

LEGAL HANDBOOK FOR YOUNG TEXANS



TEXARKANA YOUNG LAWYERS
ASSOCIATION

First Edition – 2013

L E G A L H A N D B O O K F O R Y O U N G T E X A N S

Texarkana Young Lawyers Association
First Edition – 2013

TABLE OF CONTENTS

A C K N O W L E D G M E N T S F O R T H E F I R S T	
E D I T I O N – A U G U S T 2 0 1 3	5
C H A P T E R 1 - M A R R I A G E A N D F A M I L Y :	8
Getting Hitched, Breaking Up, and Taking Responsibility	8
Marriage.....	9
Types of Marriage.....	9
Divorce.....	10
Child Custody and Visitation.....	12
Spousal Maintenance and Child Support.....	13
Premarital Agreements.....	17
Family Violence.....	17
Parents’ Rights, Grandparents’ Rights, Children’s Rights, and Adoption	19
C H A P T E R 2 - C O N T R A C T S A N D I N S U R A N C E :	23
Entering Into Agreements and Reducing Risks	23
Contracts	24
Insurance	29
C H A P T E R 3 - L E A S E A G R E E M E N T S :	37
Renting Your First Home.....	37
C H A P T E R 4 - P E R S O N A L P R O P E R T Y :	47
Taking Care of Your and Others’ Stuff	47
C H A P T E R 5 - Y O U R C A R : P A R T I :	52
Buying It and Repairing It	52
C H A P T E R 6 - Y O U R C A R , P A R T I I :	58
Driving It and Wrecking It.....	58
Getting (and Losing) Access to the Open Road.....	59
Car Insurance	61
Run-Ins (With the Law and Others) Along the Route	63
C H A P T E R 7 - P E R S O N A L I N J U R I E S (O T H E R	
T H A N C A R W R E C K S) :	67
Getting Hurt - Who If Anyone Is Responsible	67
C H A P T E R 8 - Y O U R M O N E Y :	71
No One Will Care About It If You Don’t.....	71
C H A P T E R 9 - C O N S U M E R R I G H T S :	77
Protection from Those Trying to Sell You Stuff and Loan You Money	77
The Meaning of Credit In General.....	78
Credit Cards	81
Debit Cards	83
Money Problems	84
Helpful Resources and Links - Government and Private.....	85
Common Scams and Schemes	86
Other General Consumer Information	89

CHAPTER 10 - EMPLOYMENT :	92
Entering the “Real World” and Earning a Paycheck	92
Applying for a Job	93
Discrimination, Sexual Harassment and Unsafe Working Conditions	94
Taxes	97
Workers’ Compensation	98
CHAPTER 11 - MEDICAL AND PRIVACY	
RIGHTS :	101
Protecting and Making Decisions About Your Body and Personal Affairs	101
CHAPTER 12 - CRIMINAL LAW :	110
Staying Out of Trouble and Dealing with Law Enforcement	110
Police Investigations and Arrests.....	111
The Trial Process	115
Different Types of Crimes	116
After The Trial	118
CHAPTER 13 – THE PRICE OF INDEPENDENCE :	
.....	120
With Freedom Comes Responsibility	120
CHAPTER 14 - ALTERNATIVE DISPUTE	
RESOLUTION AND LITIGATION :	130
The Basics of Resolving Civil Disagreements.....	130
The Dispute Resolution Process	131
Courtroom “Dos and Don’ts”	132
Civil Lawsuits	132
CHAPTER 15 - DEALING WITH ATTORNEYS : ..	135
Who They Are, Where They Are, and What They Can Do For You	135
CHAPTER 16 - JURY DUTY :	140
Doing Your Civic Duty	140
CHAPTER 17 - WILLS AND ESTATES :	144
You Only Live Once	144
CONTRIBUTING AUTHORS OF THE FIRST	
ARKANSAS EDITION – APRIL 2009	147

PREFACE TO THE FIRST EDITION – AUGUST 2013

To the Young Texan:

You hold in your hands the product of two states and many lawyers who generously volunteered their time. Credit for this project goes first and foremost to the Young Lawyer Division of the Arkansas Bar Association, which published the first edition of this handbook in 2009 for young Arkansans. We are grateful to the Arkansas Young Lawyers who gave us permission to convert the product of their hard work to Texas law. To honor their efforts, we have listed below the names of those Arkansas lawyers who authored the 2009 edition.

Next, this project would not have been possible without a generous grant from the Texas Young Lawyers Association. This project reflects TYLA's commitment to lawyers serving their communities, and we hope other TYLA affiliates will make use of the handbook.

The impetus for this project came from our District 1 Representative, Shivali Sharma, who proposed and championed it as well as converted the bulk of the chapters. Yet the rest of the project committee deserves recognition as well. Leah Golden, Shawn Latchford, Sarah Cameron Rose, and Victoria K. Smith each sacrificed their time to make this project a success.

We are especially grateful for the efforts of Joshua Edwards, a third-year law student at the University of Arkansas School Of Law at Fayetteville. Josh compiled and verified the work of the committee, and even converted two unfinished sections. We find it fitting that what began in Arkansas was, in part, completed by an Arkansan.

This handbook is designed to provide basic information about issues you may encounter as you transition to adulthood. *The handbook is informational only and neither the lawyers who worked on this project nor the Texarkana Young Lawyers Association nor the Texas Young Lawyers Association necessarily endorse the contents. Neither is the information in the handbook legal advice—for that you are strongly encouraged to seek the assistance of an attorney licensed in Texas. Your individual legal problem requires individual attention by a competent attorney. Because laws change and lawyers are only human, we cannot and do not assure you that the information in this handbook is complete and accurate in all respects.* Nevertheless, we trust you will find this handbook useful if you have general questions about Texas law in certain areas.

We hope this handbook gives you not only information, but a positive view of attorneys. Too often lawyers are maligned, but our profession draws its lifeblood from service and sacrifice: we exist to obtain justice so that our citizens can flourish by freely pursuing and attaining the highest things. This handbook is but a small contribution to that purpose.

Sincerely,

Justin Bradford Smith
President of the Texarkana Young Lawyers Association, 2012-2013
Attorney at Law
Norton & Wood, L.L.P.
Texarkana, Texas

A C K N O W L E D G M E N T S F O R T H E F I R S T E D I T I O N – A U G U S T 2 0 1 3

The following Texarkana Young Lawyers (and Arkansas law student) sacrificed their time to produce this handbook. By their work on this project, these attorneys exemplified the service and dedication characteristic of a good lawyer. Please thank them for their efforts if you are ever privileged to meet them:

Joshua Edwards
Law Student
University of Arkansas School of Law at Fayetteville

Texarkana, Arkansas
Chapters 12 & 17 and Compilation

Leah Golden

Law Clerk for Magistrate Judge Barry Bryant
Western District of Arkansas
Texarkana, Arkansas
Chapter 2

Shawn Latchford

Associate Attorney
Albritton Law Firm
Longview, Texas
Chapter 3

Sarah Cameron Rose

Associate Attorney
Norton & Wood, LLP
Texarkana Texas
Chapters 5, 6, and 8

Shivali Sharma

Staff Attorney
Texas Sixth Court of Appeals
Texarkana, Texas
Chapters 4, 7, 9, 10, 11, 13, 14, 15, & 16

Victoria K. Smith

Staff Attorney
Lone Star Legal Aid
Texarkana, Texas
Chapter 1 and Final Formatting

**NOTE TO THE 2013 PRINTING OF THE FIRST
EDITION**

Dear Young Texan:

Due to the generous grant we received from the Texas Young Lawyers Association, we are able to print copies for your use. We plan to make an electronic copy available at www.txklya.org in the near future so you can access this resource wherever you are.

Sincerely,

Justin Bradford Smith
President of the Texarkana Young Lawyers Association, 2012-2013
Norton & Wood, LLP
Texarkana, Texas

CHAPTER 1 - MARRIAGE AND FAMILY :
Getting Hitched, Breaking Up, and Taking Responsibility

Marriage

1. How does the law view marriage?

Marriage is a civil contract between a man and a woman with the capacity to make decisions, requiring the agreement of both people to become married.

2. Who can get married in the State of Texas?

Any man who is at least 18 years of age can legally marry any woman who is also at least 18 years of age.

3. Can anyone under the age of 18 get married?

Parental consent is required for a person between ages 16 and 18 to get married. A minor may also petition the court for an order granting permission to marry.

Types of Marriage

1. Void or Voidable: What's the difference?

In Texas, some marriages may be void and some may be voidable. A void marriage is one that was never valid from the start and can never be valid. An example of a void marriage is a marriage between relatives. A voidable marriage is one in which may become valid through the passage of time or by action of the parties. An example of a voidable marriage is one in which the parties were intoxicated when they married.

2. What types of marriages will never be allowed?

Void marriages will never be allowed and cannot be made valid. A marriage is void under the following circumstances: (1) the parties are related to each other as ancestors or descendants, brothers or sisters, an aunt or uncle, or a first cousin; (2) if one of the parties is currently married to someone else; (3) same sex marriages and civil unions; (4) marriage to a person under the age of 16, unless a court order has been obtained; (5) married to a stepchild or stepparent.

3. What is a common law marriage?

A common law marriage is also known as a marriage without formalities or an informal marriage. The state of Texas allows common law marriages. There are three requirements: (1) the man and woman must agree to be married; (2) they must live together after the agreements; and (3) they must represent to others that they were married. The parties may declare and register their common law marriage with the county clerk.

4. Does Texas recognize same sex marriages?

No. Under Texas law, same sex marriages or civil unions is contrary to the public policy of the state and are void, and without effect. A marriage license may be issued to a man and woman desiring to get married, but not to persons of the same sex.

5. What is the procedure to get married?

- Take a premarital education course, if desired. This is not required but applicants for a marriage license are encouraged to attend a course.
- Apply for a license by appearing before the county clerk. There is a small cost associated with this.
- Be prepared to submit proof of identity and age.
- Fill out an application including taking the oath printed on the application and signing before the county clerk.
- Have a wedding or ceremony: You generally must wait 72 hours between being issued a marriage license and having a ceremony. The marriage ceremony must be conducted before the 31st day after the license is issued, after which date the license expires. A wedding can be anywhere, but there are certain persons who are allowed to conduct a marriage ceremony: a licensed or ordained Christian minister or priest; a Jewish rabbi; an officer of a religious organization who is authorized to conduct marriage; judges and justices of the peace.
- Have the officiating officer sign the license and return it to the clerk within 30 days of the ceremony or else they may be fined \$200-\$500.
- You may request a certified copy of the recorded marriage license from the clerk.

Divorce

1. What are the grounds for divorce?

The grounds for divorce in Texas are as follows: (1) insupportability; (2) cruelty; (3) adultery; (4) conviction of a felony with at least one year imprisonment without pardon; (5) abandonment of at least one year; (6) living apart without cohabitation for at least three years; (7) confinement in mental hospital for at least three years with a mental disorder of such a degree that adjustment is unlikely or a relapse is probable.

2. Does Texas have a “no-fault” divorce law?

Texas allows “no-fault” divorces, filed under the ground of insupportability. The court may grant a divorce without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.

3. What is the residency requirement to get a divorce?

The petitioner or the respondent must have been a domiciliary of the state for the preceding six months and a resident of the county in which the suit is filed for the preceding ninety days.

4. Must a couple live separate and apart before getting a divorce?

The parties are not required to live separate and apart to get a divorce. A party may use abandonment of at least one year, or living apart without cohabitation for at least three years as “fault” grounds for divorce.

5. What should you discuss with and take to your lawyer the first time you see them about a divorce?

Be prepared to discuss the history of your marriage, including the dates of marriage and separation, as well as why you want a divorce, information regarding your children, a general idea of property and debts that you and your spouse have, and any misconduct by you or your spouse. You may bring documents to your lawyer if you feel those would be helpful in understanding your case, including a list of property, assets, and debts. Above all, be honest and forthcoming!

6. What are the steps for getting a divorce?

While every divorce can proceed in a different way depending on the facts of the case, in its most simple form the steps for getting a divorce are as follows:

- After meeting the residency requirement, you must file a petition for divorce and obtain a citation.
- The petition and citation must be served on your spouse, either by a sheriff or private process server.
- Your spouse must answer the petition within a certain time period –the Monday following the expiration of twenty days –or else risk an automatic judgment in your favor.
- A hearing must be scheduled with the court, in which the judge will give the parties an opportunity to state their sides of the case. The judge will make decisions regarding child custody, child support, property and debt division, and other issues as requested, such as spousal maintenance.

7. Will you and your spouse have to get marital counseling before getting a divorce?

Marriage counseling is not required for the judge to grant a divorce.

8. Will you and your spouse have to take a parenting class before getting a divorce?

The judge may require a parenting class before he grants a divorce.

9. What is the difference between a contested and uncontested divorce?

A contested divorce is one in which you and your spouse are not able to come to an agreement regarding an issue in your divorce, for example, child custody or property division. The judge must then decide these issues for you. An uncontested divorce is one in which you and your spouse are able to agree on all issues related to the divorce.

10. How long after a divorce may I get remarried?

There is a 30 day waiting period after a divorce before a person may remarry.

11. What is an annulment and what are the grounds for an annulment?

Annulments and divorces are not the same. A divorce ends a marriage that is valid. When a couple's annulment is granted, it is as if the marriage never existed. Grounds for an annulment include: (1) a person between 16 and 18 years old was married without parental consent or court order; (2) a party was under the influence of alcohol or drugs when married; (3) permanent impotency; (4) fraud, duress, or force; (5) mental incapacity; (6) one of the parties was divorced within 30 days of the marriage; (7) the parties were married less than 72 hours after the license was issued.

Child Custody and Visitation

1. What factors does a judge consider when deciding child custody?

The court will weigh a number of factors, including: the best interest of the child, history of domestic violence, preference of the child, child's age, developmental status, circumstances, and needs, the circumstances of the parties and other relevant factors.

The court will not take into consideration gender, race, martial status, or religious beliefs.

2. Do courts still give preference to the mother when awarding custody?

No. The court may not take gender into consideration when awarding custody of the child to one parent over the other. The court will determine custody based on the best interest of the child.

3. If the mother and father agree on custody and support issues, will the judge follow the parents' wishes?

If the parties enter into a written agreed parenting plan and the court finds the plan is in the child's best interest, the court will render an order in accordance with the plan. However, if the court finds that the plan is not in the child's best interest, the court may request the parties

revise the plan and resubmit it to the court, or the court may order its own plan found to be in the best interest of the child.

4. What does “joint managing conservatorship” mean?

The presumption in Texas is that the parents are to be appointed joint managing conservators of the child. This means that certain rights and duties will be shared by the parents, not that they must have equal periods of physical possession of the child. One parent may be named the primary joint managing conservator and be able to determine the primary residence of the child, while the other parent may be named the possessory joint managing conservator and be awarded periods of possession, or visitation. If the appointment of both parents would significantly impair the child’s physical health or emotional development, such as if there was a finding of a history of family violence, the court shall appoint one parent as a sole managing conservator. The other parent may still have the right to visit with the child, but may not be able to make certain decisions on behalf of the child.

5. What are the most common custody and visitation arrangements?

Texas courts use a standard possession order that defines the periods of possession the parents have with the child. In this standard order, one parent will have the child the majority of the time, while the other parent will have possession of the child every other weekend and one evening per week. Major holidays and summers are shared. If the parties can agree on periods of possession, the court may render an order reflecting that agreement.

6. If the paying party is behind on child support payments, may the non-paying party withhold visitation with the children?

No. Child support and visitation are two separate and distinct areas. Visitation cannot be denied or conditioned due to non-payment of child support.

Spousal Maintenance and Child Support

1. Under what conditions is one spouse usually granted spousal maintenance?

A party must be found eligible for spousal maintenance. The court may order maintenance for either spouse only if upon divorce that spouse will lack sufficient property, including the property that is their separate property, to care for their minimum needs. Additionally, the spouse ordered to pay must have committed an act of family violence within two years of the filing of the suit, or the spouse seeking maintenance is unable to earn a sufficient income due to incapacitating physical or mental disability, has been married for 10 years and lacks the ability to earn an income, or is the custodian of a child of the marriage requiring substantial care due to a physical or mental disability preventing the spouse from earning a sufficient income.

A court must determine the spouse is eligible and shall also determine the nature, amount, duration and manner of payments by considering:

- each spouse's ability to provide for that spouse's minimum reasonable needs independently, considering that spouse's financial resources on dissolution of the marriage;
- the education and employment skills of the spouses, the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to earn sufficient income, and the availability and feasibility of that education or training;
- the duration of the marriage;
- the age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;
- the effect on each spouse's ability to provide for that spouse's minimum reasonable needs while providing periodic child support payments or maintenance, if applicable;
- acts by either spouse resulting in excessive or abnormal expenditures or destruction, concealment, or fraudulent disposition of community property, joint tenancy, or other property held in common;
- the contribution by one spouse to the education, training, or increased earning power of the other spouse;
- the property brought to the marriage by either spouse;
- the contribution of a spouse as homemaker;
- marital misconduct, including adultery and cruel treatment, by either spouse during the marriage; and
- any history or pattern of family violence

The court may order maintenance for up to 10 years, depending on the length of the marriage. The court may order up to \$5,000 per month or 20 percent of the spouses' average monthly gross income. Maintenance may terminate on the death of either party or remarriage of the spouse receiving maintenance.

2. Do both the husband and wife have an obligation to provide support for the family?

The parents of the child have a duty to support the children. This duty exists regardless of whether the parents to a minor child are married. The duty to support a child automatically terminates when a child reaches 18 years of age, unless the child is in high school. Support also terminates when a minor child marries or becomes emancipated. A duty to support children may allow support to continue beyond the age of majority but only upon agreement of the parties.

Additionally, spouses also have a duty to support each other. A spouse who doesn't support the other spouse is liable to any person who provides "necessaries" to that spouse.

3. What if you cannot afford to support your children after your divorce is final?

Child support may be modified if the circumstances of the parties have materially and substantially changed since the earlier of the date the order was rendered or three years have passed since the order was rendered/last modified and the monthly amount of child support differs by 20% or \$100 of the guidelines.

Child support may only be modified by the court. A parent affected by a child support order may contact their local Office of the Attorney General for a review.

3. Does a spouse have to pay the other spouse's living expenses until a final divorce decree is issued?

Generally, no. A spouse is typically not required to pay living expenses for the other spouse during the pendency of a divorce, though a spouse may choose to do so. A court may order the other spouse to pay maintenance if the circumstances warrant it.

4. How does child support work where the parents are not married?

A child born during a marriage is presumed to be the husband's child. When a child is born outside of a marriage, the paternity of the child is often of question. The father-child relationship is established to children born outside the marriage through an effective acknowledgement of paternity by the man, or through a court case that establishes paternity.

Children born outside of a marriage have the same right to child support as children born in a marriage. A court can order support until a child is 18 years old. Child support may be awarded retroactively to the birth of the minor child.

A paternity suit may be brought by the biological mother, the putative father, the minor child, or the Office of the Attorney General. The judge may order genetic testing to determine the paternity of the child.

5. How is the amount of child support determined in Texas?

Child support is ordered by the court based on the child support guidelines found in the Texas Family Code. An order of child support conforming to the guidelines is presumed to be in the best interest of the child, though a court may deviate from the guidelines if the application of the guidelines would be unjust or inappropriate under the circumstances. The court may consider certain factors in determine the amount of child support, including: the age and needs of the child; the ability of the parent to contribute to the support of the child; any financial resources available for the support of the child; the amount of time of possession of an access to a child; the amount of the obligee's net resources; child care expenses incurred by either party in order to maintain gainful employment; whether either party has managing conservatorship or actual physical custody of another child; any alimony or spousal maintenance being paid or received by a party; educational expenses for a child beyond secondary school; whether the parties have an automobile, housing, or other benefits provided by an employer, another person, or business;

deductions from wages of the parties; provision for health care insurance and payment of uninsured medical expenses; special educational, health care, or other expenses of the parties or child; cost of travel to exercise possession and access to the child; cash flow from real and personal property and assets; debts assumed by either party; and other reason consistent with the child's best interest.

The parties may enter into a written agreement for child support, but the court must find that the agreement is in the best interest of the child or it will not be approved and the parties will be requested to submit a revised agreement.

The court must take into consideration the net resources of the obligor, the number of children before the court, and the number of children the obligor has a duty to support. The court may order child support be paid by: periodic payments; a lump-sum payment; an annuity purchase; setting aside property to be administered for the support of the child; or any combination thereof. The child support payment must be paid to the state disbursement unit.

The court will also order medical support for the child, which includes findings regarding health insurance of the child and which parent is to provide private health insurance or apply for government medical assistance.

6. What happens if the payor is behind on child support?

Because the duty to support children generally continues until children reach age 18, there are civil remedies for non-paying parents. The non-paying parent may be pursued for contempt in order to obtain compliance with a decree of divorce or other court order. The court may confirm the amount owed as a money judgment, including interest accrued on the arrearages. The judge may order employers to deduct court-ordered child support from the non-paying parent's paycheck through wage withholding. Federal income tax refunds, lottery winnings, or other money due from state or federal sources may be intercepted. A child support lien may be filed against property or other assets. The judge may suspend the driver's, professional, and hunting and fishing licenses. A judge may incarcerate the non-paying parent.

7. Under what circumstances may spousal or child support be increased or decreased?

Spousal maintenance may be modified on a proper showing of a material and substantial change in circumstances related to a party or child of the marriage.

Child support may be modified if: the circumstances of the child or a person affected by the order have materially and substantially changed since:

- (1) the earlier of the date the order was rendered; or
- (2) the date of the signing of a mediated or collaborative law settlement agreement on which the order is based; or

(3) it has been three years since the order was rendered or last modified and the monthly amount of the child support award under the order differs by either 20 percent or \$100 from the amount that would be awarded in accordance with the child support guidelines.

If the parties have agreed to an order in which the child support differs from the guidelines, the court may modify that order only if the circumstances of a parent or child affected by the order have materially and substantially changed since the date the order was rendered.

Premarital Agreements

1. What is a premarital agreement?

A premarital agreement is an agreement between prospective spouses made in contemplation of marriage and to be effective on marriage. It is an agreement between two people before they marry to determine issues of support and property division if the marriage ends.

2. Is it required to be in writing?

A premarital agreement must be in writing and signed by both parties. It must be signed by the person obligated by the promise or agreement or else it is not enforceable.

3. When does a premarital agreement become effective?

A premarital agreement becomes effective upon the marriage of the parties.

4. What may a premarital agreement cover?

A premarital agreement may include provisions regarding property rights, including the right to manage and control property; the disposition of property upon separation, death, divorce; spousal support; the making of a will or trust to carry out the agreement; ownership rights and disposition of life insurance policy death benefits; choice of law; and other matters not in violation of public policy or a criminal statute.

Family Violence

1. What is family violence?

Family violence is an act or by a member of a family or household against another member of the family or household intended to result in physical harm, bodily injury, assault, or sexual assault, or a threat that reasonably places the member in fear of imminent fear thereof. Defensive measures to protect yourself are not family violence. Family violence includes abuse by a family or household member toward a child of the family or household or dating violence.

2. Can you get an order to keep an abuser away from you?

Yes. A victim of family violence may be able to obtain a protective order from the court. The court may also order a temporary restraining order in the divorce.

3. What kinds of things can be included in these orders?

A protective order may:

- prohibit one party from communicating from another, including threats
- prohibit one party from coming near the other's party's residence, place of employment, or child care facility
- removing a child from the possession of the person named in the order
- prohibit transfer or removal of property
- grant exclusive possession of the residence to a party and order the other party to vacate the residence
- include orders regarding child possession and access, as well as child support
- prohibit a party from possessing a firearm
- A temporary restraining order may include prohibitions on offensive communications, threats, harassment, bodily injury, and destruction of property.

4. What if the abuser violates the order?

Violation of a protective order may result in a \$500 fine and up to 6 months in jail. If a party violated the firearm provision, it may result in a \$4,000 fine and up to 1 year in jail.

Violation of a temporary restraining order may be punished civilly by contempt.

5. Besides law enforcement, who else can you call if you are being abused?

A victim of domestic violence should contact the victim assistance personnel at their local district attorney's office, as well as domestic abuse victim advocates and private shelters.

6. What can and should you do if someone is physically or sexually abusing your child?

You have a duty to report all abuse to your local law enforcement agency and the Texas Department of Family and Protective Services. You may call the Abuse Hotline at 1-800-252-5400 or visit TxAbuseHotline.org. A protective order may be available to prevent contact between the abuser and you or your child. Remove the child from the situation immediately and seek medical care.

7. What can and should you do if you suspect that someone is physically or sexually abusing another person's child?

You have a duty to report all abuse to your local law enforcement agency and the Texas Department of Family and Protective Services. You may call the Abuse Hotline at 1-800-252-5400 or visit TxAbuseHotline.org.

Parents' Rights, Grandparents' Rights, Children's Rights, and Adoption

1. In general, what are your rights as a parent?

Unless limited by court order, a parent has the following rights:

- to have physical possession of the child, to direct the moral and religious training, and to designate the residence of the child
- the right to act as an agent of the child in relation to the child's estate;
- the right to the services and earnings of the child;
- the right to consent to the child's marriage, enlistment in the armed forces, medical and dental care, and psychiatric, psychological, and surgical treatment
- the right to represent the child in legal action and to make other decision of substantial legal significance concerning the child;
- the right to receive and give receipt for payments for the support of the child and to hold or disburse funds for the benefit of the child;
- the right to inherit from and through the child;
- the right to make decisions concerning the child's education

2. Can your parental rights be taken away, and if so, under what circumstances?

Yes. A parent's rights may be terminated voluntarily or involuntarily, if the court finds that it is in the best interest of the child. A parent may consent to a voluntary relinquishment of parental rights in order that the child may be adopted, for example. A court may terminate a parent's rights without consent in cases of extreme abuse or neglect. In abuse and neglect situations, the Department of Protective and Regulatory Services may file a lawsuit. The court will hold a hearing to determine if the parent's rights should be terminated.

3. What are grandparents' rights?

Grandparents do not have an automatic right to visitation with the child. To seek possession or access to the child, the grandparent must file suit with the court. At least one biological or adoptive parent of the child must not have had their rights terminated. The grandparent must overcome the presumption that the parent acts in the best interest of the child by proving by a preponderance of evidence that denial of access to the child would significantly impair the child's physical health or emotional well-being. The child's parent must have been incarcerated during the three months before the filing of the petition, determined incompetent by a court, is dead, or doesn't have actual or court-ordered possession or access to the child.

A grandparent may not request possession or access to the child if each of the biological parents of the grandchild have died, had their rights terminated as a parent, or executed an affidavit of relinquishment of parental rights designating someone other than a stepparent as the managing conservator of the child, and the grandchild is adopted or is subject to a pending adoption suit other than by a stepparent.

4. What is a paternity test, why might one be needed, and how can you get one?

A paternity test is a scientific test of the DNA (deoxyribonucleic acid) of a child, the biological mother, and the putative (or alleged) father that is performed to determine whether the putative father is the biological father of the child. A paternity test is needed when the parties are not absolutely certain who is the father of the child. The type of paternity test that is admissible in court to prove paternity is performed by a licensed testing facility.

A paternity test is not painful for either parent or the child, as the most common method of performing a paternity test involves using a large cotton swab to swipe the inside of each person's cheek to remove saliva containing DNA cells. The sample is sent off to a scientific lab for testing and the results are received by the facility that conducted the tests. To make sure a paternity test is admissible in court, it is best to consult with a private attorney or the Office of the Attorney General before having one performed.

5. What is a paternity suit and what happens in one?

A child born to a man and woman who are not married has no legal father. The parents may complete an Acknowledgement of Paternity (AOP) to establish legal fatherhood, or a paternity suit may be brought by the parties. Even if an AOP is signed, a court order is still needed to establish child support.

A paternity suit is a court proceeding in which the child's paternity is established. A paternity suit may be brought by the child, the mother, the father, or the Office of the Attorney General. To file a paternity suit, the parties should consult with a private attorney or with an OAG employee. The main purpose of a paternity suit is to legally declare the father so that child support and visitation rights with the child may be established. Both the mother and the father have the right to request that a paternity suit be performed as part of the paternity suit. The court may divide the cost of a paternity test between the parties, but sometimes the father may be required to pay the full cost if he requests the test and the test results are positive. After the paternity test results are received, the court will conduct a hearing and then enter a decree which establishes paternity and sets forth the rights of the parties regarding child support and visitation with the child.

6. Do children have the same legal rights as adults?

Generally, no. Children do not have the right to vote, enter into contracts, or marry without parental permission. However, children do have some of the same constitutional rights

as adults, although not to the full extent of adult rights, such as the First Amendment right to free speech, exercise of religion, and the freedom from establishment of religion, and certain rights applicable to criminal proceedings.

7. What rights does an adopted child have regarding their own adoption?

A child over the age of twelve (12) years must consent to his or her own adoption, unless the court determines that, due to the child's best interest, consent is not required.

8. Do adopted children have the same legal rights as the "natural" children in a family?

Yes.

9. Whether giving up a child for adoption or choosing to adopt a child, how does the adoption process work?

A parent who chooses to give his or her child up for adoption has several options. The parent may make arrangements to have a family member adopt the child, or go through an adoption agency to locate an adoptive family for the child.

Parents who are looking to adopt a child may consult an adoption agency or may volunteer to act as foster parents. If the only goal is to adopt a child, foster parenting is probably not the best means of achieving the goal, as many foster children are eventually returned to their families are not adopted.

No matter which method the child is matched with the adoptive parent(s), once a match is made, the legal process of adoption is generally the same. A petition for adoption must be filed. A baby cannot be adopted until after the birth. A child may be adopted if: both parents rights have been terminated; one parent whose rights have not been terminated is the spouse of the petitioner in a step-parent adoption; the child is at least 2 years old, one parent has had his or her rights terminated, and the petitioner has had actual care, possession, and control of the child for 6 months or is the child's former stepparent, and the non-terminated parent consents to adoption; or the child is at least 2 years old, one parent's rights have been terminated and the petitioner is the former stepparent or has had actual care, possession, and control of the child for a least a year.

A social study of the potential adoptive home must be conducted, and a criminal history search conducted. If the court determines it is in the child's best interest to be adopted, an order of adoption may be entered. This order creates the parent-child relationship between the adoptive child and parent. The child's name may be changed in the order, if desired.

