

Proposed changes for the 2010 edition of *Texas Pattern Jury Charges—Family*

PJC 204.1

Notes/Comments: To reflect statutory changes to subchapter E, chapter 3, of the Texas Family Code, PJC 204.1 through PJC 204.9 are replaced by PJC 204.1 to appear as shown. Certain claims for reimbursement are listed in Tex. Fam. Code § 3.402(a). Use of the term “includes” in that section indicates that types of claims other than those listed in that section may be cognizable as claims for reimbursement (Tex. Gov’t Code § 311.005(13)). The Committee has concluded that section 3.402(a) does not prohibit the more expansive interpretation set forth in the instruction as shown, which includes claims established under case law.

PJC 204.1 Reimbursement

Texas law recognizes three marital estates: the community property owned by the spouses together and referred to as the community estate; the separate property owned individually by the husband and referred to as a separate estate; and the separate property owned individually by the wife, also referred to as a separate estate.

A claim for reimbursement for funds expended by an estate to pay debts, taxes, interest, or insurance for the property of another estate is measured by the amount paid. An offset against a claim for reimbursement for funds expended by an estate to pay debts, taxes, interest, or insurance for the property of another estate is measured by the value of any related benefit received by the paying estate, such as the fair value of the use of the property by the paying estate, income received by the paying estate from the property, and any reduction in the amount of any income tax obligation of the paying estate by virtue of the paying estate’s claiming tax-deductible items relating to the property, such as depreciation, interest, taxes, maintenance, and other deductible payments, except that an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by a separate estate against contributions made by the community estate to the separate estate is not to be a part of such measurement.

A claim for reimbursement of funds expended by an estate for capital improvements to property of another estate is measured by the enhancement in value to the receiving estate resulting from such expenditures. An offset against a claim for reimbursement for capital improvements to property of another estate is measured by the value of any related benefit received by the paying estate, such as the fair value of the use of the property by the paying estate, income received by the paying estate from the property, and any reduction in the amount of any income tax obligation of the paying estate by virtue of the paying estate’s claiming tax-deductible items relating to the property, such as depreciation, interest, taxes, maintenance, and other deductible payments, except that an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by a separate estate against contributions made by the community estate to the separate estate is not to be a part of such measurement.

A claim for reimbursement to the community estate for the spouses' time, toil, talent, or effort expended to enhance a spouse's separate estate is measured by the value of such community time, toil, talent, and effort other than that reasonably necessary to manage and preserve the separate estate. An offset against a claim for reimbursement for the spouses' time, toil, talent, or effort expended to enhance a spouse's separate estate is measured by the compensation paid to the community in the form of *salary, bonuses, dividends, and other fringe benefits*.

Texas law does not recognize a marital estate's claim for reimbursement for the payment of child support, alimony, or spousal maintenance; for living expenses of a spouse or child of a spouse; for contributions of property of nominal value; for the payment of a liability of a nominal amount; or for a student loan owed by a spouse.

A spouse seeking reimbursement has the burden of proving each element of the claim by a preponderance of the evidence. However, a spouse seeking reimbursement to a separate estate must prove by clear and convincing evidence that the funds expended were separate property. "Clear and convincing evidence" is that measure or degree of proof that produces a firm belief or conviction that the allegations sought to be established are true. The amount of the claim is measured as of the time of trial.

A spouse seeking an offset against a claim for reimbursement has the burden of proving each element of the claim by a preponderance of the evidence. The amount of the offset is measured as of the time of trial.

QUESTION 1

State in dollars the amount of the reimbursement claim, if any, proved in favor of—

1. *the community estate* against
PARTY A's separate estate Answer: \$ _____
2. *PARTY A's separate estate* against
PARTY B's separate estate Answer: \$ _____

If you have inserted a sum of money in answer to Question 1, answer *the corresponding part* of Question 2. Otherwise, do not answer Question 2.

QUESTION 2

State in dollars the amount of the offset against such reimbursement claim, if any, proved in favor of—

1. *PARTY A's separate estate* Answer: \$ _____
2. *PARTY B's separate estate* Answer: \$ _____

PJC 225.1

Notes/Comments: PJC 225.1 is amended to appear as shown.

PJC 225.1 Attorney's Fees

QUESTION _____

What is a reasonable fee for the necessary services of *PARTY A's* attorney *in this lawsuit*? Answer in dollars for each of the following:

1. For representation in the trial court. Answer: \$ _____
2. For briefing in the court of appeals. Answer: \$ _____
3. For representation through oral argument and the completion of proceedings in the court of appeals. Answer: \$ _____
4. For representation at the petition for review stage in the Supreme Court of Texas. Answer: \$ _____
5. For representation at the merits briefing stage in the Supreme Court of Texas. Answer: \$ _____
6. For representation through oral argument and the completion of proceedings in the Supreme Court of Texas. Answer: \$ _____

Grandparent possession or access

Notes/Comments: To reflect the amendment to Tex. Fam. Code § 153.433(a), which makes grandparent possession or access an advisory issue, PJC 215.14 is deleted and the questions in PJC 216.4 and 217.5 are replaced by comments.