

Legal Services for Students

Students' Handbook 2013

Office of the Dean of Students • *Division of Student Affairs*

THE UNIVERSITY OF TEXAS AT AUSTIN



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deanofstudents.utexas.edu/lss

Foreword

The goal of this handbook is to inform UT Austin students on areas of the law that most frequently concern them. We caution students to seek the advice of an attorney regarding specific legal problems.



Legal Services for Students
Students' Handbook
(10th Edition, September 2013)

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The University of Texas at Austin
Office of the Dean of Students
Division of Student Affairs

Introduction

Overview of Services and Procedures

Purpose

The purpose of the Legal Services for Students office at The University of Texas at Austin is to advise students concerning their individual legal problems.

Eligibility

All currently enrolled students at The University of Texas at Austin are eligible to bring any of their legal issues to the Legal Services for Students office. If you were enrolled during the last spring semester and will be enrolled in the upcoming fall semester, we are available to assist you during the summer semester(s) as well. We can also advise a student's spouse on their legal matters if they are accompanied by the eligible student to our office. We will not, however, represent a student's spouse in court.

Location and Hours

Legal Services for Students is located on the fourth floor of the Student Services Building at 100 West Dean Keeton Street. The telephone number is 512-471-7796, the fax number is 512-471-8625. The office is open 8 a.m.–5 p.m. Monday through Friday. It is closed on weekends and university holidays.

How to Use the Service

All consultations are **by appointment only**. No legal advice will be given over the telephone. You may make an appointment by completing the intake questionnaire, including a brief description of your legal problem or question, either in the office or online at deanofstudents.utexas.edu/lss. Look for the "Schedule an Appointment" link and follow the steps to schedule a meeting with one of our attorneys. Once you have completed the questionnaire, you will be scheduled for your consultation. You may call our office at 512-471-7796 for our consultation hours. You will be required to show your current student identification card when you arrive for your appointment.

Web Site

If you do not have the time to visit our office, or merely have a basic legal question, please visit us on the Web at deanofstudents.utexas.edu/lss. Articles we have written, awards we have received, information on our staff and other general office information are available. Also, as noted above, this is one of the locations where you can make your appointments.

Note

It is the office's policy not to allow children under the age of six to be in the office while the parent is receiving legal counseling. Please make arrangements to have your children cared for while you are visiting our office.

Presentations

Legal Services for Students is available to speak to your organization, residence hall or class on an interesting legal topic of your choice. To make the arrangements, simply contact our office via e-mail at lss@uts.cc.utexas.edu.

Available Services

- ▶ Consultation and representation in:
 - Landlord-tenant disputes;
 - Criminal law—misdemeanor cases;
 - Employment law;
 - Auto accidents;
 - Auto repair problems;
 - Consumer and civil matters;
 - Simple wills and name changes;
 - Notary Public service (*please call in advance*);
- ▶ Referral to outside agencies or private attorneys for students with legal issues for which we cannot provide assistance.

Consultation Only

CIVIL

- ▶ Credit card defense suits and bankruptcy defense;
- ▶ Family law;
- ▶ Name changes;
- ▶ Probate;
- ▶ Income tax;
- ▶ Towing cases;
- ▶ Non-student spouse representation;
- ▶ Fee generating matters;
- ▶ Tax Law.

CRIMINAL

- ▶ Criminal law—felony cases;
- ▶ Assault and family violence cases;
- ▶ Dangerous drugs (those covered under a Class A misdemeanor or felony offense);
- ▶ Repeat offenders;
- ▶ Probation revocations.

Excluded Services

- ▶ Disputes between currently enrolled UT Austin students
- ▶ Disputes against any University of Texas units or entities
- ▶ Non-profit/501c3 and all other tax questions
- ▶ Immigration matters
- ▶ Patent law
- ▶ Malpractice
- ▶ Matters related to a student-owned business
- ▶ When the student is the landlord
- ▶ Complex wills/wills involving property over \$2,000,000
- ▶ Phone or e-mail consultation(s)
- ▶ Legal questions pertaining to a matter that is not yours
- ▶ Criminal matters that are similar to, or the same as, a matter LSS has advised you about in the past

Please note: Decisions about how a case will be handled are at the sole discretion of Legal Services for Students.

Landlord-Tenant Law

The Lease – Before You Sign

Is an apartment lease a legal contract?

Yes. If you do not understand something in your lease—or if the landlord’s explanation appears to be contrary to what you believe the lease means—contact this office, a tenant’s organization, or a private attorney BEFORE you sign. At the very minimum, be sure that all the blanks are filled in properly and that all options have been chosen.

When signing a lease, look out for and try to negotiate out provisions which:

- ▶ Allow the landlord to automatically deduct a fixed cleaning fee from your security deposit;
- ▶ Give the landlord the right to take certain pieces of property if you fall behind on the rent;
- ▶ Allow the landlord to enter your home without prior notice to you;
- ▶ Limit your right to repairs (e.g. plumbing stoppages, and conditions other than those which threaten your health or safety) or arbitrarily extend the time period for a landlord to make repairs or require you to pay a fixed amount for each repair; and
- ▶ Allow the landlord to retain your entire security deposit if proper notice of move-out is not provided.

How can I protect my rights?

- ▶ Put things in writing—including promises made by the landlord, any complaints you have, and notices the lease requires you to give to the landlord. Both the landlord and you should sign and date the writing;
- ▶ Read the lease or any document before you sign, making sure that blanks are filled out correctly;
- ▶ Keep copies of every document, including your lease— your landlord is required to give you a copy of your lease within three days after you have signed it; and
- ▶ Get proof the landlord received documents sent by you. Get rent receipts. Send important letters and notices by certified mail, return receipt requested; or ask the landlord to sign and date your copy of the document.

If my roommate and I have both signed the lease, can he or she act for me without my consent?

Yes. Be sure that you and your roommates are in agreement on issues regarding your lease. Since you have all signed, one person can speak for all of the roommates, and it is NOT the landlord’s

responsibility to find out if all of the tenants have discussed and are in agreement on the issue.

How can I be sure that I am picking a good apartment?

- ▶ Look at the actual unit you plan to rent before you sign any document or put down any money;
- ▶ Check out the area in the evening for outside lighting, parking and safety;
- ▶ Ask current residents how they like the complex;
- ▶ Check around the units for obvious maintenance problems;
- ▶ Get a crime statistics report for the area from the police department.

Does a landlord have to inform me of the crime rate in the apartment’s immediate vicinity?

No. However, while there is no duty for a landlord to be responsible for the safety of the tenants and their property, there is a duty for the landlord to take reasonable and necessary precautions to protect both the property and the tenants from foreseeable harm if promises of safety have been made to the tenant (written are best) or security devices are present but not operational because of negligence on the part of the landlord. You should pay close attention to the type of neighborhood you are considering for your residence. The Austin Police Department’s Web site provides crime statistics for a given geographical area.



Rights, Responsibilities and Courses of Action for Landlords and Tenants

Breaking a Lease

Texas law provides three situations in which a tenant may break an otherwise valid lease without penalty:

A victim of family violence may break his/her lease if **1)** a temporary injunction, *ex parte* order or protective order is issued against the abuser; **2)** a copy of the temporary injunction, *ex parte* order or protective order is provided to the landlord; **3)** the victim abandons the property.

A victim or the parent/guardian of a victim of sexual assault, aggravated sexual assault, sexual abuse of a child, indecency with a child, or stalking may terminate a lease if the assault(s) or stalking occurred on the rental premises during the preceding six months. Certain notice requirements apply; we recommend you consult our office before attempting to terminate your lease under these laws.

In some situations, a tenant may terminate his/her lease upon entering military service. Termination may also be available to servicemembers who are permanently transferred or deployed for a period of 90 days or more. Again, we recommend you consult our office if you believe this provision may apply to your situation.

Can I otherwise break my lease?

Not without severe financial consequences. However, if the reason for leaving is caused by the landlord's noncompliance with the lease or failure to repair a condition that affects the health or safety of the tenant or a lack of hot water issue, certain steps may be taken which are described in other sections of this *Handbook*.

If I have personal reasons for needing to vacate before the end of the lease, what are all of my alternatives and what penalties might I suffer?

- ▶ Sublet the apartment with landlord's written approval. The problem with subletting is that the tenant remains responsible to the landlord if the subletting tenant fails to pay rent or damages the premises;
- ▶ Negotiate a settlement or a mutual release of the lease. The tenant may have to pay some money to the landlord and/or agree to forfeit the deposit. If an agreement is reached, it should be in writing, signed, and a copy given to all parties;
- ▶ Move out with notice to the landlord. The TAA lease (a very common local lease form) requires that the landlord make a good faith attempt to reduce damages by arranging to rent the apartment to a new tenant. However, the leaving tenant will be responsible for the time the apartment remains vacant during

the remainder of the lease term unless the landlord does not make a good faith effort to release the unit. In addition, the lease may require a tenant to pay the cost of re-letting. Also, the lease may allow the landlord to enforce a landlord's lien or contractual lien by taking some of the tenant's property from the unit until these financial obligations are met; or

- ▶ Move out without giving the landlord any notice or arranging for a replacement tenant. The landlord will be unable to enforce a lien against your property, but the unit may sit open for a longer period of time before a new tenant is located. You are liable for this "down" time.

Does my landlord have to make an effort to relet my unit once I have broken the lease?

Yes. Landlords must make a good faith effort to lessen their damages in the event you move out early.

Am I liable for the reletting cost if I break the lease?

Yes. Landlords usually charge the full amount indicated in the relet portion of the lease regardless of their actual costs. This amount is normally stipulated to be 85% of one month's rent. However, it is arguable that such charges are legally enforceable only to the extent of actual costs which the landlord can prove that the tenant has incurred (cost of advertising, leasing fee to a realtor, cost of preparing a new lease, etc.).

What other monetary damages could I be responsible for?

The tenant will be responsible for repair of any damage and cleaning of conditions caused by the tenant beyond ordinary wear and tear. If your landlord knows that you are planning to move out early, and if your lease allows, the landlord can immediately demand full payment of the rent for the remainder of your lease term without any notice to you, and initiate a landlord's lien. (The TAA lease allows for all of this).

If I break my lease, what will happen to my security deposit?

Your security deposit will not be refunded, but will be credited against the amount the landlord determines that you owe.

What is a landlord's lien and when can it be used against me?

Normally allowed by the lease, a landlord can seize certain non-exempt property roughly equivalent in value to the amount of rent you owe, and can hold the property until you pay the amount

Rights, Responsibilities and Courses of Action for Landlords and Tenants

owed or sell the property at an auction and apply the proceeds to your debt. The lien can also be used if the lease rent has been accelerated because of a tenant's default.

Some of the property which cannot be seized under this lien are: **a)** clothes; **b)** tools and books of a trade or profession; **c)** school-books; **d)** a family library; **e)** family portraits and pictures; **f)** one couch, two living room chairs, and a dining table and chairs; **g)** beds and bedding; **h)** food; **i)** kitchen furniture and utensils; **j)** medicine; **k)** one car and one truck; **l)** children's toys not commonly used by adults; **m)** goods the landlord knows are not owned by the tenant; and **n)** goods the landlord knows are subject to a recorded lien or financing agreement.

If the landlord does not seize my property, what is likely to happen if I do not pay the damages that s/he claims?

A landlord can report the debt to a credit reporting agency and it will show up as an outstanding debt on your credit history. When you apply for a loan or a credit card, and a creditor requests your credit history, the landlord's report of the debt may cause your loan or credit card application to be denied.

Also, a landlord can sue you. If the landlord wins the lawsuit, a judgment will be entered against you, and it may show up on your credit history if it goes unpaid. Texas law provides certain protection to judgment debtors. Homesteads and certain personal property (valued up to \$30,000 if the debtor is single or \$60,000 if married) are exempt and cannot be seized or sold by forced sale to pay off the judgment. One should note that neither cash nor money on account in financial institutions is exempt and these can be seized by means of a lawsuit from the creditor against your bank account. If you are sued, or if a judgment is taken against you, consult an attorney.

Renter's Insurance

Do I need renter's insurance?

Yes. Many tenants assume that the landlord will cover any losses that occur from events not caused by the tenants—such as fire or floods. However, for the landlord to be liable, the landlord either would have had to know or should have known about the problem, and then either failed to repair it or repaired it with poor workmanship.

If you have renter's insurance, your insurance company will issue a check to cover the loss and then possibly proceed against

the responsible party. Renter's insurance is not very expensive and covers loss of property when something you own is stolen or destroyed by fire, water, or other casualty loss. You can get insurance that will reimburse you for either the "fair market value" or the "replacement cost" of the lost or damaged property.

Repair Problems

When does a landlord have to make repairs to my apartment?

The Texas Property Code requires landlords to fix any problem that affects the health or safety of "an ordinary tenant" or if there is a lack of hot water issue. Your lease may increase the landlord's responsibility to repair a wider range of conditions. Be sure to check your lease. The Texas Property Code has five basic requirements tenants must meet to use the law:

- ▶ You must be current on your rent;
- ▶ You, your family, or your guests must not have caused the problem; and
- ▶ You must give your landlord one written notice by either certified or registered mail of the specific repairs that need to be made. Be sure to keep a copy of the notice;
- ▶ You may also wish to contact the City of Austin Housing Code Enforcement Inspectors to verify defects that might be a violation of the City of Austin's Building Codes. This will increase the proof that what you are complaining of is a serious health, safety, or "reasonable request for repair" issue...as well as demonstrating that the landlord is in violation of a local law. Please see the back of this booklet for the Inspectors' phone number.



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- ▶ If the landlord has not made a diligent effort to begin those repairs within a reasonable time (which is usually assumed to be seven days unless unusual circumstances suggest a longer or shorter time frame is more appropriate), you may terminate the lease without going to court, hire someone to make the repairs and deduct the cost from the next month's rent, or you can go to justice court and possibly obtain one month's rent plus \$500 as a penalty, actual damages, an order reducing your rent, and/or get a judge's order requiring the landlord perform the necessary repairs;
- ▶ If you do not send the first written notice by certified mail, then the statutes require that a second notice be sent stating that the landlord must commence repairs in good faith within seven days of receiving your second notice, before the normal remedies might be available to you.