10. What if one parent wants to put the baby up for adoption but the other parent wants to keep it?

The court will be required to determine what is in the best interest of the child. Written consent of the child's managing conservator must be filed. If consent is withheld, the court may waive the consent requirement if it has been refused or revoked without good cause.

11. Can you agree to give up your child for adoption and still have contact with your child?

Once an adoption is final, you no longer have the legal right to contact your child. However, in some situations, adoptive parents will allow the biological parents to maintain occasional contact with the child, as in an "open" adoption or possibly a situation where a child is adopted by a family member. Many adoption agencies specialize in arranging "open" adoptions with adoptive families who agree to allow the biological parent to maintain some form of contact with the child.

12. Who may adopt a child?
Any adult may petition to adopt a child.

CHAPTER 2 - CONTRACTS AND INSURANCE :
Entering Into Agreements and Reducing Risks

Contracts

1. What is a contract and how old do you have to be to enter into one?

A contract is simply a promise given in exchange for a promise taken. The exchange of promises is usually in the form of an offer by one party and an acceptance by another party. Once those two things occur, a valid contract is created. The most common kind of contract is a promise to pay money in exchange for receiving goods or services. In Texas, you generally have to be eighteen (18) years of age in order to enter into a contract. A contract can be written (best), oral, or implied by the parties' conduct.

2. If you sell something to your fifteen year-old neighbor and then he or she or later come back to you and demands his or her money back, do you have to give the money back?

Generally, yes. A fifteen (15) year-old is not old enough to enter into a contract so he or she has the option of voiding the contract. In this instance, however, your neighbor must also give you back the thing you sold to him or her in substantially the same condition as he or she received it. If the item is in worse condition than when you received it, he or she should give you an amount of money that will make up the difference in the condition. For example, if you sold him or her your video game system for \$200, and he or she brings it back with a broken controller, you have your neighbor back the \$200, but he or she will have to give you some amount of money to make up for the broken controller.

3. When considering whether to sign a contract, what can you do if you do not like a term of the contract?

You are free to sign or not sign any contract. It is your decision. The law usually assumes that two parties to an agreement had equal right to negotiate the agreement. If you do not like a term in a contract, ask the person to change the term to your liking. If the person will not change the term to your liking, discuss the term with the person and try to reach a term upon which you can both agree. Many contracts, however, are non-negotiable as a practical matter. One example of this kind of contract is most cellular phone contracts. Often, cellular phone representatives presenting the contract to you have no authority to negotiate the terms. In that instance, you can either choose to sign the contract, refuse to sign the contract, or go somewhere else to find a more favorable contract.

4. Does a contract have to be in writing to be enforceable?

Generally, no. Most contracts do not have to be in writing in order to be enforceable. The necessity of having a written contract is a very common misconception. In fact, only a few contracts are required to be in writing, including contracts for the sale of land, contracts that cannot be completed in one year, and contracts to pay for the debts of another. Another example of a contract that must be written is a contract to sell goods for an amount in excess of \$500.

5. Does a contract have to be signed by one or both parties to be enforceable?

If a contract must be written, the contract must be signed by the party who is said to be bound by it or signed by someone lawfully authorized to sign for that party. For example, if you agree to pay for a cellular phone plan that is supposed to last two years, the contract must be in writing because it cannot be performed within one year. In that instance, the cell phone company must have your signature on a written contract in order to enforce the service contract against you.

6. Can you form a valid contract using e-mail?

Yes. Remember, to form a valid contract one only needs a promise by one party in the form of an offer, and a promise by another party in the form of an acceptance. If you offer to pay someone to paint your house by e-mail, and the other person accepts by e-mail, a contract could exist. If the contract by e-mail is one of the contracts required to be in writing, however, you might have problems with the signature, which may make enforcement of such an agreement difficult. The e-mails are nevertheless written so you should be very careful about your contractual transactions through e-mail communications.

7. Why should prefer a written contract?

Even if a written contract is not required, you should almost always prefer a contract in writing over an oral contract because there is less risk of a discrepancy over the terms of a written contract. For example, people can argue about what was offered and what was accepted in a telephone conversation but will have difficulty doing so if the parties signed something written in black and white.

8. When can you cancel a contract that you entered?

In order to determine whether you may cancel a contract, a review of the contract terms and the reasons for your cancellation is necessary. Some written contracts have specific cancellation provisions addressing when and how the parties can cancel the contract. Before entering a contract, you should carefully read your contract to determine whether it has cancellation provisions and whether the terms are acceptable to you.

An oral contract is much more difficult to address with respect to cancellation. In an oral contract, the ability to cancel the contract will usually depend upon the intent of the parties, and each side may express a different intent. This situation is another reason why written contracts are preferred to oral. Generally, you may cancel a contract if the other party breaches, but again, the right to cancel may not apply to your situation.

9. How can you protect your rights when asked to sign a contract?

The number one thing you can do to protect your rights when asked to sign a contract is to read the contract very carefully. In today's society, many people sign contracts without

reading the terms. When a dispute arises, the parties who have not read the contract have no idea what rights they have or, worse, may have contracted away. Do not be pressured to quickly sign a document before you have had a chance to read it.

Texas law will generally assume that you have read the contract and understood its terms if you signed it. If you do not understand the contract, hire a lawyer to explain it to you or take the time you need in order to be able to understand it. You may also be able to talk to the other party about terms that are more favorable and acceptable to you. It also never hurts to ask questions regarding the terms of the contract so you make sure you understand the terms and find that they are acceptable.

10. What rights do you have if the other party breaches (breaks) the contract?

Before signing a contract, you should read all contracts to learn what your rights are in the event that the other party breaches. Some contracts allow the breaching party to fix or cure the breach, depending upon the breach. Other contracts allow the non-breaching party the right to bring a lawsuit immediately. Some contracts do not allow either party to bring a lawsuit, but instead engage in a dispute resolution process outside of court. Other contracts allow you the right to additional money or damages in the event of a breach while some contracts allow you to cancel the contract altogether.

Ultimately, your rights after a breach occurs depend upon what you and the other party agreed to in the contract. If your contract is an oral contract, the steps to follow after a breach will depend upon the terms of your oral agreement and the intent of the parties. If you cannot work through a dispute or breach of contract with the breaching party, typically you have the right to bring a lawsuit as a result of the breach unless you have contracted that right away.

11. What is the difference between a “warranty” and a “guarantee?”

In common practice, there is a subtle difference between a “warranty” and a “guarantee.” Under Texas law, both “warranty” and “guarantee” generally fall under the definition of “express warranties.”

Generally, a warranty is an ongoing promise that some condition will continue to happen. An example of a warranty might be a promise from the manufacturer that a vacuum cleaner will continue to work as advertised for one year. If the vacuum cleaner stops working after six (6) months, the warranty from the manufacturer should allow you to either send the vacuum cleaner in for repairs or obtain new one, depending upon the terms of the warranty.

On the other hand, a guarantee is usually a representation that a statement about a product or service is true at the time it was made. An example of a guarantee is a statement by a car dealer that he guarantees his price on a particular type of truck is the lowest price in town. Such a statement does not have to be true forever. If you purchase the truck but see essentially the same one on sale six (6) months later for a lesser amount than you paid, you generally cannot

claim the seller breached his guarantee if it was true when he said it. Also, it is important to note that not all guarantees form part of a contract.

Generally, it is easier to get a warranty from a seller or service provider than a guarantee. Most sellers and service providers would rather give you a written warranty document explaining the terms of the warranty in the event the product or service does not operate as intended, rather than an oral guarantee that will be the “best” product available at the time it was sold. Again, it goes back to knowing exactly what you are getting, reading the contract, and asking questions about the warranty prior to buying the product.

12. What are “express” and “implied” warranties?

“Express” and “implied” warranties are two types of warranties that can be given in a contract. Express warranties are warranties that are specifically discussed and agreed to by the parties. An express warranty would be a warranty on a vacuum cleaner that it will continue to satisfactorily operate for one year from the date of purchase. A party can give multiple express warranties.

An implied warranty is different from an express warranty. An implied warranty is a warranty that is included in your contract regardless of whether the parties discuss it. The implied warranty might cover the same topics or issues as an express warranty, but it is meant to protect the buyer or recipient of products or services in the event the parties do not discuss the express warranties, or discuss express warranties on different topics.

An example of an implied warranty would be the implied warranty that the goods sold are “merchantable”; for example, they must be adequately contained, packaged, and labeled. Even if the seller does not give this as an express warranty to the buyer, the law will “imply” such a warranty. The law will imply warranties in many different types of contracts so you may have additional rights over what is expressed in the contract.

It is also important to note that most implied warranties can be disclaimed by the parties. For example, for the sale of goods, the seller can disclaim the implied warranties by stating: “There are no warranties which extend beyond the description on the face hereof [of the contract].” Many written contracts will disclaim implied warranties to the extent applicable. Again, it is very important that you read your contract to see what express warranties you have and how contract terms address implied warranties.

13. What are common warranty terms and what do they mean?

It depends upon the type of contract. Some common terms in a contract for the sale of items will require that the items be free from material and manufacturing defects for a certain period of time. With such a warranty, the seller or manufacturer of the item is promising that the item should work if used as intended over that period of time. If you purchase a graphics card

for your computer, for example, and the cooling fan failed within the warranty period through no fault of your own, you would probably be entitled to a remedy under the warranty.

In service contracts, people often warrant that their work will be free from defects for one year. An example might be a written contract with a painter to paint your house. The painter could warrant that a paint job will be free from peeling and cracking problems for two years from the date the house is painted. If the paint starts peeling or crackling under normal conditions within that time period, you would be entitled to remedy under the warranty. If the paint starts peeling and cracking for another reason, such as a fire in the house, you would probably not be entitled to a remedy under the warranty.

14. When you are buying a car, a television, or anything else, what should you consider before deciding to buy an “extended” warranty or “service contract?”

The most important consideration in determining whether to purchase an extended warranty is whether you think the extended warranty or service contract is worth your money. You should ask yourself what the extended warranty or service contract covers that the original warranty or service contract does not. Some extended warranties or service contracts merely extend the time in which you can make a warranty claim, but they do not extend any additional rights. Some extended warranties or service agreements will extend additional rights to you under the warranty or service contract, but they do not extend the time. Others will charge you fees for making a warranty claim. Consider reviewing the contract itself to determine whether it disclaims implied warranties, which may cover the same topics that the extended warranty or service contract covers.

Keep in mind that extended warranties and service contracts are an additional way for the seller of the product to make money. The seller would not offer these items to customers if the extended warranty or service agreement resulted in costs to the seller in the long-term. Ultimately, before deciding to purchase the extended warranty or service agreement, you have to balance the benefit that the extended warranty or service contract will give you with the risks you will need the services it offers.

15. What does it mean to guarantee a debt?

Guaranteeing a debt can have many meanings. It generally means that you are confirming a debt as valid and promising to pay for it in some manner. The promise to pay a debt can take many forms—whether you are promising to pay for a debt of someone else or using something you own to secure payment of the debt in the event you do not pay, such as collateral. Many financial and lending institutions, such as banks, require you to guarantee a debt through the use of collateral.

For example, you may have to agree to a mortgage or lien on your house or car in exchange to secure a loan to purchase the house or car. If you do not pay the debt, your guarantee goes into default, and the bank can use a legal process to take your house or car to pay

the loan. Situations arise where family members agree to pay the debts or serve as co-signors for the repayment of debt. For example, you might agree to guarantee the debt of your sister when she purchases furniture. If you do so, you are also liable to pay for the furniture in the event your sister does not pay for it. This situation can get very sticky, especially if you have secured the debt with collateral, such as your car. Family disputes can quickly arise if your sister does not pay for the furniture, and the furniture seller comes to your door asking for payment or your car. Be very careful when you are considering whether to obligate yourself by guaranteeing any debt.

Insurance

1. What is insurance and how does it work?

Insurance is a way for someone to contractually shift his or her risk on something to someone else in exchange for payment. The person pays a premium to the insurance company in exchange for the company agreeing to pay part or all of any damages or assessment against a person in an event that was covered occurs.

Generally, insurance companies evaluate a large group of people with similar characteristics and calculate the likelihood of the covered event (accidents, health issues, etc.) occurring. Based upon the risk level of the group of people, the company determines approximately how much each person would be assessed in trying to pay for these potential occurrences. The company will then offer indemnity, or some monetary coverage, to pay a portion of the damages that arise if the covered occurrence happens.

In the event of an accident or the occurrence of a covered event, the individual receives benefits from the insurance company after submitting a claim. If the event does not occur, the insurance company gets to keep the premium. Insurance companies often offer different coverage levels with higher coverage costing higher premiums. The individual can also assign his or her right to benefits to a third party such as to a hospital or automobile repair shop. The individual remains responsible for any unpaid amounts after coverage. Often, the individual is responsible for a co-pay or deductible regardless of how much of the occurrence is covered. This amount remains much less than what the person might have been required to pay without insurance.

2. What are some different types of insurance, and how do you know what types of insurance that you might need?

There are many types of insurance, and they have changed over the years to address the changing needs of people. Insurance comes in three general categories: (1) property and casualty insurance, (2) health insurance, and (3) life insurance. Property insurance is coverage for the loss of tangible property, usually due to theft or accident, or for the damage done to real property. Health insurance is coverage for health care issues. Health insurance can include dental, vision, and other health-related issues. Life insurance is coverage against the death of an

individual in the form of payments to another person, such as the deceased person's spouse or children. It can also include disability insurance.

Property and Casualty Insurance: The type of insurance is dependent upon your circumstances. Generally, the more you have to lose, the more you should consider getting insurance. Texas law generally requires drivers of automobiles to have property and casualty insurance on their vehicles. Automobile insurance falls into this category.

The type of coverage will be utilized should the owner of the policy have an accident. Full coverage insurance will usually provide coverage in the event of an accident or in the event of other natural events (such as hail damage), regardless of whom was at fault. Other options exist which provide lesser coverage but make them more attractive to consumers. These add-ons to the insurance policy can result in larger premium payments.

This insurance also includes homeowner's or real property and renter's insurance. If you own a home, the terms of your mortgage will generally require that you maintain property insurance. This coverage can cover anything from the shell of your home to the actual contents. You should read any property insurance policy carefully to understand what is covered and what is not. If you do not own a home and are living independently, you should consider purchasing a renter's insurance policy. This insurance covers your personal property where you are living (*i.e.*, furniture and appliances). Some homeowner's and renter's insurance policies include coverage for flood and earthquake damage. More often, however, these items are excluded. If your policy does not cover flood or earthquake, this type of coverage generally can be purchased as an add-on.

Health Insurance: Currently, you are not required to have health insurance, but most people try to have some form of health insurance because medical costs are very high. Beginning in 2014, you will be required to obtain and to carry health insurance, or you will face a monetary penalty. Although private policies can be purchased, people usually receive health insurance through their work. Dental and vision insurance may or may not be included as part of health insurance. It is up to you to compare the cost with the proposed benefits of the plan.

Life Insurance: Many young adults do not have life insurance, but those who have children or other family depending upon them as a means of support should definitely consider it. Additionally, if the person owns a small business or is in partnership with another person to operate a business, life insurance may be beneficial to ensure that the business may continue to thrive in the event of the death of the owner.

The majority of these products are regulated by the State of Texas. Texas has certain requirements for property, health, and life insurance policies. The Texas Department of Insurance has a helpful website available at www.tdi.texas.gov with a great deal of information regarding property, health, and life insurance policies.

3. What are insurance premiums and what could happen if you do not pay them on time?

Insurance premiums are the amounts you pay the insurance company in exchange for the coverage of the insurance policy. People pay premiums according to what their policy requires, which is usually on a monthly, quarterly, or yearly basis. The insurance company must be paid in a timely manner for coverage to continue. One of the most common mistakes people make is failing to pay a policy premium, and then becoming concerned about whether they have coverage when an accident occurs.

If you do not pay your premium on time, do not expect to be covered by your insurance policy. Some insurers automatically cancel coverage when the premium is not paid after a certain date while others have grace periods allowing some time after the premium was due for the person to catch up the late payments. Do not rely on grace periods. If you miss a payment, read your policy to see what happens. Call your insurance agent. Never make assumptions about coverage.

With regard to auto insurance premiums, the insurance company is only obligated to give you a ten (10) day notice of cancellation as the result of non-payment of auto premium. If the money does not reach the insurance company within ten (10) days after that notice, you will no longer have insurance coverage. If you have an accident and it is your fault following cancellation for non-payment, you will be responsible for the damages. You could also lose your driver's license or vehicle registration for failure to maintain insurance.

The amount of premium you pay is based upon different factors. Every insurance company has their own method for calculating premiums. It is always a good idea to read through your insurance policy and understand what your premiums and coverage will be.

4. What should you do if you later discover incorrect information on an insurance application that you completed?

It depends. In Texas, statements made during the application process are considered representations of truth at the time you communicated it to the insurance company. You must respond truthfully to the best of your knowledge during any insurance application process. For example, if the insurance company asks whether you have had a certain illness, you should disclose that fact, either in the application or during the insurance company's investigation prior to issuing the insurance policy. On the other hand, statements made during the application process are not warranties. As long as what you said was true during the application process, it does not have to continue to being true forever. You are generally not obligated to tell them something several months or years after obtaining the policy, unless of course you have to re-apply.

The distinction here is important. A misrepresentation during the application process can cause major problems when you have a claim. The insurance company can deny coverage or void the policy if the misrepresentation would have caused the insurance company not to issue

the policy or would have caused the insurance company to issue the policy in a different amount. The insurer can also cancel or void the policy if the misrepresentation was material to the risk. Representations can affect the premiums you pay, but paying a slightly higher premium is usually much better than not having coverage when you need it the most.

5. How quickly will an insurance company act once you submit a claim?

It depends. Most insurance policies contain provisions about how quickly the insurance company must investigate the claim and decide to either pay or deny a claim. There are rules and regulations the insurance company must follow, which presently provide that the insurance company should generally investigate and resolve the claim within forty-five (45) days of the receipt of a claim.

Some claims are simple and can be completed in a few weeks, while others are complex and may require the insurance company to hire outside investigators to help. The key in resolving claims is what is reasonable under the circumstances. The insurance company should keep you notified as to the status of your claim. If the insurance companies do not comply with the rules and regulations regarding claim processing, they can run into problems with the Insurance Commissioner, Better Business Bureau, or even legal problems if they did not act in good faith.

6. On what grounds can an insurance company cancel a policy?

Insurance policies are contracts. Like any other contract, insurance policies can be voided by the actions or inactions of the parties. Insurance policies are often complex documents. Even so, it is presumed you have read the policy and know the content of what you have signed.

When interpreting insurance policies, courts apply the definitions in the policy, or if there are none, they use the ordinary and generally accepted meanings of words. If the intent of the policy is ambiguous or uncertain (for instance, there are two ways to interpret a clause or sentence in a policy), then the courts usually read the policy against the insurance company and in favor of the consumer. In instances where the enforcement of the policy, as written, would be unconscionable, the contract can be voided by the court, but these are rare.

The most common way for an insurer to cancel a policy is through non-payment of premiums by the policyholder—no money, no coverage. Likewise, if insurance is offered as compensation for employment, insurance can be cancelled if you are terminated or quit your job. Almost every insurance contract contains a clause declaring the policy void if the consumer misrepresents facts or hides any fact that is material to the application or claim. This misrepresentation is commonly known as insurance fraud.

Regardless of the insurance company's reason for canceling, the consumer must usually be sent notice that the policy is going to be cancelled. Many times a company will be required to

give the insured a grace period of coverage or advanced notice of cancellation (in some instances as long as 180 days) in order to find other coverage. Under Texas law, for instance, an insurance company may cancel an automobile insurance policy subject to certain conditions with thirty (30) days' notice to the insured.

It is important to remember that a policy of insurance is a contract. The actions of one of the parties may give the other grounds for cancellation. The policy itself should generally cover the cancellation terms.

7. What are your rights if your insurance policy is cancelled?

The insurance policy usually states what rights you may have if the policy is cancelled. If the policy is cancelled for non-payment of premiums, some policies allow the consumer to catch up payment to start coverage once more. Some policies allow the consumer other rights, including the right to appeal the insurance company's cancellation decision to another division within the company. Of course, you always have the right to consult with an attorney if you feel the insurance company has wrongfully cancelled your policy.

8. What are some specific questions that you should ask when shopping for life insurance?

- How much insurance do I need?
- What rates can I afford?
- What type of policy should I buy, term or permanent?
- Who do I want to list as my beneficiaries?
- How many beneficiaries may I list?
- What are accelerated benefits and how do they work?
- What does this policy do in the event of disability that is short of death?
- When does this policy pay the benefits?
- Where am I covered?
- What is excluded?

9. What are some specific questions that you should ask when shopping for health insurance?

- How much insurance do I need?
- What rates can I afford?
- Who is covered under this policy (*i.e.*, spouse, children)?
- How long are the people covered following certain events (divorce, reaching 18 years, etc.)?
- My spouse has coverage through his/her job. Will the group policy address all of the medical needs of the household?
- What is the deductible for an office visit? For an emergency room visit?
- What hospitals/doctor's offices/clinics does this policy cover?

- If I do not go to one of the approved hospitals/doctor's offices/clinics, how will it affect my coverage?
- At what point do I meet the maximum out-of-pocket deductible?
- Can I increase or lower my deductible or co-pay?
- What is the maximum amount this policy will pay?
- Will my premium come down if I do not have claims? Will it rise if I do?
- What is excluded?

10. What are some specific questions that you should ask when shopping for disability insurance?

- What is the length of the term? If you have a stroke, for example, how long are you covered?
- How is disability defined? If you cannot work at your stated occupation, but can work somewhere else, are you considered disabled? ("own occupation" vs. "any occupation" – very important)
- Is there a "Partial Disability Option?" Persons suffering from MS or diabetes, for example, are often able to work sporadically or part time
- Are the premiums guaranteed? If you start smoking or become high risk for disability in some way, does the company have the right to raise your premiums in the future?
- Is there a "Return of Premium Option" or some other option that will allow you to recover your payments after a period of time?
- Is there a "Cost of Living Rider?" A monthly income that seems adequate today may be insufficient twenty years from now.
- If I miss a premium payment, how much time before your policy is cancelled?
- Is my company the First Payor or is there an Integration Clause? That is, if you are unable to work but have some other income, will your insurance policy deduct your other income from the payments (Integration) or will they pay you the full amount (First Payor).
- If I relocate to another area or country, will the policy go with you?
- What is excluded?

11. What are some specific questions that you should ask when shopping for homeowners insurance?

- How much is my home worth, including its contents?
- What risks does this policy cover (*i.e.*, fire, flood, force of nature, etc.)? "All risk" may cover everything except those items specifically excluded. Some items that are generally excluded are flood and earthquake.
- Does this policy cover the contents? If so, how much?
- Are big ticket items covered? (*i.e.*, computers, big screen televisions, jewelry)
- Does the policy offer market value or replacement coverage for your items?
- Am I in a flood plain?

- How can I qualify for any discounts (*i.e.*, fire, smoke and burglar alarms, or claims free for a number of years)?
- Does the policy include loss of use? If so, when does it apply? What are its limits? What will it pay for?
- What is the liability coverage?
- What deductible can I afford?
- What is excluded?

12. What are some specific questions that you should ask when shopping for liability insurance?

- How much coverage do I need?
- Have I shopped around for the best deal? The liability industry is especially competitive, and companies charge different amounts for essentially the same coverage. Shop around and consider all services provided by the company. Also, consider the following:
- What kind of deductible can I afford? How does raising the deductible affect the premium?
- Are there “Good Student Discounts,” and do I qualify?
- Are there other discounts, such as for completing a driver’s education course or being in the military? Are there discounts for multiple vehicles or having multiple policies with the same insurance company?
- What kind of car do I drive? High performance cars, sports cars, and exotic cars are usually rated higher by insurance companies and are more expensive to insure.

13. What is an insurance adjuster and what do they do?

An insurance adjuster is a person who is retained by the insurance company to investigate claims occurring under the insurance policy. The adjuster is often used to help facilitate the claims process and can in some instances negotiate a settlement for the insurance company. Many adjusters must submit their findings to the insurance company for final approval before a settlement can be offered to the individual.

14. What can you do if your insurance company will not pay a claim?

Read your policy and see what rights you have. You always have the right to consult with an attorney. If the insurance company is taking excessive time to pay the claim, a phone call to the agency or the insurance company can help resolve the delay of the claim process. If it is a case where the insurance company has denied a claim, sometimes you can appeal that decision to another division of the company. It is a good idea to document everything. A letter is usually good proof of your position. Always have your claim number with you when you speak to anyone handling your claim.

15. What is the process for settling a claim and working with the insurance company to have property repaired or replaced?

The process for settling claims differs depending upon the insurance company, the type of insurance, and the type of claim. Generally, you will start with the filing of your claim. The filing of your claim requires you to call your agency or the insurance company using the number in the policy, or as previously provided. You will probably have to fill out a claim explaining what happened and when it happened. Insurance companies generally have fifteen (15) days in which to respond to any pertinent communications where a response is reasonably expected.

Once a claim has been filed, the insurance company will then assign a claim number to your claim and will either contact you, send you confirmation of the claim, or both. An agent or adjuster may want to discuss the claim with you. The insurance company should let you know that they are either going to pay or deny the claim. The insurer may want you to get estimates for the repair or replacement of whatever was destroyed. If the insurer pays the claim, then a check will be issued to you or the place that is performing the repairs or providing a replacement. Generally, the check issuance is processed within ten (10) days of granting the claim. If the insurer denies the claim, refer to your policy to see what rights you may have.

16. What can you do if you believe that the insurance company is not being fair with you?

Insurance companies are required to deal fairly with people and act in good faith. The insurer should seriously consider all allegations of unfairness or bad faith very seriously. If you feel the insurance company is dealing with you unfairly or acting in bad faith, call them and communicate your concerns. You can also write them a letter explaining how you feel and telling them what conduct you think shows they are acting unfairly or in bad faith. Tell them how they can fix the problem. If notifying the insurer does not work, you can contact the Texas State Insurance Commissioner at 1-800-578-4677 or www.tdi.texas.gov or P.O. Box 149104 Austin, Texas 78714-9104. You can also contact the Better Business Bureau or an attorney.

CHAPTER 3 - LEASE AGREEMENTS :
Renting Your First Home

1. What is a lease?

A lease is an agreement between a landlord and a tenant to use property. The landlord is the person or business who owns the property. The tenant is the person or business who uses the property. A good lease will describe what the landlord and tenant can do with the property (rights) and what they have to do for each other (responsibilities). For example, most leases will tell the tenant how much rent he or she must pay the landlord. The lease may also describe how long the agreement between the landlord and the tenant will last.

A good place to go to see an example of a lease agreement is the Texas Apartment Association (“TAA”) website which provides a sample of a lease contract for an apartment which is used by many apartments in Texas. (<http://www.taa.org>) In this section, we will look at sections of this sample “Apartment Lease Contract” to look at common answers to different questions using the TAA’s lease agreement, but keep in mind your lease may be different.

The TAA agreement is not required and is not the law. It is helpful to understand what lease agreements can look like but it is only a sample agreement. Each landlord and tenant can write a lease that describes their agreement. The lease contract you sign will answer many of the questions you have about your lease. It is important that you read and understand all the aspects of a lease before you sign it since it is an agreement for a substantial amount of time and money.

2. Does a lease have to be in writing to be valid?

Under Texas law, a lease of property only has to be in writing if it is for more than one year. However, it is always best for both parties if there is a written lease so that they can prevent any future disagreements and better understand the agreement they have reached with one another.

3. What should I consider before signing a lease?

Like any agreement you make in writing, make sure you read and understand the entire lease before you sign it. Most leases are for at least a year and involve a substantial amount of money. It is worth your time (and your money) to read it! Keep the following ideas in mind when entering into a lease:

Make sure the agreement reflects your understanding of the agreement between you and the landlord. Ask yourself “what if...” to see if the lease answers potential problems you may run into. For example, “What if I am a day late on my rent?”, “What if I get a pet”, “What if I damage my apartment?”, “What if I want to have someone live with me but not sign the lease agreement?”, etc.

Do not sign a lease unless all the blank spaces are filled in or crossed out.

Get your own copy of the lease.

Any changes or additions to the lease should be made on all copies of the lease and initialed by both the landlord and the tenant.

Get all promises (like free first month of rent or repairs prior to move in) IN WRITING before you sign the lease so there is no mistake about what was promised after the contract is signed. It is best if you can have this information also written on the lease agreement itself.

Obtain a list from the landlord of repairs to be completed (if any) before moving into the property, and then insist that they be completed.

Look at the actual property you are going to rent or lease and make sure it is in good condition before you sign the lease – just because a demo unit looked nice that does not mean your actual unit will look nice. Insist on seeing the actual unit you will be renting before you sign the lease.

List any problems or damages to the property, such as carpet wear or carpet stains or cracks in the wall, on the lease. Some landlords allow you to add to this list for a short period of time as you move in.

You should also take pictures of the property before moving in. It is a good idea to attach copies of the pictures you take to the lease itself. If you do not discuss and make note of these before you move in, do not be surprised if the landlord attempts to attribute them to you when you move out.

4. What is the difference between “rent” and “lease”?

Rent usually refers to the *money paid* to a landlord in a lease. A lease on the other hand, is the *agreement* to pay rent for the use of a property. Since a lease usually requires the tenant to pay rent to a landlord, “leasing” and “renting” are often used interchangeably.

5. Can a landlord refuse to rent to me because of my race, color, disability, religion, sex, national origin, familial status, or sexual orientation?

Under state and federal law, a landlord may not refuse to rent to you because of your race, color, national origin, religion, sex, familial status or handicap. At present, there is no state law in Texas preventing a landlord from refusing to rent to you because of your sexual orientation. However, there are local rules in some places which prohibit a landlord from refusing to lease property based on other personal aspects, including sexual orientation. In Austin, for example, a landlord cannot refuse to rent a property based on wide variety of characteristics including: race, color, creed, religion, sex, national origin, disability, *student status*, marital status, familial status, *sexual orientation*, gender identity, or *age*.

