

### **Invasion of Privacy**

Our privacy has been significantly eroded by advancing technology from cell phone cameras to advanced-surveillance methods to social media.

Although much of what we do is in the public view, we should be aware that we could be charged with invasion of privacy in certain situations. For example, although your spouse may be seen by you sitting at a sidewalk cafe table sipping a latte with a lover, recording their whispered voices may be considered an invasion of privacy as well as illegal wiretapping; however, videotaping them may not. The use of special, powerful eavesdropping devices may cross the line and subject you to a claim for invasion of privacy. A general rule to follow: if the party being recorded has "a reasonable expectation of privacy," then videotaping him/her in that situation might well be considered an invasion of his/her privacy. It is not a defense that when you taped your spouse and his/her lover through the lover's apartment window, they were kissing passionately on the couch or engaged in sexual relations. Please discuss this issue with your attorney if you are even considering doing anything that could be considered an invasion of privacy.

### **Re-establishing Privacy**

Once your privacy has been invaded or you believe that your privacy has been invaded, there are several steps that you can take to re-establish your privacy.

Sometimes the invasion of your privacy can be subtle such as the fact that your spouse always wants to know where you have been or to whom you have been communicating. The invasion can also be overt such as installing videotaping equipment or listening devices in the home.

You can have your car inspected to find out if any tracking devices have been placed on it. You can have your phone inspected by a professional to find out if any tracking software or other software has been installed without your knowledge. You should make sure that your information is not on the cloud. If you have a home computer or laptop, you can have them inspected by a professional to find out if any software has been installed such as computer monitoring or keystroke logger software.

You can also have a professional inspect your home for videotaping equipment and listening devices. Your attorney will advise you in this area so just ask.

You should also change all of your passwords and make sure any password questions (ie., mother's maiden name) of something the opposing party cannot guess. In addition, you should get a new email address for attorney-client communications.

## **F. Using Social Media**

Your attorney cannot counsel you to delete prior posts as it may constitute spoliation of evidence. However, we hope to advise you to be careful of any future online presence and understand how it may impact your case.

- You can disable your account without deleting any information.

- Your posts, pictures, and comments may be used in court against you. Be careful what you post and also what your friends and family post.
- Do not discuss your divorce, custody, or litigation on your social media website.
- Do not assume that your messages are private.
- Do not assume that your privacy controls prevent unwanted people from reading your posts.
- Do not make any remarks regarding the judge, jury, court, attorneys, or the lawsuit at all.
- Do not begin any statement with “my attorney said...”
- Do not say anything negative about the other parent/spouse even if it’s true.
- Do not post pictures of you drinking, doing drugs, having affairs, etc.
- Do not post during mediation or trial.
- Do not begin online dating until after you are legally divorced.
- Remember that anything you say can and will be used in court.
- You may have a great body but you don’t have to expose it on your Facebook page or other social media site.
- Do not comment on social media about your spouse or his or her lawyer during or after the litigation.
- Do not post pictures of your children on your social media page.
- Assume that everything you post on social media, e-mail, text, or tweet will be seen by your spouse and his or her lawyer and the judge.
- Refrain from trashing your spouse and/or his or her lawyer after the litigation.
- Do not secretly access your spouse's social media page hoping to find damaging information to use against him or her (unless their page is public).
- Do not delete any posts or messages on your social media site.

## **G. Spoliation of Evidence**

Spoliation of evidence refers to the improper loss or destruction of relevant evidence. It may also include altering evidence.

If a Court determines that a spouse has destroyed evidence, the Court may impose an appropriate remedy including sanctions. It is critical that you never destroy, waste, hide, alter or otherwise do anything which would result in the loss or destruction of potentially relevant evidence.

This also includes electronic evidence including texts, messages and emails on your phone, and all files on your electronic devices. This also includes social media files.

Be sure to consult with your attorney regarding any questions that you have with respect to preserving existing documents and information.

## **H. Surveilling Your Spouse**

Trust is key to any relationship, and when a couple goes through a divorce or custody battle, that trust may be lost. If you think the opposing party is hiding something, you may be inclined to spy on them.

But beware; this has the potential to exposing yourself to civil or criminal liability.

If you spy on the other party, even if it is your spouse, you could be liable for invasion of privacy. If you access the other party's cell phone or computer, you could violate several different Texas and federal laws. And even if you obtain information that will help your divorce or custody case, you may still be facing severe fines or even jail time, which certainly will not help. The best way to obtain the

information you want is through the discovery process or possibly a private investigator, as discussed below.