If I discover mold in my apartment, can I break the lease?

Probably not. There are no specific state or local health regulations that offer you a remedy if mold is discovered in your residence. However, if you can prove through medical or other scientific documentation that you have, or could develop, a materially adverse health condition that derives primarily from mold growth, you may be able to insist upon the removal of the mold under the health provision of the repair requirements in your lease. You should consult an attorney before trying to terminate your lease in this situation.

If I meet all five requirements above, what remedies are available to me?

- ▶ If you are fed up with the unsafe conditions and are ready to move, the Texas Property Code gives you this right. However, be careful because landlords are unlikely to believe that you have the right to unilaterally terminate your lease and move out early. If the landlord becomes aware of your intentions and if your lease allows it, the landlord may accelerate your rent and take some of your property under the landlord's lien or contractual lien. (See section on *Landlord's Lien* above.) After you move out, you can sue the landlord for: **(1)** any unused portion of your rent, **(2)** your security deposit, **(3)** one month's rent plus \$500, **(4)** actual damages (possibly moving costs and utility connection fees), and/or **(5)** court costs and attorney's fees;
- ▶ If you want to stay and force your landlord make the repairs, you can sue your landlord for: **(1)** an order requiring the landlord to make the repairs, **(2)** a reduction in your rent beginning at the time you first notified the landlord of the condition, **(3)** one month's rent plus \$500, **(4)** actual damages, and/or **(5)** court costs and attorney's fees; or

- ▶ If you want to stay and hire someone to fix the problems yourself, you must first get a housing, building or health inspector to give the landlord a written notice that the condition is a threat to the health or safety of "an ordinary tenant"—unless the condition is a raw sewage back-up or overflow inside your home, flooding from broken pipes or natural drainage inside your home, a heating or air conditioning problem, or if you have no water service the landlord has agreed to furnish, in which event the time frames for initiating repairs are shorter. The deduction from the rent for the cost of repairs cannot exceed one month's rent, or \$500, whichever is greater (however, this total may be able to be repeatedly deducted over several months).

There are other requirements for making the repairs yourself, so be sure to check with our office, a tenant organization, or a private attorney before pursuing the repair and deduct remedy.

Security Deposit

Under what conditions should my security deposit be returned?

If a tenant does not do any damage and fulfills their obligations, the deposit should be returned. To get your deposit back, you should:

- ▶ Leave owing no rent;
- ▶ Fulfill the lease agreement;
- ▶ Return the key;
- ▶ Leave the place clean and cause no damage—beyond "normal wear and tear;"
- ▶ Give the landlord your forwarding address in writing; and
- ▶ Give notice that you are leaving. (Most leases require 30 days advance written notice.)

When does a landlord have to return my security deposit?

A landlord is obligated to return your security deposit and/or give you a written itemized list of deductions for repairs and cleaning within 30 days after you move out or give the landlord written notice of your forwarding address (whichever is later).

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What damages may I collect if the landlord does not return the deposit on time?

If the landlord refuses to return your deposit or if you do not agree with the deductions, you can sue for your deposit. If the landlord keeps the deposit in bad faith, you can sue for three times the amount of the deposit wrongfully withheld, plus \$100, attorney's fees, and court costs.

How can I help ensure the return of my deposit?

- ▶ Fill out a Check-In/Check-Out list when you move in and out. Have it witnessed by someone not living on the premises and by the landlord and keep a copy;
- ▶ After you have cleaned the unit prior to moving out, ask the landlord to walk-through with you and to tell you what needs to be cleaned or repaired so that you have the opportunity to clean or repair; and
- ▶ Take pictures or videos of the unit both before you move in and after you move out.

WARNING!!! Any tenant who withholds their last month's rent, thinking their deposit will cover the amount due, can be sued for three times the amount of rent wrongfully withheld, plus attorney's fees.

Eviction

When may a landlord ask me to move out?

If the tenant—

- ▶ Does not pay the rent or pays the rent late (there is a one-day grace period between the rent due date and the date rent is legally considered late);
- ▶ Breaks part of the lease (such as having a pet without permission, moving extra people in, disturbing neighbors, or destroying property); or
- ▶ Refuses to move after proper notice.

If the landlord wants to evict me, what procedures must be followed?

- ▶ The landlord must first give you a notice to vacate. You are entitled to a three-day notice unless your lease says otherwise;
- ▶ If you do not move when you get the notice to vacate, the landlord can file an eviction procedure (called a Forcible Detainer Suit) with the Justice Court;

- ▶ A constable or sheriff will give you notice that the lawsuit has been filed. It can be delivered in person to you or to someone sixteen years or older at your address, or it can be posted on your door with a copy sent by mail;
- ▶ You usually have seven days in which to contact the court and have a hearing scheduled. If you do not appear in court you lose the right to tell your side of the story, and you will automatically lose;
- ▶ If you lose at the hearing, you have five days after the hearing to move out or appeal the case; and
- ▶ If you do not move out within five days of the hearing, the landlord can get a "Writ of Possession" on the sixth day which gives the constable the power to move you out and set your property outside, by force if necessary.

Is it legal for a landlord to evict me by changing the locks?

No. The landlord is allowed, however, to change the locks if you are behind on your rent, as long as a note is left on the door stating where you can get a copy of the key, 24-hours a day. If the landlord locks you out and refuses to give you a key, you can file a lawsuit with the Justice of the Peace for re-entry, the greater of one month's rent or \$500, actual damages, attorney's fees, and court costs, less any money you owe the landlord.

NOTE: It is illegal for a landlord to cut off your utilities when you are behind on the rent, but the landlord may cut off electric service if you pay your electricity bill to the landlord, you fail to pay your electricity bill, and the landlord gives you notice at least 12 days in advance.

What if the property I'm renting is foreclosed upon?

The Protecting Tenants at Foreclosure Act requires the immediate successor in interest at foreclosure to **1)** provide tenants with 90 days notice prior to eviction; and **2)** allow tenants with leases to occupy the property until the end of the lease term, except the lease can be terminated on 90 days notice if the unit is sold to a purchaser who will occupy the property.



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Postscript

DISCLAIMER: The following is intended to be a *humorous* list of comments the Legal Services for Students office has heard from its clients. It is intended to illustrate to students what NOT to do when dealing with landlords. IT IS NOT TO BE TAKEN OR INTERPRETED AS LEGAL ADVICE.

Twelve Truisms about Landlord/Tenant Law, or What "Everyone" Knows:

- 1 The apartment will be absolutely spotless when you move in.
- 2 Amendments to the lease never need to be in writing.
- 3 The landlord will repair everything requested ASAP.
- 4 When your roommate moves out, you only have to pay half the rent.
- 5 If you find a less expensive place you can move out immediately with no consequences.
- 6 If the landlord is rude, you can break the lease.
- 7 If you do not like your roommate, you can break your lease.
- 8 Your friends can live with you for as long as you want and not be on the lease.
- 9 You'll always get your full deposit timely refunded with no deductions.
- 10 Rent can be paid at any time and in any amount.
- 11 The apartment is always in better condition when you move out than when you moved in.
- 12 The landlord cannot enter your apartment without your consent.

**Please note:
Some of these so-called "truisms"
may not always be true!**



Car Questions

Automobile Accidents

What do I do when I have a car accident?

- ▶ Call the police if **a**) someone is injured or killed; **b**) a car cannot be moved; **c**) there is substantial property damage (over \$500 to either vehicle); or **d**) if the accident involved a hit-and-run driver;
- ▶ Get the other driver's name, address, telephone number, license plate number, driver's license number and the name and policy number of their insurance;
- ▶ Give the other driver the same information about you;
- ▶ Get the name, addresses and telephone numbers of any witnesses;
- ▶ Be careful what you say. Emotional comments can be misconstrued by others or may be misquoted;
- ▶ Notify your insurance company immediately unless nobody else was involved and the damage to your car is less than your deductible;
- ▶ See your doctor if there is a chance you may be injured;
- ▶ Report the accident to the Department of Public Safety within ten days if there is an injury, death, or if total damages exceed \$500; and
- ▶ Talk to an attorney to get advice about your rights.

If the other driver caused the accident, what should their insurance company pay?

- ▶ Medical and hospital bills;
- ▶ Wages lost because of injuries;

- ▶ Loss of use of your vehicle while it is being repaired;
- ▶ Repair or replacement of your car, for its "actual market value;"
- ▶ Compensation for pain and suffering if anyone is hurt; and
- ▶ Towing expenses.

What if my bills are more than the other driver's policy will pay?

- ▶ **Medical:** File a claim for the difference against your uninsured/underinsured motorist (UM/UIM) coverage and against your health insurance; and
- ▶ **Auto Repair:** File a claim for the difference (minus your deductible) against your collision or UM/UIM coverage.

If I have only liability insurance, does my policy pay my medical and car repair bills?

No. Your liability insurance pays only for other people's injuries and property damage if you cause an accident.

What if I do not have a license or do not have automobile insurance?

Driving without a license is a misdemeanor punishable by a fine of up to \$200 for the first offense and up to \$200 for a second offense occurring within one year of the first. A third offense occurring within one year of the second offense is a misdemeanor punishable by a fine of up to \$500, up to six months in jail, or both.

Driving without automobile liability insurance is a misdemeanor punishable by a fine of up to \$350. If a person has been previously convicted of the offense, a second conviction is a misdemeanor punishable by a fine of between \$350 and \$1,000.

In addition, causing (or being at fault in) a motor vehicle accident that results in serious bodily injury or death to another person while operating the vehicle without a valid license or financial responsibility is a Class A misdemeanor.

What is "actual cash value"?

Insurance pays for repairs or replacement only up to a car's "actual cash value"—the amount it would have sold for before the accident.

What if the insurance company "totals" my car?

If the car repairs are estimated to cost 70% or more of the actual cash value of the car, an insurer will usually "total" the car and offer to buy the car from you for the market value of the car. An industry benchmark for determining the value is the *National Automobile Dealers Association Used Car Guide* ("Blue Book"), but



Guidelines, Information and Advice Regarding Motor Vehicles

you should also get price quotes from used car dealers and newspaper used car ads.

If the insurance company wants to “total” my car and I want to fix it, what can I do?

You can keep your car if you are willing to subtract its salvage value from the insurance settlement. You can get estimates from salvage yards.

What if I do not agree with the amount that I am offered to “total” my car?

Your policy offers a procedure called “appraisal” as a way to resolve the dispute. You and the company each choose a damage appraiser who selects an umpire. An estimate agreed to by any two of these three people is binding. Each party must pay its chosen appraiser and split the other expenses of the appraisal process.

Can an insurance company tell me where to get my car fixed?

No. You have the right to choose whether to repair your car, and if so, by whom.

Do I get a rental car while my car is being fixed?

- ▶ If the other driver was to blame, their liability insurance should pay for a rental car for a reasonable period of time while your car is being repaired. If your car is “totaled” the insurance company will pay for a rent car only until it makes an offer of payment for your car; or
- ▶ If the accident was a hit-and-run, or if the other driver was both uninsured and at fault, your UM/UIM property damage coverage will pay. Otherwise your own insurance company will not provide a rental car unless you have rental reimbursement coverage.

When should I sign a release?

- ▶ Do not sign a release until you are satisfied with your total settlement, and you have consulted with a doctor and a lawyer. Normally, it is okay to settle the property damage portion of your claim first, but wait until you and your physician are certain that you have achieved maximum medical recovery for any injuries you received, before settling the personal injury/pain and suffering portion of your claim. Be certain of exactly what you are settling and read the document carefully before you sign it; and
- ▶ If the insurer delays paying for your car repairs to pressure you into signing a release on your injury claim, file a formal complaint with the Texas Department of Insurance.

Texas Personal Automobile Insurance

What insurance coverage is available for my car?

The Texas Personal Automobile Policy offers eight types of coverage:

1. **Liability Insurance** is the most basic coverage. Texas law requires that if you own a car, you must purchase liability insurance. The minimum liability insurance required by law is \$25,000 per injured person, \$50,000 for everyone hurt in an accident, and \$25,000 for property damage. Failure to carry basic liability insurance can result in the suspension of your driver’s license, impoundment of your car, and a fine up to \$1,000. This insurance covers other people’s expenses for accidents caused by you, your family member, and anybody else driving with your permission. It also covers you and your family members when driving other cars—including rental cars—that is not a car regularly available to you such as a company car.
2. **Uninsured/Underinsured Motorist (UM/UIM)** covers your losses for an accident caused by a hit-and-run driver or an uninsured motorist (up to your policy’s dollar limits), or an under-insured driver (one who did not have enough insurance to cover all your expenses). However, you are still responsible for payment of any deductible.
3. **Medical Payments** pay medical and/or funeral bills arising from car accidents, including those where the victim was a pedestrian or a bicyclist. It covers you, your family members and passengers in your car, regardless of whom caused the accident. You cannot “double” collect from both your medical payments and your UM/UIM coverage. You probably do not need this coverage if you have good health insurance on your family.
4. **Personal Injury Protection (PIP)** pays the same as Medical Payments (fault being no consideration), plus 80% of lost income and the cost of hiring someone to take on the household and caregiver responsibilities of an injured person. The usual amount of coverage offered is \$2,500, but you can obtain it in higher increments if you desire. It covers the same people as Medical Payments. If you do not want PIP, you must reject it in writing. This is a worthwhile coverage even if you have good health insurance.
5. **Collision** pays the cost of fixing or replacing your car after an accident—regardless of who was driving or who was to blame. Payment is limited to your car’s actual cash value, minus your deductible. We strongly urge you to obtain this type of insurance, as you may not otherwise be able to replace your car after a wreck that is deemed to be your fault.
6. **Comprehensive** (Physical Damage Other than Collision) pays to replace or fix your car if it is stolen or if it is damaged by

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causes other than a collision, such as fire, vandalism, tree damage, or hail. It also pays for a rental car or other temporary transportation if your car is stolen. The coverage is limited to your car's actual cash value minus your deductible. It will not pay for auto theft unless you report the theft to the police.