6. Can a landlord prohibit me from having a roommate?

A landlord can refuse to allow you to have a roommate as long as the reason for refusal is not discriminatory under state or federal law. For example, your landlord may prevent you from having a roommate who is a convicted felon. If you are allowed a roommate, the landlord may require the roommate to sign the lease and become equally responsible for paying the rent and maintaining the property. The same rules that apply to you generally apply to your or roommate. The TAA lease does allow you to have roommates and calls those individuals occupants:

2. **OCCUPANTS.** The apartment will be occupied only by you and *(list all other occupants not signing the Lease Contract):*

No one else may occupy the apartment. Persons not listed above must not stay in the apartment for more than _____ consecutive days without our prior written consent, and no more than twice that many days in any one month. *If the previous space isn't filled in, two days per month is the limit.*

7. Can a landlord refuse to let me have a pet?

A landlord can refuse to allow you to have a pet. Alternatively, a landlord may charge you extra rent or an extra deposit if you have a pet. The TAA lease does not generally allow animals, but the landlord may sign a separate agreement allowing animals:

27. **ANIMALS.** *No animals (including mammals, reptiles, birds, fish, rodents, amphibians, arachnids, and insects) are allowed, even temporarily, anywhere in the apartment or apartment community unless we've so authorized in writing. If we allow an animal, you must sign a separate animal addendum and pay an animal deposit. An animal deposit is considered a general security deposit. We will authorize a support animal for a disabled person but will not require an animal deposit. We may require a written statement from a qualified professional verifying the need for the support animal. You must not feed stray or wild animals.*

Often a landlord's extra fees or rent for allowing an animal will be non-refundable at the end of the lease. You will also be responsible for any damage the pet causes.

8. What is a sublease?

A sublease is an agreement where the tenant leases the property to another tenant, often for a short period of time. Texas law generally does not allow subletting without the consent of the landlord. The TAA lease agreement also does not allow a tenant to sub-lease his or her apartment unless the landlord consents to the sub-lease agreement in writing:

REPLACEMENTS AND SUBLETTING. Replacing a resident, subletting, or assignment is allowed *only when we consent in writing*. If departing or remaining residents find a replacement resident acceptable to us before moving out and we expressly consent to the replacement, subletting, or assignment, then:

- (1) a reletting charge *will not* be due;
- (2) a reasonable administrative (paperwork) fee *will* be due, and a rekeying fee *will* be due if rekeying is requested or required; and
- (3) the departing and remaining residents *will* remain liable for all Lease Contract obligations for the rest of the original Lease Contract term.

If you are going to sub-lease you should read the tenant's lease and talk to the landlord directly to make sure sub-leasing is allowed.

9. What happens if my original lease agreement expires and it is never renewed?

If the original lease expires, the lease will usually become a "month-to-month" lease. The same terms of the agreement between the landlord and the tenant still apply but the agreement is now renewed every month. The TAA lease, for example, expressly states that the lease automatically renews every month:

LEASE CONTRACT TERM. The initial term of the Lease Contract begins on the _____ day of _____, _____ (year), and ends at midnight the _____ day of _____, _____ (year). *This Lease Contract will automatically renew month-to-month unless either party gives at least _____ days written notice of termination or intent to move-out as required by paragraph 37. If the number of days isn't filled in, at least 30 days notice is required.*

This section of the lease means that the terms of the lease remain the same for the landlord and tenant except that either the landlord or the tenant may cancel the lease at any time by giving the other party 30 days written notice. However, your written lease may have different terms so it is important to read your lease before you sign it.

10. What is renter's insurance and why should I pay for it?

Landlords usually carry insurance only on their property (i.e. the building you are renting). Generally, a landlord's insurance will not cover your property inside the building including any of your personal belongings. Renter's insurance can cover the loss of your property due to theft, accident, etc. Renter's insurance may also cover your liability for injuries to your guests. Landlords may require you to obtain renter's insurance for the property you want to lease. The TAA contract generally does not require renter's insurance but allows the landlord the option to require renter's insurance.

8. **INSURANCE.** *Our insurance does not cover the loss of or damage to your personal property. You are [check one]:*

- ☐ required to buy and maintain renter's or liability insurance (see attached addendum), or
☐ not required to buy renter's or liability insurance.

If neither is checked, insurance is not required but is still strongly recommended. If not required, we urge you to get your own insurance for losses due to theft, fire, water damage, pipe leaks and other similar occurrences. Renter's insurance does not cover losses due to a flood. Information on renter's insurance is available from the Texas Department of Insurance.

If you want to, or need to, obtain renters insurance you can ask for price quotes from different insurance agents to find the policy that best suits your needs and budget. Additional information and sources for rental insurance quotes can be found online on the Texas Department of Insurance's website at: <http://www.tdi.texas.gov/pubs/consumer/cb043.html>.

11. What is a security deposit?

A security deposit is money given by a person renting property to the landlord to protect a landlord from tenant not following a lease agreement or damaging the leased property. The tenant has to pay the amount of the security deposit at the beginning of the lease usually before the first day of the lease. The landlord holds the security deposit during the period of the lease and returns the lease (minus lawful deductions) after the lease has ended.

12. How do I terminate my lease?

Texas law generally requires the landlord/renter terminating the lease to give notice to the other person. Notice must be provided as required by the lease agreement or notice to the landlord/renter must be given more than one payment period before the lease is terminated. So, if you pay rent every month, you would have to give at least one month's notice. Most written leases will describe how to terminate the agreement. The TAA lease requires the person terminating the lease (whether the landlord or the tenant) to tell the other person at least 30 days before the lease will end. The TAA lease does *not* automatically expire at the end of the lease.

13. What happens to my security deposit when I terminate my lease?

A landlord may make deductions from your security deposit prior to its return for damage to the property other than normal wear and tear. Generally, your security deposit should be refunded 30 days after terminating your lease as long as you provide your new address in writing to the landlord. If a landlord makes deductions from the returned security deposit, he or she must provide an itemized written description of any deductions.

14. I did not get my security deposit back and never received an itemized list from my landlord after I moved out, what do I do now?

If you have sent your forwarding information and requested your security deposit back in writing more than 30 days ago but your landlord refuses to give you your security deposit or an itemized list of deductions, you should contact an attorney. Texas law provides for the recovery of attorney's fees for the wrongful retention of your security deposit.

15. I signed a lease for a year but I have to move after six months, do I have to pay for the whole year?

You may have to pay for the whole year but are likely to have to pay something less. If the landlord is able to rent the property to someone else for that time you will not have to pay for the months of rent that the landlord can recover from another tenant.

16. What could happen if I do not pay my rent?

Not paying your rent can have serious negative consequences. You may be evicted, you may be charged with late fees, and you may damage your credit score. If you do not pay your rent, your landlord may "evict" you. Eviction is another way of saying the landlord may force you to leave. For example, the TAA lease provides that if you do not pay rent, you will be in "default." Default just means you broke one of the promises made in the lease. There are many other ways to be in "default". If you are in default, your landlord may evict you and end your right to use the property. If you do not pay your rent when it is due, the landlord may also charge you a late fee under certain circumstances. If you refuse to pay your rent, the landlord may ultimately submit your past due rent to a collection agency which may harm your credit score. Paragraph 32 of the TAA lease gives several examples of how tenants may be in default and what the landlord may do when the tenant is in default.

17. When can the landlord enter the property?

Usually your lease will provide details about when a landlord can enter the property you have leased. For example, the TAA lease says that landlord can enter your leased property for a variety of reasons related to repairs, maintenance, emergencies, and to show the apartment to prospective tenants. Paragraph 28 of the TAA lease covers additional circumstances where a landlord may enter the property you leased.

18. What are the landlord's obligations?

Generally, the landlord must make sure the property is "habitable". A habitable property is one that is safe to live in. Some leases include additional responsibilities of the landlord. For example, the landlord will usually agree to make reasonable repairs. The TAA lease does require the landlord to maintain common areas and reasonable repairs as shown below:

31. **RESPONSIBILITIES OF OWNER.** We'll act with customary diligence to:
- (1) keep common areas reasonably clean, subject to paragraph 25;
 - (2) maintain fixtures, hot water, heating, and A/C equipment;
 - (3) substantially comply with all applicable laws regarding safety, sanitation, and fair housing; and
 - (4) make all reasonable repairs, subject to your obligation to pay for damages for which you are liable.

Under some circumstances, you may be allowed to have someone else do the maintenance for you and deduct the cost from your rent. Your lease may require you to give written notice to your landlord that repairs are needed. Written notice of any requested repair is a good idea whether or not your lease requires it.

Landlords of residential property are also generally required to supply certain security and safety devices like locks and a peephole, smoke and other detection devices required by statute or city ordinances. The TAA lease also provides a section where a landlord may agree to provide utilities such as water, electricity, or gas.

19. Can I make changes to the property?

Generally, you cannot make changes to the property without the landlord's permission. Some landlords may even forbid putting nails in the wall. If you modify the property without the landlord's permission, you will have to pay to restore the condition of the property. The TAA lease takes a more reasonable approach allowing for nail holes but preventing major changes to the property in the following section:

25. **CONDITION OF THE PREMISES AND ALTERATIONS.** You accept the apartment, fixtures, and furniture as is, except for conditions materially affecting the health or safety of ordinary persons. We disclaim all implied warranties. You'll be given an Inventory & Condition form on or before move-in. Within 48 hours after move-in, you must sign and note on the form all defects or damage and return it to us. Otherwise, everything will be considered to be in a clean, safe, and good working condition.

You must use customary diligence in maintaining the apartment and not damaging or littering the common areas. Unless authorized by statute or by us in writing, you must not do any repairs, painting, wallpapering, carpeting, electrical changes, or otherwise alter our property. No holes or stickers are allowed inside or outside the apartment. We'll permit a reasonable number of small nail holes for hanging pictures on sheetrock walls and grooves of wood-paneled walls, unless our rules state otherwise. No water furniture,

20. Can I pay my rent in cash instead of a check?

Under Texas Law you can pay your rent with cash, as long as your lease does not require payment by check money order, or something similar. Make sure to get a receipt if you pay your rent in cash.

21. When can the landlord evict me?

The landlord can evict you if you are in “default” which means that you did not do one or more of the things you promised to do in the lease. One of the most common reasons for eviction is failure to pay rent. However, your lease may specify many different situations where you would be in “default” and may be evicted. For example, the TAA lease includes seven possible situations where you would be in default:

- 32. DEFAULT BY RESIDENT.** You’ll be in default if: (1) you don’t pay rent or other amounts that you owe on time; (2) you or any guest or occupant violates this Lease Contract, apartment rules, or fire, safety, health, or criminal laws, regardless of whether or where arrest or conviction occurs; (3) you abandon the apartment; (4) you give incorrect or false answers in a rental application; (5) you or any occupant is arrested, charged, detained, convicted, or given deferred adjudication or pretrial diversion for (i) a felony offense involving actual or potential physical harm to a person, or involving possession, manufacture, or delivery of a controlled substance, marihuana, or drug paraphernalia as defined in the Texas Controlled Substances Act, or (ii) any sex-related crime, including a misdemeanor; (6) any illegal drugs or paraphernalia are found in your apartment; or (7) you or any occupant, in bad faith, makes an invalid habitability complaint to an official or employee of a utility company or the government.

Eviction. *If you default, we may end your right of occupancy by giving you a 24-hour written notice to vacate. Notice may be by: (1) regular*

As the section of the TAA lease above indicates, you may be evicted if any of these circumstances occurs. If you are in default of your lease agreement you may also have to pay late fees and your landlord may submit any past due payments to a collection agency.

22. What should I do to protect myself when I move out?

Make sure you send notice to your landlord that you will be moving out by the deadline stated in your lease agreement. Provide your landlord with your forwarding address for the return of your security deposit. You should also document the condition of the property before you move out. If possible, you should take pictures of the property when you move out to show the condition in which you left the property. That way you can prove you did not cause any damage the landlord may deduct from your security deposit.

22. Where can I go to learn more?

The Texas Attorney General's website has additional information about landlord and tenants.

You can find the Attorney General of Texas' website at the following address:

<https://www.oag.state.tx.us/consumer/tenants.shtml>. The Texas Young Lawyers Association and

the State Bar of Texas have created a Tenant's Rights Handbook which is an excellent resource

for first time tenants. You can find a copy of the handbook on the web at the following address:

<http://www.texasbar.com/Content/NavigationMenu/ForThePublic/FreeLegalInformation/ConsumerTenantRights/Tenants'RightsHandbook.pdf>.

CHAPTER 4 - PERSONAL PROPERTY :
Taking Care of Your and Others' Stuff

1. How and why should you consider documenting all of your personal property and updating that list regularly?

Most people do not really know what or how much personal property they own. Without looking, attempt to list all of your personal possessions such as electronic equipment, jewelry, and automobiles. Do you think your list is accurate? More than likely you have omitted objects. Imagine if you had to list all of your personal property after an event such as a fire or robbery. Due to such a stressful situation you would probably forget even more property. Therefore, it is a good idea to compile an inventory of all your personal property that provides detailed information regarding your assets. In the event of a fire or a robbery, such a list will help in filing insurance claims or informing police of the property stolen. Detailed information such as serial numbers on electronics and cars will assist police in locating the property and proving that you owned such property. Videotaping each room, closet, etc. is also a good idea. In case of a disaster that destroys your home, you should not leave a list or videotape of property in your home. Instead, consider placing it in a banker's box, uploading it to an Internet storage space, or leaving it with a trusted family member.

In conducting your personal property inventory, be sure to take photos of collectibles, art, jewelry, etc. In the event of a disaster, having a detailed inventory will help you file an insurance claim more quickly and accurately and will ensure that any payments you are to receive are timelier. Making sure that serial and model numbers of high-priced items such as televisions and automobiles are included in your inventory is important because under many insurance policies, you will likely be required to show proof of ownership. Having the serial and model numbers plus photographs may provide this proof.

2. If you hit your neighbor's dog by accident with your car, are you responsible for paying the veterinarian's bill?

The answer to the above question depends on where the accident occurred. If you should hit your neighbor's dog by accident when you swerved into the neighbor's yard, then it is likely that you will be responsible for paying for the veterinarian's bill. However, if your neighbor's dog runs into the middle of the street where you accidentally hit the dog with your car, you are not necessarily responsible for paying the veterinarian's bill. This is because the dog was outside of the area in which it belonged and the owner had a duty to prevent the dog from running into traffic where accidents might occur. In fact, it is possible that the dog's owner might be responsible for any damage caused to you or your vehicle.

3. What can you do if the dry cleaners ruin your clothes?

As with so many things, the answer depends greatly on the facts and circumstances. Most dry cleaners have a liability waiver on the ticket with regard to clothing damaged as a result of the cleaning process. So, often it is difficult to recover any damages from the dry cleaners that ruined your clothing. However, if the damage is egregious or the dry cleaners obviously should have known that a certain procedure would damage clothing, your chances of

obtaining a recovery are greater. Even if you do obtain compensation, it will likely be reduced according to how old the clothing already was when it was ruined.

As a useful rule, you should check to see if your dry cleaner is a member of any sort of association, such as the Better Business Bureau, or an association regulating the dry cleaning industry. If so, such an association might have rules assisting in determining damages. Further, a dry cleaner might be more likely to reimburse for the damage done if he does not want to lose accreditation with such association. Go here to search for the dry cleaning business: <http://www.bbb.org/us/consumers/>. Complaints can be filed online.

4. Is your employer liable if your purse or wallet is stolen while you're at work?

In most cases, your employer is probably not liable if your purse or wallet is stolen while you are at work. However, your employer may be liable if the employer requires you to remove all personal effects and store them in a particular area. At this point, the employer may have taken on the duty to ensure the security of the area and the safety of your personal property.

5. What could happen if you buy stolen property by mistake?

Generally, knowingly buying stolen property is a crime known as theft by receiving. In some instances, such knowledge can be inferred when one buys property under such circumstances that require one to inquire whether such property was stolen. However, if a person genuinely buys stolen property by mistake, generally, the only ramification is the property is returned to the rightful owner.

6. How can you avoid buying stolen property?

As with most things in life, if it seems too good to be true, it probably is. If the price seems too low, then you should consider that the property might be stolen. In order to avoid purchasing stolen property, you should probably purchase only from known, reputable sellers. However, if you do purchase from unknown vendors or individuals, you should require proof of ownership of the property. In the case of an automobile, always request to see the previous bill of sale or title to the vehicle.

7. If your friend borrows a watch from you and then it is stolen or she loses it, is your friend responsible for replacing it?

Your friend would be responsible for replacing it if she did not take all reasonable care in preventing the property from being stolen. For instance, if your friend left the watch unattended in a public place, such actions would not be reasonable and your friend would be liable to replace the watch. However, if your friend took all possible precautions to prevent the watch from being stolen such as placing it in a security deposit box at a bank and the watch was stolen from the bank, more than likely your friend would not be responsible for replacing the watch.

8. What should you do if someone borrows something from you and then refuses to return it?

If someone borrows an item and you agree to lend it, they have your consent to possess the item. However, if you request they return the item, then such consent ceases and they have placed you on notice that they intend to claim some sort of right or ownership in the item. Legally, you have the right to have possession of the item in question. Therefore, you should consult an attorney if the item in question is worth a lot of money. However, you may also consider filing a claim in small claims court (without an attorney) seeking the return of the property. In doing so, you will have to prove that you own the item in question. In some instances, their continued possession of the item without your consent can constitute a crime.

9. What if a person promised to give you something but then instead gave it to someone else; are you entitled to it?

In most situations, if the item is truly a gift, then you are not entitled to the item in question. However, if someone promised to give you something in exchange for a promise by you to do or not to do something, you may be entitled to the property. In this situation, you may have an enforceable oral contract. However, if the other person promised to sell you a good worth more than \$500, then the contract must be in writing. If it is not in writing, such an oral contract is not enforceable.

10. What if you find a wallet with \$100 in it but there is no identification in it and no one is around when you picked it up; can you keep the money?

Typically, there are three types of found property: “abandoned” property, “lost” property, “mislaid” property. Abandoned property is property discarded with the intention of terminating ownership. Lost property is property unintentionally left because of carelessness or inadvertence. Mislaid property is property intentionally left in a place where the owner can find it and the place is later forgotten. The finder of abandoned property has a right of possession since the true owner had no intention of continued ownership. The finder of mislaid or lost property has a right of possession against everyone except the true owner. In this case, the wallet is probably lost and you have a right of possession against everyone except the true owner. Thus, if the owner cannot be located or if a purported owner cannot prove ownership, you can keep the money. However, if the owner can be located or a purported owner proves that he or she is the rightful owner, then you must return the property to such person.

11. What if you plan to sell your video game system for \$150, should you prepare a written agreement for you and the buyer to sign?

While it is not necessary to prepare a written agreement to sell your video game system, it might not be a bad idea to prepare some document if you have warned the buyer that the video game system may have some issues or if you are receiving payment in installments. Further, it might not be a bad idea to evidence the transaction. This will protect both you and the purchaser. The purchaser further will later be able to prove ownership of the video game system.

12. If you own personal property and someone else also owns it along with you, can you sell it and keep the proceeds without the other owner’s permission?

Typically, you may not sell property owned jointly or as tenants in common and keep the proceeds without the other owner's permission. While you may sell certain property, the proceeds typically must be divided. If you attempt to keep such proceeds, the other owner may request an accounting of the proceeds and proceed with a claim in a court of law. In some cases, you could be accused of a crime.

13. What is a "lien," and can you sell or give away property that has a lien on it?

Technically, a lien is a legal right or interest that a creditor has in another's property lasting until the payment of a debt that it secures is satisfied. Essentially, a lien is a right that another has in your property granted either by law or an agreement with the creditor that allows the creditor to seek certain remedies including obtaining your property and selling it to pay back a debt. One common example occurs when you purchase a car with a loan. Most times the lender will file a lien on the car. Should you fail to pay the loan, the lender may exercise certain rights such as repossessing the car and/or selling the car to repay the loan.

If a piece of property has a lien on it, the property may be sold or given away, but the lien will remain on the property. If the loan is not repaid, the lender may have the right to repossess the property from the new owner. Thus, you should always be wary of purchasing property that has a lien on it. Also, you should be aware that sometimes lenders place certain restrictions in the loan agreement regarding the sale or transfer of the property on which there is a lien. You should carefully review any loan document to see if there are provisions restricting the sale or transfer. If so, you may not be able to sell or transfer the property freely. If you attempt to sell, damage, or move, secured property across state lines when you know the creditor plans to repossess the property to satisfy your debt, you could be charged with the criminal offense of Hindering Secured Creditors.

14. Can creditors ever take your personal property and sell it without your knowledge?

Typically, you will have notice if creditors attempt to repossess personal property and sell it. However, creditors usually do have a right to repossess property if you default on the payment of a note or loan. You should know that they cannot repossess your personal property through the use of force. If you tell a person to stop their repossession, and they use force to repossess the item, you should contact an attorney immediately. The creditor and/or the repossession company could be liable to you for damages and attorney's fees. Should you believe your property to have been repossessed in error or unjustly, you should obtain legal counsel.

CHAPTER 5 - YOUR CAR: PART I:
Buying It and Repairing It

1. What are some tips for buying a car?

Remember that after buying a home, purchasing a car is one of the largest purchases the average consumer will make. Therefore, it is best to plan and prepare for this expense. Before arriving at the dealership, consider the amount you can afford to spend on a car (including total price, monthly payment, sales tax, gasoline, insurance, and license plate expenses). Research various makes and models of cars, and narrow down the type of car and the particular options that interest you. Research car prices by using the Internet, and comparison shop at different dealers. There is a good deal of information obtainable through consumer-buying guides and through the local newspaper. Choose a reputable dealer. Friends and relatives will likely have suggestions on who is and who is not a reliable dealer. You should also pre-arrange financing before arriving at the dealership.

Upon reaching the dealership, do not forget that the salesperson's goal is to make money. You have the ultimate bargaining position—you can walk away from the dealership at any time. If you feel that the salesperson is pressuring you to make a decision, you can always leave the dealership.

When test driving a car, be sure to test drive it in a variety of road situations, including on hills, in busy intersections and on the highway. This will allow you to get a feel for the handling of the car in a real environment. It is likely that the dealer will require that you provide him with a copy of your driver's license in order to take the car on a test drive. Do not consent to a credit check until you have chosen to make a purchase. Credit checks may affect your credit history. Plan to negotiate a price; dealers often are willing to bargain. Look closely over the warranties to see what services, parts and costs are covered. Ask for written information about any extended warranty options. You will want to review the terms of the warranties and know the additional costs.

If you are going to trade in your current vehicle, have an idea of what its value is. Kelley's Blue Book and the newspaper classified advertisements are two excellent sources for this information. It is a good idea not to mention that you want to include your trade-in until the price for the car is negotiated. It is also important not to let anyone pressure you into buying a vehicle you either do not want or cannot afford. Finally, do not sign any documents that you do not understand. Get copies of all documents before you leave the dealership; do not let them mail them to you later.

2. What warranties will you receive if you buy a car?

A new car will probably come packaged with certain express and implied warranties. One express warranty covering the purchase of a new car is the car manufacturer's express limited warranty. The limited warranties vary depending on the type of car but will typically cover your new car's parts against defects for a determined amount of miles or years (typically 36,000 miles or three years), whichever occurs first. Before you purchase your vehicle, be sure to ask the

dealer about the specific terms of this type of express warranty. Make sure you obtain a copy of the warranty terms.

For new car purchases, a buyer will usually have the option of purchasing an extended warranty from the dealer for an additional charge. Each dealership has different options for extended warranties, so be sure to ask about the salesman about the various types of coverage. For example, most dealership extended warranties require that covered repairs be made by the dealership or an approved repair shop.

If you do not wish to purchase an extended warranty from the dealership, you may have the option of purchasing an after-market extended warranty from a third-party company. You will want to make this decision prior to purchasing the car, however, as there may be a time limit on purchasing the extended warranty from the dealership. Your insurance company may have information regarding these types of warranties.

If you are purchasing a used car, the original manufacturer's warranty and any extended warranties may still cover your car if those warranties are transferable and if the car has not exceeded the mileage or time limit imposed by the warranties. When purchasing a used car from a used car dealer, federal law requires that the dealer post a buyer's guide on the car window. The buyer's guide contains information about your car, including whether the car comes with a warranty or is being sold "as is." This law does not apply to individuals who sell their used cars. You should inquire from the seller as to whether the used car you are purchasing will include the original warranty or any extended warranties that were purchased by prior owners before you make the purchase.

In addition to express warranties, your car may also come with certain warranties that are implied. The implied warranties of merchantability and of fitness are not written into the sales contract but are implied by law. Unless excluded or modified by a contract, the sale of a car by a dealer includes an implied warranty of merchantability, that is, that the car is good for the ordinary purpose for which it was purchased and that it will operate properly given its age and condition. This warranty will only apply in a transaction between a buyer and a merchant car dealer. It will not apply to a transaction between a buyer and a non-dealer.

If the car dealer is aware that you are purchasing a car for a particular purpose, and you are relying on the car dealer's judgment in making your purchase, the implied warranty of fitness will apply to your situation. The implied warranty of fitness is essentially a guarantee from the dealer that the car will serve that particular purpose. These implied warranties can be waived by contract. For example, if a car is sold "as is," then the implied warranties will not apply. If you purchase a car "as is," then in most situations you will be responsible for any needed repairs.

3. What if you buy a new car and it turns out to be a "lemon?"

When a new car has undergone repairs for the same problem four (4) or more times, with two (2) repair attempts within a 12 month period or 12,000 miles following original delivery to

an owner, which ever occurs first and the next two (2) or more repair attempts falling within the next 12 months or 12,000 miles and the problem continues to exist, it could be designated a “lemon,” and the manufacturer may be required to either replace or buy back your vehicle.

Generally speaking, the “Lemon Law” applies only to new cars registered within Texas to a Texas resident. Only non-conformities that substantially impair the use, value, or safety of the car are covered. If the same non-conformity remains despite four (4) repair attempts, or if the vehicle is in the shop for more than thirty (30) days, or if the vehicle undergoes two (2) repair attempts for a non-conformity that creates a serious safety hazard within a 12 month or 12,000 mile period, the vehicle probably is a “lemon.” If you have a “lemon” but are not sure what to do, contact the Texas Attorney General’s office or a lawyer for help.

4. What if you buy a used car and it turn out to be a “lemon?”

There is no used car “Lemon Law” in Texas. However, if the car seller has misrepresented material facts about your car and you have suffered damage as a result, you may have a cause of action against the seller. In this event, you should contact a lawyer for further guidance.

5. Where can you get the money to buy a car?

While you can pay cash for a car, given the amount of money involved it is more likely that you will be borrowing the money to pay for the car. Loans can be acquired through a bank, the dealer, a finance company, or a credit union. Check to see which has the lowest interest rate. It is best to arrange for financing before visiting the dealership.

6. What are your rights if you put down a deposit on a car and the dealer then sells it to someone else?

If you place a deposit on your car but the dealer sells the car to someone else, the dealer must refund your deposit. Be wary of dealers who ask for a deposit. In all likelihood this is a pressure sales tactic. A deposit should only be necessary in the event you are purchasing a unique or one-of-a-kind vehicle.

7. Can a repair shop charge more than the estimate?

Yes. An estimate is just the repair shop’s best guess at how much the repair will actually cost. It is your responsibility to get a written estimate. The repair shop may not be bound by the written estimate, but ask them to call you and get authorization before they exceed the amount of the estimate. Carefully read any repair order before you sign and ask the repair person to explain anything you do not understand. Ask for an itemized bill, after the transaction is completed. Also, it is a good idea to have a repair shop in mind before there is a problem with your car.

8. Can the repair shop charge for diagnosing a problem before an estimate?

Yes, but on the front end how much the diagnosis charge will be, and make sure to tell the repair shop not to make any repairs after the diagnosis without calling and asking for your permission to do so.

9. What if you take your car to the repair shop to fix a problem and they do other work as well without your permission, must you pay for all of the repair work?

This really depends on the particular facts of the situation. In a typical situation, you do not have to pay for unapproved work, and you have the right to ask that your bill be adjusted accordingly. When leaving your car with the dealer, you may be asked to sign paperwork that gives the repair shop the authority to make repairs. Be sure to read the paperwork that you are signing. If you do not want the repair shop to make repairs, make sure that this is clearly written in the paperwork. It is sound practice to request that the mechanic diagnose the problem first, and then contact you and provide a cost estimate before making any repairs. While you may be required to pay for the labor costs of diagnosing the problem, you will also have the option of taking your car to another mechanic for a second opinion.

10. If you take your car in for minor repair work and the repairman causes additional damage, can you be held responsible?

You could be responsible for the damage if you know about the damage and choose to not do anything about it. If you have any questions about the mechanic's repairs or any new damage that you discover, you should speak with the mechanic or the repair shop manager before leaving the repair shop or as soon as you discover the problem. Depending on the nature of the damage and if the repair shop assumes fault, the repair shop may choose to repair the damage if minimal, or if the new damage is substantial, may choose to file a claim against its insurance policy to cover the cost of the repairs.

If the repair shop denies responsibility, you may be faced with filing a lawsuit against the repairman and his shop. You will want to document the specific events and the order in which the events occurred. You will also want to obtain cost estimates from several repair shops in the area. If you were referred to this particular shop by your insurance company, you should call your local insurance company representative to make them aware of the problem.

11. What are some ways to avoid car repair rip-offs?

Go to a reputable dealer and take this Handbook or other consumer guide information with you. If you do not feel comfortable with the situation or with the salesperson, leave. If it sounds too good to be true, it probably is. Do not let the salesperson apply high pressure tactics on you, and make sure all terms are discussed up front in understandable detail, and do not sign anything until you understand everything. It might be a good idea to ask your family members who they use and to even take an experienced person with you. Be sure to research what repairs

typically cost and the average age that certain repairs for wear-and-tear are usually done on your make and model.

12. Can you get your car back even if you disagree with the repair shop on the amount of the bill?

Yes, but generally you must first pay the bill. If you cannot work out an agreement with the repair shop, you might want to consider filing a claim in court. In the event you do this, make sure to have an experienced car repair person who will testify on your behalf as to why the total amount is incorrect.

13. What happens if you have an accident while driving a rented car?

It depends on the contract that you have with the rental company. Rental companies offer optional (and expensive) insurance which could be used in addition to your personal insurance. In the event you have not purchased the optional insurance, your insurance (or the person with whom you had an accident) may be the one to cover the damages. Call your insurance and credit card companies to see if they insure cars that you rent so that you do not pay for unnecessary coverage and are not left without any insurance at all if you refuse the optional coverage. Call 911 when you have an accident and let your insurance agent know. It is important not to admit fault at the scene of the accident, as well.

