



"Real" Alimony Comes to Texas

The 2011 Legislature made numerous changes to the Family Code. Three of the most significant changes include an increase in amount and duration of spousal maintenance, a codification of fraud on the community estate and a list of factors that the Court should consider when ordering a possession schedule for a child under the age of three.

Spousal Maintenance

The legislature made material changes to the spousal maintenance provisions of the Family Code, both as to the duration of payments and the maximum amount. During the 15-year history of spousal maintenance in Texas, the maximum length of time that a Court could order spousal maintenance payments was 36 months, unless the obligee or a child of the marriage was disabled. The 2011 amendments to the spousal maintenance statute expanded the maximum duration to 5 years for marriages of 10 to 20 years, 7 years for a marriage of 20 to 30 years, and 10 years for a marriage of 30 years or more. If the payor has been convicted or received deferred adjudication for family violence, the maximum duration is now 5 years.



The maximum amount of monthly spousal maintenance increased in 2011 to \$5,000.00. The monthly support is still capped at 20% of the payor's gross monthly income.

Fraud on the Community

In 2011, the legislature amended the Family Code to codify the common law claim of fraud on the community. Pursuant to Texas Family Code §7.009, if the trier of fact finds that a party has committed actual or constructive fraud on the community estate, the court shall calculate the depletion resulting from the fraud, add that amount to the community estate, and divide the reconstituted community estate in a just and right manner. The remedies available to the wronged spouse can include an award or appropriate share of the community estate remaining after the fraud, a money judgment, or both.

Possession and Access of a Child less than 3 years of age

The Standard Possession Order is presumed to be in the best interest of a child over three years of age, but the Family Code provided no guidance concerning possession schedules for children younger than three. With the 2011 amendments to the Family Code, the legislature has now provided a list of factors that the court should consider in creating a possession schedule for children under three. The factors include:

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 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.

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