- Towing and Labor** pays for towing charges when your car is disabled and labor charges—such as changing a tire—at the place where your car is disabled.
- Rental Reimbursement** pays a set daily amount for a rental car if your car is stolen or is being fixed because of damage covered by your auto policy.

Is my Texas policy good in Mexico?

No, unless you get a special “endorsement” to extend your policy's coverage to infrequent trips as far as twenty-five miles into Mexico. You can buy Mexican liability insurance from Texas agents who specialize in it.

Will my auto policy cover equipment such as cellular phones?

No. For coverage for tapes, CDs, cellular phones, citizens band radios, or stereo equipment not permanently installed in your car, you must pay extra for separate coverage.

Automobile Repairs

How can I find a reputable mechanic?

- ▶ Ask friends for recommendations;
- ▶ Call the Better Business Bureau and the Consumer Protection Division of the Texas Attorney General to determine whether a business has unresolved complaints filed against it;
- ▶ Do comparison shopping; and
- ▶ Remember the cheapest estimate may not be the best choice in terms of workmanship and reliability.

Do I need to get an estimate in writing?

Yes. Include in the estimate:

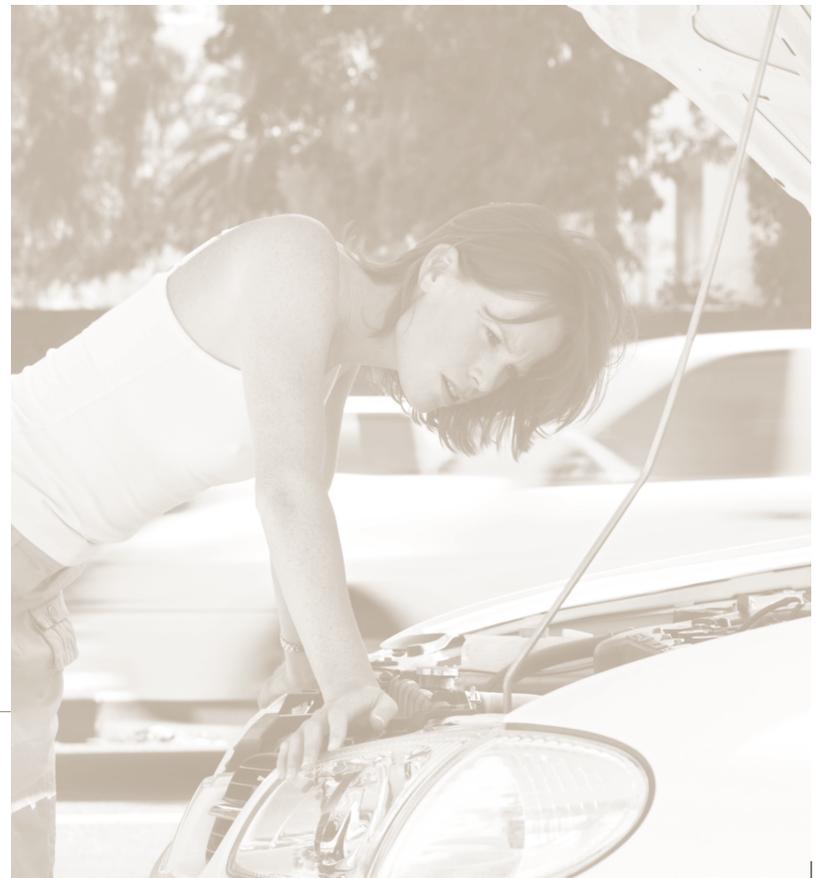
- specific repairs to be done,
- breakdown of cost as to parts and labor, and
- when the work will be completed.

What are my options if I am dissatisfied with the repair work?

- ▶ **Complaint:** File this with the Attorney General-Consumer Protection Division and/or the Better Business Bureau and allow them to try to resolve the dispute on your behalf.
- ▶ **Mediation:** The Better Business Bureau will mediate at no cost to the parties. There are also private and community alternative dispute resolution centers.
- ▶ **Sue:** If you cannot negotiate or mediate a settlement, you may need to file a lawsuit. Claims up to \$10,000 can be brought in Justice Court without the assistance of an attorney.

What happens if I do not pay or stop payment on my check or credit card if I am not satisfied with the repair work?

Often the repairman refuses to release a car until the bill is paid. Texas law provides a “possessory mechanic's lien” for a worker who repairs a car. If a consumer pays for repairs by check or credit card and stops payment on either, the repairman has the right to repossess the car under the lien and refuse to release the car until all the repair costs and repossession fees are paid. However, stopping payment on a check or credit card is generally not considered a criminal act, and you should not be prosecuted for theft of services unless the repairperson can prove that you had intent to steal their service.



Guidelines, Information and Advice Regarding Motor Vehicles

Towing Law

When can my car be legally towed?

- Police can order a car towed if it is parked in violation of a city ordinance;
- A private landowner or parking facility can order a car towed only if one or more of the following conditions have been met:
 - If one or more conspicuous signs state who may park in the designated area, and prohibit others from parking there;
 - If the owner or operator of the property has notified you to “move the vehicle or it will be towed;” or
 - If the vehicle is blocking an entrance, an exit, a fire lane, or an aisle of a parking facility.

If my car is illegally towed, what are my remedies and whom should I sue?

If your vehicle is towed illegally, the individual who requested the wrongful towing will be liable for any damages resulting from towing and storage, any towing and storage fees, and attorney’s fees, if any.

If the court determines that probable cause existed for the tow, the owner of the vehicle must pay the costs of the tow and storage.

What are the court procedures if I wish to file a wrongful towing suit?

The car owner is entitled to a hearing to determine whether or not probable cause existed for the tow. Before the fourteenth day after the date of the tow, the owner must request a hearing before:

- a justice of the peace or magistrate in the county from which the vehicle was towed; or
- a municipal court judge in whose jurisdiction the vehicle storage facility is located (in municipalities that have a population of 1,200,000 or more).

NOTE: Any damage done to your vehicle by the towing company during the tow is the responsibility of the towing company.



Consumer Law

Buying and Selling a Car

What should I do first?

- ▶ Drive the car and inspect it thoroughly.
- ▶ Ask the seller about wrecks, major problems, repair and maintenance records.
- ▶ Ask how long the seller has owned it, and why they are selling it.
- ▶ Check the date of the inspection and license tags.

If you still like the car, you may:

- ▶ Have a mechanic inspect it.
- ▶ Get the VIN (vehicle identification number) and check current title and history with DOT at 512-465-7611.
- ▶ Ask the seller about the title: Does the seller have it, and if not, when will it be obtained? Make sure the title is clear, that is, one without a lien. Do not accept a title stamped “Non-Negotiable.”
- ▶ Make sure the odometer reading (mileage) matches or is close to that which is reflected on the title.

DO NOT:

- ▶ Pay cash for a car. Instead, it is best to use a cashier’s check, certified funds, or money order(s). Keep the receipts.
- ▶ Give the seller the check without receiving the title or completing the title transfer papers.
- ▶ Drive without insurance. Once you decide to buy it, let your insurance agent know **immediately!**

NOTE: The seller may tell you by law he has a certain number of days to deliver the title. While this may be true in certain instances, it is best not to give up the money without the title.

How should I close the deal?

- ▶ When you have agreed on a price, meet the seller at the county tax assessor’s office. Complete a Form 130-U (the title transfer form), sign it **and** have the seller sign it.
- ▶ Make sure any lien is released on the front of the title.
- ▶ Make sure the seller has signed the title to you on the back.
- ▶ The buyer normally pays the sales tax and transfer fee.
- ▶ Put the right sales price on the form. Lying on a title form to avoid taxes is a felony.
- ▶ Bring your check. When the clerk approves the paper work, give the check to the seller. Get the keys, the owner’s manual if available, and all maintenance and repair records.
- ▶ Make sure you get the “White Slip” from the tax assessor. This document is your receipt until the new title is mailed.

What if I am the seller?

- ▶ Don’t lie about the car’s condition.
- ▶ Sell it “As Is-No Warranty” and put this provision in writing.
- ▶ Do NOT take a personal check.
- ▶ Make sure the title transfer is complete, so you won’t be confused with the previous owner in case of a future accident.

Is it okay to buy from a dealer?

- ▶ Of course; however, make sure dealer has the title.
- ▶ Paper dealer tags are only good for a short period. If the first time period expires, contact this office or DOT.
- ▶ If dealer doesn’t transfer title, you may be able to recover money from his \$25,000.00 performance bond.



Legal First Aid and Practical Information Regarding Consumer Law

Illegal Downloading, File Sharing, and Copyright Violations —

*The Recording Industry Association of
America (RIAA) and Others*

In the past several years, there has been a huge increase in lawsuits and legal activity by various trade associations to protect their copyrights on sound recordings, movies, software and the like. The most aggressive of these associations is the Recording Industry Association of American (RIAA) which represents companies such as Sony, Capitol, Time Warner and others. Recently, their main focus has shifted to college students they allege have illegally copied music and video files through the internet without payment or permission from the holder of the copyright.

If a person produces a musical or other creative work and secures a legal protection called a copyright for it, no one can use, copy, sell or profit from that work without the written permission of the copyright holder. Normally, this consent is accomplished by the purchase of a CD or DVD of the item, which then includes the right to listen to or view the item as often as desired. Permission may also be acquired through the use of iTunes or any such similar device where a sum is paid and permission to download the item is included in the transaction. The RIAA takes the position that having the file loaded on a file sharing, or “P2P,” program, such as Limewire, **whether or not you intend to distribute or share the song/video with anyone else, also violates the copyright act.** A violation carries a civil, i.e. monetary, damage amount of \$750.00 *per recording* in the event of a successful lawsuit. Such activity is also prohibited by UT Austin’s internal rules of conduct, and the event is reported to Student Judicial Services for possible disciplinary action.

The RIAA identifies students they allege are illegally downloading or sharing by legally searching filesharing programs online by song, movie, or other work title. Once the person had been identified by their IP address*, then a pre-lawsuit settlement letter is sent by the RIAA (often through UT Austin’s ITS department) to the students they believe are violators, normally giving the individual 20 days to respond to their demand by calling their settlement hotline. If the student used the university as an Internet service provider, including occasional use through WiFi while on campus, then they would potentially be at risk. These letters offer to accept a fixed amount, usually \$3,000 to \$4,600 to settle the alleged infringement before a suit is actually filed.

Students who use filesharing and/or download are at substantial risk of being sued, or at least paying a hefty sum for the practice. You are cautioned **not** to copy files, and **not** to use P2P programs (such as Limewire) for music and video files. This caution applies even if you have purchased the item, because the copyright owners believe sharing it online is just as much a violation as downloading. If you are contacted and do nothing, you may well end up with a Federal court judgment against you for several tens of thousands of dollars, which can follow you and your credit *for life*.

LSS strongly urges that if you receive a settlement letter by email or postal service, or a subpoena indicating that you have been sued in Federal Court that you DO NOT call the settlement hotline but that YOU DO immediately seek legal advice from either our office or another attorney. A lawyer still may be able to contact the RIAA and settle the case quickly, possibly protect your identity from being known by the RIAA, identify if possibly you have a legal defense to the allegations, and work out a payment plan that may give you up to a year to pay the proposed fine, among other things.

*** Some students have noticed that the current IP address was not the same as the one targeted by the RIAA, but that is no consolation as the UT Austin IP addresses rotate frequently and the address that you currently hold is very unlikely to be the same one noted during an alleged violation months previously.**



Legal First Aid and Practical Information Regarding Consumer Law

Sales

Door to Door Sales

How long do I have to cancel a purchase made via a door to door sale?

A Federal Trade Commission rule gives a buyer three days in which s/he may cancel a sale that:

- a) is over \$25;
- b) does not take place on the seller's premises; and
- c) is in interstate commerce.

If I wish to cancel the sale, what do I do?

If you decide to cancel the sale, you should contact the seller within three days of the purchase, follow up an oral notice with a written notice, and allow the seller to come pick up the product. It must be in substantially the same condition as when you received it. If the seller fails to pick up the item within twenty days of cancellation, you may keep it without any further obligations unless other arrangements have been made.

Within ten days of receipt of the notice of cancellation, the seller must return any payments and trade-in merchandise and release the buyer from any further obligations.

Telephone Sales

Helpful Hints:

- ▶ Do not agree to buy something over the telephone unless the salesperson agrees to send you a written contract which explains the sale;
- ▶ Sales agreed to over the telephone are hard to cancel; and
- ▶ Be cautious of giving a telephone salesperson your credit card and/or bank account number.



Mail Order Sales

What can I do to minimize risk of loss when ordering by mail?

- ▶ Read catalogues thoroughly. Check products, prices, shipping and handling charges. Compare catalogue offers with store offers;
- ▶ Order the merchandise four weeks before you want it. Determine whether an order made after a certain date will be shipped later than you might desire;
- ▶ It is preferable to pay by credit card as you may be able to challenge the charge if something is wrong; and
- ▶ Keep a record of your orders.

Are there other remedies available to me?

Yes. A dissatisfied buyer can file a complaint with the Postal Inspector through the Postal Authorities. Also, the Federal Trade Commission has regulations concerning delivery delays and refunds. Companies are required to:

- ▶ Fill mail orders within thirty days if no other time is stated. If this deadline cannot be met, the customer must be given the option of accepting the delay or canceling the order with a full refund; and
- ▶ If the consumer does not reply to the company's offer to cancel a delayed order, the company can assume it has thirty more days to meet the order. After the additional thirty days, the consumer must then provide written consent to allow any further delay.

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Unsolicited Goods

If I receive unrequested items in the mail, what are my options?

You have two remedies:

- Return the items or
- Keep the unrequested items without any obligation.