14. What record do you need in order to sell your car?

You need the title to the automobile, and you will need to make a bill of sale for the individual purchasing the car.

15. What are some precautions you should take when selling your car?

Remove any documents from your car before the sale. Also, as soon as you sell the car, have the insurance on it discontinued. Have a bill of sale clearly defining who is buying and who is selling, the selling price of the car, how many miles the car has, and whether or not there are any warranties being provided (recommended if a used car). Honesty is the best policy when discussing the condition and history of the car.

16. If you sell your car to someone, do you have to give any warranties?

Texas law requires that a car seller provide the car buyer a written disclosure of the cumulative mileage registered by the odometer; or a written statement that the mileage amount shown on the odometer is incorrect if the seller knows that the mileage registered by the odometer is incorrect.

CHAPTER 6 - YOUR CAR, PART II:
Driving It and Wrecking It

Getting (and Losing) Access to the Open Road

1. Is driving a right of privilege?

Driving is a privilege. In Texas, you can lose your driving privileges for a number of offenses, including, but not limited to: being convicted of driving under the influence of alcohol or drugs; being convicted of the underage consumption, manufacture, or transportation of alcohol, or other intoxicating substance; refusing a request by a law enforcement officer to be tested for alcohol or narcotics intoxication; leaving the scene of an accident in which you are involved without identifying yourself; being convicted of a “hit-and-run” accident; being held in contempt of court; being convicted of failing to pay for gasoline (in other words, driving off after you fill up); giving false information when you apply for a driver license; failing to show proof of financial responsibility or failing to settle a financial judgment made against you for damages resulting from a motor vehicle crash; attempting to change the information on your license or using another person’s license when attempting to purchase an alcoholic beverage; failing to appear for re-examination when requested to do so by the Texas Department of Motor Vehicles; using a motor vehicle to commit a felony or cause the death of anyone in a motor vehicle crash; being convicted of using fraudulent license plates, vehicle registration, or inspection stickers; being convicted of illegal street racing; purchasing cigarettes or alcohol for minors or serving alcohol to minors; being a convicted sex offender; and allowing another person to use your driver license.

2. If you do not already have a driver’s license, how do you get one?

In Texas, if you wish to obtain a driver’s license, you must first complete a driver education and traffic safety course approved by the Texas Education Agency. Before you are able to complete the driver education and traffic safety course, you will be issued an instructional permit. This permit will be issued after the driver has successfully passed a six-hour classroom driver education course approved by the Texas Education Agency, each part of the driver’s education examination (other than the driving test), and completed the classroom portion of an approved driver’s education course. An instructional permit entitled the holder to operate a vehicle on a highway while (1) the permit is in the holder’s permission, and (2) the holder of the permit is accompanied by a driver who is at least 21 years of age, has been driving for more than one year, and is sitting in the passenger seat of the car. An instructional permit will be necessary to complete the driving instruction portion of your driver’s education and traffic safety course.

Once all classroom and driving instruction hours required as a part of your course have been completed, you will need to pay a fee and apply to be given an operational driving test, which will demonstrate you are able to exercise ordinary and reasonable control in the operation of a motor vehicle. The driving test must take place no later than the 10th day after you application is made, and may be administered by the instructors from your driver education and traffic safety course.

You have three chances to pass both the written and operation portions of the driving test. If you do not pass after the third attempt, you will need to submit a new application accompanied by the required fee.

3. Do you need a special type of license to drive some vehicles?

To drive certain vehicles (large trucks, buses, limousines, etc.) you may need a special type of license or what is known as a commercial driver's license. A commercial vehicle is classified by weight or occupancy. If you are driving a vehicle in excess of 26,001 pounds or a vehicle that seats in excess of sixteen, you will probably need a commercial driver's license to legally operate it. To qualify for a commercial driver's license additional tests are required before obtaining what is referred to as a "CDL."

4. If you are going to attend college in another state, will you need to get a new driver's license and new license plates in that state?

If you intend to maintain your Texas residency, the answer is no. However, if you take up residency in the state where you are attending college (you may do this in order to obtain in-state tuition rates, or qualify for certain scholarships), you will need to obtain a driver's license and plates in that state.

5. What could happen to you if you are caught driving with an expired driver's license?

It is a misdemeanor to drive a vehicle with an expired license. For a first offense, at present you could be fined \$200. For a second offense within one year of the first, you could be fined \$200. For a third offense within one year of the first, you could be fined \$500 and imprisoned for up to 6 months or both.

If your license expires before you have a chance to renew it, you can do so within one year of its expiration. After one year, you must re-take the written examination.

6. What is the difference between having your license suspended and having it revoked, and under what circumstances can it be suspended or revoked?

If your license is suspended, it is usually for a specified period of time after which your license is eligible for reinstatement. The Texas Department of Motor Vehicles is responsible for enforcing the rules concerning suspension and subsequent reinstatement of an offender's driver's license. The department shall suspend a person's license if the department determines that the person: (1) has operated a motor vehicle on a highway while the person's license was suspended, canceled, disqualified, or revoked, or without a license after an application for a license was denied; (2) is a habitually reckless or negligent operator of a motor vehicle; (3) is a habitual violator of the traffic laws; (4) has permitted the unlawful or fraudulent use of the person's license; (5) has committed an offense in another state or Canadian province that, if committed in this state, would be grounds for suspension; (6) has been convicted of two or more separate

offenses of a violation of a restriction imposed on the use of the license; (7) has been responsible as a driver for any accident resulting in serious personal injury or serious property damage; (8) is the holder of an instructional license (discussed above) and has been convicted of two or more moving violations committed within a 12-month period; or (9) has attempted to use a motor vehicle to evade arrest.

A person is a “habitual violator” if the person has four or more convictions that arise out of different transactions in 12 consecutive months, or seven or more convictions that arise out of different transactions in 24 months, if the convictions are for moving violations of the traffic laws of any state, Canadian province, or political subdivision.

If your license is revoked, it can be permanent. Your license could be revoked for being convicted of driving under the influence of alcohol or drugs, using a motor vehicle to commit a felony, or causing the death of anyone in a motor vehicle crash.

7. Do bicycle riders have to follow the same traffic laws as motorists?

Bicyclists who ride their bikes on the Texas roadways are bound by the same laws as motorists. In addition, you should remember that, because bicyclists are bound by the same laws as motorists, you can be cited for operating a bicycle while intoxicated.

8. Do you need a special license to operate a motorboat?

You do not need a special license to operate a motorboat. However, if you are born after 1993, you must complete a boater’s education course and carry a valid Boating Education Card while operating a motorboat on Texas water. Visit the Texas Parks and Wildlife website for more information on boating education.

Car Insurance

1. Are you required to have automobile insurance?

You are required to have automobile insurance if you own and operate a vehicle in the State of Texas.

2. What are some specific questions that you should ask when shopping for automobile insurance?

You should ask questions such as:

- What coverage is available?
- What policy limits are available?

- Whether you are eligible for any discounts, for example, good grades, safe driving, multiple cars being insured under the same policy, or multiple types of insurance with the same company.
- What is the premium?
- What is the deductible (the higher the deductible, the lower the premium [and vice-versa])?
- What is the grace period if I cannot pay my premium on the date it is due?
- Who do I call if I need to make claim?
- What exclusions are contained in the policy?

3. What is uninsured insurance and who do you need it?

Uninsured insurance covers your losses if you are involved in an accident caused by an uninsured vehicle. It is not a mandatory coverage in the State of Texas. Your insurance company will ask you if you want this coverage and will collect an additional premium for it if you choose to accept it. It is a good idea to have uninsured insurance, and the coverage is usually not very expensive. After all, who do you think is going to have to pay for your damages (as a practical matter) if an uninsured person crashes into you and it is their fault?

4. What is underinsured insurance and why do you need it?

Underinsured insurance covers your losses if you are involved in an accident caused by another person and that person does not have enough insurance to cover all of your losses. As with uninsured insurance, it is not a mandatory coverage. Your insurance company will ask you if you want this coverage and will collect an additional premium for it if you choose to accept it. Like uninsured insurance, it is a good idea to have underinsured insurance, and the coverage is usually not very expensive. After all, who do you think is going to have to pay for your damages (as a practical matter) if an underinsured person crashes into you and it is their fault?

5. How do insurers set car premium rates and what can you do to keep them as low as possible?

Many factors affect how insurers set car premium rates, including your age, gender, the type of vehicle you own, and your driving record. If you own a type of vehicle that is prone to accidents, chances are your premiums will be higher. The same is true if you have traffic citations or accidents. You and your vehicle are more expensive to insure for these reasons, and your premiums will be greater. If you choose a practical vehicle and remain free of traffic citations and accidents, your premiums should be less.

6. Is it legal for you insurance company to cancel your policy after you have been involved in an accident?

Your insurer can choose not to insure you if you are involved in an accident. However, the insurer must give you notice of their intent to cancel your insurance.

Run-Ins (With the Law and Others) Along the Route

1. What are the possible consequences if you are involved in a hit-and-run?

If you are involved in an accident and leave the scene, you could be subject to a fine of not less than \$100 and not more than \$1,000. If someone is harmed or killed, the potential consequences could be much greater. If the violation is willful, your driver's license could also be revoked.

2. What are the consequences of not paying tickets that you receive?

If you fail to pay a ticket, a warrant may be issued for your arrest or your driver's license or license plate may be suspended, or both.

3. Is it against the law to hitchhike or pick up a hitchhiker?

Though picking up a hitchhiker is not illegal in Texas, it is never a good idea (because you are placing your safety at risk).

4. What could happen when you drive after consuming a drink or two?

If you drive after consuming a drink or two, you could be stopped by law enforcement authorities, lose your driving privileges, or worse, you could have an accident and injure yourself and others. There are stiff penalties for drinking and driving, including fines, possible prison, probation, loss of driver's license and alcohol education classes. Just don't do it.

5. What happens if you are stopped for driving under the influence (DUI)? What are the penalties?

If you are less than 21 years of age and your blood alcohol level is between .02 and .08, you could be ticketed for driving under the influence. If you are found guilty, your driver's license could be suspended or revoked, and you could face a substantial fine, possible jail time and/or both.

6. What happens if you are stopped for driving while intoxicated (DWI)? What are the penalties?

If you are any age and your blood alcohol level is .08 or greater, you could be ticketed for driving while intoxicated. If you are found guilty, your driver's license could be suspended or revoked, and you face the possibility of a \$1,000 fine and one year in prison for the first offense, as well as the suspension of your driver's license and required alcohol education classes. Subsequent convictions for DWI could result in higher fines and imprisonment.

7. Do you have to submit to a breathalyzer or blood test?

In Texas, the general rule is that a breath or blood specimen may not be taken for the purposes of determining if that person is operating a motor vehicle under the influence of alcohol or another intoxicating substance if the person refuses. However, there are several exceptions to this rule. The first is that many cities have instituted “no refusal” policies. These policies are temporary, and may be implemented around certain events or holidays (such as New Year’s Eve). The refusal of a breath or blood specimen on a “no refusal” period will result in your arrest. Once you are placed under arrest, Texas law presumes that if you are arrested for an offense arising out of acts alleged to have been committed while you were operating a motor vehicle in a public place while intoxicated, you consent to submitting breath or blood specimens to determine the alcohol concentration or the presence of a controlled substance in a person’s body.

Additionally, you may not refuse to submit to the taking of a breath or blood specimen if (1) there has been an accident, and the officer reasonably believes you were driving under the influence of alcohol or illicit drugs at the time of the accident AND the officer reasonably believes that as a direct result of the accident any individual involved in the accident has died or will die, has been seriously injured, or has been transported to the hospital for treatment; (2) you were driving under the influence of drugs or alcohol with a child in the vehicle; or (3) the officer has reliable information from a credible source that you have previously been convicted of driving under the influence of drugs or alcohol, driving under the influence of drugs or alcohol with a child in the , intoxicated assault, intoxicated manslaughter.

8. Do you have to take a field sobriety test if asked to take one by the police officer?

You must comply with a law enforcement officer’s request to a field sobriety test. Failing a field sobriety test does not automatically convict you of DUI or DWI, but it is evidence that you may have been drinking. If you refuse, your license could automatically be suspended or revoked for a number of months.

9. In general, how many drinks make you legally drunk?

It differs from person to person depending upon your gender, weight, tolerance for alcohol and other factors. When in doubt, stop drinking (and never drive).

10. What happens if you are stopped with an open container of an alcoholic beverage in your car?

Texas law prohibits drinking in a public place, including your car. It is a crime even if you are not the person driving.

11. What should you do if you are involved in a traffic accident?

If you are involved in an accident and your vehicle can be moved, you should determine whether it will obstruct the flow of traffic. If it does, you should move your vehicle to a safe location but should not leave the scene.

12. What if you hit an unoccupied vehicle or roadside property?

If you hit an unoccupied vehicle or roadside property, at the very least you should attempt to locate the owner of the vehicle or property or leave a written note on the vehicle including your name, address and telephone number. You should also call the police so that they can make a report.

13. What should you do if you accidentally hit and kill a deer crossing the road?

You should call a law enforcement officer and make a report of the incident. Your insurance company may not require a report, but it is always a good idea to have one.

14. If you witness a car accident, do you have a legal obligation to stop or to notify the police and make a statement?

You do not have a legal obligation to stop, but it is a good idea to notify police and make a statement. After all, if you were the one in the car accident you would certainly want someone to do that for you.

15. If you lend your car to a friend, who will be responsible if your friend has an accident with the car and injures someone or causes property damage?

You may be responsible if you entrust your vehicle to someone who you know has a bad driving record. Also, your insurance may have to provide coverage to your friend because you have given him permission to operate your car. This could cause your premiums to go up or your insurance to be canceled.

16. Can the passengers in your car sue you if you are in an accident and they are hurt?

Yes. Some states have guest statutes which prohibit such suits. Texas has abolished these laws. You are responsible to others in your car if they are harmed as a result of your negligence.

17. What happens if both drivers involved in an accident are at fault?

Usually, they are responsible for their own damages.

18. What if, after an accident, the other driver offers to pay you money if you will sign a release from further liability? Is this a good idea?

It depends upon the severity of the accident and your injuries. If you are not injured but your car is damaged and the money will compensate you for these damages, this may not be a bad idea. If you are not sure if the money will cover all of the damage to your vehicle, or if you are unsure as to the extent of any medical injuries, by all means you should not sign a release - let insurance do its job instead.

19. You are involved in a minor fender bender in which no one was cut or bruised . . . should you see a doctor anyway?

Injuries are not always immediate. If you are involved in an accident, no matter how minor, and not feeling well, you should seek medical treatment. Sometimes injuries will not manifest themselves for some time.

**CHAPTER 7 - PERSONAL INJURIES (OTHER
THAN CAR WRECKS):**
Getting Hurt - Who If Anyone Is Responsible

1. What are your legal responsibilities to persons who come onto your property, and how does it differ depending upon the circumstances and their purpose for being there?

As the owner or possessor of property, you have a responsibility to keep your property safe for anyone who may visit you. In Texas and other states, the degree of responsibility, however, depends largely upon the reason for the visit. Generally, homeowners are most responsible for the safety of invitees and least responsible for the safety of trespassers.

An “invitee” is one who enters another’s land with the owner’s knowledge and for the mutual benefit of both. It is someone that you may ask to visit you for some specific purpose, such as to buy something (a customer), to do some work for you (a repairperson), or to deliver something to you (a postal carrier). Premises owners and operated owe a duty to keep their premises safe for invitees against conditions on the property that pose unreasonable risks of harm. If an invitee is injured on your property, you may be held liable if you did not take steps to make your home safe or if you did not warn your visitor about the danger. Once an invitee is on your property you generally have a duty to use greater care than usual when performing potentially dangerous tasks.

A “licensee” is a person who goes on the premises of another merely by permission, express or implied, and not by any invitation. This is generally someone who comes onto your property for their own benefit, such as a door-to-door salesperson or someone soliciting for charity. Social visitors such as friends and relatives who come to visit are also often considered to be licensees. You generally have a duty to warn such visitors about any dangers that are not readily apparent, such as a slippery floor or a weak handrail on your stairs, and to use greater care than usual when performing potentially dangerous tasks.

A “trespasser” is someone who enters your property without your permission, such as a burglar or a person who is lost and stumbles onto your premises. You are generally not liable if such a person is accidentally injured on your property, but you do owe a special duty to children especially if an object or condition on your property is dangerous and likely to attract children. Also, if you know that someone repeatedly trespasses on your property you may have a legal duty to make that person aware of any hidden dangers.

So, the question of responsibility for a person’s injuries turns largely upon the specific facts involved. There are any number of possible scenarios that involve personal injuries resulting from events other than car accidents, and as you will see below the question of liability in any given scenario is often “maybe.”

2. If you invite some friends over to grill hamburgers in your back yard and one of them breaks his leg because he stepped in a hole in the yard, are you liable for his medical expenses?

A homeowner is not automatically liable for every injury that results in or around his home. Certainly as a host you have a duty to tell your guests about any dangerous conditions that are not already obvious. If you knew about the hole and if the hole was deep or hidden and

not obvious, then you might be held to be at fault (especially since you invited the guests over to your back yard). If you did not know about the hole, if the hole was not particularly deep or plainly apparent and obvious, then you might not be held at fault. If the hole was due to natural means (a sinkhole, etc.) as opposed to being manmade, this might also result in a less likely finding of liability.

3. If you slip and fall on a snow-covered sidewalk in front of a department store, is the store liable for your injuries?

Maybe, but not necessarily. In locations where there are frequent snow and ice storms, business owners cannot reasonably be expected to keep their sidewalks clear at all times. Because of this, people must assume the risks involved in walking on slick sidewalks. But this does not mean that the store owner always escapes liability for the person's injuries.

Specifically, if you want to sue you should consider such factors as whether it was snowing or sleeting when you fell (if so, this factor would favor the owner since they cannot be expected to clear the sidewalk during the storm), how long the snow or ice had been there (the longer the amount of time, the more this factor is in your favor), whether you were carefully trying to navigate the obvious hazards (if not, this would favor the store owner), and whether or not the building had defective lighting (if dark) or a defective draining system (if the hazard was not a natural condition this would make your case a stronger one).

4. If you slip and fall on a water puddle in the produce section of the grocery store, is the store liable for your injuries?

Maybe. Your chances of prevailing would depend upon a number of factors, including how carefully the store had attempted to keep the area dry. It is foreseeable in the produce section of a grocery store that there would be moisture in the vicinity; however, because of this fact it is also reasonable to expect that the store will recognize this and take steps to more diligently monitor these floors. The answer also depends upon how long the store employees had notice of the wet area. For instance, if the puddle had only been there for a couple of minutes, your chances of prevailing would be significantly less than if the puddle had been standing for a couple of hours. Another factor is whether you might have contributed to the accident. For instance, if you were hurrying down the aisle because you were late for work and were quickly buying a couple of things for later in the day, or if your water bottle was the one that actually spilled the water, then a finding of liability on the store's part is far less likely.

5. If you go bungee jumping and you sign an agreement not to sue, are you prevented from suing the business operator if you become injured?

Maybe, but not necessarily. The agreement you signed is generally known as a "release" or an "exculpatory clause." In deciding whether to uphold it, a court will likely review both the language of the agreement and the facts and circumstances surrounding your decision to sign it. Such agreements are generally not favored as courts do not like people to sign away their right to sue. Given the inherently dangerous nature of the activity involved, if you freely signed the

document and the language was easy to understand and squarely addressed the potential risks, a court may likely uphold the agreement. In other situations, such as when the activity involved is less dangerous and it is not as foreseeable that you could be injured, when you are under pressure to sign the agreement, or when the agreement is vague or difficult to understand, a court may decline to uphold the agreement thereby allowing you to sue for your injuries. The chances of successfully suing, however, still depend upon whether the party you are claiming was at fault was in fact negligent.

6. If you go to a major league baseball game and are hurt by a fly ball that goes into the crowd, can the baseball park be held liable?

Generally, no. The law assumes that fans at baseball games assume the risk of possibly being injured by a ball that is hit into the stands. Ballpark owners may be required to install protective fencing in the area immediately behind home plate since it is highly foreseeable that someone could be hurt sitting in that location, but the likelihood of injury in other areas is significantly less. If the spectator was injured because the fencing was torn down or inadequate, then in that instance a ballpark owner could possibly be held liable.

7. If someone breaks into your apartment and slips on a banana peel and breaks his arm, can he sue you for damages?

Generally, no. When a burglar trespasses onto your property and forcefully enters your home, he assumes responsibility for whatever hazards and dangers that he may encounter. You should not be held liable for any accidental injuries that a burglar might receive while on your property.

CHAPTER 8 - YOUR MONEY :
No One Will Care About It If You Don't

1. What are some good questions to ask before opening a bank account?

- Is a minimum balance required on the account?
- Can I earn interest on this account?
- Is there a charge for the monthly service for check processing?
- Is there a charge for printing checks?
- Is there a fee to use the automated teller machine (ATM) or get a banking agent's assistance by phone?
- Are the cancelled checks returned or are only images of the checks provided?
- What are the fees for bouncing a check (overdrafts) and stopping payment on a check?

2. How long does it take for a check to clear?

The process could be virtually instantaneous. Some merchants now use electronic check conversion. This allows the sales clerk to pass your check through a machine and immediately transfer the funds from your bank account electronically. (The actual check may be returned to you on the spot by the merchant.) A check could still be processed through the Federal Reserve's check clearing system and take as long as three days to clear, but you should never write a check without the funds in your account to pay the check.

3. What happens if my check bounces?

If you write a check for more than the amount you have in your checking account, the bank may handle it several ways. The bank may return the check to the person who attempted to cash it. That person may notify you and charge you a fee as a penalty in addition to collecting the face amount of the check. Writing a check when you do not have enough money in your account to pay it may be a crime, which could result in a fine or even prison. Or the bank may pay the check (and require you to make a deposit to cover the difference) and charge you a fee or a penalty.

4. What is the difference between Non-Sufficient Funds (NSF) and an Overdraft Privilege (ODP) offered by some banks and credit unions?

If there is not enough money in your checking account to pay a check presented for payment, your bank will generally stamp the check "NSF," return the check to the person who presented it to be paid, and charge your account a NSF fee which can currently exceed \$30 for each insufficient item. The person to whom the check was returned has a right to charge you a fee in addition to the one charged to your account by the bank.

If a bank offers Overdraft Privilege to you on your checking account and you do not have sufficient funds to pay a check presented for payment, the bank will generally pay the check (up to the overdraft limit the bank has determined), charge you a ODP fee which is similar in cost to

a NSF fee, and require you to deposit funds within a certain time period (usually 30 days) to bring your account balance positive. This feature is marketed as a way to avoid the embarrassment of repaying a merchant who has had your check returned and avoid paying the merchant's additional returned check fee. This "privilege" is very costly and should not be relied on to pay usual bills.

5. How do you go about getting your bank to stop payment on a check that you have written? Why might you stop payment?

If you have paid for a purchase with a check and the purchase is not what was promised (such as a paint job on your pick-up that starts chipping the day you bring it home from the body shop), you may ask your bank to stop payment on that check. Most banks will require you to sign a stop payment form that lists the number of the check that should not be paid and the person or business to whom the check was payable. Most banks will also charge you a fee to put a stop payment on a check. A stop payment is good for 180 days from the date requested.

Returning to your paint job, just because you put a stop payment on the check to the body shop does not mean that the body shop is limited in its ability to collect the money that it might believe you owe; however, a court will usually have to decide the matter.

A stop payment is best used in cases where you have written a check for payment of goods or services, and you believe that the person to whom the check is paid will not correct any problem with the item not delivered as promised or the person will not be around to correct the problem. Be very certain you are right before stopping payment on a check because you could owe more money if you improperly stop payment.

6. What should you do if someone steals your checkbook and forges your name on a check?

You should notify your bank immediately when you discover the theft of your checkbook and forged checks. Once you report a missing debit card, credit card, or checkbook, your bank will generally close your old account and open a new account with a new number to keep any forged check from clearing. The bank may ask you to sign a forgery affidavit to assist the bank in recovering funds paid due to the forged checks. The law limits your right to recover from the bank funds lost through forged documents if not reported to the bank within 60 days from the time the bank first notifies you of the forgeries. The time period starts at the time that you receive your first bank statement showing the forgery whether you look at your statement each month or not. The bank may not repay you for any fraudulent transactions made if you report outside of this time period. This is one very important reason why you should review your bank statement each month.

7. What are the potential consequences of writing a "hot check?"

In Texas, it is a punishable offense to write a check as payment for goods or services when you know you do not have sufficient funds in your account to pay the full amount of the

check. This is called writing a “hot check.” In Texas, the first offense minimum penalty for the Issuance of a Bad Check is a Class C Misdemeanor, which may result in a fine not to exceed \$500. If the hot check is written for child support payments, it is classified as a Class B Misdemeanor, which may result in a fine not to exceed \$1000 and/or confinement in jail for up to 180 days. In addition to the statutory penalties, the district attorney may collect a fine ranging from \$10 to \$75 dollars depending on the amount the check was written for; a fine totaling the amount of the check plus a \$30 handling fee; restitution of the amount of the check; and court costs (if any). The fine and jail terms increase significantly for subsequent offenses and higher check amounts.

8. What is the difference between a certified check and a cashier’s check? When might you need either?

A certified check is a check drawn on your personal checking account which has been certified by your bank to have those funds available when the person to whom the check is made payable presents the check for payment. The face of the check will have “certified” written on it by the bank accompanied by a bank officer’s signature. A cashier’s check is a check drawn on an account of the bank, not your personal account. A cashier’s check may not be dishonored by the bank unless it has been tampered with or is a forgery. When you ask the bank to issue a certified check, the bank will place a hold on the funds in your account which will be used to pay the certified check. Those funds will not be released to pay any other items presented for payment. When you ask the bank to issue a cashier’s check, the bank will withdraw the funds from your account and place those funds in the bank’s own account. If a cashier’s check is lost, the bank may require you to purchase a bond or other insurance policy before it will replace the lost cashier’s check.

You may need a certified or cashier’s check when paying for a large purchase such as a car or boat or when dealing with someone who is unfamiliar with you. Additionally, some locations, such as apartment complexes or rent to own centers, may require you to pay overdue rent and/or late fees by certified check. An authentic cashier’s check is probably safer for most transactions than handling large sums of cash. But keep in mind, cashier’s checks and certified checks may not part of a basic bank account, and you may have to pay a small fee to in order to get one.

9. What is a promissory note and how are they commonly used?

A promissory note is a written promise to pay a certain sum of money on a certain date with or without interest. They are used in most commercial transactions where you purchase an item and make payments over time. Promissory notes are also used when you borrow money from a bank (a loan) and agree to repay the money over time.

A promissory note will list the amount borrowed, the interest rate (if interest is charged), the date each payment is due, and the maturity date of the note. The promissory note will also state if there is collateral for the note or if the note is unsecured. An unsecured note is one where the lender relies solely on your ability to repay to make the loan. A note secured by property (whether it is a car, boat, furniture or home) usually has a lower rate of interest than an unsecured note, but if you do not make the payments on a note secured by your property, the lender may take your property (either by judicial or non-judicial process), and sell it to pay on the debt that you owe. If the lender does repossess and sell your property, you are still responsible to pay any balance leftover.

10. What is usury?

Usury occurs when a lender charges more than the legally permissible maximum rate of interest. The Texas Legislature has the authority to define interest and fix maximum rates of interest. However, in the absence of legislation fixing a maximum rate of interest, contracts cannot have an interest rate greater than 10 %. If the contract does not specify an interest rate, the Texas Constitution prohibits contracts with interest rates greater than 6%. When a contract provides for payment of interest in excess of the amount allowed by law, the unpaid interest shall be void and the borrower may recover twice the amount of interest paid to the lender.

A federal statute limits the applicability of the usury statute to banks and savings and loan, so they may charge interest that is higher than the rate in the Texas Constitution; however, the usury limitations still apply to car dealers who “tote the note,” furniture stores who finance their own sales, and individuals lending money to others. Interest can add a great deal to any purchase that you finance, so you should be sure that you are charged a legal rate.

11. What if your bank statement shows that you have \$1,000 more in your account than your own calculations say, can you keep this extra money?

First, you should re-balance your checkbook records to see if there is really \$1,000 more in your account. You may have a check that you have written that has not cleared your account yet for various reasons.

Secondly, if there is really \$1,000 more in your account, you should contact the bank to resolve the error. The bank may have deposited the money in your account because another depositor wrote your account number on the deposit slip in error. Mistakes sometimes happen, but you do not have the right to keep this money because of someone else’s mistake. It is not your money.

12. What are some safeguards that you should take for paperless banking?

Paperless banking may save trees and be good for the environment, but you still need to be responsible and watch for the following:

- Check your account at least weekly online to verify charges/debits and deposits made to your account. The law still limits some remedies you may have for wrongful charges even if you do not receive a paper bank statement each month.
- Keep your Personal Identification Number (PIN) and login passwords secret. DO NOT provide this information to anyone else because you could be responsible for their actions on your account.
- Keep your debit card and PIN separate. DO NOT write your PIN on your debit card or keep them together in your wallet. It is difficult to get a bank to reverse any charges made if you lose your wallet and someone uses your debit card and PIN to make a withdrawal from your account.

13. What happens if you have an arrangement with your bank to have certain bills paid automatically and the bank makes a mistake?

You should contact the bank as soon as you recognize a mistake has occurred. If the mistake is the bank's fault (and not the originator of the charge such as your cellular phone provider), the bank will generally investigate the error, correct the mistake and pay any late fees or charges that resulted from its error. Your rights under your arrangement with the bank, however, may be limited depending on the contract you signed with the bank for its Bill Payment Service.

Make certain that you keep a list of all of the bills you have enrolled in any online Bill Payment Service. Remember that if you lose your debit card, or need to change your account number for any reason, those bills will need to be moved to the new account. If you fail to move any bills, you will incur late fees and possible damage to your credit score.

CHAPTER 9 - CONSUMER RIGHTS :
Protection from Those Trying to Sell You Stuff and Loan You Money

The Meaning of Credit In General

1. What is credit?

Credit is any method of buying goods or services with an agreement to pay for them in the future. Some common examples of credit are credit cards, student loans, car loans, and home mortgages.