## **I. Using a Private Investigator**

Private investigators must be (1) licensed by the Texas Department of Public Safety (DPS) or (2) registered with DPS and working for a private investigation company that is licensed by DPS.

It is a Class A misdemeanor to hire an investigator who is not licensed or registered. Private investigators may also achieve certifications to distinguish themselves as having advanced training or education. There are many things a private investigator can do to help your case. But some of the things a private investigator cannot do include:

- Impersonate law enforcement;
- Make a legal arrest (except for possibly a citizen's arrest as outlined in the Texas Penal Code);
- Wiretap a phone without consent;
- Record a private conversation of which no party has knowledge;
- Trespass on private property;
- Tamper with mail;
- Run a license plate without a legal reason;
- Obtain protected information without consent or legal purpose such as bank accounts, phone records, credit checks, and certain criminal records and court documents;
- Harass a subject; or
- Use bribery, hacking, pretexting (impersonating the individual whose records they are trying to obtain), or other deceitful methods of obtaining information.

The Texas Disciplinary Rules of Professional Conduct, the rules by which Texas attorneys are governed, prohibit an attorney from

assisting or counseling a client to engage in these behaviors or other acts that the attorney knows are criminal or fraudulent.

Always discuss the pros and cons of hiring a private investigator with your attorney before you do so.

### **Using Tracking or Recording Devices**

Global positioning system (GPS) tracking devices are easily obtainable, and most people probably already carry one everywhere they go—their cell phone. However, it may not be legal to track where another person goes.

The Texas Penal Code classifies the unlawful installation of a tracking device in a motor vehicle that is owned or leased by another person as a Class A misdemeanor.

Only if the vehicle or property is titled in your name or the owner gives consent may a tracking device be installed in the vehicle or property. While family plans are not necessary for these apps to function, You must remember that family plans may also allow the other party to track your phone calls, data usage, payments, etc., so you should get out of the family plan.

Similarly, if you have iMessage or a similar app on several devices, that app may allow the other party to see your text messages or emails sent through that app.

Computer spyware may violate Texas and federal law if it is installed without the consent of the owner, and it may also expose you to invasion of privacy liability.

Recording devices may similarly lead to civil and criminal liability, such as invasion of privacy or violation of wiretapping laws.

Wiretapping is not limited to recording landline phone conversations.



Rather, it includes recording landline phones, cell phones, and face-to-face communications, while other laws prohibit intercepting or accessing emails or computers. It is also illegal to eavesdrop by a concealed microphone.

Texas, similar to federal law, is a one-person consent state, meaning that as long as one person to the conversation consents to it being recorded, it does not violate the wiretapping statutes. Some states require both parties to consent, though, so before you record any conversation, check with your attorney whether the state you or the other party is in requires both parties to consent.

Drones are becoming common-place in our society today, and several laws regulate their use. Drones, if falling within a certain size or weight limit, must be registered with the Federal Aviation Administration (FAA).

If you use drones, or solicit someone to use drones, to spy on the opposing party, you may be subject to the same civil and criminal liability as discussed above, namely invasion of privacy, trespass, negligence, and intentional infliction of emotional distress.

## **29.Common Questions**

### **1. How long does the divorce take?**

A petition for divorce must be on file for at least 60 days before the court can grant your divorce except in certain circumstances involving family violence.

Other factors that determine how long it will take include the willingness of the parties to negotiate, the size and complexity of the estate, and the court's availability to set a final trial if you cannot settle.

Some larger counties may not have time for a final trial for several months. Discovery and the request for a jury trial can also delay the final trial.

Keeping open communication with your attorney will help facilitate a more expeditious resolution.

## **2. How much will it cost?**

Most family law attorneys, however, bill by the hour. The total cost will depend on your lawyer's hourly billing rate, the complexity of your case, each party's willingness to negotiate, and everything each side does in the case.

If your relationship with the opposing party is particularly acrimonious, they may do things that drive the cost up. If you think your spouse is hiding assets, more time and energy will need to go into finding those assets. If your child has a disability that requires special care, doctors or other experts may need to testify. Each of these things can make the cost skyrocket. Similarly, if you call or email your attorney several times a day, each of those communications may be billed and will make the cost go up.

## **3. Why is this process taking so long?**

It could be a number of reasons. First, you may have to wait sixty days from the date the petition for divorce is filed for an agreed divorce.