E-mail Marketing (aka, “Spam”)

Texas has recently instituted a new anti-spam statute which provides that unsolicited commercial email may not be sent unless “ADV:” is used as the first four characters in the subject line of the message or, in the case of a message containing obscene and/or sexual material, “ADV: ADULT ENTERTAINMENT” must be in the subject line. Violation of these laws may subject a spammer to both civil and criminal penalties. You can report illegal spam to the Attorney General’s office. In addition, if you are the victim of a violation of these anti-spam laws, you may sue the spammer for actual damages or the *lesser* of **1)** \$10.00 for each unlawful message; or **2)** \$25,000.00 for each day the unlawful message is received.



Credit Issues

Credit Cards

What laws protect consumers when they are using credit cards?

A consumer using credit cards is protected by the Federal Consumer Protection Act, which includes the Truth-in-Lending Act. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2011 also contains provisions designed to regulate credit card companies.

Can an issuer of a credit card give a consumer an unsolicited credit card?

No.

What am I liable for if my credit card is stolen?

A consumer is protected from unauthorized use of their card, and is liable for a maximum of \$50 if the card is stolen, and then only if the unauthorized use occurs before the consumer notifies the issuer of the theft or loss.

However, if you determine who has stolen your credit card, be aware that if you make a “deal” for the thief to pay you back, and then that person defaults on the agreement, the police may be unwilling to file criminal fraud charges. Further, the credit card companies may not credit your account with the disputed or improperly charged amount. The result could be that your only recourse would be to file a civil suit against the perpetrator while you remain legally responsible for the debt. In this instance, your only hope to recoup your loss is that the defendant has sufficient funds to pay any judgment you might win (something that is not at all a guarantee).

Debit Cards

Debit cards are issued by banks and may be used to withdraw funds from an Automated Teller Machine (ATM) or to make purchases from stores or vendors who accept major credit cards. Debit cards are riskier than credit cards because the identity of the person using the “credit” card fraudulently is not verified by a personal identification number (PIN), so funds may be completely withdrawn from a bank account without a consumer knowing their money is gone. Unlike a credit card, a consumer does not have the option of withholding payment on charges they suspect are the result of theft, fraud, or error, nor is liability limited to \$50. Once the consumer’s money is gone, it may take a while for the bank to investigate and credit the bank account. In the meantime, the consumer can be left with little or no funds.

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What is credit card abuse?

It is illegal for another person merely to possess your credit card without your consent if there is the intent to use it. Violation of this law is a state jail felony.

To protect yourself against illegal activity on your card(s):

- ▶ Check your current bank cards to determine whether you have an ATM or a debit card. Many banks automatically issue debit cards to replace expired ATM cards. If you prefer an ATM card, notify your bank of your preference.
- ▶ Check your bank statements carefully and frequently. If you notice fraudulent use of your card, immediately report your suspicions to the bank.

Helpful hints to prevent theft:

- ▶ Keep a file of all your credit cards, including the account numbers, and telephone numbers and addresses to contact in case the card is lost or stolen; and
- ▶ Save your purchase receipts and compare them to the credit card bill.



Collection Agencies

What should I do if I am behind in paying a bill?

If you are having trouble paying a bill, contact the creditor before the account becomes delinquent. The creditor may be willing to accept smaller payments, at least on a temporary basis.

If my debt is turned over to a collection agency, what can they legally do to try to get me to pay?

There are two laws that protect a consumer from bill collectors—the Federal Fair Debt Collection Practices Act and the Texas Debt Collection Act. A debt collector/creditor cannot:

- ▶ harass you by contacting you at inconvenient or unusual times, such as before 8 a.m. or after 9 p.m.;
- ▶ call you at work if your employer disapproves; or
- ▶ lie to you about the consequences of not being able to pay the debt on their terms (such as, “you will go to jail if you do not pay this” or “we will force you out of your house, take your car and everything that you own”). If the collector/creditor uses illegal collection methods like this, you can sue for monetary damages.

How can I stop a collection agency from contacting me?

Write a letter telling them to stop. Send the letter by certified mail, return receipt requested and keep a copy of the letter. Upon receipt of the letter, the collector or creditor cannot contact you any further except to say that they will not contact you again or inform you of a specific action, such as the filing of a lawsuit against you.

What can I get out of them if they do this to me?

You can potentially recover your actual damages, statutory damages, and attorney’s fees.

Credit Reporting Errors

What laws protect a person from inaccurate credit reporting?

The Fair Credit Reporting Act covers consumers by requiring credit bureaus to furnish correct and complete information to businesses. The Federal Trade Commission enforces this law.

Can I get a copy of my credit report?

You have the right to know what your credit report says. You may obtain your report annually for free by visiting www.annualcreditreport.com. You may also obtain a copy of the re-

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port directly from Credit Reporting Agencies (CRA). (Use the keywords “credit” or “credit rating and reporting” when searching the Web.) There is a fee unless you have been denied credit within 30 days of your request.

What if I find an error on my credit report?

Request that the CRA investigate the error. If the investigation does not resolve your dispute, send a written explanation of the disputed information (two hundred words or less) and request that the CRA show your version to the potential creditor who has requested your credit history. There may be a charge unless you request this service within thirty days after you receive notice of denial of a credit application.

How long will a bad debt be reflected by the agency?

CRAs will report unfavorable information for seven years, with certain exceptions, such as bankruptcy data, which will be maintained for ten years, and information regarding a judgment will last until the judgment is no longer valid.

How else may I challenge the validity of a debt?

You may request that the CRA verify the debt with the creditor. If they do not confirm the debt within 30 days from receipt of notice (45 days if the dispute originates from www.annualcreditreport.com), then the debt will be eliminated from your credit report.

Helpful Hint: Keep copies of all notices/requests you send and mail them by certified mail, return receipt requested.

Credit Billing Errors

How do I protest an incorrect bill?

Under the Fair Credit Reporting Act you must send the creditor written notice about the problem to avoid paying for any disputed charges. To be protected under this law:

- ▶ Within thirty days after the creditor mailed the first bill containing the error, you must write the creditor. Include your name and account number, the date, type, and dollar amount of the disputed charge; why you think there was a mistake; and request for proof of the charge. (These instructions are usually on the back of every bill.)
- ▶ Send the letter to the special address for billing inquiries—not to the payment address;

- ▶ Do not send the letter with your payment; and
- ▶ Keep a copy of the letter and send it by certified mail, return receipt requested.

What is the creditor required to do?

- ▶ Acknowledge your letter in writing within thirty days after it is received;
- ▶ Conduct a reasonable investigation and, within no more than ninety days, either explain why the bill is correct or adjust the error; and
- ▶ Include documents proving the charge is proper (if you requested such proof in your letter).

Identity Theft

What is identity theft?

Identity theft occurs when someone uses another person’s personal information (name, social security number, date of birth, etc.) without permission to commit fraud or other crimes. The most common types of identity theft are:

- ▶ Obtaining loans or opening a bank account in the victim’s name;
- ▶ Opening and/or using an account (e.g., credit card, cell phone, utility) in the victim’s name; and
- ▶ When arrested for an unrelated crime, giving the victim’s personal information as his/her own during the booking process.

How might my identity be stolen?

There are numerous methods. Some of the most common are:

- ▶ Stealing a wallet or purse;
- ▶ Standing behind the victim as he/she enters an ATM password or telephone calling card number;
- ▶ Sorting through garbage;
- ▶ Rifling through a roommate’s belongings;
- ▶ Stealing mail;
- ▶ Deceptive telephone calls (e.g., victim receives a call and is told “You have won a free TV! I just need your social security number...); and
- ▶ Phishing (e.g., the victim receives a fraudulent email stating “Your eBay/Paypal account(s) needs to be renewed. Go to this Web site and enter your Username, Password and credit card number.”)

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How do I avoid identity theft?

Use common sense.

- ▶ Secure your belongings at all times;
- ▶ Do not give financial account or other personal information to an unknown person who contacts you;
- ▶ Do not utilize a mailbox that cannot be locked. If your home/apartment does not have a locking mailbox, rent a post office box instead;
- ▶ Do not use your birthdate or other easily deciphered codes as passwords;
- ▶ Do not have your driver's license number, birthdate, or social security number pre-printed on your personal checks;
- ▶ Shred all documents containing personal information;
- ▶ Obtain copies of your credit reports at least once a year.

What should I do if I am a victim of identity theft?

- ▶ Contact the three major credit reporting bureaus, notify them of the situation, and ask that they place "fraud alerts" on your accounts. You should also order copies of your credit reports to assess whatever damage has occurred.
- ▶ Contact the financial institutions affected by the fraud and notify them of the situation. You should fully cooperate with any investigation they may conduct into the matter.
- ▶ Contact your local police department to file a report.

I received an e-mail from a Nigerian prince offering to send me a money order in the amount of \$10,000,000.00. Should I drop out of school and retire?

E-mails like these are known as advance fee fraud. They take many forms (e.g., "you've won the lottery," "we want you to be a mystery shopper," "I want to buy your car for more than you're asking," "you have inherited a substantial sum of money"). Most of the time, the scammer sends the victim a fake money order with instructions to deposit it in the victim's bank account; the victim is then told to wire a portion of the payment back to the scammer via Western Union. By the time the victim realizes the money order is fake, the scammer is long gone and the victim's bank is now demanding to be compensated for the deficiency in the victim's account. If it seems too good to be true, it probably is.

Bankruptcy

What is bankruptcy?

During a college career, many students incur a large amount of debt—from student loans, car purchases, landlords, and credit cards. Often when they fall behind, students consider filing bankruptcy to avoid payment of these debts. Bankruptcy is a step of last resort in most cases, and should only be used for emergency or extreme hardship. The ultimate goal of bankruptcy is a discharge, which is a permanent court order against collection of the debt by the creditor, and a chance for the debtor (the person filing bankruptcy) to start over financially. The two most common types of bankruptcy for individuals are Chapter 7 and Chapter 13.

In a **Chapter 7** bankruptcy the debtor lists all debts and property, shows inability to repay, and designates which property can be kept. Some debts, such as most taxes, child support, and alimony cannot be discharged. Student loans can only be discharged if extreme hardship is proven—such as a disabling illness.

In a **Chapter 13** bankruptcy the debtor proposes a three to five year payback plan based on the excess of monthly income over basic monthly living expenses. This payment plan can be used to restructure payments while keeping most property, including a house, appliances, or car, which might otherwise be repossessed.

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NOTE: The new law also makes it more difficult to stop a Landlord's eviction if it had begun before filing.

In both Chapter 7 and Chapter 13, a Debtor must have filed his most recent tax returns. There are also stronger eligibility requirements for child support payments.

Whether you can file a Chapter 7 or 13 is determined in large part by reference first to the national income standards, and then to a Means Test for allowed expenses that is based on IRS national and regional amounts. One must compare his or her monthly income to the national standards. If it is at or below the amount, then you qualify for Chapter 7. If it is above, then all of a person's expenses are put into a rather involved formula, which then decides (based on the law's guidelines), whether you have the ability to repay part of the debts. If the formula says you do, then you can ONLY file a Chapter 13. There are a few hardship exceptions, but they are very narrow. If you file a Chapter 7 and the formula and the court find that you should not have done so, the case can be dismissed and you and/or your attorney may have to pay a penalty.

All bankruptcies now require credit counseling before filing, and require budget counseling before the discharge is granted. The new laws make this relief more expensive than before, and in some instances a debtor may not be able to keep the property they could under the previous statute.

How often can I declare bankruptcy?

Once every eight years.

How long does a bankruptcy stay on my credit report?

Ten years.

When should I file bankruptcy?

Generally, filing should occur when there is no realistic expectation of repayment, or when the Internal Revenue Service or another creditor is about to seize a person's assets.

It should be examined very carefully, and taken generally only when there is no other option.

If I file bankruptcy, can I keep any property?

In bankruptcy, unless the creditor loaned the money to buy the item or the IRS is a creditor, ordinarily the debtor keeps exempt property. Exempt property cannot be taken to satisfy debts. There

are two sources of exempt property—state law and the Bankruptcy Code. A debtor must choose between either the state or federal exemptions.

Texas exemptions include 10 acres of land in town or 200 acres in the country, as well as \$30,000.00 for a single person or \$60,000.00 for a married couple in personal property (such as furniture, clothing, car, books, tools of the trade, pictures, and food.) In addition, except for child support or income taxes, wages cannot be garnished, that is, taken directly from one's employer. However, in some instances the type and amount of property one can keep is determined by how long you have lived in the state in which you want to file, the purpose for which you borrowed money against the property in the past, and the means test formulas.

The Bankruptcy Code also offers a set of exemptions, with smaller monetary amounts in the categories than the Texas exemptions but can include cash, which is generally not included in the Texas exemptions. In addition, properly qualified IRS retirement accounts are exempt subject to an overall cap of one million dollars for Individual Retirement Accounts.

Why should I not file bankruptcy?

- ▶ Long-term credit harm.
- ▶ After filing bankruptcy a person must answer "yes" to the bankruptcy inquiry on credit, employment, graduate school, and other types of everyday life applications.
- ▶ While bankruptcy does not carry the stigma it once did, it still will always require an explanation.
- ▶ In addition, if a student files bankruptcy while in school or immediately thereafter, it puts a burden on his/her reputation at the very beginning of a promising career.
- ▶ Finally, with a few narrow exceptions, student loans are not discharged, meaning that the debt still must be paid after the bankruptcy is over.

What are some alternatives to filing bankruptcy?

Many companies will allow lower payments if pressed, and the amount of the debt that seems insurmountable now may be relatively minor after securing that first "real" job. If one secures a reduced payment agreement from a creditor, make sure the terms are in writing.

Also available in some cases is Consumer Credit Counseling, a nonprofit agency that mediates between the debtor and creditors, and can, if funds are available, negotiate a long-term payment plan. The debtor pays a certain amount each pay period to

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Consumer Credit, which then distributes it pro rata to each creditor. We strongly recommend that consumers contact Consumer Credit before considering bankruptcy.

What is likely to happen if I decide not to file bankruptcy?