2. What is collateral?

Collateral is an asset that guarantees a loan. If a debt is not repaid, then the lender can take the collateral and sell it in order to repay the debt. For instance, if you borrow money to purchase a car, and then become delinquent in your car payments, the lender can repossess and sell your car to recoup all or part of the money you borrowed to buy the car. If the collateral does not sell for the amount of your debt, a lender may also be able to take action against you to recover the difference under certain circumstances.

3. What is the cost of credit?

Lenders do not give away money for free - there is a cost associated with wanting something now when you do not have the cash to pay for it now. In order to receive money to buy the item now, you must agree to pay the lender the amount you borrowed plus interest. Interest is most often expressed in the form of an Annual Percentage Rate (APR). The higher the APR, the more money you will have to pay back to borrow the money now.

4. How do you get credit?

There are several places that you may apply for credit: banks, credit card companies, and sometimes the store itself.

5. What information does a company need to decide whether to give you credit?

Most businesses that extend credit obtain information from a credit reporting bureau. Companies are looking for your financial history. Basically, they want to know how much debt you have and whether you can and are paying off your other debts in a timely fashion.

6. What is a credit bureau?

There are three major credit bureaus: Equifax, Experian and TransUnion. These companies compile the information creditors look at to determine your credit worthiness. Current contact information:

Equifax: www.equifax.com, P.O. Box 740241, Atlanta, GA 30374; (800) 685-1111

Experian: www.experian.com, P.O. Box 2104, Allen, TX 75013; (888) 397-3742

TransUnion: www.transunion.com, P.O. Box 2000, Chester, PA 19022; (800) 888-4213

7. What is a credit report and do you have the right to see one?

The credit bureaus produce what is called a credit report that shows your credit history. It provides information like where you have lived, how many credit cards you have, how much debt you are currently carrying, and if you have any delinquent or late accounts. That's why it is so important to pay your bills on time. The credit bureaus take this information and determine your credit score, which ranges between 200 and 900. The higher the number the more likely you will receive credit under good terms. It is also important to understand that when you apply for credit, the lender will conduct an inquiry with the credit bureau. Applying for credit at several different places will create multiple inquiries which can actually lower your credit score. It is prudent to conduct research to determine the best lender for your needs ahead of time instead of going through several different companies and allowing all of them to inquire about your credit history.

Under current law you are entitled to receive one free copy of your credit report from each bureau per year. If you would like other copies you will have to pay for those. You can go to www.annualcreditreport.com to request your free yearly credit report, or you can contact the credit bureaus directly. It is recommended that you check your credit report at least once a year for possible errors.

8. What can you do if you believe your credit report contains erroneous or misleading information?

If you do find errors on your credit report you should file a written dispute with both the credit reporting agency and the company or individual that reported the incorrect information. For more information on how to do this you can go to the Federal Trade Commission's website at www.ftc.gov or contact the Texas Attorney General's Office website at www.oag.state.tx.us.

It is important to note that there may be some differences in the information presented among the three major credit reporting agencies and there will be differences in your credit score between the three. Just because there are small variations in your credit score between the three agencies does not mean anything is wrong.

The higher your credit score is, the more likely it will be that you will be granted credit on better terms. A low credit score can have consequences that may surprise you, such as:

- having to pay a deposit
- being denied employment (especially in the banking field)
- being denied an apartment
- higher insurance premiums
- no loan or a loan at a higher interest rate

9. How can you establish a good credit history?

The best possible way to build a good credit history is to pay your bills and pay them on time. Avoid opening too many credit cards and other credit accounts.

Keep in mind that there are a number of businesses that claim that they can “repair your credit.” Most of these businesses are scams and should be avoided.

10. What rights do you have if credit is denied to you based upon information provided by a credit bureau?

Any time a lender views your credit report, you are entitled to view a copy of the report the lender used. If there is incorrect information on your credit report then you have the right to have that information removed.

11. What are some common loan terms that you may see in a loan application or agreement, and what do they mean?

Important terms may vary depending on what type of loan. A couple of terms that should be included on most loan agreements are the Annual Percentage Rate (APR) and the finance charge. Federal law requires almost all loans to disclose both the APR and the finance charge.

Annual Percentage Rate (APR): A standardized measure of the cost of credit expressed as a yearly percentage. The higher the APR the more you are paying to borrow the money.

Finance Charge: The total cost, expressed in dollars, to borrow a fixed amount of money. In other words, the finance charge tells you how much you will have to pay, including interest and fees, to borrow a certain amount of money.

If you have questions about a term in a loan agreement, ask someone that you know and trust. Ask questions until you are satisfied you understand. Take the time to shop around for the best credit available. You are entitled to take a credit offer with you to compare to another offer. But once you sign, you are probably bound to the terms.

12. What can you do if you sign a loan agreement and later realize that you misunderstood the terms?

There is generally no absolute right to cancel. Therefore you should be careful and read any agreement thoroughly before signing. However, you may be able to cancel the contract after you signed it if:

- (1) you were not legally competent to sign the contract;
- (2) you signed the contract as a result of fraud, misrepresentation, or misleading business practices; and
- (3) if the goods you bought were defective.

You may have other cancellation rights, and you should contact an attorney to discuss your options.

13. What does it mean to “cosign” a loan?

It is fairly common for lenders to want the parents or guardians of young borrowers to “cosign” for a loan. The young borrower does not have a long credit history and may not be on the best financial footing. A cosigner is liable for the debt in the event the young borrower cannot pay off the debt.

14. Can a lender have different rules for making loans to men, women or minorities?

No. Federal and State laws prohibit a lender from discriminating based on race, gender or ethnicity.

15. Under what conditions can a bank demand full and immediate repayment of a loan or take possession of collateral?

Most lending contracts have what is called an “acceleration clause.” If you miss a payment or if you are late on a payment, the bank may have the right to immediately demand full repayment of the loan.

If you are unable to pay the full amount of the loan, the bank can take possession of the collateral under certain circumstances. After taking possession of the collateral, the bank will attempt to sell the collateral to recoup the balance on the loan. A common example of this is home foreclosure. If you are in this situation, take a look at the Texas Young Lawyers Association’s Facing Foreclosure pamphlet at <http://tyla.org/tasks/sites/default/assets/File/37647ForeclosurePamphletLoRes.pdf>.

Credit Cards

1. How do credit cards work?

Credit cards are one of the most common forms of credit and are readily available to young people. Credit cards allow a person a monthly line of credit. At the end of each month, any charges to the card must be paid off or the company will charge the customer interest on the remaining unpaid balance.

Credit card interest is often very high, and it is not usually advisable to carry a balance beyond one month. For instance, if you charge \$1,000 at 18.5% APR and make only the monthly minimum payments, it will take you 11 years and \$1,987 in interest, in addition to the principal, to pay back the \$1,000 you borrowed. In other words, that \$1,000 television would actually cost you almost \$3,000 (not to mention probably break before the 11 years is up). Do your best to pay off the balance in full or at least as soon as possible. For great advice on how to choose a credit card, protect your identity when using one, reporting credit card theft, and filing a complaint against a credit card company, visit the Federal Trade Commission’s money matters website at <http://ftc.gov/bcp/edu/microsites/moneymatters/credit-cards.shtml>, or the Attorney General’s website at https://www.oag.state.tx.us/consumer/credit_repair.shtml.

2. What is the “grace period”?

The grace period is the time from when you purchase a good to when payment is due. With most cards, the payment is not considered due until your card's next monthly bill is due. During the grace period, the credit card does not charge you interest on the balance. Interest is not applied to balances paid off monthly.

However, some cards begin charging interest sooner than the one month billing cycle. You should not take out a card that does not have at least a 20 day grace period.

3. What should you look for in a credit card?

- a low Annual Percentage Rate (APR).
- no Annual Fee (some cards charge a yearly fee to use their card).
- a long "grace period" (at least 20 days).
- low fees. Some examples are late payment fees, balance transfer fees, over credit limit fees, etc.
- there are lots of different cards. You should try to find one tailored to what you need.

4. Why not use a credit card instead of checks or cash?

There is no legal difference between paying with a credit card, a check or cash. In some instances, using a credit card has perks such as cash back or airline miles. However, if you cannot pay off the balance of your credit card at the end of the month, then you will be paying expensive interest charges on the remaining balance which will probably not offset the benefits offered by the credit card company. It is usually best to only put on a credit card what you can pay-off at the end of the month.

5. What if you discover an error in your credit card bill?

Errors should be reported in writing as soon as possible to the credit card company. You have a limited time period to dispute errors so do not delay. Some credit card companies allow you to dispute your bill online.

6. What should you do if your credit card is lost or stolen?

Call the card issuer as soon as possible and report that the card has been lost or stolen. Follow up with a letter to the issuer that includes the account number, when the card went missing, and when you reported it to the issuer.

If you report the loss within two business days after you realize your card is missing, you may not be responsible for unauthorized use. However, if you don't report the loss within two business days after you discover the loss, you may be liable for unauthorized use up to a certain dollar amount. You also risk unlimited loss if you fail to report an unauthorized transfer within 60 days after your bank statement containing unauthorized use is mailed to you.

You are not liable for unauthorized Internet transactions where someone has stolen your account number, assuming you report the unauthorized use upon detection.

For tips on what to do if your wallet is stolen, see the Wallet protection toolkit at <http://www.creditcards.com/credit-card-news/identity-protection-tips-when-credit-card-is-lost-1282.php>.

7. Should you sign the back of your card?

Yes, sign it with a pen as soon as you get it. While some clerks do not check the signature, many do. You can also write “See ID” in the signature line. This will prompt clerks to check your driver’s license and will help prevent unauthorized use of your credit card.

Other useful credit card tips:

- Never lend your card to someone else.
- Keep your receipts. If there is a dispute you will be glad you had them. If you hate keeping up with paper receipts, you can take pictures of receipts with your phone and can upload them onto a designated computer file.
- Never give out your credit card information over the phone or on the internet, unless you initiated the transaction.
- Credit Card Offer Opt-out. Be weary of pre-approved credit cards which often come with high rates and fees. To slow down the number of “pre-approved” credit card offers you receive you can call (888) 567-8688 or go to www.optoutprescreen.com.

Debit Cards

1. What is the difference between a debit card and credit card?

While a debit card may look like a credit card, it is not the same thing. A debit card is linked to a checking or savings account at your bank or credit union. It is similar to writing a check. If you do not have enough money in your account and do not have overdraft protection, your transaction will be declined. You may be charged a fee for having insufficient funds.

2. What is overdraft protection and should I have it?

Most banks offer overdraft protection to their customers. If you spend more money than you have in the bank, the bank will cover the charge for a fee. Overdraft protection can be beneficial but it is also expensive. Banks presently charge fees as high as \$35 for a single overdraft item.

If you use your debit card for a \$1 soda and don’t have the funds in your checking account, the bank will pay the item and charge you a \$35 overdraft fee. Congratulations, you just bought a \$36 soda!

If you have overdraft protection, it is important to remember that it should not be used as a way to pay for things you cannot afford.

Money Problems

1. What do you do if you are behind on your bills?

If you are having troubles paying your bills do not ignore the problem.

If it is a credit card bill, stop charging things to your card. Contact the credit card company and notify them of the problem. They may be able to offer you a payment plan.

If the problem involves utilities such as water or electricity, you should contact the company as soon as possible. Most companies will be able to offer you an extension or some form of payment plan.

In order to get these debts paid off, you should trim your expenses. Plan a monthly budget, eliminate non-essential purchases, cut costs and stick to your budget. Live below your means. The FTC has great tips on budgeting, saving, and spending here: <http://ftc.gov/bcp/edu/microsites/moneymatters/managing-your-money.shtml>.

If you are unable to solve the problem yourself, you may want to talk with a credit counselor. A credit counselor may be able to negotiate better rates on your outstanding bills, as well as payment plans you can afford. Be careful of credit counselors that charge large sums of money for their services. If you have questions about a credit counselor, you can contact the Attorney General's Office. If you are considering modifying a loan in order to afford payments, visit the Texas Young Lawyer's Loan Modification Scam Pamphlet at: <http://tyla.org/tyla/assets/File/LoanModification2011.pdf>.

2. What is bankruptcy and when is it something that you should seriously consider?

Bankruptcy is a special court proceeding operated through the Federal Bankruptcy Court system. A fundamental goal of the federal bankruptcy laws is to give debtors a financial "fresh start" from burdensome debts. This goal is accomplished through the bankruptcy discharge, which releases debtors from personal liability from specific debts and prohibits creditors from taking any action against the debtor to collect those debts.

Bankruptcy is not something you should enter into lightly. For the average consumer, bankruptcy should only be considered if there is no other option to paying your debts. You should consult an attorney before deciding to file bankruptcy. Bankruptcy law now often requires debt counseling prior to filing for bankruptcy. For more general information, see the Consumer Bankruptcy booklet published by the Texas Young Lawyers Association at this website:

<http://tyla.org/tasks/sites/default/assets/File/37475BankruptcyBookletLoRes.pdf>.

3. What happens once you declare bankruptcy?

The most common form of bankruptcy is Chapter 7, in which the consumer's assets are liquidated to pay the consumer's debts. In Chapter 7 there is a court-supervised procedure by which a trustee takes over the assets of the debtor's estate, reduces them to

cash, and makes distributions to creditors, subject to the debtor's right to retain certain exempt property and the rights of secured creditors.

4. What can you keep if you declare bankruptcy?

The Bankruptcy Code allows an individual debtor to protect some property from the claims of creditors because it is exempt under federal bankruptcy law or under the laws of the debtor's home state. In Texas a debtor may choose to use the federal exemptions or the Texas exemptions.

An attorney should be consulted regarding exemptions, but here are a few things that are typically exempted: your house or homestead, a car that is not subject to a lien, your clothes and a limited amount of money. For a current list of exempt property, see the Texas Property Code at 42.002 at <http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.42.htm>.

5. What if anything can you do to stop calls and letters from creditors?

The Federal Fair Debt Collection Practices Act (FDCPA) protects consumers from harassment by debt collectors. Personal, family, and household debts are covered under the act. This includes money owed for the purchase of an automobile, for medical care or for charge accounts. Among other restrictions, a debt collector may only contact a person between the hours of 8 a.m. and 9 p.m. Debt collectors may not contact the consumer at his job if the debt collector is aware that the employer prohibits personal calls. A person may notify a debt collector in writing if he or she does not want any further contact with the collector. Once this notice has been received, the debt collector must stop all communications, except to notify the person that a specific action will be taken.

Creditors may not harass you, nor can they make threats that you will be criminally prosecuted or arrested. Contact an attorney if experience harassment from creditors.

Helpful Resources and Links - Government and Private

—The Texas Attorney General

Consumer Protection Hotline(800) 621-0508 P.O. Box 12548 Austin, TX 78711-2548 <https://www.oag.state.tx.u>

The Attorney General's Office deals with a wide range of consumer issues including charities, health care, antitrust, tobacco, environmental, public utilities and other areas. If you are having a problem with a company, you can file a consumer complaint with the Attorney General's Office. They can facilitate a resolution to the matter, refer to a more appropriate source for assistance, or otherwise provide you necessary information. Additionally, the Attorney General uses the Texas Deceptive Trade Practices Act, which prohibits unlawful, deceptive or unconscionable business practices. To read the act, visit <http://www.statutes.legis.state.tx.us/SOTWDocs/BC/htm/BC.17.htm>.

—The Public Utility Commission of Texas

1701 N. Congress Ave.
Austin, Texas 78701
(512) 936-7000
www.puc.texas.gov

The Texas Public Utility Commission regulates the rates and services of the public utilities in Texas, including phone, natural gas, water and electricity. The Consumer Protection Division works with customers to answer questions and resolve complaints about the rates and services of regulated utilities. For more information on filing a complaint, visit: <http://puc.texas.gov/consumer/complaint/Complaint.aspx>.

—The Better Business Bureau

1-800-482-8448
www.bbb.org (National website)

Research a business; find out how long it has been around and its track record of dealing with consumer complaints. If you have a complaint about a company, you can file the complaint with the BBB to see if the BBB can mediate the matter for you.

—The Federal Trade Commission

(877) FTC-HELP (382-4357)
www.ftc.gov

The FTC's Bureau of Consumer Protection works to prevent fraud, deception, and unfair business practices in the marketplace. The Bureau enforces federal laws that protect consumers, provides information to help consumers exercise their rights and spot and avoid fraud and deception, and provides consumers a forum to get information or file a complaint about fraud or identity theft.

—Find a Lawyer

Visit the Lawyer Referral Service of the State Bar of Texas to find a lawyer that will match your needs: http://www.texasbar.com/AM/Template.cfm?Section=Lawyer_Referral_Service_LRIS. You can also contact the service by phone at (900) 252-9690.

Common Scams and Schemes

A scam is a fraudulent scheme which is meant to separate a person from his money or property. Scammers often target the elderly, the uneducated or the desperate. Once a scammer has your money, you may have little chance of seeing it again. So, the best way to protect yourself is to try and recognize a scam before it happens to you. Here are a few signs you should look for:

- If it seems too good to be true, it probably is. Scammers prey on people's desire for a good deal, as well as their greed.

- They “need” your money now. Most scammers are trying to get hold of your cash as quickly as possible. Before giving away your money, make sure you are dealing with a legitimate business.
- High pressure tactics to act now. Scammers may say the offer is only open for a limited time, or they may say it is only available to a select group. Resist the sales pitch. If the offer is legitimate, it will still be there once you have thoroughly checked it out.
- Ask for details. Often scammers will not want to answer your questions about who they are, where they are or who their other customers are. If they will not answer or cannot answer, it is a good bet that the offer is not legitimate.
- If they say something is “free,” then you should obviously not have to send them money. If you have to send a shipping fee, a holding fee, or any other kind of “fee,” then whatever they are selling is not free.

Take a look at the FTC’s Sam Watch website to find out how to spot and report a financial predator: <http://ftc.gov/bcp/edu/microsites/moneymatters/scam-watch.shtml>.

1. Charities:

Most people have a soft spot when it comes to charities. Unfortunately, there are people out there that are willing to play on your sympathies in order to con you out of your money. Not only does this hurt you, but it also hurts legitimate charities that could have made good use of that money. Before making a donation check out to the charity, contact the Better Business Bureau and the Attorney General’s website relating to charity scams at <https://www.oag.state.tx.us/consumer/charities.shtml>. These organizations keep track of charities and how they operate. Here are some things to think about before giving your money:

- Does the charity publish how much money it raises and what it spends it on?
- Are you talking to the charity or a paid solicitor? If it is a paid solicitor, how much of your donation will actually reach the charity? Too often, much of the money that goes to a paid solicitor does not end up with the charity.
- Ask for information about what kind of projects this charity does? Do they have any information they can send you? Do they have a website? Find out as much as you can before you give.
- Find out how long the charity has been in existence.
- Be wary of high pressure tactics and emotional appeals. A legitimate charity can wait for your money until you have researched the charity.

If you do not have the money to give, do not give it. A lot of charities need volunteers. Your time is as valuable as your money.

2. Home Repair:

People who go door to door soliciting odd jobs around your house or yard may be legitimate or they may be trying to take your money. If they want money up front for the job or for supplies, think before you pay them in advance. Once you pay you may never see them again.

Before you hire someone, ask for references and actually check the references. Get the details of the work to be performed and the estimate of the cost in writing before you allow work to begin. Also, you need to confirm that they are insured and bonded. This will insure you that they will be able to compensate you for an incomplete or botched job. For more tips on how to save yourself from Home Remodeling and Repair disaster, visit: https://www.oag.state.tx.us/consumer/home_improvement.shtml.

3. Job Search or Scholarship Scams:

Be skeptical of any company that requires an upfront fee to locate a job or a scholarship. A legitimate job finder will only charge a fee once you are placed in a new job. Many charge the business, not you. Scholarship information is easily found using the Internet or contacting university financial aid departments. You should not have to pay for it. Beware of any company that offers you a guarantee that they will find you a job or a scholarship. For more information on the most common job related scams, see the FTC website at <http://ftc.gov/bcp/edu/microsites/moneymatters/jobs.shtml>.

4. “Phishing” scams:

Beware of any phone call, e-mail, or letter that asks for any personal information like your Social Security number, bank account number or birth date. If you did not originate the communication, the scammers may be trying to steal your identity. They may pretend to be with your bank, credit card company, or insurance company. They may ask for you to confirm your bank account number or other important information. Do not be fooled. If they are with the bank, they should obviously already have this information. For more information on Identity theft and what to do if you have become a victim, see the Texas Young Lawyers Association’s Identity Theft brochure at http://tyla.org/tasks/sites/default/assets/File/08_Identity_Theft_Pamphlet.pdf.

5. Travel Scams & Free Prizes:

Businesses that advertise “free” vacations are not usually free. If you have to pay any type of fee for a trip you “won,” then you have not won a trip. Often there are large up-front costs. If you are not careful, you may end up paying money and not even getting a trip. If you want to buy a vacation package, do your homework. Use a local travel agent or reputable online travel website and check out the business with your BBB and the Attorney General’s Office before paying any money for the trip.

6. Debt Settlement, Credit Counseling and Credit Repair:

There is an upswing in these types of businesses when the economy is in trouble. The main theme these scammers use is that they can fix your economic problems. Of course you have to pay them before they can get started. Often you do not get the results you were promised.

If you are having problems paying your debts, try contacting your creditors yourself first. The creditors may work with you. If this does not work, there are a number of non-profit organizations that will help you for little or no fee. If you need help finding a non-profit credit counselor you can contact the Attorney General's Office.

Do not pay high fees based on promises that your debts or interest rates will be lowered. Put your money to paying off your debts.

Do not pay money to companies promising to "repair" your credit. A company claiming to clean up your credit report by removing negative information from the report is lying to you. This is absolutely illegal. Remember, only incorrect information can be removed from your credit report. You can accomplish this yourself. Additionally, it is illegal for a credit repair company to take a fee before they actually complete the job. To help identify these types of scams, visit <http://ftc.gov/bcp/edu/microsites/moneymatters/dealing-with-debt.shtml>.

7. Work-at-Home:

This scam usually promises easy money while you work at home. Typically, the scammers require you to purchase something in advance before you can start your business. They may have you buy a "how to" manual or sell you an "exclusive" franchise. More often than not, the only person that makes any money is the salesperson. If you have a question about a work-at-home business, contact the BBB or the Attorney General's Office before you become involved.

Other General Consumer Information

1. What precautions should you take when buying items in the mail or over the Internet?

Both the mail and Internet make it easier to purchase goods and services from all over the United States, as well as from other parts of the world. They also make it easier for scammers to take advantage of you. Here are some precautions to take when buying something through the mail or over the Internet.

Do not respond to unsolicited e-mails. Do not respond to e-mail messages asking you to go to a website or click on a Web link and update your account information.

If you are concerned that an institution might really need to reach you, go ahead and contact them directly, but not via the e-mail message you received or the information on the letter. Look up their information from another trusted source.

You could consider using an intermediary service for your online transactions. Using a credit card is a good option. If something goes wrong, you at least have the option of disputing the charges and possibly getting your money back.

Some credit cards offer a service where they will give you a one-time only transaction number for online purchases. This way, your regular credit card number will not be provided to the company.

Look for signs of security. When you reach the point of payment or of sharing your personal information, the website should be secure. Most websites will indicate that you have reached a secure site. You should also look at the web address. Look for “https” in the address.

Do not pay outside the system. Fraudulent sellers will ask you to ignore the regular method of payment and wire them money instead. Or, they may want you to place money in what will turn out to be a phony escrow account. Do not fall for this scheme!

Check the seller’s reputation. You should check the company out with the BBB and/or the Attorney General if you are uncomfortable with doing business with them. Opt for a seller who has sold at least ten items and who has a high satisfaction rating. Most websites allow other buyers to post feedback on previous transactions; take a minute to read about other customers’ experiences.

2. If you buy something from a store and you bring it home and discover that it is defective, what can you do about it?

Many stores have a return policy. Before buying something you should check out what it is. Some stores allow the return of unused or unopened items regardless of condition.

Most stores should allow you to return defective items regardless of whether or not the item has been opened or used. Stores often limit the time in which an item may be returned. Some items have a warranty. Check the terms of the warranty to see what steps to take if the item is defective.

If the store does not allow you to return the defective item, before contacting an attorney you should consider contacting the Better Business Bureau or the Attorney General’s Office. Sometimes, the BBB or the AG can mediate a satisfactory result for both the consumer and the business.

3. What can you do about telemarketers calling you?

The National “Do Not Call Registry” allows consumers to limit the number of telemarketing calls they receive. The registry is run by the Federal Trade Commission. To sign up go to www.donotcall.gov or call 1-888-382-1222. Most telemarketers have one month to stop making phone calls to numbers that have been listed. The service is free.

If you continue to receive calls from covered telemarketers you can file a complaint with the FTC at www.donotcall.gov or by calling 1-888-382-1222. You will need to provide either the name or the telephone number of the company.

Some telemarketers block their number from your caller ID. This practice is illegal in the State of Texas. If this happens to you, you should file a complaint with Attorney General's Office.

C H A P T E R 1 0 - E M P L O Y M E N T :

Entering the “Real World” and Earning a Paycheck

Applying for a Job

1. What are some illegal types of interview questions, and why are they improper?

Title VII of the Civil Rights Act of 1964 and similar laws apply to all employers with 15 or more employees, including the government, employment agencies, and labor organizations. Those laws prohibit discrimination against employees and potential employees on the basis of certain protected characteristics.

Potential employers should not ask you questions related to those protected characteristics, including: your gender, race or color, national origin, marital status, family status (e.g., whether you have children or parents who require care and attention), religion, age, and medical or disability status, including pregnancy. In addition, potential employers should not ask you about your membership in or opinion of unions.

Questions on the above characteristics are improper because, typically, they are not related to your qualifications for a particular job. However, where one of the listed characteristics is a true job qualification (e.g., a job requires that you be at least 18 years of age), a potential employer may ask you specifically about that qualification. Regarding disability status, an employer may only ask whether you can perform the essential functions of the job, either with or without an accommodation. An employer may be required to make an accommodation for any disability you have if the accommodation is reasonable and does not impose an undue hardship on the company.

Some examples of illegal interview questions are:

- What country are you from?
- Are you pregnant? Do you have young children?
- How old are you? When were you born?
- What does your husband/wife do for a living?
- Do you belong, or have you ever belonged, to a union?
- Where do you go to church?

2. What are some legal types of interview questions?

Information about you may be requested either during an interview or on a written application form. Potential employers are allowed to ask you information that is relevant to your qualifications for a particular job or information that may indicate your potential performance on the job. All questions asked of you should be job-related. For example, potential employers may ask whether you will be able to meet the job's attendance requirements. They may also describe or demonstrate job duties and ask whether you

will be able to perform those duties (with or without a reasonable accommodation for any disability you may have).

Some examples of legal interview questions are:

- What previous work experience do you have?
- Are you a citizen of the United States? If not, can you furnish proof of your legal right to work and remain in the U.S.?
- Can you work the hours required for this job? Do you have any obligations that would prevent you from working the required hours or any required overtime?
- If you are applying for an interstate commercial driving position, are you at least 21 years of age?
- How often, in the last year, have you missed work?
- What are the names and positions of any relatives employed by this company?
- To what organizations do you belong that are related to this job?
- Can you perform the essential functions of this job with or without a reasonable accommodation?

Employers may also ask you questions about previous criminal convictions that are reasonably related to a particular job.

3. What if you lie on your job application and your employer later finds out about it?

Most employers have a policy of terminating employees if they find out that the employee made a misstatement on his/her job application. No employer values dishonesty, and a false statement on a job application may indicate that you are not an honest person.

Discrimination, Sexual Harassment and Unsafe Working Conditions

1. What are some types of illegal discrimination?

There are federal, state, and (in some places) local laws prohibiting discrimination. In general, it is illegal for employers to discriminate against you on the basis of your race, color, gender, religion, national origin, age, or disability, including pregnancy. In many locations, it is also illegal for employers to discriminate against you on the basis of your sexual orientation or marital status. Employers may not discriminate against you with regard to hiring, promotion, job assignments, pay or other terms or

conditions of employment. To find out more about employment discrimination, visit <http://tyla.org/tyla/index.cfm/projects/youre-hired-now-what/>.

Discrimination may be in the form of unwelcome physical or verbal conduct that is offensive, disparaging or defamatory and is based on a protected characteristic. Such behavior may make you feel uncomfortable at work or may interfere with your ability to perform a job. The posting or distribution of offensive, disparaging and/or defamatory cartoons, drawings, or any other material which negatively portrays a protected characteristic is also illegal.

2. What is sexual harassment and what can you do about it?

Sexual harassment is a form of sex discrimination which is prohibited by Title VII of the Civil Rights Act of 1964. Sexual harassment occurs when unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

The following facts about sexual harassment are important to know:

- The harasser's conduct must be unwelcome.
- The victim and the harasser may be either male or female. The victim does not have to be the opposite sex of the harasser.
- The harasser may be the victim's supervisor, a supervisor in another area of the company, a co-worker, a customer of the employer, or another non-employee that the victim comes into contact with on the job.
- The victim does not have to be the person who is actually harassed but may be anyone who witnesses and is adversely affected by the offensive conduct.
- Unlawful sexual harassment may have occurred even though no one has been fired or suffered a monetary loss.

3. What should you do if you believe that you have been illegally discriminated against or harassed?

In situations of discrimination or harassment, it is often important for you to inform the offending person directly that the conduct is unwelcome and should stop. You should then contact either your manager or the company's human resources department to report the conduct and request an investigation. If those avenues do not produce results, you should use any formal complaint mechanism or grievance process that the company has available. If the company still does not handle the situation appropriately, you may contact the Texas Workforce Commission Civil Rights Division or the U.S. Equal Employment Opportunity Commission (EEOC) at www.eeoc.gov.

If you want the EEOC to assist you, you should contact them as soon as possible. You have only a limited amount of time (typically 180 days) to file a complaint. Time limits apply to filing a complaint with the Texas Workforce Commission as well. If you do not file a complaint in time, this may prevent you from filing a civil lawsuit later. Visit <http://www.twc.state.tx.us/crd/how-submit-employment-discrimination-complaint.html> to learn about the process of filing a Texas Workforce Commission Complaint. If you are considering filing a lawsuit against the company, you should know that most complaints of discrimination or harassment must go through the federal or state process before you will be allowed to proceed with a lawsuit.