After filing, you will probably first have a temporary orders hearing. This is subject to the availability of the attorneys and the court.

Then, normally, your attorney will need to collect evidence. This is done through the discovery process. Each side may request discovery, and the other side has thirty days to respond.

If you are responding to discovery but are not providing your attorney with the requested documents, you are the cause of the delay.

If you are trying to set a time for mediation, that is subject to everyone's availability. In larger counties, a final trial date may be several months out because of the availability of the court.

Whether you settle the case or have a final trial, the final judgment needs to be drafted. That may take longer depending on the complexity of your case or if the estate is large. Once it is drafted, each side has the opportunity to review and make corrections until everyone is satisfied that the final judgment reflects what the settlement was or what the judge ordered.

There are several steps along the way and several people that are involved from both sides. The best thing you can do to help it go more quickly is to promptly provide any requested information or feedback to your lawyer when requested.

#### **4. What is discovery?**

Discovery is the process by which either side collects information from the other side. This can be in many different forms, such as a deposition, written questions, or a request to produce documents.

The information requested should be related to any claims or defenses that either party has. So, for example, if you want to prove that a piece of property is separate property, your attorney may ask you for certain information so that you can prove it.

The other side may also request that information so that they can know how to defend against your claim or show that you have not proved it. This is a normal part of the litigation process and does not mean that the case cannot or will not settle. In fact, discovery may sometimes help the case settle because both sides see what the other side is holding.

#### **5. Why do I have to produce these documents and answer these questions?**

This is part of the discovery process. Both sides are entitled to request information from the other side.

You will rarely see “gotcha” moments because one side did not know about a piece of evidence. Your lawyer will request information from the other side, and you will want them to answer those questions and produce those documents.

Similarly, the other side will request information from you, and they will want you to answer those questions and produce those documents. If one side does not respond to the discovery request, the other side may ask the court to compel them to respond.

This means that, if you did not respond, the court will order you to respond, and if you do not, you may be sanctioned or fined. Sanctions may include you being prohibited from using that requested evidence that you did not

produce. That means that even if it could help you prove something, the judge will not let you use it because you did not produce it to the other side when they requested it.

**6. If I file a temporary restraining order, do I allow my spouse to see the children before the hearing?**

Usually, a temporary restraining order does not require a hearing. If you are asking for the court to prohibit a spouse from seeing a child, an affidavit or a hearing is required. But until that temporary restraining order is signed, whatever order is in place is what you must follow; otherwise, you may be violating a court order and could be held in contempt. If you have questions about possession of the child before the temporary order hearing, be sure to consult with your attorney.

**7. Why do I have to pay child support if we have 50/50 custody?**

Texas requires that parents support their children. This is in the child's best interest. A 50/50 schedule does not abolish this duty. Usually, if a parent is not willing to pay "net support," that parent may be trying to avoid child support, not trying to have equal possession. Net support means that the higher earning parent will help equalize costs for the child. Child support is support for the child, not support for the other spouse.

**8. If my spouse has moved out, can I change the locks?**

If you have been awarded the temporary exclusive use of the residence and have a copy of the court order that unequivocally states this, then it is yours to do with as you want. But read the order carefully.

Does it prohibit you from changing locks or doing any repairs like that?

Consult with your attorney to review the orders and know before acting.

If there is no order awarding you the exclusive use of the property, then the home may still be considered community property, and each party retains the right to access it.

## **30. Special Issues**

### **Violence**

Violence, whether in a divorce or custody suit, is never acceptable. Texas has different options to help protect spouses, children, and others in the home from violence and abuse.

Texas breaks down violence into different categories, so do not think that there has to be physical violence to receive protection. Family violence is defined as an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the family or household member in fear of imminent physical harm, bodily injury, assault, or sexual assault.

Family violence also includes dating violence, which is defined the same as family violence but includes persons who are in a dating relationship or third parties who are in a dating relationship with or marriage to a person with whom the offending party has or had a dating relationship or to whom the offending party was married.

Two ways that can help protect individuals from family violence include protective orders and temporary restraining orders, discussed below.

### **Protective Orders**

A court may render a protective order if it finds that family violence has occurred and is likely to occur in the future. The order may contain injunctions against committing family violence and also orders relating to conservatorship, access, child support, distance restriction, injunctions against communication, possession of a firearm, and use and possession of property. A protective order may also order the respondent to complete a batterer's intervention and prevention program or prohibit a party from removing a pet or assistance animal.