- ▶ A creditor can always put a negative entry on the debtor's credit history and contact the debtor at reasonable times by telephone and letter seeking payment.
- ▶ If the debt is secured (such as a purchase money loan for a car) and the debtor defaults on the loan, the creditor repossess the property and sell it. If the value of the property is less than the amount due on the loan the creditor can file a lawsuit against the debtor for the balance.
- ▶ If the debt is unsecured (such as many credit card debts), a creditor can sue a debtor.

What if a creditor sues me?

If a creditor files a lawsuit and wins, he gets a judgment against the debtor. The creditor then has to collect the debt. However, if a debtor does not have any non-exempt property (see the previous question "What property can a debtor keep?"), then the creditor normally cannot take any of the debtor's property at that time. The judgment can also be put on the debtor's credit history, and sometimes remains "active" forever, earning interest continually, allowing the creditor to periodically attempt collection.

The Deceptive Trade Practices Act (DTPA)

What is the DTPA?

This act protects Texas consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty. The DTPA eliminates many barriers to the enforcement of a consumer's rights. If a consumer prevails in court, s/he can recover her/his attorney's fees.

What can I recover if I win a case under this law?

A consumer may collect actual and punitive damages. However, to collect punitive damages, it is necessary to show that the seller breached the law intentionally, a standard that may be difficult to prove in court. Without the proof of "intent," the consumer's remedies are usually limited to recovery of "economic damages," court costs and attorney's fees only, but punitive damages may be up to three times the amount of your actual damages.

Are there any prerequisites before I can file a lawsuit under this law?

Yes. To assert a claim under the DTPA, at least sixty days before filing a lawsuit, a consumer must give written notice to the person or business against which the complaint is being made. The notice must include:

- a) a statement that the letter is intended as notice prior to filing suit under the DTPA;
- b) the specific complaint of the consumer; and
- c) the amount of actual damages and expenses claimed, including attorney's fees, if any.

The merchant then has sixty days in which to pay the amount demanded by the consumer or make a written settlement offer. An offer is considered rejected if the consumer fails to accept it within thirty days. If a consumer rejects an offer, the dispute can then go to trial.



Employment Law

You're Hired!... Employment Contracts

What is typically in an employment contract?

- ▶ The amount that you will be paid;
- ▶ Details of your work assignment;
- ▶ How long you will be employed;
- ▶ Any special circumstances or benefits that you might have bargained for in the hiring process.

Can a company require that I sign a non-competition and/or trade secrets' agreement?

Yes. If the company gives you their confidential data at that time or shortly afterwards, then a company can insist that you keep secret any of their:

- ▶ trade secrets,
- ▶ techniques or processes,
- ▶ customer lists,
- ▶ marketing strategies.

However, the confidentiality agreement will not be enforceable until the time that you receive the business' trade secrets.

What if I violate a non-competition and/or trade secrets' agreement?

If you make any improper revelations, you could be liable for any economic damages the business incurs. Your former employer may also be able to get an injunction preventing you from working for a competitor in a position similar to the one you held with your former employer.

Are there any specific provisions in a non-competition and/or trade secrets' agreement of which I should be wary?

Yes; beware of agreements that:

- ▶ forbid you from ever entering into your own business;
- ▶ ever joining another competitor;
- ▶ not being able to use talents and skills that you possess prior to joining that company;
- ▶ place restrictions on competing with your former employer that are over 2 years in duration;
- ▶ unnecessarily restrict the geographic scope (the area in which the company has been active is normally protected).

If I am just a part-time summer intern/employee, should I be concerned about non-competition and/or trade secrets agreements?

YES! You must carefully weigh the advantages of joining an enterprise that has heavy restrictions on your future employment, especially if the job you are agreeing to do is temporary (summer) or part-time in nature. You may unnecessarily limit yourself from future opportunities for short-lived compensation.



Rights and Responsibilities of Employers and Employees

What if I invent something during my employment... is it the company's or mine?

If you create an invention while using company facilities, equipment or even time, the item belongs to the business. However, if your creation occurs outside the physical presence of the company without the use of their facilities or specific knowledge that you acquired while at work, then it will likely be deemed to be your intellectual property. These concerns are usually addressed in the employment contract, so it is best to read your contract to determine your rights. Do not sign an agreement that unfairly or unduly restricts your right to use your ingenious abilities outside the workplace.

What if I receive an offer of employment in writing and then it is withdrawn months later after I have rejected other offers? Can I successfully sue the company for depriving me of other opportunities?

As Texas is an employment-at-will state and as you could hypothetically be fired at any time, even upon your arrival for work, the company is probably not liable for any damages or lost opportunities you suffer. But, if you can prove that the rejection is based upon an illegal reason, then you may be able to successfully collect damages. If the employment offer states or implies a term to the employment period (i.e. annual or monthly salary), you may at least be able to receive a salary for that time period.

What if the company does not pay me for my work?

Unless you are on a commission, you can file a complaint with the Texas Workforce Commission under the Texas Payday Act. If your grievance is found to be meritorious, then the employer can be ordered to give you all back pay and may be fined by the state. This action must be started within six months of the payday obligation that was not met by the employer.

You're Fired!... or Are You???... Employment at Will

I have heard that Texas is an "employment at will" state. What does that mean?

It means that an employee can be fired for good cause, bad cause or no cause at all. Of course, there are exceptions stated in both federal and state law. The most common of these are covered in:

- ▶ Title VII (also known as The Civil Rights Act of 1964);
- ▶ The Americans with Disabilities Act;
- ▶ The Age Discrimination Employment Act.

These laws state that you cannot be fired because of your race, color, religion, national origin, gender, disability or age if you are 40 or older.

When can a company not terminate an employee?

You cannot be lawfully terminated:

- ▶ if a written employment contract stipulates a time period that you will be employed;
- ▶ if an employee files a worker's compensation claim;
- ▶ if an employee takes reasonable time off to go vote;
- ▶ if an employee serves on a jury;
- ▶ if an employee has child support withheld from his/her paycheck;
- ▶ if an employee is not hired or is fired or demoted based upon genetic information;
- ▶ if an employee is the victim of retaliation of a protected right that is listed here;
- ▶ if an employee refuses to participate in an employer ordered criminal act.

If I discover that my company is doing something illegal, can I report them to the proper authorities and not be fired?

No. There is no recognized "whistle blower" protection in the private sector in Texas; however there is in the public sector, but damages are limited.

What if the company violates its own handbook's guidelines in disciplining or terminating an employee?

An employer is not liable for wrongful discharge. Texas courts have ruled that the handbook is not an employment contract, unless there is specific language to the contrary in the handbook.

Can my employer be held liable for negligent hiring if I have been convicted of a crime in the past?

In most circumstances, your employer cannot be held liable for negligent hiring if they hire you with knowledge that you have been convicted of a crime in the past. However, they may be held liable if they hire you with knowledge that you committed a crime while performing duties similar to those you will be performing at the job for which you were hired. The employer may also be held liable if you were convicted of certain violent or sexual offenses.

Rights and Responsibilities of Employers and Employees

Harassment

Under Title VII, are harassment claims limited to sexual harassment issues?

No. Hostile environment claims apply to all of the protected classes—not just those that are gender based. Therefore, if you are harassed because of your race, color, religion, nationality, age, genetics or disability, there is a potential cause of action on the same basis as that which is set forth below for sexual harassment.

When can an employer be held liable for harassment?

The most well publicized form of harassment in the workplace is sexual harassment, which is a type of sexual discrimination. There are three types of sexual harassment now recognized as creating liability for a business.

- a) **“Quid pro quo”, or being forced to have sex with a superior in order to keep your job or to get a promotion, etc.** This is illegal if the actions against the employee resulted in an adverse and “tangible employment action” (meaning a significant consequence). The courts have stated that if the allegations are proven, there is virtually automatic liability for the company.
- b) **Hostile environment from a supervisor or higher ranking person.** The business is required to have a plan to deal with hostile environment issues. This information must be widely disseminated to the work force. Any allegations of harassment need to be investigated and dealt with promptly. Likewise, the employee who has been harassed must take advantage of the company’s resources to resolve the problem and do what is rea-

sonable to avoid the alleged harasser and his/her behavior. If the business does not do its part, liability can be placed on the business; likewise, if the employee does not follow procedures or fails to mitigate the problem, they may not have any legal basis for a claim.

- c) **Hostile environment from a co-worker or visitor to the company.** If the company knew of, or should have known of the problem, and does little or nothing to resolve the issue, then there could be liability. Here, silence is not golden and the victim needs to make Human Resources or management aware of the problem. We recommend following the same procedures as are stated in the section above regarding hostile environment created by a supervisor.

Is same sex harassment covered by Title VII?

Yes. There may be liability even if the victim is the same gender as that of the harasser.

What is the legal definition of “harassment”?

The fact that different people are offended by different actions makes an absolute definition impossible. However, the guidelines offered by the courts and the EEOC state that the act(s) of the perpetrator must be:

- ▶ severely offensive; or,
- ▶ moderate acts that are frequently repeated and are
- ▶ not consensual.

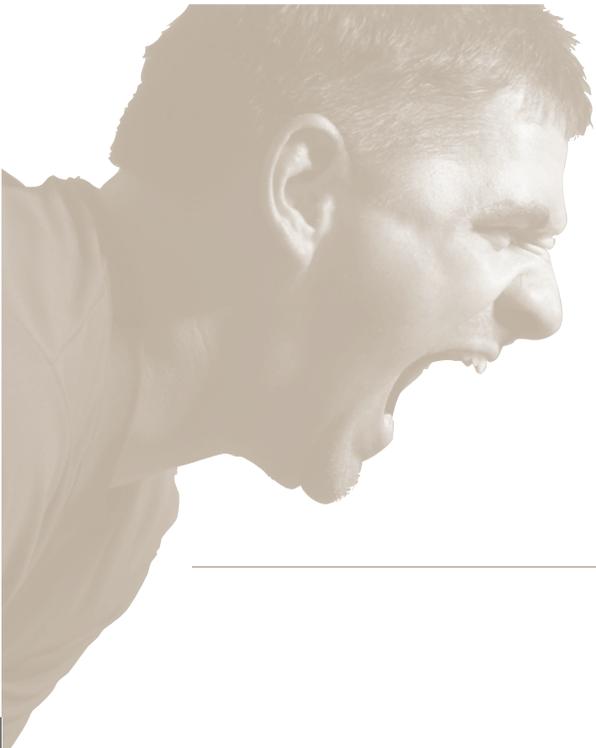
In order to be actionable, the actions must also be repugnant to a reasonable person. Therefore, occasional sexual jokes, some casual touching, or asking someone in the workplace for a date on several instances are generally not considered Title VII violations. However, individual companies may have internal policies that prohibit or discourage these actions.

Americans with Disabilities Act

How is “disability” defined under the ADA?

The ADA defines this term broadly. It is:

- ▶ a physical or mental impairment that substantially limits one or more of the major life activities of an individual;
- ▶ a record of such impairment; or
- ▶ being regarded as having such an impairment, *even if there is no disability.*



Rights and Responsibilities of Employers and Employees

How did the ADA Amendments Act of 2008 change the law?

This new law has significantly broadened how the ADA is interpreted. One is now considered “disabled” if the limitation affects any activity that is “central to daily life.” Even events that are episodic or in remission are now covered by the law, and, except for the need for glasses, any measures one takes that mitigate the disability do NOT take it out from under the disability definition. However, temporary or short-term conditions (lasting less than six months) are not disabilities. Further, current alcohol or drug addicts are not protected under the ADA.

If a person is disabled, does the employer have to hire that person or keep that person on his/her original job?

The employer is required to reasonably accommodate the person so that he/she can perform the job. This does not mean that merely because someone has a disability the employer is required to hire or keep such an individual in the position. It does mean that if the disability, with accommodations, would not prevent him/her from successfully performing their duties on a particular job, that person should be given the opportunity to compete for that position with any other person who is not disabled.

So what is a reasonable accommodation?

This can vary from case to case, but generally if the accommodation sought is not a great economic burden to the business, then it can be required. Many alterations cost less than \$500 and would apply to nearly every entity. However, the disabled person cannot choose which accommodation he/she prefers as long as it effectively eliminates the barrier.

Can an employer ask me about my disability in a job interview?

No. The only time the matter can be discussed is if the disabled applicant voluntarily brings it up on their own, or after a job offer is tendered. In that latter situation, the offer may be made conditional upon the candidate being able to demonstrate that they can perform the task successfully or passing a medical exam that verifies their ability to succeed in that position.

Reporting Discrimination

If I believe I have been illegally discriminated against, what actions should I take?

- ▶ Try to communicate with the person involved to let them know your concerns.
- ▶ If this is ineffective or you do not wish to talk to that person directly, report the problem to your or the harasser’s supervisor.
- ▶ If this is not possible or impractical, then report the problem to the Human Resource office at your work place.
- ▶ If no satisfactory resolution is concluded, then you may file a report with the Equal Employment Opportunity Commission in San Antonio or the Texas Commission on Human Rights in Austin. Be mindful that any filing must be made within 300 days of the complained-of incident or your action is barred by law.

Association Retaliation

Title VII prohibits retaliation against anyone who reports an illegal or discriminating act. It also forbids retaliation against a third party associate (defined as a spouse, fiancé, family member, or even a “close associate”) of the complainant.

Privacy in the Workplace

What is okay for my boss to access on my computer?

While this issue has yet to be firmly decided, it is probably not okay for your employer to ask for your passwords or for access to your social media accounts. Your employer would also likely be prohibited from using any passwords you might have stored on your computer to access your accounts under the Stored Communications Act (SCA). However, if your social media profile is easily accessible to your employer, he or she may be able to use the information available there to take disciplinary action against you. As a general rule of thumb it is best not to post information on your social media that you wouldn’t want your employer to see!

Criminal Law

If You Are Stopped

What do I do if I am stopped for questioning?