4. What does “equal pay for equal work” mean and how does it relate to you?

“Equal pay for equal work” means that employees have a right to be free from discrimination in the amount of pay, or compensation, they receive. Pay equality is protected under several federal laws, including the Equal Pay Act of 1963, Title VII, and the Ledbetter Fair Pay Act of 2009. Though it is illegal for an employer to pay you less than a co-worker based on any of the protected characteristics mentioned above, courts will generally look to see whether you are performing work which is substantially similar to the work being performed by a comparable employee. For example, a company should pay equal wages to a man and woman who perform jobs that require substantially the same skill, effort, and responsibility, where those jobs are performed under similar working conditions within the same work location. Disparity in pay is probably not illegal when it is based on factors such as the employees’ seniority, merit, or quality of work.

5. What should you do if believe that there are dangerous or hazardous work conditions at your place of employment?

If you believe that there are working conditions at your place of employment which cause safety or health risks, you should immediately notify your manager and/or your company’s safety department of your concern. If your employer ignores the problem, you may file a formal complaint with the Occupational Health & Safety Administration (OSHA) at www.osha.gov.

Unfortunately, as a general rule, you do not have the right to walk off the job (without facing termination) due to unsafe conditions. Nonetheless, you should request that the company rectify those conditions immediately. You may refuse to work if you genuinely believe there is an immediate danger of death or serious injury and there is not enough time to work through the proper process to have the danger removed.

6. Can you be retaliated against if you report discrimination, harassment or unsafe practices at your job?

It is unlawful for a company to fire, demote, harass, or otherwise retaliate against you for opposing discriminatory employment practices, for filing a discrimination charge, or for participating in an investigation or litigation regarding discriminatory employment practices. The same laws that prohibit discrimination based on protected characteristics

also prohibit a company from retaliating against a person who opposes unlawful discrimination or harassment. Likewise, employees who report safety or health concerns are protected from retaliation for exercising their rights under OSHA. To learn more about retaliation discrimination, visit the Texas Workforce Commission website at <http://www.twc.state.tx.us/crd/retaliation-discrimination.html>.

In order to qualify for protection, you must be a covered individual who has engaged in a protected activity. That means you must have outwardly opposed unlawful practices, participated in proceedings or litigation related to unlawful practices, or requested an accommodation based on a protected disability. Also, your employer must take an adverse employment action against you and the protected activity must have contributed to the adverse action. Adverse actions could include: threats, demotion, reduction in pay, discipline, termination, or similar activities.

Taxes

1. Do I need a Social Security number to get employment?

Yes, unless you are ineligible for a Social Security number. In that case, you would need an Individual Taxpayer Identification Number (ITIN). An example of an individual that may need an ITIN is a U.S. resident who is not a citizen.

Your employer is required to report your wages to the Internal Revenue Service (IRS). The IRS is the agency that collects federal taxes from taxpayers. The IRS uses your Social Security number or ITIN to process your federal tax payment. If you need additional information you should check with your local Social Security office, go to www.ssa.gov, or call 1-800-772-1213.

2. What is income tax withholding?

Employers withhold payroll taxes and income tax from employees' pay. Gross pay is the amount the employee earns. Net pay, or take-home pay, is the amount the employee receives after deductions. The difference between gross pay and net pay includes withholdings for Social Security taxes, Medicare taxes, Income taxes withheld (state and federal), and other amounts withheld. Employers send the amounts withheld to the taxing authorities.

3. What is a Form W-4?

Employees complete Form W-4, *Employee's Withholding Allowance Certificate*, to assist the employer in determining how much federal income tax to withhold from employee pay. The amount of federal income tax withholding depends on the employee's marital status, the number of withholding allowances claimed by the employee, any additional amount the employee wants to withhold, and any exemptions from withholding that the employee claims.

4. What are payroll taxes?

Payroll taxes include the Social Security tax, the Medicare tax, and the unemployment tax. Social Security taxes provide the following benefits for employees and their dependents: retirement benefits, benefits for the dependents of retired workers, and benefits for the disabled and their dependents. With the Social Security tax, your employer pays half of the premium, and you pay the other half. The Medicare tax is used to provide medical benefits for certain individuals, including senior citizens and disabled U.S. Citizens. Generally, you are eligible for Medicare if you or your spouse worked for at least ten years in Medicare-covered employment and you are 65 years or older and a citizen or permanent resident of the United States. If you aren't yet 65, you might also qualify for coverage if you have a disability or End-Stage Renal disease (permanent kidney failure requiring dialysis or transplant).

The unemployment tax provides for payments of unemployment compensation to workers who have lost their jobs.

5. How are federal income taxes used?

Federal income taxes are used to provide for national programs such as defense, veterans and foreign affairs, social programs, physical, human and community development, law enforcement, and interest on the national debt.

6. If I am a full-time student, am I exempt from federal taxes?

There is no exemption from tax for full-time students. Every U.S. citizen or resident must file a U.S. income tax return if certain income levels are reached. Factors that determine whether you have an income tax filing requirement include: the amount of your income (earned and unearned), whether you are able to be claimed as a dependent, your filing status, and your age.

Regardless of your income, you should file an income tax return as you may have income tax withholding that you would like refunded to you, or you may be entitled to certain refundable credits.

7. Will I get back any of the tax that I pay?

If certain income levels are reached, you (or your accountant) must complete an income tax return each year and mail it to the Internal Revenue Service (IRS) no later than April 15. If it turns out that you paid too much tax for your level of income, you may be entitled to a refund. If it turns out that you did not pay enough, you will be required to pay the difference to the IRS. Therefore, it is important that when you begin employment you fill out the appropriate paperwork so that enough tax is being deducted from your paycheck.

Workers' Compensation

1. In general, what is workers' compensation and how does it work?

The purpose of workers' compensation is to pay benefits to workers who are injured on the job. Benefits are available for three types of work-related injuries: (1) injuries caused by specific accidents, (2) injuries that occur gradually because of some work-related cause, and (3) work-related diseases. Texas, unlike other states, does not require an employer to have workers' compensation coverage. See the Texas Department of Insurance website at <http://www.tdi.texas.gov/wc/> for more information.

When an employee suffers a work-related injury, the employer (or its insurance company) is required to pay for appropriate medical treatment for the injury, including the costs of medication, travel expenses, ambulance fees, and other related expenses. The employer or its insurance company is entitled to choose the doctor who treats the employee, but if the employee wants to switch to a different doctor she can request a "Change of Physician" from the Workers' Compensation Commission.

If the employee misses more than a week from work because of the injury, the employer must usually pay weekly disability benefits (called "temporary total disability" or TTD) until the employee is able to return to work or until she completes her medical treatment, whichever occurs first. If the injury causes permanent damage to the employee's body, the employer must usually pay benefits for that damage (called "permanent partial disability" or PPD).

Sometimes a work injury is severe enough that the worker cannot return to her old job. If the worker cannot do any meaningful work because of the injury, she is considered to be "permanently totally disabled" and is entitled to weekly disability benefits until she reaches the age of 65. If she cannot do her old job but can possibly do other types of work, she may be entitled to additional disability benefits (called "wage-loss") for up to 450 weeks after the end of her medical treatment. A worker who cannot return to her old job may also be entitled to job training or education expenses to help her find other employment.

When an employer or insurance company denies a claim or refuses to pay a benefit, the employee can file a claim with the Texas Department of Insurance, Division of Workers' Compensation online at <https://txcomp.tdi.state.tx.us/TXCOMPWeb/notice/iec/SelectLanguage.jsp>. The Commission has a staff of judges who conduct hearings on disputed claims. A claim can be filed with the Commission at any time for up to two years after the injury (or, past that time, for up to a year after the last time the employer or insurance company paid for any benefits).

2. Who is and is not eligible for workers' compensation?

Generally, an employer is required to carry workers' compensation insurance if it has at least three employees, including the owner. Some employers are required to carry workers' compensation insurance even if they have only one or two employees—almost all contractors and subcontractors in the construction industry fall in this category.

The vast majority of employees are eligible for workers' compensation benefits if their employer is required to carry coverage. Sometimes employers try to avoid this

obligation by calling their employees “independent contractors.” If those employees meet the criteria of the law, they are entitled to benefits regardless of whether they are called independent contractors, and regardless of whether they signed a contract or waiver that claimed they were independent contractors.

A few categories of employees are not covered by workers’ compensation, but most are. Federal government employees fall under a different system, as do railroad workers. Farm laborers are usually not entitled to benefits, unless their employer carries insurance coverage.

If you are injured on the job and do not know if you are entitled to benefits, talk to an attorney—do not assume you are ineligible and do not automatically believe your employer if he says you are not eligible.

3. Must the injured worker prove that the employer was at fault in order to collect workers’ compensation benefits?

No. In workers’ compensation, an injured worker is entitled to benefits regardless of who was at fault or how the accident happened. However, there is an exception to this rule. If the worker was intoxicated or under the influence of illegal drugs at the time of her injury, she may be disqualified from receiving benefits. The law allows employers to require that their workers be tested for drugs when they get hurt on the job.

4. Can an employer fire an injured worker for filing a workers’ compensation claim?

The law makes it a crime for an employer to fire an injured worker for filing a claim, but this does not mean you cannot be fired after filing a claim. Texas is known as an “at-will employment” state. This means that an employer can fire an employee for almost any reason, so long as the reason is not illegal. If you file a workers’ compensation claim, your employer cannot fire you for doing so, but he can fire you if he has some other reason to justify your termination.

5. How long is an employee entitled to receive workers’ compensation?

Generally, an employee is entitled to receive weekly disability benefits until she is able to return to work, or until she completes her medical treatment, whichever occurs first. She is also entitled to medical treatment for as long as it is reasonably necessary, for up to two years after the injury. After two years she may still be entitled to medical treatment, but the law sets certain deadlines she must meet for getting treatment and filing claims.

If you are ever hurt on the job, talk to an attorney about your options. The Texas Department of Insurance, Division of Workers’ Compensation can be reached, toll-free, at (800) 252-7031.

CHAPTER 11 - MEDICAL AND PRIVACY RIGHTS :

Protecting and Making Decisions About Your Body and Personal Affairs

1. What are your rights with respect to obtaining or declining medical treatment?

As a competent adult, you generally have the right to request or refuse medical treatment for yourself. If you are under the age of 18 or lack capacity to make health care decisions for yourself, a health care provider will look to a parent or guardian to make decisions about your care. You have a right to refuse medical treatment (including life-sustaining treatment under certain circumstances), after your provider has informed you of the risks and benefits of treatment and the consequences of refusing such care.

2. What is a hospital's obligation to treat someone who comes to their emergency room for medical assistance, even if they do not have medical insurance or an ability to pay?

Under federal law, a hospital that participates in Medicare and has an emergency room is required to provide any individual who comes to the hospital's emergency room for a potential emergency with a medical screening to determine if a medical emergency actually exists. If the examination shows that an emergency condition exists, the hospital is then required to stabilize the patient prior to discharging that patient or transferring the patient to another hospital. This federal law, known as the "Emergency Medical Treatment and Active Labor Act of 1986" or "EMTALA," imposes these requirements regardless of the patient's insurance status or ability to pay.

Be aware that some hospitals have a "charity care" policy that may allow you to receive free or discounted treatment depending on your income and circumstances. If you find yourself in need of hospital treatment that you are unable to pay for, you should ask a hospital representative for a copy of the hospital's charity care policy, and ask the representative to explain the policy to you.

3. Can a hospital force you to leave if you are not able to pay your bills, and if so, when?

Once you are admitted to a hospital, the hospital is generally required to stabilize your condition, regardless of your ability to pay. This means that a hospital cannot discharge you simply for failing to pay your hospital bills, particularly if you require continued treatment to prevent deterioration of your condition. A hospital that discharges a patient before the patient is stable may be liable for possible violations of EMTALA and/or for medical malpractice.

4. What are some examples of medical malpractice?

Medical malpractice is any act of medical treatment by a medical care provider that does not live up to the expected level or standard of care. The classic example of medical malpractice is that of the surgeon who leaves something, such as a sponge, bandage, or piece of gauze, inside a patient after an operation. Other examples of medical malpractice include failing to properly read an x-ray, failing to perform the proper medical tests or misreading test results, giving a patient medicine in the wrong

dose or medicine to which the doctor or nurse knows or should know the patient is allergic, failing to properly perform a surgery or other procedure, and failing to properly explain the risks of a surgery or procedure.

It is important to keep in mind that the fact that you have had a complication or unexpected outcome following a surgery or medical procedure does not mean that you have been the victim of medical malpractice. Every procedure carries a certain amount of risk, and sometimes things will go wrong despite everyone's diligence and best efforts. However, Texas law imposes strict requirements for pursuing a medical malpractice lawsuit, so if you do believe that you have been the victim of medical malpractice, consult an attorney experienced in medical malpractice cases as soon as possible.

5. What is a "living will" and what are some of its benefits?

A "living will," also called a directive to physicians and family is a legal document that tells medical professionals and members of your family to what extent special means should be used to keep you alive if you are terminally ill or become permanently unconscious. A living will is a type of advance directive, meaning it allows you to make decisions about your care ahead of time while you are competent and able to communicate your wishes. A living will allows you to decide, for example, whether you want to receive such interventions as surgery, CPR, dialysis, a ventilator, or a feeding tube to keep you alive. You can request that all possible measures be taken to save your life, indicate that there are some that you want and some that you do not want, or ask that none be given at all. In the event that you direct that no lifesaving interventions be provided, your health care provider will make sure you are given comfort care, such as pain medications. An online form is available on the Texas Young Lawyers Association website at <http://tyla.org/tasks/sites/tyla/assets/File/directive.pdf>.

Living wills are helpful because they allow you to have control over your treatment, even after you are no longer able to direct your care. They can take the burden off of family members who would otherwise be left to make difficult decisions regarding your end-of-life care, and can minimize disagreement among family members regarding the care you should be provided. Many people mistakenly believe that living wills are only needed for the elderly or seriously ill - to the contrary, living wills may be especially useful in situations where a younger person suffers an unexpected, traumatic injury or illness, as these situations are likely to be particularly difficult for family members faced with end-of-life decisions.

6. What are the benefits of organ donation and how do you go about it?

The benefits of organ donation are that you will be helping to alleviate a severe, nationwide shortage of organs. To become an organ donor, simply say "yes" when you obtain your driver's license and are asked if you would like to become an organ donor. You can register with the Donate Life Texas online at <https://www.donatelifetexas.org/register> to become an organ donor in less than 60 seconds. Call the LifeGift Organ Donation Center office at 1-800-633-6562 for more information.

7. What are a woman's legal rights to have an abortion?

As of October 1st 2011, Texas law requires all women seeking an abortion (except in the case of medical emergency) to have at least two visits to the abortion facility and an ultrasound at least 24 hours before she has an abortion. A woman who requests an abortion must be informed of possible medical risks associated with the procedure to be employed; probable gestational age of the fetus at the time the abortion is to be performed; medical risks of carrying the fetus to term; that a spouse, boyfriend, parent, friend or other person cannot force her to have an abortion; and the ramifications of having an abortion, including fetal pain, before the decision to go forward is made. For more information, download the Woman's Right to Know booklet published by the Texas Department of Health at <http://www.dshs.state.tx.us/wrtk/default.shtm>.

Texas law requires parental consent for a minor—someone who is under the age of 18—to get an abortion. Minors seeking an abortion must have their parents notified at least 48 hours ahead of time, unless they have received a waiver from a judge. In order to apply for waiver, the minor must fill out a form and talk privately with a judge about the reasons the minor's parents should not be notified of the abortion.

8. Does a woman have to get the father's permission to have an abortion?

No.

9. What are your rights with respect to birth control?

Texas does not require contraceptive equity. That means that insurance companies that cover other prescription medications do not have to also cover the costs of birth control. Emergency contraception (EC), also known as "the morning-after pill" is now available without a prescription to women over the age of 17. EC is most effective when taken within 72 hours of unprotected sex. EC is not the "abortion pill." In fact, it is not effective if you are already pregnant, and it will not terminate an existing pregnancy. The cost of EC varies, depending upon where you go.

For more information and free resources, visit Planned Parenthood of Greater Texas at <http://www.plannedparenthood.org/greater-texas/>.

10. What is "HIPAA" and what are your rights with respect to medical records under those laws?

"HIPAA," short for the "Health Insurance Portability and Accountability Act of 1996," is a federal law that protects health insurance coverage for persons who change or lose their jobs, that dictates standards for electronic health care transactions, and that establishes requirements for ensuring the privacy and security of health care information. The privacy requirements are perhaps the most well-known component of HIPAA, as these provisions govern when and how health care providers may use patient information.

HIPAA's privacy requirements apply to health care providers, including physicians, dentists, hospitals, pharmacies and mental health centers.

Under HIPAA, a health care provider generally cannot use or disclose your health information without your written authorization, unless the provider uses or discloses the information for purposes of payment (for example, your doctor submits a claim to your health insurance company), treatment (for example, your allergy doctor sends the results of your allergy tests to your primary care physician) or "health care operations" (for example, internal audits, in-service staff training, legal services). A provider may also discuss your health information with friends or family members who are involved in your care. Your health care provider is required to provide you with a comprehensive list of the types of uses or disclosures that the provider may make in its Notice of Privacy Practices. You can ask for a copy of your provider's Notice of Privacy Practices at any time.

HIPAA also requires your health care provider to make your medical records available to you or to your personal representative (generally, a parent if you are a minor, or a person who you have agreed can access your records in a written authorization) within a reasonable time frame. If you want copies of your records, a provider may charge you for its costs.

If you have questions about your health care provider's obligation to protect your health information, or if you are concerned that your provider has improperly used or disclosed your information, you have a right to complain to your provider's Privacy Officer. If you are not comfortable talking to the Privacy Officer or you are not satisfied with the Privacy Officer's response, you have a right to complain to the Office of Civil Rights Enforcement of the U.S. Department of Health and Human Services. HIPAA provides civil and criminal penalties for providers who violate HIPAA, but it does not allow you to file a lawsuit against your provider for HIPAA violations.

11. Can someone tape record a conversation with you without your permission or knowledge?

Yes. Under Texas law, it is legal to tape record a conversation so long as one party to the conversation consents to the recording. For example, if two people are having a conversation, it is legal for one of the people to record the conversation. Likewise, it is legal for one of the parties to the conversation to direct someone who is not part of the conversation to record the conversation. However, it is not legal for someone who is not a party to a conversation to record the conversation. For example, if two people are having a conversation, and unknown to them someone else is recording the conversation, the recording is illegal.

12. How do you get placed on the “Do Not Call” List?

There are two ways to get placed on the “Do Not Call” List. First, you can log on to www.donotcall.gov and complete a simple form. Second, you can call 1-888-382-1222 and ask to be added to the Do Not Call List. You must call from the home or mobile number that you want to be added to the List. Once a number is added to the Do Not Call List, telemarketers have approximately one month from the date of registration to stop calling. Registration on the Do Not Call List is permanent and does not expire.

There is one thing about the Do Not Call List that you should keep in mind. The federal government does not allow third parties to add telephone numbers to the Do Not Call List. If you get a call of solicitation from a person or service offering to add your telephone number to the Do Not Call List, especially for a fee, beware. It is probably a scam that could result in identity theft.

13. How can you put a stop to obscene phone calls?

An obscene phone call is any call in which a person uses threatening or offensive language, or uses conduct, such as heavy breathing or just plain silence, to convey threatening or offensive messages. They are generally anonymous, which makes them difficult for police to investigate and prosecute. Because telephone use is so common and central to the way we communicate, obscene phone calls are one of the toughest invasions of privacy and forms of harassment to stop. However, there are a number of simple things you can do to protect yourself from obscene calls and to make it easier for police to investigate and prosecute serious, and potentially dangerous, callers.

- Hang up. Most crank callers are looking for attention. Do not give it to them. Do not engage them in conversation and do not give them the satisfaction of a reaction. Instead, just hang up.
- Leave a deterring answering machine message. If hanging up does not work, let the caller know you will aggressively pursue your privacy by putting a message on your voice mail or answering machine along the following lines, after your standard greeting:
 - I/we are receiving annoying phone calls right now and the phone company has a trap on this line. If you do not leave a message, I/we will assume that you are the annoying caller and this call will be traced.
- (Phone traces and traps are discussed below.) To complement this tactic, when you answer a call and the harassing caller is on the line, say, “Operator, this is the call” or “trace” or “trap,” followed by the time and date, and hang up.
- Use caller ID to identify the caller and the caller’s phone number. Not only is this information that you can pass on to police, but most telephone companies

offer a service called “inbound call blocker” that allows you to stop certain callers. Once you know who the caller is, you can block the call.

- Screen calls using your answering machine or voice mail. If you are going to do this, let friends and family know that you are having problems with obscene and harassing callers and to leave a message.
- File a police report. Different law enforcement agencies will handle reports of obscene or harassing calls differently, depending on the amount of information you have and the frequency and content of the calls. But the police will always make a report, and it will never hurt to have this additional piece of documentation.
- Contact your telephone company. The company may be able to set a “trap” on your line, which will allow the company to identify the harassing caller’s telephone number. For this to work, you must keep a log of the time and date when the calls are received. Your company may also offer a service called “call trace,” which will allow you to enter a code (such as *57) immediately after receiving a harassing call and trace the call.
- Change your telephone number. This is probably the choice of last resort, but if the problem is severe enough you should not hesitate to simply get a new telephone number.

14. How do you protect your identity?

While there is no guaranteed way to keep your identity from being stolen, a few basic precautions will greatly minimize your risk of identity theft. We recommend that you review the Texas Young Lawyers Association’s pamphlet on identity theft here: http://www.tyla.org/tasks/sites/default/assets/File/08_Identity_Theft_Pamphlet.pdf

Protect your personal information. Information such as your Social Security number, birth date, driver’s license number, bank account and credit card numbers, PIN numbers and passwords, and even your mother’s maiden name, can all be used to steal your identity. To the greatest extent possible, keep this information secret, safe, and secure. Do not share your Social Security number, PIN numbers, and passwords with others. Do not loan your driver’s license, passport, ATM, or credit cards, even to roommates, friends and family. Do not keep information in your purse or wallet that you do not need, and do not carry your Social Security card with you unless you know that you are going to need it. Keep your personal documents and passports in a secure place. Protecting this information is the best way to prevent identity theft.

Be careful to whom you give information. Phone and e-mail solicitations are popular tools of the identity thief. Do not give personal information over the phone, online, or by e-mail unless you know who you are dealing with. For example, you will never be asked to give your Social Security number or a credit card number as part of a legitimate phone survey. Likewise, banks and credit card companies will not e-mail you

asking for personal information like account numbers, PINs, access codes, passwords, and the like. Your bank and credit card companies will already have this information.

Be careful with your mail and your trash. Do not leave mail sitting in your mailbox or in a public place, and be sure to mail bills from a safe and secure location. Consider using a United States Postal Service for mail containing personal or financial information. Likewise, destroy, such as by shredding, documents that contain personal information. This includes bank statements, credit card statements, credit card solicitations, and checks.

Be careful online. If you can, access the Internet from a computer that is protected with anti-virus and anti-spyware software. Avoid using passwords that are obvious, like your birth date, initials, last name, or pet's name. Instead, use passwords that contain a combination of numbers and upper and lower case letters, and change your passwords frequently. If you access your e-mail account from a public computer, such as in a library or at a hotel, be sure to log out of your account and close the browser when you are done. Do not post your personal information or pictures in "blogs" or on sites like Facebook, MySpace, and Twitter. Once information is posted online, it is there forever, and for anyone to find and use (future employers, the admissions officers who will review your college applications, etc.).

Above all, use your common sense! Your passwords, PINs, account numbers, and Social Security numbers are meant to be secrets. Keep them that way.

15. What can you do if you are the victim of identity theft?

If you suddenly stop receiving bills or mail that you normally get, start receiving unexpected bills or seeing unfamiliar charges on your credit card and bank statements, or start receiving calls from debt collectors about debts and accounts that you know are not yours, you need to recognize that these are signs your identity has been stolen. If this happens, you need to act quickly. The quicker you act, the more likely you will be able to reclaim your identity and minimize the damage.

First, file a "fraud alert" with one of the three national credit bureaus – TransUnion, Experian, or Equifax. Once you file with one, that company is required to contact the other two.

Second, contact law enforcement and file a report.

Third, notify any banks, credit card companies, or other financial institutions that you believe your account with the company has been stolen. Notify the company of the fraudulent charges or transactions, and dispute the charges or transactions if necessary. Be sure to keep notes of who you talk to and when. Follow up in writing. It is important for you to keep written records, so keep copies of any letters or documents, such as an affidavit of fraud that you send to a company. Use certified mail so that you will have proof of mailing. Close the accounts if necessary.

Fourth, file an identity theft complaint with the Federal Trade Commission online at www.consumer.gov/theft or by calling 1-877-IDTHEFT and download the Texas Attorney General's Identity Theft Victim's Kit at https://www.oag.state.tx.us/ag_publications/pdfs/IDTheft_Affidavit.pdf

Fifth, place a "security freeze" on your credit report. This will restrict access to your credit report.

CHAPTER 12 - CRIMINAL LAW :
Staying Out of Trouble and Dealing with Law Enforcement

NOTE: **Emphasis in this section of the Handbook is upon state rather than federal law. Federal criminal rules and procedures may be somewhat different.**

Police Investigations and Arrests

1. What should you do if you are stopped by the police?

If you are stopped by any law enforcement agent, you should always indicate to the law enforcement officer that you wish to remain silent and you should do so. You should never curse or argue with any law enforcement agent. If you are operating a motor vehicle and are asked to produce your driver's license, you should be compliant and produce that identification. If you are asked to produce a form demonstrating that you have compulsory liability insurance, you should produce this information. Otherwise, seek the assistance and advice of an attorney before answering any questions or before producing any other documents. Never give consent to search your person or automobile.

2. What can you do if you think a police officer is mistreating you?

You can contact the police officer's supervisor and make a report. Additionally, if the treatment arises to a violation of your civil rights, then you can file a lawsuit in the appropriate court.

3. What are your rights if you have been arrested?

You may or may not have a right to bail. You have the right to an attorney. You have the right to remain silent. You have the right to call witnesses on your behalf and you have a right to confront those witnesses whom the State may call to testify against you. You have the right to a trial by jury and you have the right to be presumed innocent.

4. What happens after you have been arrested and booked?

You have the right to have an attorney represent you. You have the right to file motions in support of your defense. You have the right to a jury trial to determine whether you are guilty of the allegations as made against you.

5. What happens when you are taken before a judge?

Upon arrest, if a bail has not been set, then the judge may set bail. You may or may not be asked to enter a plea to the charges. If asked to enter a plea to the charges, you should plead not guilty until you have had the opportunity to discuss any defenses with an attorney.

6. What do you do if you cannot afford an attorney in a criminal case?

If you cannot afford an attorney, then you have the right to have an attorney appointed to represent you. An accused's desire for, and ability to retain, counsel should be determined by a judicial officer before the first appearance, whenever practicable.

Whenever an indigent is charged with a criminal offense and, upon being brought before any court, does not knowingly and intelligently waive the appointment of counsel, the court shall appoint counsel to represent the indigent.

However, there are certain circumstances when an accused is not entitled to counsel. For instance, when an indigent is charged with a misdemeanor and the court has determined that under no circumstances will incarceration be imposed as a part of the punishment if the indigent is found guilty, then the accused indigent may not be entitled to appointment of counsel.

7. What could happen if you help a juvenile break the law?

You could and most likely will be arrested. If you are an accomplice or an accessory to a crime, then you may be charged as such. Likewise, if you provide liquor to any person under the age of 21 years of age, then you can be prosecuted. It should be noted that if charged as an accomplice or accessory to a crime, the juvenile may be charged as such and may receive only those penalties prescribed by the juvenile code. However, you, as an adult, will be charged as an adult and punished accordingly if found guilty.

8. Is it legal for a police officer to stop and frisk you merely because they think you “look suspicious”?

No.

9. What is a “search warrant”?

A search warrant is a document that gives officers the authority to search for persons or things. It is issued only by a judicial officer. The document must contain the persons or things for which a police officer is looking. It must also state reasonable cause to believe the persons or things being sought are in the location to which the search warrant applies.

10. Under what circumstances can the police search without a warrant?

They can search, for example, with the consent of the owner; they can search open lands; they can search for purposes of officer safety; they can search when they have reason to believe there is contraband (*i.e.*, when a drug canine hits on a vehicle); they can search under exigent circumstances (*i.e.*, during an emergency, such as when they feel someone is in danger); they can search incident to an arrest; and they can perform an inventory search when having vehicles towed.

11. Can the police arrest you without an arrest warrant, and, if so, under what circumstances?

Yes. A police officer may arrest you without a warrant if:

- you commit any felony or any crime against the peace in the presence of an officer
- you make a statement to the police that establishes probable cause that you have committed a felony, even if you did not intend to confess to a crime
- the officer is instructed to make the arrest by a police agency or judge, which possesses knowledge sufficient to constitute reasonable cause of a crime
- you are found in a suspicious place and under circumstances which reasonably show that such you have been guilty of some felony, breach of the peace (including public intoxication), or are about to commit some offense against the laws
- a police officer has probable cause to believe you committed an assault resulting in bodily injury to another person and the peace officer has probable cause to believe that there is danger of further bodily injury to that person;
- a police officer has probable cause to believe you have committed an offense involving family violence, prevented or interfered with an individual's ability to place a telephone call in an emergency, violated a protective order

12. Can the police search your friend's car while it is parked in front of his house?

If law enforcement has a search warrant which authorizes the search of the vehicle, they may search the vehicle. If any occupant of the vehicle is committing a crime, the police may search the vehicle as a search incident to arrest or may be allowed to perform an inventory search. If the vehicle is merely parked in your front yard and is unattended and the law enforcement agent does not have a search warrant authorizing search of that vehicle, he or she cannot search the car. Of course, if the owner of the vehicle gives consent to search the vehicle, a law enforcement agent may search the vehicle.

13. Can a store employee stop you from leaving a store even if you have not done anything wrong?

Yes. A store employee may detain person whom the employee reasonably believes has stolen or is attempting to steal property in order to investigate for theft. However, the employee may only detain the person in a reasonable manner and for a reasonable length of time.

