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# Texas Family Law Practice and Procedure

Publication 705

Release 87

April 2023

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## HIGHLIGHTS

### TEXAS FAMILY LAW RELEASE 87

- This release updates the set to incorporate recent case law developments.

**Same-sex marriage.** A new federal law requires every state to recognize same-sex marriages performed in other states [28 U.S.C. § 1738C(a)]. See Task B1, Establishing the Marriage Relationship, § B1.01[3].

**Statement of Inability to Afford Payment of Court Costs.** The Texas Supreme Court has created a new form for the Statement of Inability to Afford Payment of Court Costs. The new form is illustrated in Task C4, Filing and Serving the Petition, § C4.107[2].

**Arbitration.** Under Family Code

Sections 6.6015(a) and 153.00715(a), if before arbitration a party asserts that the contract containing the arbitration clause is not valid or enforceable, the trial court must determine that the contract is valid and enforceable before referring the parties to arbitration. This is an exception to the ordinary rule regarding who decides certain disputes that arise in motions to compel arbitration [In re Ayad, 655 S.W.3d 285, 289–290 (Tex. 2022)]. See Task E3, Using Alternative Dispute Resolution Methods, § E3.02[2][a].

If an arbitration award is based on foreign law, a party may oppose enforcement of the award on the ground that it violates constitutional rights or public policy. Regardless of whether enforcement is opposed, the court must hold a hearing and issue findings of fact and conclusions of law regarding whether to enforce the

award [In re Ayad, 655 S.W.3d 285, 289 (Tex. 2022)]. See Task E3, Using Alternative Dispute Resolution Methods, § E3.02[2][a].

**Attorney’s fees in divorce case.** Under Family Code Section 6.708(c), a trial court may award attorney’s fees even if there is no community estate to divide [In Interest of A.P.N., 655 S.W.3d 55, 58 (Tex. App.—Dallas 2022, no pet. h.)]. See Task E7, Obtaining Court-Ordered Attorney’s Fees and Costs, § E7.01[1][a].

**Protective orders.** There is a divided burden of proof on the issue of attorney’s fees in a family violence protective order case [Dolgener v. Dolgener, 651 S.W.3d 242, 265–265 (Tex. App.—Houston [14th Dist.] 2021, no pet.)]. See Task P2, Following Procedure to Obtain Protective Order, § P2.07[3][d].

**Parentage suit.** A petition to adjudicate parentage may not be brought after the death of the putative father [In Interest of Dart, 648 S.W.3d 652, 653–656 (Tex. App.—Waco 2022, pet. filed)]. See Task R3, Initiating Parentage Suit, § R3.04[3][c].

**Termination of parental rights.** Under Texas Rule of Civil Procedure 277 as amended in 2020, a broad form jury question on termination grounds is error regardless of the evidentiary support for a particular ground [In Interest of J.W., 645 S.W.3d 726, 751 (Tex. 2022)]. See Task S2, Conducting Termination Suit, § S2.09[5][b].

The Texas Supreme Court will review an endangerment case holding that the party seeking termination must prove a causal link between the parent’s drug use and actual harm to the child [In Interest of A.A., 635 S.W.3d 430, 441 (Tex. App.—Houston [14th Dist.] 2021, pet. granted)]. See Task S3, Establishing Grounds for Termination, § S3.02[2A][b][iii].

**Premarital agreements.** The advice of counsel is not a prerequisite to the validity of a premarital agreement [Matter of Marriage of Sauls and Worley, 648 S.W.3d 359, 363–364 (Tex. App.—Texarkana 2021, no pet.)]. See Task V1, Creating Premarital Agreement, § V1.08[1][a].

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Publication 705    Release 87

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