

2005 Legislative Changes

Highlights:

- **Custody cases are now "Parenting Plan" cases like the rest of the country and may have a "Parenting Coordinator"**
- **Grandparents rights to access to their grandchildren tightened**
- **Defines marriage as between [surprise] one man and one woman**
- **Defines percentages of pensions and stock options as separate or community**
- **Clarifies income in a partition agreement**
- **Allows the agreement from a traditional settlement conference to be as enforceable as a Mediated Settlement Agreement**
- **Alimony tuned; can be indefinite when there is a disabled child**
- **Court can [finally] consider tax consequences of the assets in a divorce**
- **Texas [again] has a statute of limitations for past due child support**
- **Military Deployment**

Details (Section references are to Texas Family Code):

Parenting Plans

In its 2005 wisdom, "The Legislature finds that the use of parenting plans and parenting coordinators in suits affecting the parent-child relationship will assist in promoting the interest of children and in helping litigants resolve their issues relating to parenting." Section 153.601 et seq. are intended to assist parties in minimizing conflicts in their post-divorce parenting through (1) creating a "parenting plan" which establishes the parents' rights and duties with respect to the children and which provides procedures for resolution of future disputes and (2) by court-appointment of "an impartial third party" to assist the parents in developing and implementing their "parenting plan". The court may appoint this "parenting coordinator" over a parent's objection in a "high conflict case." The parenting coordinator is paid by the parties, like a mediator, except for hardship exceptions. She has no power to impose a solution and may not testify in Court.

Grandparents

Section 153.433 has raised the burden of proof a grandparent must meet to gain possession of an access to her grandchildren over the parent's objection. The grandparent now must defeat the presumption that a parent acts in the best interest of the parent's child by proving by a preponderance of the evidence that denial of possession of or access to the child would significantly impair the child's physical health or emotional well-being before a Court will grant permission or access.

Marriage

Texas will defines the marriage relationship to be between one man and one women (subject to approval of the voters in a constitutional amendment election on November 8, 2005). Several other changes were made to clarify the information required to get married and penalties for somebody conducting a marriage without authority. Now incarcerated persons and military personnel can be married from afar §2.006.

Employment Property Interests, Disability, and Insurance Proceeds Defined/ Clarified

Section 3.007 gives definitions in the common situation where an employee was employed at the time of the marriage, and therefore has a separate property interest in the eventual pension, or is divorced prior to vesting or payment of the pension, as defined 3.007(a), (b), (c).

3.007(d) deals with stock options and restricted stock plans that easily define the rights of stock interest that are granted prior to the marriage but mature during the marriage, or granted during the marriage and mature after the marriage.

Both are simply a calculation comparing the total time between grant date and vesting and the ratio of marital and non marital portions of that time.

Insurance proceeds insuring the loss of property are now specified to be defined as the same character as the property insured. This change eliminates the tension between the idea that a separate property was insured, but paid with community funds and therefore if upon a casualty loss that the community would own the proceeds and not the damaged estate.

Significantly, Section 3.008 clarifies that disability insurance payments that are for loss of earnings is marital property when married and separate property if for earnings when not married.

Partition and Exchange Agreements

Section 4.102 now requires an affirmative statement that future earnings or income from property transferred in a partition or exchange agreement shall be the separate property of the owning spouse rather than there being a presumption to that effect from the transfer itself. Section 4.104 makes clear that either type of agreement is enforceable without consideration.

Informal Settlement Conferences Can Lead to BINDING Agreements

Section 6.604 allows the parties to enter into a written settlement agreement at their own informal settlement conference, with or without attorneys, that will be binding on the parties if it includes the non-revocable notice used in mediated settlement agreements and is appropriately signed. The terms of the signed agreement are binding on the divorce court only if the court finds that the settlement terms are "just and right."

Alimony for Custodian of Disabled Child

Section 8.051 allows the divorce court to award post-divorce maintenance to a spouse exiting a 10+ year marriage who is the custodian of an adult (or other) child of the marriage whose disabilities make employment outside the home impractical for the parent. The Section 8.053 presumption against maintenance now does not apply to a parent whose ability to be employed is limited by such responsibilities.

Tax Considerations

In dividing the community estate at divorce, the court is now expressly authorized to consider whether an asset will be subject to taxation and, if so, when the tax will need to be paid. Section 7.008.

Ten-Year Limit on Child Support Enforcement

Section 157.005 provides that a court retains jurisdiction to confirm arrearages and render judgment for past-due child support up through 10 years after the date on which the child becomes an adult or the court-ordered child support obligation terminates. Previously there was no statute of limitations.

Possession of Child During Military Deployment

Section 156.105 provides that a conservator who is deployed by the military outside the country may nominate another person to have possession of the child during that deployment, and the Court may grant that request if it is in the best interest of the child.