14. Can you report a crime to the police and remain anonymous?

While anonymity hinders future investigation and prosecution of a crime, a police department employee may take action from information given anonymously. Some

programs, such as reporting guns or planned violence at school, encourage anonymous reporting. However, a person reporting criminal activity will be encouraged to share basic information, and information given anonymously may not result in any police action.

15. If you are a victim of a crime, do you have a legal duty to report the crime to the police?

No, but here are some thoughts on the subject. First, you are generally not allowed to seek your own retribution, such as by stealing something “back” or, worse, by exacting revenge or punishment on your own. The nature of our criminal justice system replaced the vigilantism approach and, while not perfect, gives legal authority to punish criminals to the neutral magistrates (judges) in that system. “Taking the law into your own hands” will likely subject you to criminal prosecution.

Second, a police report of the incident may be a requirement for pursuing insurance claims for property damage. Third, unreported crimes let the criminals who commit them go unpunished. This may encourage them to commit crimes in the future.

16. If you do report a crime to the police, what can you expect them to do in response?

At the very least, you can expect the police to take the report and investigate what you have reported. A representative from the police department may be in touch with you to check some facts. If there is sufficient information, the police may seek an arrest warrant from a judge for any suspects. Depending on the investigation, the information may then be shared with the prosecuting attorney for a decision on whether to prosecute someone for the crime.

17. What does it mean to “press charges”?

Common usage of this term suggests that one will report the matter to the police and/or prosecuting attorney by direct communication with the police or by filing a formal complaint at the prosecutor’s office. Only the prosecuting attorney can get the criminal charge filed, resulting in court appearances for the suspect of a crime.

18. What could happen if you file a false police report?

If you file a false police report, then you may be prosecuted. In Texas, it is a Class B misdemeanor to provide a false statement to the police. You could face a fine of up to \$2,000 and or imprisonment for up to 180 days.

19. What should you do after you have received a phone call from your friend saying that he has been arrested?

Find out if he is eligible for a bond and the amount of the bond. If there is a bond amount, contact a bail bondsman to see if you can post that bond. Then, go post bail for him.

20. How do you “post bail”?

Contact a bail bondsman and, under most circumstances, give the bail bondsman 10% of the bond amount. However, a serious consideration before deciding to post bond for someone else is that if that person fails to appear in court on the assigned dates, you may lose any collateral that you posted to secure the bond.

21. What do you do if you do not have enough money to post bail?

Most bondsmen will allow property to be used as collateral (*i.e.*, title to real property or a vehicle) to secure the bond.

The Trial Process

1. What happens when you are charged with a crime?

If you are charged with a felony and have not been arrested, then a judge, upon a finding of probable cause, will issue a warrant for your arrest and you will be arrested pursuant to that warrant. Under certain circumstances, you may be arrested without a warrant. (Arrest without warrant is addressed below.) After being arrested or upon being formally charged, the accused is entitled to a “first appearance” wherein the judicial officer will inform the accused of the charge(s). When charged with a crime, you have the right to retain an attorney. If you cannot afford an attorney, you may have the right to request that an attorney be appointed on your behalf.

2. What are the steps of a criminal case after charges have been filed against you?

If the charge is a misdemeanor, you will be given a court date in one of the district courts. Appear in court on that day where you will be able to plead either guilty or not guilty. If you plead not guilty, a trial date will be set for you to return to court with anyone you need as a witness.

If the charge is a felony, you will be given a court date in one of the district courts. Appear in court on that day where you must enter a plea of not guilty. Those charges may then be filed in circuit court, where you will have another date to appear before a circuit judge and enter either a guilty plea or a not guilty plea. If you enter a not guilty plea, the judge will set the trial date.

3. What might happen if you do not go to court on the day that you are supposed to appear?

A failure to appear warrant will be issued by the judge. These usually have a “no bond” condition so that you may sit in jail until your next court appearance.

4. What is a “plea bargain,” and what is involved in pleading guilty?

A plea bargain is an agreement between the prosecution and the defense about what charges the person is pleading guilty to and what the recommended punishment will be. When a person pleads guilty he forfeits the right to a trial and the right to an appeal.

5. Can you plead guilty or innocent against your attorney's advice?

Yes.

6. What does pleading "no contest" to a criminal offense mean?

It comes from the Latin term "*nolo contendere*." This is a plea that is sometimes accepted instead of a guilty plea. It has all of the connotations of a guilty plea, but is used when a defendant may not be able to admit to specific details of the offense (for example, if a person knows he committed the offense but was too intoxicated to remember exactly what he did).

7. If someone is charged with a crime, does that mean he is guilty as charged?

No. Each person is presumed innocent until proven guilty or until he pleads guilty in a court of law.

8. If you are the defendant in a criminal case, must you testify, and what are the pros and cons of testifying versus not testifying?

No defendant in a criminal case has to testify. If one testifies and has any prior criminal history, that history may come out in trial at that time. Another consideration is whether the defendant is claiming self-defense as his defense. If so, then he will have to testify to explain the self-defense.

9. Can the victim of a crime be required to testify at the suspect's trial?

Yes, if the victim is competent to do so. Physical or mental disability or age may prevent some crime victims from being witnesses. If subpoenaed by the prosecutor (or even by the defense), a crime victim is obligated to come to court and testify, though any witness does not have to answer questions for which the Fifth Amendment bar to self-incrimination may apply.

Different Types of Crimes

1. What are some common state crimes?

Common state crimes are possession of controlled substances (including marijuana, cocaine, and prescription drugs without a prescription, such as Xanax), theft of property, theft by receiving (possessing stolen property), drug possession and sales, driving while intoxicated, domestic battery, writing a "hot check," battery, assault, burglary, manslaughter, murder, and any of various sexual assault offenses.

2. What are some common federal crimes?

Common federal crimes include weapons charges, mail fraud, wire fraud, drug smuggling, bank robbery, racketeering, immigration offenses, and possessing or distributing pornography.

3. What is a “hate crime”?

Hate crimes are offenses that are committed against a person or group of people (or even property in certain situations) due to their membership in a certain group or class. For example, the criminal defendant commits the offense due to his or her bias against a particular race, gender, or national origin.

4. Does Texas have a “three strikes law”?

Yes, Texas has a three strikes law. The Texas “three strikes law” applies only to certain offenses. However, Texas also has habitual offender laws that create greater or enhanced penalties for offenders that have more than one prior felony conviction.

5. How is committing a crime at age 18 or older different than committing a crime when younger than 18?

A person whose court involvement is in juvenile court is subject to very different consequences if he or she is found to have violated the criminal code. The consequences in juvenile court are aimed more at teaching and rehabilitating, rather than punishing, and may include orders for family members as well as the delinquent juvenile. The consequences usually require court appearances for reviews that may leave a case open much longer than it would be if in criminal court. Criminal court is more about punishing behavior (through fines, probation and incarceration) and hopefully preventing habitual offenders. Minors 14 years of age and older may be charged as adults for some felonies.

6. What if you do something illegal but you do not know it?

A person is presumed to know the law, especially once he or she reaches age 18. So even if a person did not know an act was a violation of the law, he or she may still be subject to prosecution, with some particular exceptions. “Ignorance of the law is no excuse.”

Many misdemeanors are not listed in the criminal code, but are governed by the language in other sections of the Texas Code. Hopefully, job training or orientation would address these specific instances, such as what type of information may or may not be disseminated by a particular agency. No matter the career or employment field one enters, it would be a good practice to get as much information about the law and regulations surrounding that job, thus improving job success and avoiding violations.

7. Is the failure to act ever considered a crime?

Yes, failure to act may be considered a crime and subject the person to penalty. Examples surround treatment of children, disabled persons and the elderly. A doctor, teacher, and social worker are among a long list of “mandatory reporters” of suspected

child maltreatment. Failure to report, then, would subject such a person to criminal liability. Likewise, a person in a position to prevent abuse may also be held responsible for failing to act in the prevention of abuse.

8. What is the difference between a misdemeanor and a felony?

Misdemeanors are less serious types of crimes than are felonies. The biggest difference between them involves the consequences if guilty, as described under the next two sections.

Felony convictions also have a greater impact on a person's future, affecting such things as holding public office, serving on a jury, serving as a guardian, voting, and possessing a firearm (even a hunting rifle). Many employers are more interested in whether a person has a felony record than a misdemeanor record, and a job application may have a question such as "have you ever been arrested or convicted of a felony?" as one of its questions. Convicted felons can find it very difficult to find employment.

After The Trial

1. What are the possible consequences of a misdemeanor?

There are three levels of misdemeanors: A, B, and C. Class A misdemeanors are the most serious, with a fine of up to \$4,000 and or imprisonment for up to one year. A fine and probation, usually with a requirement to pay probation fees and submit to random drug screens, are common sentences for first-time offenders.

2. What are the potential consequences of a felony?

Felonies are also classified into levels, with the highest level punishable by life in prison without parole or the death penalty. The court may also impose fines of up to \$10,000. Persons who commit more than two felonies are subject to enhanced penalties for third or subsequent felonies.

A person convicted of a felony may be sentenced to a term of probation and a fine, and probation may include requirements of holding a job, submitting to drug screens, and not committing new offenses. Felons committed to the penitentiary may be released early and placed on parole, which involves supervision similar to probation. Convictions for most sex offenses will result in a lifetime of reporting address, work, and telephone information as maintained in the sex offender registry.

3. Can your criminal conviction be appealed and if so how?

Yes. To appeal a criminal conviction, you (or preferably through your attorney) must file a notice of appeal with the clerk of the trial court within 30 days of your conviction (the time period is much shorter in federal court).

4. If you win your criminal case, can the government appeal?

Typically not, but in some circumstances yes.

5. If you are convicted, how is your punishment decided and when will you start serving it?

If convicted, your punishment is decided by either a judge or a jury. In most cases, you will generally be required to begin serving your sentence immediately unless you can persuade the judge to stay enforcement of your sentence pending appeal.

6. Can you get your criminal record expunged?

Expungement means that criminal records relating to a specific event will be destroyed. In Texas, arrest records may be expunged if a person is acquitted of the crime by the court or pardoned for the crime. Alternatively, a person may have arrest records expunged if (1) an indictment for the crime was never presented, or was denied; (2) the expunction was filed after the time limit for bringing charges for the crime; and (3) the person was released and there was no final conviction.

7. What are some legal consequences of having a criminal record?

If you are convicted of a felony, you cannot vote, you cannot sit on juries, and you cannot own or possess a firearm.

**CHAPTER 13 – THE PRICE OF
INDEPENDENCE :**
With Freedom Comes Responsibility

1. What are sexual and assaultive offenses?

There are many types of offenses listed in the Texas Penal Code. The Penal Code Chapter called Sexual Offenses includes public lewdness, indecent exposure, indecency with a child, improper relationship between education and student, and improper photography or visual recording, among others. The Chapter entitled “Assaultive Offenses,” includes assault, sexual assault, aggravated assault, aggravated sexual assault, injury to a child, and deadly conduct, among others.

2. What is rape and statutory rape?

The common understanding of the word “rape” is obtaining sex through force or the threat of force. There is no specific crime in the penal code called “rape.”

Sexual assault is a phrase commonly used to describe the crime of forcible sexual contact. Texas law defines “sexual contact,” as “any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.” The crime of sexual assault can be committed under circumstances that do not involve force. For example, a person can be convicted of sexual assaultive offense by instigating sexual contact with another person who is unconscious, has a mental handicap, is physically unable to resist, or is under the age of 14.

“In Texas, as in many jurisdictions, the phrase “statutory rape” is not actually used in any laws; rather, it is a generic term used to describe the crime of sex with minors, with or without consent. In Texas, a person can be found guilty of a variety of sexual assaultive offenses by engaging in sexual contact or intercourse with an individual that is less than the age of 17. However, the defendant can assert an affirmative defense if the actor is not more than three years older than the victim if the victim was older than 14.

3. What are date rape drugs and for what should you look?

Date rape drugs are those substances used to assist predators in a sexual assault and battery and/or rape. There are three main types of date rape drugs: Rohypnol, GHB, and Ketamine. Rohypnol causes its victims to appear drunk with effects such as difficulty standing, slurred speech, dizziness, nausea, loss of memory, unconsciousness, or even death in some cases. Rohypnol “comes as a pill that dissolves in liquids. Some are small, round, and white, while some are oval and green-gray in color. When slipped into a drink, a dye in these new pills makes clear liquids turn bright blue and dark drinks turn cloudy. But this color change might be hard to see in a dark drink, like cola or dark beer, or in a dark room.”¹

The second category of date rape drugs is GHB, or gamma hydroxybutyric acid. GHB usually causes its victims to feel an intense state of relaxation, drowsiness, loss of memory, or dizziness, and it has the potential to cause loss of consciousness or even

¹ <http://www.4woman.gov/faq/date-rape-drugs.cfm>.

death. “GHB has a few forms: a liquid with no odor or color, white powder, and pill. It might give your drink a slightly salty taste, but beware because a sweet drink such as fruit juice can mask the taste.”

The third type of date rape drugs is Ketamine. Ketamine induces more hallucinogenic effects than Rohypnol or GHB. Victims introduced to Ketamine typically experience “distorted perceptions of sight and sound, lost sense of time and identity, out of body experiences, dream-like” sensations, impaired mobility, and other symptoms. Sometimes, victims of Ketamine are aware of the sexual assault or rape, but cannot physically move during the attack. Ketamine usually “comes as a liquid and a white powder.”

4. What are the potential risks of surfing the Internet?

Surfing the Internet carries many risks. One of the most detrimental of these is the risk to your privacy and security. “When you surf the Internet, any web resource you access can gather and record usage information about you such as your IP address [and] your Internet identification number. Using your IP, it is possible to know your country, city, internet provider, and even physical address. Hackers and identity thieves can use this information to steal personal information, spy on you, or cause damage to your computer.”²

Some other risks include: false information that often attempts to mislead readers into believing in the agendas of the site promoters; sites that fraudulently portray banks or other reputable services that ask users to input personal information to create accounts or for other bogus purposes; SPAM messages that can slow the performance of your computer and constantly pile up in your electronic mailboxes; sexual predators who lurk in chat rooms; and the Internet can be addictive to some people who become unable to lead normal, healthy lives.³ There are many other risks involved with surfing the Internet, and new risks will arise in the future, as it is a constantly evolving technology.

5. Is it okay to download music, movies, and other materials without paying for it?

Just because it may seem like everyone you know is pirating music, movies, etc., it remains an illegal activity. Anyone who violates any of the exclusive rights of a copyright owner commits copyright infringement. The copyright owner has the exclusive rights to reproduce the copyrighted work, prepare derivative works based upon the work, distribute copies of the work to the public, perform the work, and display the work. Downloading items for free violates the copyright owner’s exclusive rights to reproduce the works and distribute copies to the public. Remedies for copyright infringement can be very severe. In addition to merely stopping further infringement or impounding infringing articles, copyright owners can pursue civil damages for each offense (or more

² <http://www.proxyway.com/www/internet-privacy.html>.

³ <http://www.coedu.usf.edu/internetsafety/internet/sld009.htm>.

if they can prove they have suffered more) and/or criminal charges that carry heavier fines and possible jail sentences.

It is possible to commit copyright infringement even though you may not have downloaded the material for free. For instance, if you transfer the tracks of a CD you purchased onto your computer and then e-mail them to a friend, you have committed infringement. Also, because criminal copyright infringement can be committed by making a work “available on a computer network accessible to members of the public,” if you put those CD tracks into a “shared folder” on a peer-to-peer network, you can be severely punished.

6. Is it legal to view sexual images over the Internet?

Viewing most sexual images over the Internet is not illegal. Even though some sexual images might be considered obscene by legal standards, and thus not protected by the First Amendment, possessing such materials in the home is still protected by the United States Constitution. However, printing a sexual image or reproducing a pornographic movie and possessing such materials outside of the home will potentially violate criminal statutes in Texas if it is deemed obscene.

Possessing child pornography via the Internet is almost always illegal. Texas and federal laws prohibit any person from knowingly possessing any materials which involve the use of a minor engaging in sexually explicit conduct. For these purposes, a minor is someone who is under 18 years old. Even if the user is not required to download the material in order to view it, the image or other material is nonetheless stored onto the user’s computer when viewed.

7. What are the rules governing the consumption and purchase of alcoholic beverages?

In Texas, it is unlawful for any person under the age of 21 years to purchase or have in possession any intoxicating liquor, wine, or beer. If an individual who is under 21 is holding an alcoholic beverage or has one in his or her pockets, possession is implied. However, if an alcoholic beverage is merely in one’s immediate proximity, then possession may or may not be established.

Purchasing or possessing alcohol while under the age of 21 is a crime punishable as a misdemeanor. Depending upon the circumstance of the case and the offender, punishment options can include a fine not less than \$250 or more than \$2,000, confinement of up to 180 days in jail, both the fine and confinement, community service, driver’s license suspension, etc.

8. What happens if you use a fake identification to buy alcohol and get caught?

It is illegal in Texas for a person under 21 years of age to attempt to purchase an alcoholic beverage or use a fraudulent or altered personal identification document for the purpose of purchasing an alcoholic beverage. An alcohol vendor is allowed to detain someone for a reasonable time to determine whether he or she has used a fake or altered

ID. Typically, vendors call law enforcement once they have detained the alleged culprit. Once law enforcement has determined the detained culprit has used a fake ID in the attempt to purchase alcohol illegally, the culprit's false ID is taken, his or her real driver's license is taken and suspended, and he or she may be arrested.

The use of a fake ID to buy alcohol illegally is generally prosecuted as a Class C misdemeanor which generally carries a fine of up to \$500. Upon conviction, the culprit's can be assigned to community service.

9. What are the penalties for buying, making, or selling a false identification?

Buying a fake ID will subject the buyer to the same punishments listed in the previous section. That is a Class C misdemeanor upon the first offense and Class A misdemeanor for each subsequent offense. This is because mere possession of the false identification card by someone under the age of 21 violates the law. Thus, a person under the age of 21 who has the false ID in his or her pocket and is merely riding a bike down the street can be punished as severely as someone under the age of 21 who uses the fake ID in an attempt to buy alcohol.

Manufacturing or producing a fake identification card, or altering a personal identification document, for the purpose of assisting someone under 21 years old to purchase alcohol is prosecuted as a second degree felony offense in Texas, carrying a punishment of up to twenty years' imprisonment.

10. Is it a crime to give alcohol to someone who is not yet 21 years of age?

It is unlawful for any person knowingly to give, procure, or otherwise furnish any alcoholic beverage to any person less than twenty-one (21) years of age. However, this law does "not apply to the serving of such to one's family or to the use of wine in any religious ceremony or rite in any established church or religion." Knowingly furnishing alcohol to persons under the age of 21, unless within the two limited exceptions previously mentioned, is a criminal offense. To see how you can or your family can be effected by inviting friends to a private party and consuming alcohol, visit The Unconscious Truth at <http://www.tyla.org/tyla/index.cfm/projects/the-unconscious-truth/>.

11. Is it okay to drink alcohol in public or in a park?

Drinking alcohol in public or in a park is a criminal offense in Texas. It is prohibited by the State's laws regarding public intoxication. A person commits the offense of if the person "appears in a public place while intoxicated to the degree that the person may endanger the person or another." If the person is under 21, the crime of public intoxication is punished as in the manner described in the answer to question number 7.

12. When would a party be disruptive enough to illegally disturb the peace?

Disturbing the peace is locally prohibited and enforced, meaning it is against city law. Checking your city's municipal code will show you what constitutes disturbing the

peace in your area. To find the code that applies to your city, start your research here: <http://www.municode.com/Library/TX>.

13. What can I do if strangers “crash” my party?

If people are at your party and you want them to leave, ask them to leave. If they do not leave upon your request, contact the police to remove the unwanted guests. In Texas, an unwanted party “crasher” is committing criminal trespass, which is a crime.

14. Can you play your music in your home or your car as loud as you want?

The answer to this question depends on how loud you may want to play your music. As discussed above, local city ordinances govern what constitutes “disturbing the peace.” In Texarkana, Texas for example, no person shall operate “any sound amplification system from within the vehicle so that the sound is plainly audible at a distance of thirty (30) or more feet from the vehicle.”

15. You might be worried about what might happen during your college fraternity/sorority initiation. Are there limits to what they can do?

In Texas, “hazing” is defined as: any intentional knowing, or reckless act, occurring on or off the campus of an educational institution, by one person alone or acting with others, directed against a student that endangers the mental or physical health or safety of a student for the purpose of pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization whose members are students at an educational institution. The term includes but is not limited to

- any type of physical brutality, such as whipping, beating, striking, branding, electronic shocking, placing of a harmful substance on the body, or similar activity;
- any type of physical activity, such as sleep deprivation, exposure to the elements, confinement in a small space, calisthenics, or other activity that subjects the student to an unreasonable risk or harm or that adversely affects the mental or physical health or safety of the student;
- any activity involving consumption of a food, liquid, alcoholic beverage, liquor, drug, or other substance which subjects the student to an unreasonable risk of harm or which adversely affects the mental or physical health or safety of the student;
- any activity that intimidates or threatens the student with ostracism that subjects the student to extreme mental stress, shame, or humiliation, or that adversely affects the student from entering or remaining registered in an educational institution, or that may reasonably be expected to cause a student to leave the organization or the institution rather than submit to acts described in this subsection;

- any activity that induces, causes, or requires the student to perform a duty or task which involves a violation of the Penal Code.

In Texas, no organization shall engage in hazing. In Texas, a person reporting a hazing incident to the Dean of Students or other appropriate official is immune from civil or criminal liability. This encourages someone who might have been involved in the organization to report hazing activity because charges cannot be filed against them.

16. What are the penalties for possessing or selling illegal drugs?

The penalties for possessing or selling illegal drugs in Texas vary widely. The Texas Department of Health & Safety organizes controlled substances into Penalty Groups. The penalties for selling or possessing a controlled substance are determined by which Schedule it is assigned.

There are six Penalty Groups of drug classification in Texas. The Federal Drug Enforcement Agency (DEA) has five, and you can find those here: <http://www.usdoj.gov/dea/pubs/scheduling.html>. Penalty Group 1 drugs are the most prohibited drugs. They have the highest potential for abuse, no accepted medical use, and carry the stiffest penalties. For a complete list of Texas Penalty Groups, visit http://ibt.tamhsc.edu/safety_office/pdf_stuff/Tex_Penalty_groups.pdf.

Be aware that the penalties for sale can also vary depending upon the specific drug sold and the amount sold, usually measured in grams. Also, under Texas law, a prosecutor may change a possession charge into a possession with intent to deliver charge if the culprit possesses a sufficiently large amount of the controlled substance.

17. Is it worse if you sell illegal drugs at school?

If convicted of selling illegal drugs at school, the offender will face enhanced penalties in Texas because the crime was committed in a school zone. The original punishment of the offense will be enhanced based on this finding.

18. If you use steroids to help pump up your muscles, are you breaking the law?

You are breaking the law when you possess steroids without a prescription. Anabolic steroids are a Penalty Group III controlled substance

19. Can you share your prescription drugs with your family or friends?

Sharing your prescription drugs with family or friends is prohibited in Texas. A person delivering controlled substances to another is subject to the same punishments as a seller of those narcotics. Therefore, even if you legally possess the drugs as a result of a medical prescription, you commit a serious crime if you deliver them to others. The fact that no money or anything of value is exchanged will not prevent a conviction for delivery of a controlled substance.

20. What are some of the laws relating to guns and other weapons?

There are several laws that prohibit and/or regulate guns and other weapons in Texas. The most general restriction is the unlawful carrying of weapons if the person is not on his own premises, not inside or en route to a vehicle owned by him, is displaying a handgun, or is engaged in criminal activity. Other restrictions prohibit: possession of firearms by convicted felons, altering or defacing firearms or possessing altered or defaced firearms, handgun possession by minors or possession on school property, carrying a weapon with the purpose of using it against another person, possessing a concealed handgun without a license, and possessing a deadly weapon in publicly owned buildings and facilities.

Also, some weapons are deemed so dangerous that, except as authorized by law, possessing, making, repairing, selling, or otherwise dealing them is a felony in Texas. These “prohibited weapons” include bombs, machine guns, sawed-off shotguns or rifles, firearms with silencers, metal knuckles, a chemical dispensing device, a zip gun and other weapons that can inflict serious physical injury or death. Violations involving a switchblade knife or brass knuckles will be prosecuted as a Class A misdemeanor while the others will be pursued as third degree felonies.

21. Do you need a license to hunt or fish?

Hunting and fishing in Texas is regulated by the Texas Parks & Wildlife Department. Licenses are required by the Department for both activities. For regulations and answers to questions on hunting, visit <http://www.tpwd.state.tx.us/huntwild/hunt/season/>. For questions about fishing licenses, visit <http://www.tpwd.state.tx.us/fishboat/fish/recreational/fishreport.phtml>.

22. Can you get into trouble just for pointing a gun at someone?

You can certainly get into trouble for pointing a gun at someone in Texas. This can be considered to be aggravated assault, ^{which} is prosecuted as a first degree felony. A culprit will even be guilty of the crime if the gun is unloaded. However, a defense can be asserted if pointing the gun was done in self-defense or in defense of a third party.

23. Are there any restrictions on where you can practice your shooting?

Under State law, you cannot practice your shooting in or around a publicly-owned or maintained building such as a school, fire department station, government agency building, or the State Capitol. Nor can you practice shooting firearms on a publicly-owned or maintained football field, baseball field, soccer field, or similar “municipally owned or maintained recreational structure or property.” In fact, one generally cannot *possess* firearms in those areas.

Your local municipal or county government may also have restrictions on where you can practice shooting.

24. How do you obtain a concealed handgun license?

Under Texas law, a person can obtain a license to carry a concealed handgun if he/she:

- (1) is a legal resident of this state for the six-month period preceding the date of application under this subchapter or is otherwise eligible for a license under Section 411.173(a);
- (2) is at least 21 years of age;
- (3) has not been convicted of a felony;
- (4) is not charged with the commission of a Class A or Class B misdemeanor or equivalent offense, or of an offense under Section 42.01, Penal Code, or equivalent offense, or of a felony under an information or indictment;
- (5) is not a fugitive from justice for a felony or a Class A or Class B misdemeanor or equivalent offense;
- (6) is not a chemically dependent person;
- (7) is not incapable of exercising sound judgment with respect to the proper use and storage of a handgun;
- (8) has not, in the five years preceding the date of application, been convicted of a Class A or Class B misdemeanor or equivalent offense or of an offense under Section 42.01, Penal Code, or equivalent offense;
- (9) is fully qualified under applicable federal and state law to purchase a handgun;
- (10) has not been finally determined to be delinquent in making a child support payment administered or collected by the attorney general;
- (11) has not been finally determined to be delinquent in the payment of a tax or other money collected by the comptroller, the tax collector of a political subdivision of the state, or any agency or subdivision of the state;
- (12) is not currently restricted under a court protective order or subject to a restraining order affecting the spousal relationship, other than a restraining order solely affecting property interests;
- (13) has not, in the 10 years preceding the date of application, been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony; and
- (14) has not made any material misrepresentation, or failed to disclose any material fact, in an application submitted pursuant to Section 411.174.

25. If I have a concealed handgun license, may I carry any type of gun that I want?

No. First, any gun that you carry has to be concealed such that no one around you knows that you have the gun with you. Second, the gun must be a handgun (in other words, you can't carry a machine gun or a sniper rifle). Third, you can only carry a revolver unless you pass a training course to qualify you to carry a semi-automatic pistol.

26. If I have a concealed handgun license, may I carry a handgun wherever I want?

No. Even with a concealed handgun license, guns are still prohibited at police stations, most government facilities, prisons, jails, courthouses, polling places (*i.e.*, you can't take your gun when you go to vote), any athletic event, bars (other than restaurants that happen to sell alcohol), schools, universities, airports and churches, among other places. Any business can also prohibit guns by placing a sign at the entrance. You also have to notify the occupants of a home before entering while carrying a concealed handgun.

27. If I have a concealed handgun license, may I carry a handgun into other states?

Not necessarily. Texas has reciprocity with many, but not all, states. For a map of states recognizing Texas licenses, see <http://www.stateoftexaschl.com/chl-faqs/reciprocity/>.

28. How do you register to vote?

Once you turn 18 years of age, you have the right to vote in federal, state, and local elections. You can find voter registration forms in many places (for example, the U.S. Post Office, the public library, or if in Pulaski County the Pulaski County Circuit Clerk's website). You will need to particularly pay attention to the instructions regarding what type of identification you will need to register to vote, and what you need to bring later on when you are actually ready to vote. Where you live will control the precinct in which you can vote.

If you will be away from home on Election Day, you can vote through the mail using an absentee ballot. You will need to call your county clerk's office for specific instructions regarding the process for absentee voting.

To learn more about your civic duty, visit the Vote America website here: <http://www.tyla.org/tyla/index.cfm/projects/vote-america/>.

29. How do you register with the Selective Service?

The Selective Service System is the program that calls up people for military service. All males between the ages of 18 and 25 must register with the Selective Service System so that the United States government will have information available regarding potential soldiers in the event of war. While there is presently no military draft, if you are male you must sign up with the Selective Service System once you turn 18 years of age. You can register online here: <https://www.sss.gov/regver/wfregistration.aspx>.

**CHAPTER 14 - ALTERNATIVE DISPUTE
RESOLUTION AND LITIGATION:**

The Basics of Resolving Civil Disagreements

The Dispute Resolution Process

1. What are the pros and cons of a civil lawsuit vs. arbitration vs. mediation?

Litigation can be a time-consuming, expensive, and frustrating way to resolve disputes; thus, there are options such as Alternative Dispute Resolution (“ADR”) to resolve lawsuits before trial. ADR includes both arbitration and mediation, and while they are different procedures, their goal is the same – that is, to minimize the expense and delay associated with a civil lawsuit. The State Bar of Texas’ Dispute Resolution guide is a helpful tool to understanding ADR. It’s available at: <http://www.texasbar.com/Content/NavigationMenu/ForThePublic/FreeLegalInformation/OurLegalSystem/DisputeResolution.pdf>.

