WEST VIRGINIA CODE CHAPTER 48 ARTICLE 5

WV Legislature

PART 1. GENERAL PROVISIONS.

§48-5-101. Absolute divorce.

A divorce ordered in this state is an absolute divorce.

WV Legislature

PART 1. GENERAL PROVISIONS.

§48-5-102. Subject matter jurisdiction.

(a) The Legislature hereby finds and declares that it has the authority to establish, by general law, the jurisdiction of circuit courts and family courts over domestic relations matters.

(b) The circuit courts and family courts of this state, by act of the Legislature, are vested with concurrent jurisdiction over the subject matter of divorce. Generally, a family court has the right and authority to adjudicate actions for divorce and the power to carry its judgment and order into execution. Circuit courts have limited jurisdiction in divorce actions, as provided in section two, article two-a, chapter fifty-one of this code and as otherwise specifically provided in this chapter. Jurisdiction of the subject matter of divorce embraces the power to determine every issue or controverted question in an action for divorce, according to the court's view of the law and the evidence.

WV Legislature

§48-5-103. Jurisdiction of parties; service of process.

(a) In an action for divorce, it is immaterial where the marriage was celebrated, where the parties were domiciled at the time the grounds for divorce arose or where the marital offense was committed. If one or both of the parties is domiciled in this state at the time the action is commenced, the circuit courts and family courts of this state have jurisdiction to grant a divorce for any grounds fixed by law in this state, without any reference to the law of the place where the marriage occurred or where the marital offense was committed.

(b) A judgment order may be entered upon service of process in the manner specified in the rules of civil procedure for the service of process upon individuals.

WV Legislature

§48-5-104. Retention of jurisdiction when divorce is denied.

If a divorce is denied, the court shall retain jurisdiction of the case and may order all or any portion of the relief provided for in this article that has been demanded in the pleadings.

WV Legislature

§48-5-105. Residency requirements for maintaining an action for divorce.

(a) Except as otherwise provided in subsection (b) of this section:

(1) If the marriage was entered into within this state, an action for divorce is maintainable if one of the parties is an actual bona fide resident of this state at the time of commencement of the action, without regard to the length of time residency has continued; or

(2) If the marriage was not entered into within this state, an action for divorce is maintainable if:

(A) One of the parties was an actual bona fide resident of this state at the time the cause of action arose, or has become a resident since that time; and

(B) The residency has continued uninterrupted through the one-year period immediately preceding the filing of the action.

(b) An action for divorce cannot be maintained if the cause for divorce is adultery, whether the cause of action arose in or out of this state, unless one of the parties, at the commencement of the action, is a bona fide resident of this state. In such case, if the respondent is a nonresident of this state and cannot be personally served with process within this state, the action is not maintainable unless the petitioner has been an actual bona fide resident of this state for at least one year next preceding the commencement of the action; or

(c) When a divorce is granted in this state upon constructive service of process and personal jurisdiction is thereafter obtained of the respondent in the case, the court may order all or any portion of the relief that has been demanded in the pleadings.

WV Legislature

§48-5-106. Venue of actions for divorce.

(a) If the respondent in an action for divorce is a resident of this state, the petitioner has an option to bring the action in the county in which the parties last cohabited or in the county where the respondent resides.

(b) If the respondent in an action for divorce is not a resident of this state, the petitioner has an option to bring the action in the county in which the parties last cohabited or in the county where the petitioner resides.

WV Legislature

§48-5-107. Parties to a divorce action.

(a) Either or both of the parties to a marriage may initiate an action for divorce.

(b) A spouse who is under the age of majority has standing in a divorce action to sue, answer or plead by a next friend.

(c) An incompetent or insane person shall sue, answer or plead by his or her committee. If a person has not been adjudicated incompetent or insane and has not been divested of the power to act on his or her own behalf, it is presumed that the person has the capacity to bring the action or be made a party respondent. This presumption may be rebutted by evidence which shows that the person cannot reasonably understand the nature and purpose of the action and the effect of his or her acts with reference to the action.

(d) The appointment of a guardian ad litem for a minor, an incompetent or an insane party is not required unless specifically ordered by the judge hearing the action.

(e) Anyone charged as a particeps criminis shall be made a party to a divorce action, upon his or her application to the court, subject to such terms and conditions as the court may prescribe.

(f) In a divorce action where the interests of the minor children of the parties are or may be substantially different from those of either or both of the parents and the best interests of the children may be in conflict with the desires of either or both parents, the court may make the children parties respondent and appoint a guardian ad litem to advocate and protect their rights and welfare.

WV Legislature

PART 2. GROUNDS FOR DIVORCE.

§48-5-201. Grounds for divorce; irreconcilable differences.

The court may order a divorce if the complaint alleges that irreconcilable differences exist between the parties and an answer is filed admitting that allegation. A complaint alleging irreconcilable differences shall set forth the names of any dependent children of either or both of the parties. A divorce on this ground does not require corroboration of the irreconcilable differences or of the issues of jurisdiction or venue. The court may approve, modify or reject any agreement of the parties and make orders concerning spousal support, custodial responsibility, child support, visitation rights or property interests.

WV Legislature

§48-5-202. Grounds for divorce; voluntary separation.

(a) A divorce may be ordered when the parties have lived separate and apart in separate places of abode without any cohabitation and without interruption for one year. The separation may occur as a result of the voluntary act of one of the parties or the mutual consent of both parties.