- ▶ It is not a crime to refuse to answer questions, although it is a crime to refuse to identify yourself and produce proof of your identity;
- ▶ The police may “pat-down” your clothing if they suspect that you have a concealed weapon. Do not physically resist, but you are not required to consent to any further search;
- ▶ Ask if you are under arrest and if so, what the charge is; and
- ▶ Do not “bad mouth” the police or run away even if you believe what is happening is unreasonable. Evading the cops could lead to your arrest and/or additional charges of evading arrest.

What are some things I should NOT say to a police officer?

- 1 I know my rights.
- 2 My daddy’s/mommy’s an attorney.
- 3 You can’t do that.
- 4 I’m a criminal justice major/law student.
- 5 Can you hold my beer while I get out my driver’s license?
- 6 I usually get a warning for this.
- 7 I pay your salary.
- 8 You’re not gonna check the trunk are you?
- 9 Sorry I was speeding—my radar detector wasn’t plugged in.
- 10 I didn’t think that university cops were real cops.
- 11 Why aren’t you out catching real criminals?
- 12 You’re out of your jurisdiction.



If I am arrested, do I have to be read my Miranda rights?

Probably not. A suspect must be read his Miranda warnings if **1)** s/he is being questioned by police officers or other state officials **AND 2)** s/he is being detained by those officials. If the police do not do this, then any statements made during the questioning are generally inadmissible in court. If a suspect is being questioned by police officers but is not detained, or is being detained but not questioned about anything beyond their identity, any statements made can be used against the suspect in court.

What if I am stopped while driving my car?

- ▶ Show your driver’s license and proof of insurance upon request.
- ▶ Remember, except for the reasons noted below, the general rule is that the U.S. and Texas constitutions give you the right to refuse to allow a search of your person or car.
- ▶ Also, both constitutions permit you to refuse to answer any questions or perform any “field sobriety tests” for the officers unless you voluntarily decide to do so. It is normally best to speak with your attorney before answering any questions, doing coordination tests, or permitting any search.
- ▶ If you are given a ticket, you should sign it or you can be arrested. Signing the ticket merely indicates that you agree to appear in court. You can always challenge the ticket once you get to court.
- ▶ If you are suspected of DWI and refuse a blood, urine, or breath test, your driver’s license may be suspended.

When can a police officer search my car?

Your car may not be searched unless **1)** you give consent or **2)** there is probable cause. Unfortunately, there is no hard and fast rule as to what is probable cause. Courts have held that mere suspicion or hunches are not probable cause, nor are nervousness, fidgeting, or ambiguous gestures on the part of the suspect. On the other hand, courts have held that the odor of marijuana in a car can serve as probable cause for a search. If a judge decides that probable cause did not in fact exist, all evidence found as a result of the wrongful search will be excluded from any resulting trial.

If, after pulling over your vehicle, a police officer properly believes that he or she has probable cause to believe that you have been involved in a crime, he or she may conduct a full search of the vehicle. If, however, the officer does not have probable cause, he or she must limit the search to items in the car within plain view—under the seats, inside the glove box, and inside the trunk are off limits.

If You Are Arrested

What happens if I am arrested and taken to jail?

- ▶ You have the right to remain silent and to talk to a lawyer before you talk to the police. If you cannot pay for a lawyer, you may have the right to a free attorney, and you should ask the police how the lawyer could be contacted;
- ▶ After you are arrested or immediately after being booked, you have the right to make phone calls in the local dialing area to a lawyer, a bail bondsman, or any relative or other person; and
- ▶ Sometimes you can be released without bail on a “PR” or “Personal Recognizance” bond. When bail is being set, you can also ask the judge about lowering it.

Traffic Offenses

If a police officer misspells my name on a ticket, will the charge be dismissed?

The fact that the police officer may have made a mistake while writing the ticket does not automatically invalidate the ticket, unless it is a fundamental or serious error. All that is required is that the ticket reasonably identifies you and the events surrounding the offense with sufficient certainty that the person, place and basis of the crime are ascertainable.

If I receive a speeding ticket what should I do?

First and foremost, it is important that you sign the ticket...failure to do so may result in your immediate arrest. Next, after you have left the scene, you should either sign the back of the ticket and request defensive driving or plead not guilty. It is normally a bad decision to pay the fine and plead guilty or no contest.



What is defensive driving?

It is an intense one-day course that instructs you in a myriad of safety techniques that might help you to avoid an accident and be a better driver. In many instances, even if you are charged with a minor traffic offense that does not involve an accident, you can resolve the matter with minimal cost by taking such a course. These are available through a variety of venues, including the Internet. The most significant restriction is that if the offense was speeding, you cannot have been exceeding 25 mph over the limit and you cannot have taken the course within one year from the date of the second offense. Also, you must have a valid Texas driver's license to be eligible for this option.

What are the advantages to meeting with the prosecutor?

If you plead not guilty, this will give you the chance to ask for such a meeting to try to plea bargain the case. You can always change your not guilty plea any time before the judge or jury passes sentence. Remember that the prosecutor represents the state (NOT YOU) and is not someone in which you should confide. However, they are usually fair people who do want to reach a reasonable compromise in these disputes.

You can ask them to give you a deferred disposition (similar fine, but the ticket stays off your record if you do not repeat the offense in the next few months) or to allow you to take the defensive driving course a second time (some courts will allow this). This will permit you to keep the ticket from being reported to your insurance company and increasing your rates significantly (which renders a much worse financial impact than the fine associated with the ticket).

Of course, you can contest the ticket in trial as well, but often it is more practical to pursue one of the suggestions noted above from a time and cost perspective.



Civil Rights, Remedies, Controlled Substances and More

What is the Texas “points system?”

The system assigns points to most moving violations and applies those points to your license as follows:

- ▶ Two points for a moving violation conviction in Texas or that of another state;
- ▶ Three points for a moving violation conviction in Texas or another state that resulted in a vehicle crash.

Points will not be assigned for speeding less than 10% over the posted limit (except in school zones) or seat belt convictions. The Department of Public Safety will assess a surcharge when you accumulate a total of six points or more on your license during a three-year period. You must pay a \$100.00 surcharge for the first six points and \$25.00 for each additional point.

In addition, if you are convicted of driving while your license is invalid or without required liability insurance, you will be assessed a surcharge of \$250.00 paid annually for three years. Failure to pay any of the surcharges described above within 30 days of demand will result in the suspension of your driver’s license.

DWI Advice

What is DWI?

This is one of the most common and most serious charges students typically encounter. In Texas, if you are intoxicated to the extent that you cannot properly operate a motor vehicle you are potentially liable for a DWI charge. If your blood alcohol content exceeds 0.08%, then there is a legal presumption that you have reached the point where you cannot safely drive, and you can be charged with DWI.

The consequences of being convicted of DWI are severe. A first offense is considered to be a Class B misdemeanor. You can be jailed for a minimum of seventy-two hours and a maximum of 180 days, fined up to \$2,000, required to pay court costs, have to attend an alcohol awareness class and pay a probation officer a set monthly fee that averages about \$50 per month for the entire time that you are put on probation (which is usually about two years). The court can also, at their discretion, have a deep-lung breath analysis mechanism installed that makes the vehicle inoperable if ethyl alcohol is detected in the breath of the operator. This device must be installed on your vehicle at your expense. It will remain on your auto for at least half of the court imposed probationary period. If your blood alcohol content (“BAC”) exceeds 0.15, then this device becomes mandatory.



You will also be required to pay a surcharge to keep your license. A first time DWI is a Class B misdemeanor and results in a \$1,000.00 surcharge, paid annually for three years. However, even if it was your first DWI, if your BAC exceeded 0.15%, you may be punished more severely, although the surcharge remains the same. A second time DWI results in a \$1,500.00 surcharge, paid annually for three years. In addition, the deep-lung breath analysis mechanism mentioned above is mandatory, regardless of your BAC. If you take the breath test and your BAC is 0.16 or greater, the surcharge rises to \$2,000.00. The charges are cumulative; therefore, you could pay \$1,000.00 as a result of your first DWI and an additional \$1,500.00 for your second DWI, paying a total of \$2,500.00 annually for up to three years. Also, the previous rule that DWIs only were enhanced if they had occurred in the past ten years has been eliminated; now any DWI conviction anytime during your life will count toward determining the appropriate penalty.

Furthermore, Your insurance rates will skyrocket (probably doubling at minimum) as soon as you are convicted. These rates will not reduce to their pre-conviction level for three years after the offense, even if you have no further offenses during that time. The alternative is worse; your insurance company could choose to “drop” your policy. This would force you to obtain liability coverage from the state’s high risk pool of drivers, an option that is very expensive. As the ad says, you cannot afford DWI!

What do I do if I am charged with DWI?

- ▶ Be courteous at the scene, identify yourself, show your driver’s license and insurance papers, but it is recommended that you do not do any sobriety tests as these could be used against you in court;
- ▶ If you are arrested, you cannot stop the police from video-taping you, but again, you do not have to do any of the tests that are requested of you; and
- ▶ Although your license can be suspended if you refuse to take a breath test, you may wish to refuse this test and ask to consult with your attorney first.

Other Alcohol-Related Misdemeanor Crimes

What is a “DUI?”

A minor who operates a motor vehicle in a public place while having any detectable amount of alcohol in his or her system is guilty of this criminal offense. Because the law only requires a “detectable” amount of alcohol in the young driver’s system, it is easier to be convicted under this law than normal DWI. Penalties include fines, community service, and attendance in an Alcohol Awareness workshop. A third offense may also include a jail term.

What other alcohol offenses do UT Austin students commonly encounter?

A minor possessing, consuming, purchasing, or attempting to purchase alcohol, or a minor misrepresenting their age (for example, using a fake ID to buy liquor). A conviction for a first offense for any of the above crimes is punishable by fines, community service, and a suspension of your driver’s license for 30 days. The penalties are stiffer if the individual committed the offense at a party involving binge drinking or alcohol abuse, in which case the court must order that she perform community service, attend an alcohol awareness program, and that her license be suspended for 180 days. The penalties are also harsher if the conviction is a second or third offense, which leads to a 60 and 180 day driver’s license suspension, respectively. In addition, for the third conviction, the fine is increased up to \$2,000 along with the requirement that you may serve up to 180 days in jail.

Texas state parks and Lower Colorado River Authority parks prohibit the public consumption or display of alcohol, although consumption is allowed in cabins, tents, and other such habitations. Travis County parks and Austin city parks prohibit the consumption of alcohol completely.

Several of my friends have been charged or threatened with “public intoxication”—what is that?

If a person appears in a public place while intoxicated to the degree that the person may endanger the person or another, then they could be charged with this offense. It is a Class C misdemeanor (lowest level), but you could still end up spending a night in jail if you are charged with this offense. Obviously, this is a somewhat subjective crime, so guilt is often determined by all the surrounding circumstances of the case. However, one accused of public intoxication does not have the right to demand a breathalyzer or field test to prove their sobriety.

I want to help my friend if he gets alcohol poisoning at a party, but I’m a minor and I don’t want to get in trouble. What should I do?

The Texas Legislature recently passed legislation creating an exception to minors committing the offense of possessing or consuming alcohol by granting immunity to the first minor who requests emergency medical assistance in response to a possible alcohol poisoning, or to other minors who stay on the scene and cooperate with medical and law enforcement professionals.

Marijuana

What are the penalties for the possession of marijuana?

It depends upon the amount that you have:

- ♦ Possession of two ounces of marijuana or less is a Class B (mid-level) misdemeanor;
- ♦ Four ounces or less but more than two ounces is a Class A (high-level) misdemeanor;
- ♦ The offense level continues to rise all the way up to a first degree felony if you possess 2,000 pounds or more.

There is a presumption of intent to distribute marijuana if you possess over 5 pounds of the drug and the penalties become much more serious for that offense.

Can a person just “get a ticket” for possession of marijuana?

Texas police officers are now able to issue a citation and order to appear instead of arresting someone for class B possession of marijuana. This does not mean the case is any less serious than it would have been had that person been arrested, and jail time is still a possibility. The person will still be required to post a bond and attend court just as if s/he had been arrested for the offense.

Theft by Check

What constitutes the crime of “Theft by Check?”

If you obtain property or secure performance of service by issuing a check and the check is later returned due to insufficient funds, the holder of the bad check normally must give you written notice of the return. If you fail to pay the holder in full within 10 days

Civil Rights, Remedies, Controlled Substances and More

of your receipt of the notice, such failure constitutes evidence of your intent to commit theft and you may be prosecuted.

If I am unhappy with a service I receive and stop payment on the check, am I subject to prosecution?

If you are unhappy with a **service**, you do have the option of stopping payment on the check you wrote to pay for the service. Police departments normally consider this a “civil matter” and will not pursue criminal charges. Note that this does not apply to the purchase of **property**. If you purchase a piece of tangible property and later stop payment on the check, you can be criminally prosecuted.

Sexually Explicit Recordings and Internet Issues

Texas law specifically prohibits individuals from promoting sexually oriented photographs or visual recordings made without the subject’s consent. This means it is illegal to secretly record a sexual act involving your girl/boyfriend and post the recording on the internet, for example. It also means that you are not allowed to take a cell phone photograph of a sexual nature without the individual’s consent.

Further, it is now illegal for anyone who is 17 or older to solicit a minor (defined as someone who is under the age of 17), or someone who portrays themselves to be a minor, over the internet for sexual contact or sexual intercourse. One is also prohibited from relaying sexually explicit materials to these minors.

Stalking and Harassment

What is harassment?

A person commits this offense if, with intent to harass, annoy, abuse, torment, or embarrass another, s/he:

- ▶ initiates obscene communication with another person;
- ▶ threatens to inflict bodily injury on the person or to commit a felony against the person, a member of his family or his property;
- ▶ makes a false report regarding the death or serious injury of another person, knowing that the false report will alarm the person receiving the report;
- ▶ causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously; or

- ▶ makes a telephone call and intentionally fails to hang up or disengage the connection.

What is online impersonation?

