

MEMO
September 30, 2019

SUBJECT: Temporary Restraining Orders

Hereinafter set forth is the Court's position with regard to requests for the issuance of temporary restraining orders:

1. Language approved by the Court:
 - a. Restraining, enjoining and prohibiting a PARTY, his agents, employees and all other persons, firms or corporations acting or claiming to act on his behalf from disposing of, alienating, or encumbering any of the property (including income) owned by the **community** of acquets and gains existing between the parties, and further from withdrawing, converting or disposing of any of the **community** funds on deposit at any bank or trust company in the name of the defendant. See *Bukart v. Bukart*, 71 So.3d 532 (La. App. 1st Cir. 7/7/11).
 - b. Prohibiting a PARTY from changing the beneficiary under any employee benefit plan, retirement plan, stock ownership plan, life insurance, or the like either **belonging to the community or in which the community has an interest** pending a partition of the community property. See *USAA Life Ins. Co. v. Krake*, 7 So.3d 78 (La. App. 5 Cir. 3/24/09).
 - c. Prohibiting a state retirement system from disbursing, disposing of, alienating or otherwise encumbering any benefit or a return of employee contributions by a member or retiree of a state or statewide retirement system and his/her spouse or former spouse that is a **community asset**, which shall be effective only after a certified copy of such order or is received by the retirement system. R.S. 11:291.
 - d. Prohibiting a PARTY from harassing petitioner or the children named herein. R.S. 9:372.1
 - e. Prohibiting a PARTY from relocating the principal residence of a child beyond seventy-five (75) miles or out of state in violation of R.S. 9:355.1, *et seq.* See *Burch v. Burch*, 814 So.2d 755 (La. App. 2 Cir. 4/3/02)
 - f. Removing a child named herein from the jurisdiction of the court. C.C.P. Art. 3604B(3).
2. Language not approved by the Court (unless appropriate facts are pled establishing irreparable injury, loss or damage pursuant to C.C.P. Art. 3603; no bond required pursuant to C.C.P. Art. 3610)
 - a. Prohibiting a PARTY from physically or sexually abusing or harming the other spouse or a child of either party under R.S. 9:372. Also, this must be submitted on an approved LPOR form that can be obtained from the Louisiana Supreme Court website: http://www.lasc.org/court_managed_prog/LPOR/pro_forms.asp
3. Language not approved by the Court (unless appropriate facts are pled establishing irreparable injury, loss or damage and an appropriate attorney certificate is attached pursuant to C.C.P. Art. 3603, and the moving party furnishes security in an amount to be fixed by the Court in accordance with C.C.P. Art. 3610; expires in ten days unless extended prior to expiration and can be extended only for ten day periods under C.C.P. Art. 3604).
 - a. Charging any additional bills on any credit cards or charge accounts issued to either or both of the parties. [It has been specifically held that such charges are the separate

debts of the party incurring the same. See *Hatsfelt v. Hatsfelt*, 922 So. 2d 732 (La. App. 3rd Cir. 2/1/06)].

- b. Applying for retirement benefits pending the completion of the community property settlement and the preparation and execution of a proper qualified domestic relations order.
 - c. From canceling any policy of auto, health, or other insurance insuring PARTY, the vehicle to which PARTY is awarded exclusive use and possession, or the minor children.
 - d. From disconnecting any utilities affecting community assets, including without limitation cable service, telephone or cell phone service, and internet service with the following exceptions: utilities for the former family home located at ADDRESS can be disconnected if that home sells before the parties' community property is partitioned.
 - e. Any other relief sought not contained in Paragraphs 1 and 2, above.
4. The Court will not sign a temporary restraining order restraining, enjoining and prohibiting a PARTY from disposing of, alienating, or encumbering "all property presumed to be community property." Under C.C. Art. 2340, "Things in the possession of a spouse during the existence of a regime of community of acquets and gains are presumed to be community" This would subject separate property and unowned property in the possession of a spouse to the temporary restraining order, which is not provided for under C.C.P. Art. 3604(B) or R.S. 9:371.

Please Note: The law is always changing. The Court will reconsider the above policy if presented with supporting legal authority and citations warranting a modification.