Protective orders are generally in place for two years. A protective order may be requested ex parte, meaning that the judge can grant the protective order without a hearing.

This type of protective order is only good for twenty days, however. If you have a hearing, the protective order can be valid for the full two years. Furthermore, if you are asking the court to remove someone from your home, an affidavit providing the details and live testimony is required. This type of order requires that you are currently living in the home or had been within the past thirty days; that the family violence occurred within the past thirty days by the person who is to be excluded; and that there is clear and present danger that the person to be excluded is likely to commit family violence again.

### **Temporary Restraining Order**

A temporary restraining order is similar to a protective order, but it only lasts for fourteen days. It protects the status quo of the parties while the suit is pending. It can be signed by the judge without having a hearing, unless extraordinary relief is requested.

A temporary restraining order may prohibit both parties from:

Communicating with the other party in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.

Threatening the other party in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, to take unlawful action against any person.

Placing one or more telephone calls, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.

Causing bodily injury to the other party [include if applicable: or to a child of either party].

Threatening the other party [include if applicable: or a child of either party] with imminent bodily injury.

Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.

Falsifying any writing or record, including an electronic record, relating to the property of either party.

Misrepresenting or refusing to disclose to the other party or to the Court, on proper request, the existence, amount, or location of any tangible or intellectual property of one or both of the parties, including electronically stored or recorded information.

Damaging or destroying the tangible or intellectual property of one or both of the parties, including electronically stored or recorded information.

Tampering with the tangible or intellectual property of one or both of the parties, including electronically stored or recorded information, and causing pecuniary loss to the other party.

Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of one or both of the parties, whether personal property, real property, or intellectual property, and whether separate or community property, except as specifically authorized by this order.

Incurring any debt, other than legal expenses in connection with this suit, except as specifically authorized by this order.

Withdrawing money from any checking or savings account in any financial institution for any purpose, except as specifically authorized by this order.

Spending any money in either party's possession or subject to either party's control for any purpose, except as specifically authorized by this order.

Withdrawing or borrowing money in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan, employee savings plan, individual retirement account, or Keogh account of either party, except as specifically authorized by this order.

Withdrawing, transferring, assigning, encumbering, selling, or in any other manner alienating any funds or assets held in any brokerage account, mutual fund account, or investment account by one or both parties, regardless of whether the funds or assets are community or separate property and whether the accounts are self-managed or managed by a third party, except as specifically authorized in this order.

Withdrawing or borrowing in any manner all or any part of the cash surrender value of any life insurance policy on the life of either party [include if applicable: or a child of the parties], except as specifically authorized by this order.

Entering any safe-deposit box in the name of or subject to the control of one or both of the parties, whether individually or jointly with others.

Changing or in any manner altering the beneficiary designation on any life insurance policy on the life of either party [include if applicable: or a child of the parties].

Canceling, altering, failing to renew or pay premiums on, or in any manner affecting the level of coverage that existed at the time this suit was filed of, any life, casualty, automobile, or health insurance policy insuring the parties' property or persons [include if applicable: , including a child of the parties].

Opening or diverting mail or e-mail or any other electronic communication addressed to the other party.



Signing or endorsing the other party's name on any negotiable instrument, check, or draft, including a tax refund, insurance payment, and dividend, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party.

Taking any action to terminate or limit credit or charge cards in the name of the other party.

Discontinuing or reducing the withholding for federal income taxes from either party's wages or salary.

Destroying, disposing of, or altering any financial records of the parties, including but not limited to a canceled check, deposit slip, and other records from a financial institution, a record of credit purchases or cash advances, a tax return, and a financial statement.

Destroying, disposing of, or altering any e-mail, text message, video message, or chat message or other electronic data or electronically stored information relevant to the subject matter of this case, whether stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium.

Modifying, changing, or altering the native format or metadata of any electronic data or electronically stored information relevant to the subject matter of this case, whether stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium.

Deleting any data or content from any social network profile used or created by either party [include if applicable: or a child of the parties].

Using any password or personal identification number to gain access to the other party's e-mail account, bank account, social media account, or any other electronic account.

Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or any other contractual service, including security, pest control, landscaping, or yard maintenance, at [full address] or in any manner attempting to withdraw any deposits for service in connection with any of those services.

Excluding the other party from the use and enjoyment of the residence located at [address, city, state].

Entering, operating, or exercising control over the [year, make, and model of motor vehicle] [include if applicable: or any motor vehicle] in the possession of the other party.