A person commits this offense if:

- ▶ S/he uses the name or persona of another to create a web page or post messages on a commercial social networking Web site [e.g. Facebook] or other Web site without obtaining the other person’s consent and with the intent to harm, defraud, intimidate or threaten any person, or;
- ▶ She sends an electronic mail, instant message, text message or similar communication that references a name, domain address, phone number, or other item of identifying information belonging to any person without obtaining the other person’s consent, with the intent to cause a recipient of the communication to reasonably believe that the other person authorized or transmitted the communication, and with the intent to harm or defraud.

What is stalking?

A person commits this offense if the person, on more than one occasion:

- ▶ commits offenses that qualify as harassment, such as by initiating obscene communications or repeatedly calling a victim anonymously; or
- ▶ knowingly engages in conduct, which the victim will reasonably regard as:
 - threatening bodily injury or death to the victim or a member of the victim’s family or household;
 - threatening bodily injury or death to an individual with whom the victim has had a dating relationship; or
 - threatening damage to the victim’s property.

What are the penalties for these three offenses?

- ▶ Harassment is a Class B misdemeanor for which the punishment is a fine up to \$2,000; or confinement in jail for up to 180 days; or both such fine and confinement, but may become classified as stalking if such harassment occurs repeatedly.
- ▶ Stalking is a felony of the third degree for which the punishment is a fine up to \$10,000 and two to ten years confinement.
- ▶ Online impersonation is either a Class A misdemeanor punishable by a fine of up to \$4,000 and confinement in jail for up to one year, or a Third Degree Felony punishable by a fine of up to \$10,000 and two to ten years in prison depending on the facts.

Civil Rights, Remedies, Controlled Substances and More

What can I do if I believe I am being harassed or stalked?

Call any of the following agencies for information and/or help. **Do not wait until something serious happens to call.** If you call early, you may be able to take action to prevent injury or harm.

UTPD (if incident occurs on campus)	512-471-4441
Emergency	911
Behavior Concerns Advice Line (BCAL) ..	512-232-5050
Victim Services/Austin Police Department (APD)	512-472-HELP
Teleserve/Austin Police Department	512-974-5037
Family Violence Protective Team	512-974-8535
SafePlace	512-267-SAFE

What other resources for University of Texas at Austin students who believe they are being harassed or stalked?

- ▶ Call the UT Police Department (UTPD) at 471-4441. UTPD advises students not to wait for repeated actions or behaviors, but to call as soon as they have good reason to believe they are being stalked or harassed. UTPD will conduct a thorough investigation and follow up on the situation.
- ▶ If you are a student living in a residence hall on campus, you should advise your Resident Assistant (RA) of the situation. Your RA can then document your complaint and pass the information along to the Hall Coordinator and any other housing administrator who needs to be informed.
- ▶ If you are a student living off campus, you should notify someone in the management office so that extra precautions or preventative measures may be taken.

If I am being harassed or stalked by another UT Austin student, is there anyone else I can contact?

Yes, you can report the matter to Student Judicial Services (512-471-2841) in the Office of the Dean of Students. If the stalking behaviors are occurring on campus, they will investigate and may take formal disciplinary actions against the offender.

Are there other forms of harassment of which I should be aware?

Yes. Stalking or harassment can occur through unwanted e-mail, text messages or online posts. This is becoming increasingly com-

mon. If this is a concern, you should follow the reporting procedures described in the previous section.

Does any protection exist for dating violence?

The law provides protection against threats and violence from another person with whom you have been in a long-term, intimate dating relationship. What distinguishes this from an assault case is that it is possible in this scenario to get a protective order. The penalty for a dating violence event has been increased to a third degree felony from a Class A misdemeanor. As each situation can vary greatly, you should consult an attorney regarding the details of your case before taking any action.

Expunctions and Orders of Non-Disclosure

Is there a way to prevent my future employers from learning about a previous arrest?

The only way to remove an arrest from your record is through an expunction. Expunctions, however, are only available to arrested individuals under limited circumstances. First, if an individual is tried and acquitted for an offense, or if she is tried, convicted, but subsequently pardoned for an offense, then she may expunge the record of her arrest for that offense so long as she has not also been convicted for another crime stemming from the same criminal episode.

An individual who has not gone to trial and been acquitted or pardoned for an offense, however, may still expunge the record of her arrest, if and only if she can meet the following set of requirements:

1. The individual must not have been convicted for the offense for which s/he was arrested, and
2. The individual did not intentionally or knowingly flee after being released on bail, and
3. The arrest did not arise out of a warrant issued for a violation of community supervision,
4. A court has not ordered community supervision for the crime, and either:
 - a. The requisite time period has passed, or
 - b. The prosecutor certifies the arrest records are no longer needed, or
 - c. The charge was dismissed because the individual completed a pretrial intervention program, or

Civil Rights, Remedies, Controlled Substances and More

- d. The charge was void or based on a mistake or false information, or
- e. The prosecution of the offense is no longer possible because the statute of limitations has expired

If all of these circumstances are true, then an individual who has not been indicted or has been falsely indicted may also expunge the record of her arrest despite her not having been acquitted or pardoned for the offense.

Are Class C Misdemeanors handled differently with regard to Expunctions?

Yes. The “no conviction” and “no community supervision” requirements noted above do not apply. Hence, someone arrested for public intoxication, minor in possession of alcohol or any other Class C misdemeanor may have the arrest expunged if she received “deferred disposition” (the Class C equivalent of deferred adjudication) for the alleged offense. Deferred disposition means a final conviction is not entered against the defendant while she completes a period in which she cannot repeat the offense (usually 90–180 days). Thereafter, the charge is dismissed, but the arrest remains on the defendant’s record until it is expunged. The other requirements do apply, however, so the person must wait at least 180 days after the arrest date before applying for an expunction.

How long are the requisite waiting periods?

The current expunction law requires that a person wait out the applicable statute of limitations period before being eligible to seek an expunction. All misdemeanor crimes, including Class C tickets, have a 2 year statute of limitations. However, the law also allows for person to seek an expunction sooner if the prosecuting authority agrees an earlier timeline is necessary. Those seeking expunctions for Class C misdemeanors must wait until 180 days after the date of arrest, while those seeking expunctions for Class B or A must wait one year and those seeking expunctions for felonies must wait three years after the date of arrest. However, if you decide to request an expunction based upon the shorter waiting period rather than the statute of limitations, the prosecutor may keep your file. If you would prefer that the prosecutor not be allowed to keep your file, you may wish to wait until the statute of limitations for the crime has expired.

What if I am not eligible for an Expunction?

Another option is to obtain an “Order of Non-disclosure.” Unlike Expunctions, an Order of Non-disclosure is available to those who successfully complete deferred adjudication for a Class B or above criminal offense. Once granted, the Order prevents law enforcement agencies, jails, courts and other public information agencies from releasing arrest information to private third parties. How-

ever, the Order does not prevent law enforcement agencies from sharing the information with one another or with certain authorized agencies, such as school districts and licensing boards. The arrest information may also be revealed in the case of subsequent criminal prosecutions.

You may be eligible for this Order immediately upon completion of your deferred adjudication requirements if the crime did not involve, sex, guns or violence. If it does involve these areas, then you will have to wait five years before applying for the order. In the case of felony arrests, the waiting period is ten years. Orders of Non-disclosure are not available to those receiving deferred adjudication for kidnapping offenses, sex crimes, abandonment or endangerment of a child, injury to a child, the elderly or disabled, violation of a protective order, stalking or crimes involving family violence.

So why bother with an Expunction or Order of Non-disclosure?

The advantages of an Expunction or an Order of Non-disclosure are numerous. Employment and other types of applications often ask if you have ever been arrested for a criminal offense. In most cases, a person who has had an arrest expunged or has acquired an Order of Non-disclosure can answer, “No.” However, many law enforcement, security and military agencies expect applicants to disclose even expunged arrests. Failure to do so may result in termination. Such is also the case for people applying for a license from such entities as the State Bar of Texas or the State Board of Medical Examiners, wherein an applicant can be denied licensing. However, Texas law limits the instances in which some licensing boards may deny a person an occupational license based on that person having received deferred adjudication or having been convicted of a Class C misdemeanor in the past.

How long does it take to obtain an Expunction/Order of Non-disclosure?

Expunction—Once an Expunction request is filed, it takes approximately six to eight weeks for the court to rule on it. If the request is granted, the court orders all city, state and federal agencies to destroy the arrest records. This normally takes about four months, but has been known to take up to one year. You should check on the status with the DPS headquarters located in Austin if you have any concerns.

Order of Non-disclosure—Once the Order is granted, the clerk of the court must send a certified letter to DPS indicating the existence of the Order. DPS must then send letters to any other agency that might have records of the arrest. No timetable is provided in the statute indicating how long DPS has to complete this task.

Domestic Relations

Marriage

Who can I marry?

As long as your spouse is 18 or older—or is 16 or 17 and has parental consent—and is not a relative of yours within the first degree of blood relationship (no, you cannot marry your first cousin), and as long as neither of you is already married, the joiner is legal.

Can I get an annulment from the State if things do not work out?

The grounds are very limited. Broadly, here are the grounds recognized by the State of Texas: you can do this only **a**) if one of the parties is under 18 and without parental consent, **b**) if either party is under the influence of drugs or alcohol, **c**) if either party is impotent and the other party was unaware of it at the time of the union, **d**) if there is fraud, force, or duress to cause the wedding to happen (a shotgun wedding), **e**) if there is mental incapacity, **f**) if a concealed divorce occurred within 30 days of the second wedding, or **g**) if the action is sought within 72 hours of the ceremony. There are some exceptions and limitations to these rules, so please consult an attorney before you try to proceed.

Divorce

Can I get a separation in Texas?

Texas law does not provide for a “legal separation.” You are either married or not.

What is “no fault” divorce?

Texas has a “no fault” divorce law that allows spouses to file for divorce without having to prove grounds, (such as mental cruelty, adultery, abandonment, etc.). The spouses simply have to prove that the marriage cannot be saved because of irreconcilable differences.

How long after I file the Petition for Divorce can I get divorced?

There is a 60-day waiting period from the date on which you filed for divorce before you are granted a final hearing to finalize the divorce. If there has been family violence, the 60-day waiting period is waived. Evidence of family violence includes: **1**) An active Protective Order in place or **2**) a final conviction of, or deferred adjudication for, an offense involving family violence against the petitioner or a member of the petitioner’s household.

Is alimony allowed in Texas?

Texas does not provide for alimony, but does provide for spousal maintenance for up to five years for a person who has been in a marriage of between ten and twenty years duration, up to seven years for a person who has been in a marriage between twenty and thirty years duration, and up to ten years for a person who has been in a marriage over thirty years duration, provided the person does not live with another partner with whom they are in a relationship. In all cases, the spouse must lack the ability for self-support or have a child that requires substantial care due to a disability that prevents the spouse from being self-supporting. Another way to be eligible for this type of support is if a person lacks sufficient property to provide for their own reasonable needs and the other spouse was convicted, or has been granted deferred adjudication and placed under community supervision, for an act of family violence within a two-year time frame prior to the filing of the divorce or during the time the divorce is pending; in these circumstances, the marriage can be for any duration of time, even less than ten years.

Do I have to hire an attorney?

No. However, it is only advisable for you to do your own divorce if: **1**) the divorce is uncontested, **2**) there are no children of the marriage, **3**) you do not own any real estate, and **4**) you have agreed to a division of the personal property and debts.



Child Support

How is child support calculated?

The court will determine the child support based upon what is in the best interest of the child. Texas law has established guidelines for child support—for one child, 20% of the monthly net income of the paying parent; for two children, 25%; for three children, 30%; for four children or more, 35%.

The obligation to pay child support carries with it the obligation to provide medical insurance for the children. The non-custodial parent should provide medical insurance for the children through their employment. If insurance is not available through employment, the paying parent must reimburse the custodial parent for the cost of carrying the children on the custodial parent's insurance. If the custodial parent is unable to provide medical insurance for the children, then the paying parent must pay to cover medical expenses. The cost of the medical insurance is in addition to, not part of, child support.

What if there is a change in the income in the parent who is responsible for child support?

If the parent paying child support has a negative change in their financial situation, the parent should file a modification and request that the child support be reduced. The parent collecting child support can also file a modification to request an increase in support if no support order or modification has been made in three years and the difference in child support would increase \$100 or more, or if the overall child support will increase by 20%.

Visitation

How does the court decide visitation?

The court will determine custody and visitation of the child based upon what is in the best interest of the child. However, parents are encouraged to come to their own agreements in regards to visitation. This is because you understand your child's needs and those of your family better than a judge who does not know you. If you cannot come to an agreement as to visitation, the Texas Family Code has a suggested visitation formula that provides for the non-possessory parent to have custody of the children every other weekend and alternating holidays.

What is the standard visitation schedule?

The standard visitation allows the non-possessory parent to have visitation with the child on the first, third, and fifth weekends of the month. There is also a provision for midweek visitations on Thursday evenings. Additionally, the Non-possessory parent has 30 days of Extended Summer visitation each summer. The major holidays such as: Thanksgiving, Christmas, and Spring Break, alternate in even and odd years between the parents. The visitations begin and end at 6 p.m.

Once there is a court ordered visitation schedule in place, can it be changed?

There may come a time when there is a change in circumstances and the visitation schedule with the child needs to change. One example could be a change in one parent's work schedule. A modification can be filed to make changes to the visitation schedule.

Paternity

What if I have a child by a man who later denies responsibility for fathering the child?

You can file a paternity lawsuit. Once this occurs, the court will order blood tests. If the court determines that the man is the father, the court will determine custody, visitation rights and child



support. If neither the mother nor the father want the father to be involved with supporting or raising the child and if the mother does not apply for welfare support, no paternity action is required. If the custodial parent applies for governmental financial assistance, the County Attorney or Attorney General will bring suit against the non-paying parent to recover moneys they have paid to the custodial parent for child support.

In addition, a man who has already filed an acknowledgment or denial of paternity may file a statement withdrawing the previously stated denial of paternity within 60 days of signing the original acknowledgment/denial or before any proceeding occurs in which the man is a party to adjudicate an issue relating to the child, whichever is first.