2. What is arbitration?

Arbitration is an adversary proceeding in which the parties present competing evidence and arguments before a neutral person or panel, who then decides the dispute much like a judge would in a trial. Arbitration can be voluntary, judicially mandated, or contractual, and the outcome of arbitration can be binding or nonbinding (advisory). Many contracts today contain provisions that compel binding arbitration of potential disputes. For more information, take a look at the State Bar of Texas’ Consumer Arbitration In Texas guide at: <http://www.texasbar.com/Content/NavigationMenu/ForThePublic/FreeLegalInformation/OurLegalSystem/ConsumerArbitrationinTexas.pdf>.

3. What is mediation?

In mediation, a neutral third party attempts to facilitate communication and devise a compromise between the conflicting parties. Mediation is not a legal proceeding. Unlike arbitration, the neutral third party’s role in mediation is not to determine who wins; rather the neutral party is expected to bring the conflicting parties closer together and assist in overcoming obstacles to settlement. The actual structure and conduct of mediation is typically much less formal than arbitration. Parties in a civil case may be required to or may decide to mediate a case before taking it to trial.

4. Arbitration vs. Mediation

The parties’ attitudes and relative circumstances of the parties are the factors that typically determine whether arbitration or mediation is an option. To successfully mediate, both parties must want to settle their dispute and participate in good faith with one another. Mediation is unlikely to be effective when there is a great deal of hostility between the parties. In such circumstances, arbitration may be the only hope of avoiding civil litigation and trial.

Courtroom “Dos and Don’ts”

How to Dress For Court.

DO dress as you would for an important event.

DON’T wear t-shirts with messages.

DON’T chew gum. If you are a party going to trial, ask your attorney for suggestions on what to wear.

Your Courtroom Behavior.

DO exercise self-control at all times no matter what is said in the courtroom.

DO be on time for court.

DON’T react to the answers of witnesses.

DON’T argue with the opposing party or his/her attorney.

When You Are Testifying.

DO listen to the entire question being asked before you answer.

DO ask the questioner to repeat or clarify any question you do not understand.

DO answer the question asked if you know the answer.

DO answer questions that may seem stupid or foolish to you – after all, it is your attorney’s job to object to improper questions.

DON’T mumble or use gestures to answer a question since the court reporter must transcribe your answer.

DON’T lie about anything. This is a serious crime.

DON’T feel the need to explain every answer.

DON’T argue with the questioner.

Civil Lawsuits

1. How are monetary damages determined in a civil lawsuit?

The law determines the types of damages a plaintiff may recover. Damages may be limited in a case where a plaintiff could have avoided injury or a loss. For instance,

suppose that you lost control of your car and drove it through the window of a store. If the owner fails to board up the window or post a guard after the incident, you cannot be held responsible for losses the store incurs when looters enter it later that night and steal the merchandise. There may be a cap on damages for some types of litigation. In jury trials, the jury will decide how much money should be awarded, although a judge usually has the discretion or requirement under the law under certain circumstances, to increase or reduce the amount of a jury award. In a bench trial, the judge will make the decision on how much to award in damages.

2. What type of relief, other than monetary damages, may be available in a civil lawsuit?

The type of relief in a civil lawsuit can vary. Besides money/compensatory damages, a plaintiff can seek an injunction (keeping or requiring someone from doing something), declaratory judgment (asking that the court decide a particular issue), and/or specific performance (forcing someone to do something they promised to do), to name a few examples. The type of relief one can receive depends on the type of civil lawsuit filed.

3. If you are not a party (either plaintiff or defendant) but instead are a witness in a lawsuit, what can you expect to happen prior to and at trial?

A witness is one who gives relevant information to a court relating to a matter pending before a court of law. As a witness, you could be asked to give your evidence in an out-of-court deposition in person and can be called to testify in court under oath. Both parties will have an opportunity to question you.

Prior to proceeding to court, the parties may want you to visit their office before the trial to go through your evidence. This is useful and will give you an idea of the type of questions you can expect at the trial. You may receive a subpoena which compels your attendance in court at the date and time listed in your subpoena.

On the date of the trial, you may be required to wait to give your evidence. While you are waiting to give your evidence, you may sit in the courtroom unless told otherwise by a court official. When your name is called, walk forward to the front of the judge's bench and stand until you are sworn in. You will then enter the witness box and sit for questioning.

4. Why do witnesses have to wait outside the courtroom before testifying at trial?

When a party to a lawsuit "invokes the rule" at trial, he or she is seeking to implement the rule of sequestration – that is, the rule requiring that certain witnesses remain outside of the presence of other testifying witnesses. The reason behind the rule is that it prevents witnesses from hearing the testimony of other witnesses so that each person's testimony is his or her own and not influenced because of another witness's testimony. While waiting outside of the courtroom to testify, you are not to discuss the case or your testimony with anyone.

5. What could happen if you do not tell the truth in court?

If you knowingly do not tell the truth under oath in court you commit perjury. Perjury is a serious criminal offense. If you perjure yourself in court you could face time in prison.

6. What options do you have if you lose your lawsuit?

The losing party to a lawsuit has the right to file a motion for new trial and/or file an appeal and have a higher/appellate court review the lower court's decision. In the event you are on the losing end of a lawsuit and you do not wish to appeal, you may attempt to negotiate a post-trial settlement with the opposing party.

7. Can you get the other side to pay your attorney's fees if you win your lawsuit?

Attorney's fees are provided for by statutes enacted by the Texas Legislature. You may be awarded attorney's fees depending on the type of case you file. Your attorney will be able to advise you if you will get attorney's fees in the event that you win your lawsuit.

8. What is the difference between a hearing and a trial?

A court hearing is conducted in front of a judge to determine anything other than liability in a civil case. By way of example, if you are going through the discovery process and are trying to obtain information from the opposing party who refuses to provide you with the information, your attorney can file a motion to compel the other party to produce the information. There will be a hearing (prior to the trial) to determine if the other party must turn over the information.

CHAPTER 15 - DEALING WITH ATTORNEYS :

Who They Are, Where They Are, and What They Can Do For You

1. Which is better, an older lawyer or younger lawyer?

A lawyer's age has no bearing on whether he or she is better than any other lawyer. An "older" lawyer may be more experienced than a "younger" lawyer but may have a heavier case load and be more expensive. A younger lawyer, on the other hand, may be more accessible, less expensive, be more attuned with the latest technology, and easier to talk to about your particular problems than an older lawyer. However, the foregoing generalities do not always hold true, so your choice of an attorney should simply be based on who is the right fit for you under the facts and circumstances. In order for you to benefit from your attorney-client relationship, it is necessary that your attorney be someone with whom you feel comfortable telling your story or problem including all of the details, whether good or bad. Whether younger or older, it is imperative that the attorney be honest, diligent, a good communicator, and a hard worker. To conduct a search for attorneys in your area, and to make sure that they are in good standing to practice law, visit the State bar of Texas Lawyer Search page at http://www.texasbar.com/am/template.cfm?section=simple_search.

2. What are the differences, advantages, and disadvantages of different fee arrangements?

There are generally four types of fee arrangements between a lawyer and client: hourly, contingent, flat, and a limited-scope fee. An hourly fee arrangement is one in which you will pay your lawyer based on his or her hourly rate. Hourly rates generally vary by attorney, law firm, and area of the state where the attorney practices. . In this arrangement, you only pay your attorney for his or her time working on your case. Typically, an attorney will bill you for his or her time on a monthly basis. You are generally responsible for out-of-pocket expenses incurred as well.

A contingent fee, on the other hand, is one which is based on the outcome of the case. You may be familiar with this arrangement already by seeing commercials or other advertisements which say something along the lines of "we'll win your case or you don't pay." Generally, with a contingent fee arrangement, an attorney will be paid based on a percentage of your recovery, if any. Percentages of recovery depend upon many factors, including but not limited to the time of recovery (before trial or after trial), the complexity of the case, and the necessity of appeal. In some cases, a lawyer's percentage of your recovery may vary at different stages of a case. For example, a contingent fee arrangement may provide that your attorney will be compensated at 25% if recovery is had before trial, 33% if recovery is had after trial, or 40% if recovery is had after an appeal. In contingent fee arrangements, you are generally responsible for all costs associated with your case other than the lawyer's fee, although often the lawyer will advance these costs. Ethical rules prevent attorneys from collecting contingent fees in certain type of civil cases, such as divorce proceedings.

A flat fee is the third general type of fee arrangement. A flat fee is just what it says. You pay a flat fee to an attorney for his or her work on the case. A flat fee

arrangement is often the arrangement where attorneys are hired to draft a client's will or obtain an uncontested divorce for a client. The scope of the work should be clearly defined so that there are no misunderstandings as to what you are getting for your money.

Finally, in the event that you are unable to afford an attorney, and do not qualify to receive legal aid, you may be charged pursuant to a limited-scope arrangement. You and your attorney will discuss what portions of the case you will handle, and what parts the attorney will handle. The attorney will only bill you for the work completed as specified in the limited-scope fee agreement. For example, if you are comfortable appearing in court, but want an attorney to draft your legal documents, a limited-scope representation might be right for you.

Some cases are handled with mixed arrangements combining elements of the first three main arrangements described above. Just like with choosing an attorney, you should only enter into a fee arrangement with which you feel completely comfortable. Depending upon the type of fee arrangement you have with your lawyer, he or she may require you to pay a retainer. A retainer is money that is held in trust by your lawyer during the course of your case. The attorney can make withdrawals from the account as they earn their fee by working on the case. Typically, at the end of your case, if you have an outstanding balance on your account, the attorney may apply the retainer to your balance or, if your account is paid in full, will return the retainer to you in accordance with your agreement. The amount of retainer required varies among lawyers and cases, and often it will need to be "replenished" every month.

Whether or not you have an hourly, contingent, flat fee, or limited-scope arrangement, you should have an engagement letter prepared by your attorney. An engagement letter is a letter prepared by your attorney and signed by you that confirms his or her agreement to represent you and your agreement to such representation. Also, the letter is a means by which the lawyer makes you aware of his or her expectations of payment, including the type of fee arrangement, the attorney's billing cycle, and the attorney's policies on costs and expenses incurred in his or her representation of you. This way you will know your obligations of payment to your attorney in advance.

For more information, read *Retaining a Lawyer: What You Need to Know About Fee Agreements*, an article written by Attorney Chad Baruch that was published in the Texas Bar Journal at:

http://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal&Template=/CM/ContentDisplay.cfm&ContentID=19948.

3. What if I cannot afford an attorney at all?

You may qualify to receive free legal assistance. For information on how to obtain legal aid, and a complete directory of legal aid offices in Texas, visit <http://texaslawhelp.org/>.

4. How can you tell if your attorney is handling your case properly?

Your attorney should be communicating with you periodically about the status of your case. For example, he or she may call, write, or send you copies of all filings and correspondence he or she receives or sends out in your case. If you feel that you are not being kept up to date about the status of your case, call or write to your attorney. While his or her response may not be immediate, you should receive a response in a timely manner. If you have questions or concerns about the way your case is being handled, you should likewise call or write to your attorney. Do not be afraid to question your attorney. If he or she is committed to you as a client, your attorney will welcome your questions and will try his or her best to address each of your questions and concerns. If you feel that your attorney will not communicate with you concerning the status of your case or if you believe that your case is being handled improperly, you should consider looking for another attorney. If your lawyer's actions in failing to communicate with you or handle your case properly are serious, you should consider contacting the State Bar of Texas Office of Chief Disciplinary Counsel. For information on attorney complaints, visit: <http://www.texasbar.com/Content/NavigationMenu/ForThePublic/FreeLegalInformation/OurLegalSystem/AttorneyComplaintInformation.pdf>.

5. If you become dissatisfied with your attorney, can you get a new one?

Yes. If you become dissatisfied with the way your attorney is handling your case, you can get a new attorney. This does not necessarily mean that you will not have to pay your previous attorney, though. Depending upon your fee arrangement, you may still owe your attorney for his or her services performed, or your attorney may still have a claim to any recovery in a contingent fee arrangement. Often your ability to terminate the attorney and/or his or her ability to withdraw as your attorney will be a part of the engagement letter.

6. What are your attorney's obligations to you as the client?

Your attorney's obligations to you as the client come from various sources. First, the Texas Disciplinary Rules of Professional Conduct provide a code of ethics by which lawyers must abide in representing clients, communicating with third parties, and dealing with the courts. This code of ethics provides the greatest source of a lawyer's obligations to a client.

A lawyer's obligation to you includes the duty to provide competent representation. Competent representation means that the attorney possesses the legal knowledge, skill, thoroughness and preparation that are required by your case. A lawyer must also represent you with reasonable diligence, promptness, and should make reasonable efforts to expedite your case. Your attorney's obligations may also come from your engagement letter. In the engagement letter prepared by your attorney and signed by you, there will generally be a provision that addresses the scope of the attorney's representation of you, as well as his or her obligations to you as a client. If at the time you hire an attorney you are unclear about his or her obligations to you as a client, you should ask specific questions. In order to benefit from the attorney-client relationship, you should fully understand and be comfortable with both your obligations to your attorney, as well as your attorney's obligations to you as a client.

7. What are your obligations to your attorney?

Your obligations to your attorney include fully and accurately disclosing all of the facts and details regarding your case, as well as any developments or changes in the facts that may arise. It is your duty to cooperate with your attorney to allow for an efficient, timely resolution of your case. It is your obligation to make yourself available for communication with your attorney, including telephone calls and office conferences. Also, you may be responsible for attending proceedings such as depositions, hearings, and trial if required by the circumstances of your case.

8. Do attorneys have a code of ethics they must follow?

Yes. Attorneys must follow a code of ethics. The code of ethics in Texas is called the Texas Disciplinary Rules of Professional Conduct. These rules govern the client-lawyer relationship, a lawyer's transactions with people other than clients, a lawyer's role as advocate and counselor, law firms and associations, and a lawyer's pro bono public service. Each of the rules is designed to maintain the integrity of the legal profession while defining the expectations and obligations of attorneys to their clients and others. If you believe your attorney is in violation of the ethical rules that govern attorneys, you may file a complaint with the State Bar of Texas Office of Chief Disciplinary Counsel. A complete copy of these rules is available on the Texas Supreme Court's website here: <http://www.supreme.courts.state.tx.us/rules/>.

CHAPTER 16 - JURY DUTY:

Doing Your Civic Duty

Jury service is a privilege. Comprehensive information on conducting this civic duty, and its importance, is featured in the Texas Young Lawyer's American Juror project. This is a web and video-based project dedicated for informing Texas about jury service. Visit the American Juror Website at <http://www.americanjuror.org/>.

1. What are the qualifications for serving on a jury in a criminal or civil case?

To be legally qualified for jury service in Texas, an individual must: (1) be at least 18 years of age at the time he or she is required to appear; (2) be a citizen of Texas and the county where the jury service is sought; (3) be qualified to vote in the county of service (a person who is not registered to vote is not disqualified from service); (4) be of sound mind and good moral character; (5) be able to read and write; (6) not have been convicted of misdemeanor theft or a felony; (7) not have served as a juror for six or more days during the preceding three months in the county court or during the preceding six months in the district court; (8) not be under indictment or other legal accusation for misdemeanor theft or a felony. Under certain circumstances, rules 5 and 7 may be suspended by the trial court.

All individuals meeting these qualifications are considered competent to serve on a jury. However, persons otherwise legally qualified to act as jurors can be disqualified for several reasons, which include situations where the person is a witness in the case, has an interest in the outcome, is related to a party, or is biased against or for a party. A person may also be excused from jury service if they are over 70 years of age, have legal custody of a child younger than ten if jury service would require leaving the child without adequate care, a student in secondary or higher education, an officer or employee of the legislative branch, the primary caretaker of an invalid, and for other reasons discussed with the trial judge. The qualifications for serving on a jury in federal court are similar to the qualifications for jury service in state court. To be legally qualified for federal jury service, an individual must: (1) be a United States citizen; (2) be at least 18 years of age at the time he or she is required to appear; (3) reside primarily in the judicial district for one year; (4) be adequately proficient in English; (5) have no disqualifying mental or physical condition; (6) have no pending felony charges; and (7) have never been convicted of a felony (unless civil rights have been legally restored).

2. If you are called, do you have to serve?

Yes. All citizens called for jury duty in both state and federal court, unless disqualified or excused, have a duty to serve as a juror. The court may excuse jurors from service for undue hardship or extreme inconvenience; however, this is a discretionary decision made only by the court. A person who fails to respond to a notice of jury duty may be subject to a contempt action that is punishable by a fine of not less than \$100 and not more than \$1,000.

3. How does your name get on a jury list?

Jurors in Texas are randomly selected from lists of registered voters and driver's license holders.

4. How long does jury service usually last?

In both state and federal court, the length of jury service will vary according to the circumstances of each case. Usually, jury duty will last less than one week.

5. Do jurors get paid for their service?

Does my employer have to pay me if I serve on jury duty?

Neither Texas state law nor federal law requires a non-government employer to pay wages to an employee while an employee is on jury duty. Although not required to do so, many employers will pay employees while on jury duty. An employee on jury duty is entitled to protection against termination or other adverse action by the employer as a result of jury service.

Does the court have to pay me if I serve on jury duty?

Texas Jurors: You will be paid by the county in an amount not less than \$6.00 and not more than \$50.00 per day or fraction of a day served. However, the Commissioners Court of a county may choose to reduce or eliminate the daily compensation for prospective jurors who attend court for only one day without actually serving on a jury.

Federal Jurors: Federal jurors are paid \$40 per day of service. While the majority of jury trials last less than a week, jurors can receive up to \$50 per day after serving 30 days on a trial (employees of the federal government are paid their regular salary in lieu of this fee). Jurors are reimbursed for reasonable transportation expenses and parking fees. Jurors also receive a minimal allowance covering their meals and lodging if they are required to stay overnight.

6. Can you lose your job or your pay when you serve on a jury?

You may not be discharged from employment or receive any other form of penalty on account of absence from employment by reason of jury duty. An employer who terminates, threatens to terminate, penalizes, or threatens to penalize an employee because the employee performs jury duty is subject to sanctions for contempt of court and payment of damages to the employee.

7. What kinds of questions might the attorneys or judge ask you during jury selection?

The attorneys or the judge may pose questions to determine whether a potential juror is: (1) biased; (2) knows any of the parties, counsel, or witnesses; or (3) should otherwise be excluded from jury duty. The types of questions asked often vary depending upon the type of case. For example, if the case involves a claim for large damages, you may be asked if you would have any reason not to make such an award even if the plaintiff proved his or her entitlement to a large award. If the case involves a lot of documents, you may be asked if you like working crossword puzzles. An affirmative

answer may reveal that this potential juror is highly literate, has a strong vocabulary, is persistent, and will read and understand complex documents.

8. What will you do if you are selected as a juror?

The date and time you are to appear at the courthouse should be written on your summons. If a written summons is not used, you will be notified by a proper judicial official or through your local newspaper.

Those persons for whom jury service would be an extreme personal hardship may be excused because of their occupation or their age. If you have a serious problem or conflict, write or visit the circuit clerk's office at once. He or she will tell you how to apply for an excuse from jury duty.

If you have more questions about Jury Service, visit the Texas Judicial Counsel's website on Juror Information available at: <http://www.courts.state.tx.us/tjc/jury-home.htm> .

CHAPTER 17 - WILLS AND ESTATES :

You Only Live Once

1. What does a will do?

In a Last Will & Testament (will), you appoint a person or financial institution to gather your assets, pay your creditors, and distribute your assets in accordance with your wishes. This person is referred to as a personal representative. In a typical will for a young adult, you would give your property to a surviving spouse, or if none, to your children, siblings, or parents. Often times, a person will include in his will a trust for minors who are beneficiaries so that they do not receive an inheritance in one lump sum at a young age. It is also common for a person making a will to leave a portion of his/her assets to a charity or university.

2. What happens if I die without a will?

Typically, if you are a resident of Texas at your death, Texas law will determine who inherits your assets and how they will be divided. For example, if you die without a spouse or children, your assets will pass to your parents. If you die with children but no spouse, the children will receive your assets. If you are married, the recipient of your assets depends on whether you acquired the assets before or after you got married, and whether your children (if you have any) are also the children of your current spouse. Most states have statutes that set out how your assets will be divided if you die without a will.

3. Do I need a will?

In most cases, it is not crucial that you have a will until you are married, have children, or have accumulated assets. If you are married, it is important to have a will because your spouse, by virtue of marriage, becomes entitled to a portion of your assets upon your death; however, if you desire that all of your assets, or more than his/her legal entitlement, pass to your spouse, then it is important to have a will to direct these assets to your spouse. If you have minor children, it is crucial to have a will in order to nominate a guardian to care for the children in the event both natural parents are deceased. In this situation, a court will appoint a guardian over the minor children, and in making such appointment, it will give preference to a nomination in the parent's will. If you are an individual with assets, you need a will in order to direct who will inherit your assets upon your death. A will should be revised as your life circumstances change – when you get married, have children, or gain more assets.

4. Upon my death, what happens to my estate?

When you die, there is a court procedure known as probate to administer your estate and distribute your assets in accordance with a will, or if none, in accordance with state law. The probate process is very similar regardless of whether or not you had a will. In most circumstances, if you have a will, your assets are distributed in accordance with your will, and if you do not have a will, your assets are distributed in accordance with state law. At the beginning of the probate process, the court appoints a personal representative to gather and protect your assets, pay any creditors or claimants, and

distribute your assets in accordance with your will, or if no will, in accordance with state law. If you have a will, the personal representative is typically the person nominated in the will. If you do not have a will, the personal representative can be any person who qualifies under state law. The personal representative has the duty and legal obligation to properly administer the estate, and once the probate process is completed, the personal representative is released of his/her duties and obligations.

**CONTRIBUTING AUTHORS OF THE FIRST
ARKANSAS EDITION – APRIL 2009**

CHAPTER 1 -

**MARRIAGE AND
FAMILY**

David W. Kamps
Attorney at Law
Dodds, Kidd & Ryan
Little Rock, Arkansas

Denise Reid Hoggard
Attorney at Law
Chisenhall, Nestrud &
Julian, P.A.
Little Rock, Arkansas

Heather G. Moody
Attorney at Law
Chisenhall, Nestrud &
Julian, P.A.
Little Rock, Arkansas

Jacob M. Hargraves
Attorney at Law
Newell & Hargraves
Hot Springs, Arkansas

Jennifer L. Modersohn
Attorney at Law
Peel Law Firm, P.A.
Russellville, Arkansas

Kevin R Holmes
Attorney at Law
Hopkins & Holmes,
PLLC
Van Buren, Arkansas

R. Brannon Sloan, Jr.
Attorney at Law
Dodds, Kidd & Ryan
Little Rock, Arkansas

Vicki S. Vasser
Attorney at Law
Matthews, Campbell,
Rhoads, McClure,
Thompson, & Fryauf
P.A.
Rogers, Arkansas

Victor D. “Trey”
Wright, III P.A.
Attorney at Law
Wright Law Firm
Little Rock, Arkansas

**CHAPTER 2 -
CONTRACTS AND
INSURANCE**

Amanda Capps Rose
Associate Counsel,
Legal Division
Arkansas Insurance
Department
Little Rock, Arkansas

Booth Rand
Chief Counsel, Legal
Division
Arkansas Insurance
Department
Little Rock, Arkansas

Caley B. Vo
Attorney at Law
Wright, Lindsey &
Jennings, LLP
Rogers, Arkansas

Cory Cox
Director, Criminal
Investigation Division
Arkansas Insurance
Department
Little Rock, Arkansas

Dan Honey
Deputy Commissioner,
Life and Health Division
Arkansas Insurance
Department
Little Rock, Arkansas

Nina Carter
Associate Counsel,
Legal Division
Arkansas Insurance
Department
Little Rock, Arkansas

Zane Chrisman
Associate Counsel,
Legal Division
Arkansas Insurance
Department
Little Rock, Arkansas

**CHAPTER 3 - LEASE
AGREEMENTS**

Brandie Patton
REIT Management
Wal-Mart Realty
Bentonville, Arkansas

Brian R. Lester
Attorney at Law
Lester Law Firm, PLLC
Fayetteville, Arkansas

J. Cliff McKinney, II
Attorney at Law
Quattlebaum, Grooms,
Tull & Burrow PLLC
Little Rock, Arkansas

CHAPTER 4 - PERSONAL PROPERTY

Grant M. Cox
Attorney at Law
Perkins & Trotter, PLLC
Little Rock, Arkansas

CHAPTER 5 - YOUR CAR, PART I (BUYING IT, REPAIRING IT

C. Michael Daily
Attorney at Law
Daily & Woods,
P.L.L.C.
Fort Smith, Arkansas

Farrah L. Fielder
Attorney at Law
Ledbetter, Cogbill,
Arnold & Harrison LLP
Fort Smith, Arkansas

CHAPTER 6 - YOUR CAR, PART II (DRIVING IT, WRECKING IT)

J. Matthew Coe
Attorney at Law
Fogleman & Rogers
West Memphis,
Arkansas

Staci Dumas Carson
Attorney at Law
Watts, Donovan &
Tilley, P.A.
Little Rock, Arkansas

CHAPTER 7 - PERSONAL INJURIES (OTHER THAN CAR WRECKS)

Breean Walas
Attorney at Law
Gary Eubanks &
Associates
Little Rock, Arkansas

Matthew R. House
Attorney at Law
James & House, P.A.
Little Rock, Arkansas

CHAPTER 8 - YOUR MONEY

Vincent E. Guest
General Counsel
Cross County Bank
Wynne, Arkansas

CHAPTER 9 - CONSUMER RIGHTS

Bradford Phelps
Senior Assistant
Attorney General
Office of the Arkansas
Attorney General
Little Rock, Arkansas

Charles Saunders
Assistant Attorney
General
Office of the Arkansas
Attorney General
Little Rock, Arkansas

CHAPTER 10 - EMPLOYMENT LAW

Christy Rose Conrad
Senior Attorney
FedEx Freight, Inc.
Harrison, Arkansas

H. Wayne Young, Jr.
Attorney at Law
Friday, Eldredge &
Clark
Little Rock, Arkansas

Mark White
Attorney at Law
The Law Firm of White
& White, P.L.C.
Bryant, Arkansas

Missy McJunkins Duke
Attorney at Law
Cross, Gunter,
Witherspoon & Galchus,
P.C.
Little Rock, Arkansas

CHAPTER 11 - MEDICAL/PRIVACY RIGHTS

Amy D. Johnson
Deputy Reporter of
Decisions
Arkansas Supreme
Court
Little Rock, Arkansas

Benjamin D. Brenner
Attorney at Law
Williams & Anderson
PLC
Little Rock, Arkansas

Bonnie Robertson
Attorney at Law
Robertson Law Firm,
PLLC
North Little Rock,
Arkansas

CHAPTER 12 - CRIMINAL LAW

Jacob M. Hargraves
Attorney at Law
Newell & Hargraves
Hot Springs, Arkansas

J.P. Longacre
Attorney at Law
LeForce & McCombs,
P.C.
Idabel, Oklahoma

Joan Lucas
Deputy Prosecuting
Attorney
Pulaski County
Prosecutor's Office
Little Rock, Arkansas

Kimberly N. Davis
Division Chief- Drug
Crimes Unit
Pulaski County
Prosecutor's Office
Little Rock, Arkansas

CHAPTER 13 – THE PRICE OF INDEPENDENCE

Melissa Sawyer
Attorney at Law
Monticello, Arkansas

J.J. McNiece
Attorney at Law

Shane Henry &
Associates, PLLC
Conway, Arkansas

Shane A. Henry
Attorney at Law
Shane Henry &
Associates, PLLC
Conway, Arkansas

J. Cliff McKinney, II
Attorney at Law
Quattlebaum, Grooms,
Tull & Burrow PLLC
Little Rock, Arkansas

CHAPTER 14 - LAWSUITS AND LITIGATION

Matthew R. House
Attorney at Law
James & House, P.A.
Little Rock, Arkansas

Michael C. Stiles
Attorney at Law
The Mayton Law Firm
Little Rock, Arkansas

CHAPTER 15 - DEALING WITH ATTORNEYS

Amanda K. Wofford
Attorney at Law
Rose Law Firm, a
Professional Association
Little Rock, Arkansas

Karen B. Reagler
Attorney at Law
Baim, Gunti, Mouser,
Havner & Worsham,
PLC
Hot Springs, Arkansas

CHAPTER 16 - JURY DUTY

Franki E. Coulter
Senior ERISA Counsel
Windstream
Communications, Inc.
Little Rock, Arkansas

Leslie J. Ligon
Law Clerk to the
Honorable Harry F.
Barnes
United States District
Court/Western District
of Arkansas
El Dorado, Arkansas

CHAPTER 17 - WILLS AND ESTATES

J. Cliff McKinney, II
Attorney at Law
Quattlebaum, Grooms,
Tull & Burrow PLLC
Little Rock, Arkansas

Nathan E. Tyler
Attorney at Law
Quattlebaum, Grooms,
Tull & Burrow PLLC
Little Rock, Arkansas

Robert E. Tellez
Attorney at Law
Quattlebaum, Grooms,
Tull & Burrow PLLC
Little Rock, Arkansas

CONTRIBUTING
EDITORS OF THE
FIRST ARKANSAS
EDITION (APRIL
2009)

Bryce Brewer
Attorney at Law
Welch and Kitchens,
LLC
North Little Rock,
Arkansas

Cory Childs
Law Clerk for the
Honorable Lavenski R.
Smith
United States Court of
Appeals for the Eighth
Circuit
Little Rock, Arkansas

Gwendolyn Rucker
Law Clerk for the
Honorable Henry L.
Jones, Jr.
United States Magistrate
Little Rock, Arkansas

Heather G. Moody
Attorney at Law
Chisenhall, Nestrud &
Julian, P.A.
Little Rock, Arkansas

J. Cliff McKinney, II
Attorney at Law
Quattlebaum, Grooms,
Tull & Burrow PLLC
Little Rock, Arkansas

Lloyd "Tre" Kitchens
Attorney at Law
Welch and Kitchens,
LLC

North Little Rock,
Arkansas

Matthew R. House
Attorney at Law
James & House, P.A.
Little Rock, Arkansas
Michael C. Stiles
Attorney at Law
The Mayton Law Firm
Little Rock, Arkansas

Valerie D. Nation
Attorney at Law
Mitchell, Williams,
Selig, Gates &
Woodyard, P.L.L.C.
Little Rock, Arkansas

Vicki S. Vasser
Attorney at Law
Matthews, Campbell,
Rhoads, McClure,
Thompson, & Fryauf
P.A.
Rogers, Arkansas