Disturbing the peace of the child[ren] or of another party.

Withdrawing the child[ren] from enrollment in the school or day-care facility where the child[ren] [is/are] presently enrolled.

Hiding or secreting the child[ren] from the other party.

A party to a temporary restraining order may be authorized to do the following:

To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.

To make expenditures and incur indebtedness for reasonable attorney fees and expenses in connection with this suit.

To make withdrawals from accounts in financial institutions only for the purposes authorized by this order.

To engage in acts reasonable and necessary to conduct Respondent's usual business and occupation.

A temporary restraining order may not, however, exclude someone from the home. If the temporary restraining order contains extraordinary relief, meaning that it takes a child from a person or excludes a parent from possession of a child, it must be accompanied by an affidavit stating specific facts showing that irreparable injury would result if it is not granted without notice and hearing.

### Child Abuse

Abuse against a child is family violence. Protective orders and temporary restraining orders also apply to child abuse situations. Please discuss this with your attorney immediately if you believe a child is being harmed. Also know your attorney has a legal duty to report child abuse.

### Temporary Injunctions that May Impact Ability to Carry Firearms

It is common in family law cases for the court to order a mutual temporary injunction. These temporary injunctions are often part of the temporary orders that the court routinely enters in many divorce cases.

Also, the courts in several counties have adopted “standing orders” that include a rather broad prohibition against threatening the other party in person, by telephone, or in writing, to take any unlawful action against any person.

The form of temporary injunction commonly used in family law cases and in standing orders usually contains an injunction against causing bodily injury to the other party or a child, or threatening the other party or a child with bodily injury.

As a result, the Federal Gun Control Act of 1968, as amended (“Gun Control Act”), may create substantial problems in this area.

The Gun Control Act contains provisions which prohibit persons who are under certain court-ordered injunctions from possessing, purchasing, or acquiring firearms or ammunition. Specifically, (1) if a court order is issued after a hearing with respect to which a person received actual notice; (2) such person had the opportunity to participate at the hearing; and (3) the order by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against an intimate partner or a child that would reasonably be expected to cause bodily injury, then that person may not possess, acquire, or purchase a firearm or ammunition.

There is a strong argument that the broad language commonly used in Texas family law injunctions or standing orders falls within this federal prohibition. Family law commentators have suggested that it is “clear” that a person subject to a Texas standard temporary injunction is prohibited from acquiring, purchasing, or possessing a firearm or ammunition.

Therefore, it is important for you to understand that federal law apparently prohibits an individual subject to a standard temporary injunction or standing order from possessing firearms or ammunition.

As a result, if you possess firearms or ammunition while subject to a standard form of temporary injunction or standing order in Texas which contains provisions relating to use of force, attempts to use force, threats of force, stalking, or other such language, you may be in violation of the Gun Control Act, which may subject you to federal prosecution.

Finally, while it is reasonably clear that the Gun Control Act applies to temporary injunctions, it is not as clear if it is applicable to temporary restraining orders or standing orders.

However, prudence would dictate caution.

Again, discuss the temporary injunction with your attorney and follow his or her advice regarding your possession of firearms and/or ammunition.

### 31. Homework and Forms

Please take the time to read through this handbook. It has important information that will be helpful to you during the divorce proceeding and includes the legal steps involved in obtaining a divorce.

Also included in our contract is "The Texas Lawyers Creed." Be sure to read this as it serves as a moral compass for lawyers. Note that this Creed calls for lawyers to be professional, honest, and have integrity.

#### **Divorce Notebook**

To help with your case and to prepare you for trial, keep track of your documents in a Divorce Notebook.

This consists of at least a 3" ring binder with sectional dividers or if you prefer and are computer savvy, make a computer file entitled Divorce Notebook.

A notebook or file will be helpful in assimilating information that is sent to you so that it is all in one place when you need to reference it. For example, when you send me the deed on the house it would go under the real estate section.

Then we each would have a corresponding document under Real Estate. When I send you a letter it would go under your incoming correspondence section.

Once discovery commences, Interrogatories and Request for Production would go under your section titled Discovery Documents, etc. Any Court documents would go under Pleadings.

The corresponding sections or computer files you should put in your notebook are as follows:

- Background
- Incoming Correspondence

- Outgoing Correspondence
- Pleadings (all papers filed with the Court)
- Discovery Documents (Request for Production; Interrogatories and Request for Admissions of Fact)
- Inventory and Appraisement
- Financial statements for income and expenses