Military Parents Who Are Deployed

What happens if I am deployed during my child visitation rights?

If you are the primary custodial parent you can designate someone to fill that role in your absence during deployment. If you are the non-possessory parent you can designate someone to exercise your visitation in your absence, and once you return from deployment you can petition the court for make-up visitation. In order to make any of these elections, you have to file a modification and request temporary orders, which will expire upon the end of your deployment. You do not need to prove a substantial change in circumstances to get the modification, provided that deployment is the reason the request for temporary orders was filed.

Grandparent Access

What rights do grandparents have?

Grandparents do not have any statutory legal rights. Grandparents can petition the court for possession or access to their grandchildren if: **1)** there is a living parent who has not had their parental rights terminated and **2)** the grandparent can prove that the child's physical health will be endangered and the child's emotional well-being and development will be impaired if access is not granted. Judges are given discretion on whether or not to grant grandparent access.

Stepparents

What rights do stepparents have regarding their spouse's children?

Typically, stepparents do not have any legal rights in regard to their spouse's children. However, a custodial parent can delegate certain parental rights to the stepparent in documents such as: a medical power of attorney, a durable power of attorney, or a document on file at a child's school that authorizes the stepparent access to the child's educational records and the authority to sign parental documents on behalf of the child. If a stepparent formally adopts a child, they have all the rights and responsibilities to the child as the biological parent. In order for a stepparent to adopt, the non-possessory parent's rights to the child must be terminated and if the child to be adopted is 12 years or older, the child must consent.

Spousal or Child Abuse

What if someone abuses my child or me?

Most importantly, protect yourself and your children by moving out of harm's way to a friend's house or possibly to a battered women's shelter. If you live in Travis County or the abuse occurred in Travis County, you may obtain a protective order free of charge through the Travis County Attorney's office. A protective order is an option in cases of:

- ▶ abuse by a family member;
- ▶ abuse by a person with whom the victim has had a "dating relationship;"
- ▶ sexual assault.

If you are a victim of abuse, or if you have knowledge of abuse, there are community organizations that can help (*see the list of community resources at the end of this Handbook*). Texas law requires any person who suspects or has actual knowledge of child abuse to report the situation to the Texas Department of Protective and Regulatory Services.



Estate Documents

Wills

What does a will do?

It determines who receives your property upon your death. It can also solve or avoid costly court supervision of the distribution of your estate and of a guardianship to protect the rights of your minor children.

What happens if you die without a will?

Your property will be disposed of according to provisions of the Texas Probate Code. Of course, this may mean that your wishes may not be met.

Is a Guardianship required if you leave children and no will?

Generally, if you are survived by your spouse and your children, and you have no will, all of your community property goes to your spouse—BUT, this only happens if **all** your children came from the marriage of you and your surviving spouse. If you have children from another marriage, then half of your community property goes to your children from all marriages, and half goes to your surviving spouse.

In the second case, if the children are minors, the court will probably require a supervised guardianship for your children for their inheritance, even if their other parent is still living. The guardian would take charge of the property, and have to get probate court approval for most transactions. This burdensome, time-consuming process is avoided with a proper will naming a guardian for the inheriting minors from your previous marriage. You do need a provision that provides for a guardian in the event something happens to both you and your spouse simultaneously. If this occurs, then the court again would intervene and decide who gets custody of your children.

If I am in a same-sex marriage that was recognized in another state, will Texas recognize it as a legal marriage?

No, but this issue is complex. The United States Supreme Court in *U.S. v. Windsor* held that the federal government cannot limit the definition of marriage to include only heterosexual couples. This ruling did NOT legalize gay marriage throughout the United States. Instead, the ruling legitimized any marriages that had taken place in the 13 states already granting same-sex couples the right to marry. The *Windsor* decision also allowed for same sex couples to begin filing jointly on their federal income tax returns. The *Windsor* decision did not address whether a state that prohibits same-sex marriage must recognize a marriage from a

state that does grant same-sex marriage. Hence, such a couple that legally married in New York but lives in Texas may be unable to divorce if Texas chooses not to recognize that their marriage exists. Such couples that reside in Texas will still need to have written wills, medical health care power of attorneys, directive to physicians (a.k.a. “Living Will”- see below for further information), and General Power of Attorneys to ensure that their partners are protected in case of emergencies or death.

Living Wills

What is a “living will”?

This is a legal document, which indicates to a medical provider that you do not want extraordinary measures taken to sustain your life. This is typically done when a patient is brain dead or existing solely on a life support system without any real hope of recovery or quality of life.

Other Documents

Are there other instruments I should consider signing in conjunction with my will?

Yes. In a Health Care Power of Attorney you can appoint a trusted individual to make medical decisions for you if you are unable to make your own medical decisions.

Also, if you plan on going out of the country for an extended period of time, or have some other need to allow another person to make business, financial, and other decisions on your behalf, then you may wish to sign a General Power of Attorney.



Justice Court

Jurisdiction and Whether to File Suit

What is Justice Court?

This court is designed for individuals to bring smaller disputes before a judge or jury for resolution without having to hire a lawyer. Texas law provides that every county in the state have a Justice Court as a forum for settling legal disputes involving cases for money damages or creditor/debtor issues up to \$10,000, cases for repair or remedy of a tenant's residence by a landlord, and cases for eviction of a tenant by a landlord. It costs approximately \$100 to file a case. You can represent yourself in Justice Court or have an attorney, if you believe it is necessary. The person filing the lawsuit is called the plaintiff and the person being sued is called the defendant.

When should I sue?

There are several factors to consider before taking this step. You must weigh the time and effort required to follow through on the case against the amount of money you hope to win. You must be able to locate the person you are suing because they must be served with notice of the lawsuit. If you lose and the other party hires an attorney, a judgment could be entered against you for their attorney's fees.

Also, remember that if the person you are suing files a counterclaim against you for money damages and you lose, a judgment could be entered against you for the defendant's damages and court costs. Once you win, you must take steps to collect a judgment if the defendant does not pay you. Often, the defendant has no assets which can be attached, and you may not be able to collect money on the judgment even though you won your case.

What happens if I am the defendant?

- ▶ If you are sued, you are referred to as the defendant in the lawsuit.
- ▶ After the plaintiff files a lawsuit, you will be given notice of the lawsuit, or "served," by a constable or some other qualified person.
- ▶ Each type of justice court case has its own unique time frame and requirements for filing an answer. Please consult an attorney for more information on this issue.
- ▶ Also if you believe that the plaintiff owes you money, you can pay a small fee and file a counterclaim against the plaintiff.

What happens if I do not answer?

If you do not enter an answer within the allotted time, the plaintiff can get a default judgment from the court. You will not receive any prior notice of the hearing nor will you have an opportunity to tell your story to the court.

Preparing Your Case

What do I need to do to prepare my case?

- ▶ Write out all the details you can recall—people, dates, places, times, then put it in outline form;
- ▶ Gather copies of all documentation (receipts, letters, notices, and pictures) which support your position, with extra copies for court;
- ▶ Arrange for your witnesses to be present at the trial (you can subpoena them if you need to) or get written statements or affidavits from those who will not be present in court;
- ▶ Write out questions you want to ask your witnesses;
- ▶ Try to anticipate what testimony the other party will give; and what you want to ask them;
- ▶ Arrive at court on time.

What are the procedures in court?

- ▶ The plaintiff presents their witnesses and evidence first. The defendant can cross examine each witness;
- ▶ Next, the defendant presents witnesses and evidence. The plaintiff can cross examine each witness; and
- ▶ The judge may ask questions at any time.
- ▶ Each party may make a closing statement.

How soon will a decision be made, and can I appeal it if I do not like it?

The judge usually gives a decision immediately or within a few days of the trial. If either party is dissatisfied with the judgment, they may appeal to the County Court within ten days of the trial by posting an appeal bond. This appeal bond is twice the amount of the judgment against the loser, or \$500 if the winner wants to appeal. Also, one must pay a filing fee that is normally about \$150. The case is then retried, from the start, by another court. It may then be appealed to the Court of Appeals.

Community Resources

Advocacy, Inc. (Disability Issues)

www.disabilityrightstx.org | 512-454-4816

AIDS Services of Austin

www.asaustin.org | 512-458-2437

American Civil Liberties Union

www.aclu.org | 512-478-7300

Austin Community Court, Downtown

www.austintexas.gov/department/community-court
512-974-4879

Austin Housing Authority

www.hacanet.org | 512-477-4488

Austin Housing Code Enforcement Division

www.austintexas.gov/department/planning | 512-974-2000

Austin Municipal Court, City of

www.austintexas.gov/department/municipal-court
512-974-4800

Austin Tenants' Council

www.housing-rights.org | 512-474-1961

Better Business Bureau

centraltx.bbb.org | 512-445-2911

Child Abuse/Texas Protective Rights and Regulatory Services

www.dfps.state.tx.us | 800-252-5400

Children's Advocacy Center/Travis County

www.centerforchildprotection.org | 512-472-1164

Child Support/Texas Attorney General's Office

www.oag.state.tx.us/cs/index.shtml | 512-460-6000

Consumer Credit Counseling Services

www.cccsintl.org | 866-531-3433

Consumer Protection Division/Texas Attorney General

www.oag.state.tx.us/consumer/index.shtml | 800-621-0508

County Attorney's Office/Travis County (protective order)

www.co.travis.tx.us/county%5Fattorney | 512-854-9415

Criminal Defense Law Clinic (UT Law)

www.utexas.edu/law/clinics/criminal | 512-232-1300

Dispute Resolution Center

www.austindrc.org | 512-371-0033

Equal Employment Opportunity Commission (EEOC)

www.eeoc.gov | 800-669-4000

Federal Trade Commission (FTC)

Consumer complaints:

Business Practices, Identity Theft, E-mail Spam and Phishing,
National Do Not Call Registry, Antitrust Issues

www.ftc.gov | www.ftc.gov/ftc/contact.shtm

Fire Department, City of Austin

www.austintexas.gov/department/fire | 512-974-0130



Community Resources

Health and Human Services Department, Austin/Travis County

www.austintexas.gov/department/health | 512-972-5000

Justices of the Peace

www.co.travis.tx.us/justices_of_peace/default.asp

Precinct 1: Justice/Small Claims Court 512-854-7700

Precinct 2: Justice/Small Claims Court 512-854-4545

Precinct 3: Justice/Small Claims Court 512-854-6763

Precinct 4: Justice/Small Claims Court 512-854-9478
Criminal 512-854-9479

Precinct 5: Justice/Small Claims Court 512-854-9050
Criminal 512-854-9049

Lawyer Referral Service of Central Texas

www.austinlrs.com | 512-472-8303

Mediation Clinics

Conflict Resolution Center:

512-471-1950

www.utexas.edu/courses/maxwell/utcrc/index.htm

UT Law School:

www.utexas.edu/law/clinics/mediation | 512-232-7846

National Domestic Violence Hotline

www.thehotline.org | 800-799-7233 | TTY: 800-787-3224

Safe Place

www.safeplace.org | 24-Hour Hotline: 512-267-7233

Secretary of State, Texas

www.sos.state.tx.us

Business Organization: 512-463-5555

Trademarks: 512-463-5600

Nonprofits: 512-463-5583

Texas Advocacy Project (Family Violence Legal Line)

www.texasadvocacyproject.org | 512-476-5770

Texas Department of Motor Vehicles (Title and Registration)

www.txdmv.gov/contact_us/vehicle_titles_registration.htm
512-837-4416

Texas Department of Public Safety

www.txdps.state.tx.us | 512-424-2000

Driver License Customer Service: 512-424-2600

Texas Department of Transportation

www.txdot.gov | 512-463-8588

Texas Rural Legal Aid

www.trla.org | 512-374-2700

Texas Workforce Commission—Employee Rights and Laws

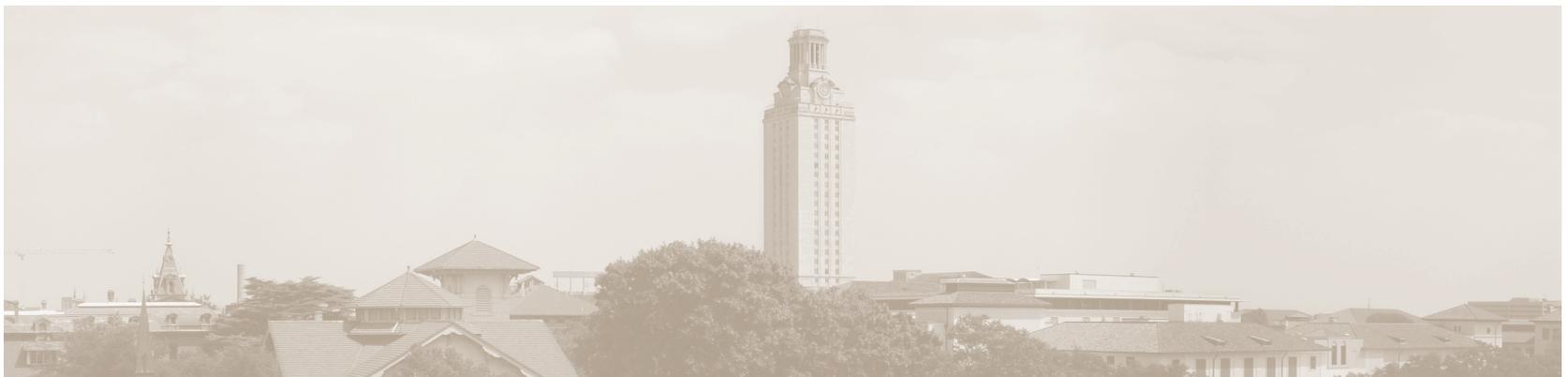
www.texasworkforce.org | 512-463-2642

Travis County Jail

www.tcsheriff.org | 512-854-9033

Travis County Tax Collector's Office

www.co.travis.tx.us/tax_assessor | 512-854-9473





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