1. You can only get a divorce in Texas if you were married in Texas. **FALSE.** Texas courts have jurisdiction over a divorce action if either spouse resided in Texas for a continuous six-month period prior to the filing of the divorce petition.

2. In custody actions, the law favors mothers. **FALSE.** Texas law expressly provides that a family court shall not consider a parent’s gender in making decisions regarding custody. Judges must determine what is in the best interest of the child, taking all facts and circumstances of the child and the parties into consideration. Judges presume that both parents should be named joint managing conservators with relatively equal rights and duties. The parent who has historically been the primary caregiver of the child is usually granted the exclusive right to designate the primary residence of the child.

3. Texas recognizes legal separation, which allows spouses to remain married but live separately. **FALSE.** Texas courts do not recognize legal separation. The laws relating to the acquisition and disposal of community property continue to apply to married people, even if physically separated, until the date of divorce.

4. If you acquire an asset in your own name during the marriage it will not be considered community property. **FALSE.** All property acquired by either party during the marriage is community property. If a party acquires an asset in his or her own name, that party has sole management rights over the asset, but the asset remains community property. An asset that was owned by a party before marriage or acquired by a party during marriage by gift or inheritance is that party’s separate property.

5. If you commingle separate property funds with community property funds, the separate property funds are converted to community property. **FALSE.** The nature of separate property does not change unless it is intentionally gifted by the spouse owning the property to the other spouse. Texas law also presumes that all property owned by the parties is community property until the spouse claiming the funds as his or her separate property proves the funds are separate in nature by clear and convincing evidence. If separate property funds are commingled with community property funds, it is the separate property owner’s burden to trace the funds to show the original source and the current value of the separate property funds.

6. Parties are required to have a hearing if a petition is filed. **TRUE and FALSE.** If the parties reach an agreement on all issues in a divorce case, one party must attend an uncontested hearing to testify about the elements of the agreement and request that the agreement be signed and made into an order. In non-divorce cases, agreements can be submitted to the court for signature by filing and no hearing is necessary. If a party files a petition for divorce and later reconciles with his or her spouse, the petition can be dismissed without a hearing.

7. Alimony, if awarded, lasts forever. **FALSE.** In order to qualify for the Texas version of alimony, which is called “spousal maintenance,” the spouse seeking maintenance must be unable to provide for his or her own minimum reasonable needs and must have been married for a minimum of 10 years or must be the custodian of a child of the marriage requiring substantial care and personal supervision due to a physical or mental disability. A spouse may also qualify for spousal maintenance if the spouse from whom maintenance is requested was convicted of a criminal offense constituting family violence against the spouse requesting spousal maintenance. If a spouse qualifies for maintenance, the maintenance is limited in duration depending on the years of marriage, and the amount ordered cannot exceed 20 percent of the gross income of the paying spouse. If spousal maintenance is awarded, the maintenance is always subject to future modification in the event of a material and substantial change of circumstances.
8. Community property and debts incurred during the marriage are always divided equally in a divorce. **FALSE.** Community property is divided in a “just and right” manner, taking into consideration several factors, including the debts incurred by each spouse during the marriage, the spouse who is the obligor on the debt, the award of property securing the debt and the ability of each spouse to pay the debt.

9. If one spouse commits adultery, it can have a significant outcome on the division of assets and debts in divorce. **TRUE** and **FALSE.** In Texas, a spouse can request a “no fault” divorce or a “fault” divorce based on adultery or another fault ground enumerated in the Texas Family Code. If the spouse has requested a no fault divorce, however, the family court shall not consider adultery in determining how to divide the community estate in a just and right manner. The court can only consider adultery if alleged in the petition as a basis for the divorce.

10. The family court cannot enter a protective order if the parties are unmarried. **FALSE.** The Texas Family Code allows a person to obtain a protective order against a family member, a member of the same household or a person with whom he or she is in a “dating relationship.” A “household” is comprised of persons living together in the same dwelling without regard to whether they are related to each other. Additionally, any adult may apply for a protective order to protect a child from family violence.

11. Child support must be paid while a child is in college. **FALSE.** A child support order remains in effect until a child turns 18 or graduates from high school, whichever occurs first. A support order terminates automatically when the child turns 18 unless one of the parties files notice with the court that the child has not graduated from high school.

12. An employee’s wages can never be garnished for the payment of alimony. **FALSE.** The Texas Constitution allows spousal maintenance, whether court ordered or by agreement, to be garnished from an employee’s wages. Additionally, Texas courts must give full faith and credit to another state’s income withholding order for alimony or spousal support.

13. If a child support obligor loses his or her job, he or she can stop paying child support temporarily during the period of unemployment. **FALSE.** Child support must be paid by an obligor so long as an order is in place requiring him or her to pay child support. An obligor may seek to modify a child support order based upon the loss of a job and the court may order the cessation of child support retroactive to the date the petition seeking to modify child support was filed by the obligor. However, if the court determines the obligor is intentionally unemployed or underemployed, the court may apply the support guidelines to the earning potential of the obligor.

14. A spouse cannot sue the other for a tort committed during the marriage. **FALSE.** In 1977, the Texas Supreme Court abolished spousal immunity for intentional torts. In 1987, the court abrogated spousal immunity completely as to any cause of action, including negligence actions for personal injuries. A court may either choose to award tort damages to a divorcing spouse, or may elect to consider the tort as a factor in awarding a disproportionate share of the community estate to the damaged spouse, but the court may not do both.

15. A written agreement reached through mediation can always be revoked, just like any contract or settlement agreement. **FALSE.** In Texas, parties are entitled to a judgment on any mediated settlement agreement meeting the requirements of the Texas Family Code. A mediated settlement agreement may only be modified by the written agreement of the parties or by a finding by the court that the mediated settlement agreement is not in the best interest of a child.

16. Parties can enter postnuptial agreements to resolve property issues between them. **TRUE.** At any time, spouses can agree in a signed writing to partition or exchange between themselves all or part of their community property, then existing or to be acquired, as the spouses may desire. Property or a property interest transferred to a spouse by a partition or exchange agreement becomes that spouse’s separate property. The partition or exchange of property may also provide that future earnings and income arising from the transferred property shall be the separate property of the owning spouse. The agreement is enforceable without consideration.

If you have any questions about these laws, please contact:

**Abby Ewing**
214.231.5717
aewing@foxrothschild.com

**Monica M. Peters**
214.231.5775
mpeters@foxrothschild.com