(b) Allegations of res judicata or recrimination with respect to any other alleged grounds for divorce are not a bar to either party obtaining a divorce on the ground of voluntary separation.

(c) When required by the circumstances of a particular case, the court may receive evidence bearing on alleged marital misconduct and may consider issues of fault for the limited purpose of deciding whether spousal support should be awarded. Establishment of fault does not affect the right of either party to obtain a divorce on the ground of voluntary separation.

WV Legislature

§48-5-203. Grounds for divorce; cruel or inhuman treatment.

(a) A divorce may be ordered for cruel or inhuman treatment by either party against the other. Cruel or inhuman treatment includes, but is not limited to, the following:

(1) Reasonable apprehension of bodily harm;

(2) False accusation of adultery or homosexuality; or

(3) Conduct or treatment which destroys or tends to destroy the mental or physical well-being, happiness and welfare of the other and render continued cohabitation unsafe or unendurable.

(b) It is not necessary to allege or prove acts of physical violence in order to establish cruel and inhuman treatment as a ground for divorce.

WV Legislature

§48-5-204. Grounds for divorce; adultery.

A divorce may be ordered for adultery. Adultery is the voluntary sexual intercourse of a married man or woman with a person other than the offender's wife or husband. The burden is on the party seeking the divorce to prove the alleged adultery by clear and convincing evidence.

WV Legislature

§48-5-205. Grounds for divorce; conviction of crime.

A divorce may be ordered when either of the parties subsequent to the marriage has, in or out of this state, been convicted for the commission of a crime that is a felony and, the conviction is final.

WV Legislature

§48-5-206. Grounds for divorce; permanent and incurable insanity.

(a) A divorce may be ordered for permanent and incurable insanity, only if the person is permanently and incurably insane and has been confined in a mental hospital or other similar institution for a period of not less than three consecutive years next preceding the filing of the complaint and the court has heard competent medical testimony that such insanity is permanently incurable.

(b) A court granting a divorce on this grounds may in its discretion order support and maintenance for the permanently incurably insane party by the other.

(c) In an action for divorce or annulment, where the petitioner is permanently incurably insane, the respondent shall not enter a plea of recrimination based upon the insanity of the petitioner.

WV Legislature

§48-5-207. Grounds for divorce; habitual drunkenness or drug addiction.

(a) A divorce may be ordered for habitual drunkenness of either party subsequent to the marriage.

(b) A divorce may be ordered for the addiction of either party, subsequent to the marriage, to the habitual use of any narcotic or dangerous drug defined in this code.

WV Legislature

§48-5-208. Grounds for divorce; desertion.

A divorce may be ordered to the party abandoned, when either party willfully abandons or deserts the other for six months.

WV Legislature

§48-5-209. Grounds for divorce; abuse or neglect of a child.

(a) A divorce may be ordered for abuse or neglect of a child of the parties or of one of the parties, "abuse" meaning any physical or mental injury inflicted on such child including, but not limited to, sexual molestation; and "neglect" is willful failure to provide, by a party who has legal responsibility for such child, the necessary support, education as required by law, or medical, surgical or other care necessary for the well-being of such child.

(b) A divorce shall not be granted on this ground except upon clear and convincing evidence sufficient to justify permanently depriving the offending party of any allocation of custodial responsibility for the abused or neglected child.

WV Legislature

PART 3. DEFENSES.

§48-5-301. When a divorce not to be granted.

No divorce for adultery shall be granted on the uncorroborated testimony of a prostitute, or a particeps criminis, or when it appears that the parties voluntarily cohabited after the knowledge of the adultery, or that it occurred more than three years before the institution of the action; nor shall a divorce be granted for any cause when it appears that the offense charged has been condoned, or was committed by the procurement or connivance of the plaintiff, or that the plaintiff has, within three years before the institution of action, been guilty of adultery not condoned, but such exception shall not be applicable to causes of action brought pursuant to sections 5-201 and 5-202 of this chapter. The defense of collusion shall not be pleaded as a bar to a divorce.

WV Legislature

PART 4. PRACTICE AND PROCEDURE.

§48-5-401. Verification of pleadings.

All pleadings in a divorce action must be verified by the party in whose name they are filed.

WV Legislature

PART 4. PRACTICE AND PROCEDURES.

§48-5-402. Petition for divorce.

(a) An action for divorce is instituted by a verified petition and the formal style and the caption for all pleadings is "In Re the marriage of _____ and _____". The parties shall be identified in all pleadings as "petitioner" and "respondent".

(b) The petition must set forth the ground or grounds for divorce. It is not necessary to allege the facts constituting a ground relied on and a petition or counter-petition is sufficient if a ground for divorce is alleged in the language of the statute as set forth in this article. The court has the discretionary authority to grant a motion to require a more definite and certain statement, set forth in ordinary and concise language, alleging facts and not conclusions of law.

(c) If the jurisdiction of the court to grant a divorce depends upon the existence of certain facts, including, but not limited to, facts showing domicil or domicil for a certain length of time, the petition must allege those facts. It is not necessary that allegations showing requisite domicil be in the language of the statute, but they should conform substantially thereto so that everything material to the fact of requisite domicil can be ascertained therefrom.

(d) A petition shall not be taken for confessed and whether the respondent answers or not, the case shall be tried and heard independently of the admissions of either party in the pleadings or otherwise. No judgment order shall be granted on the uncorroborated testimony of the parties or either of them, except for a proceeding in which the grounds for divorce are irreconcilable differences.

(e) The Supreme Court of Appeals shall develop and provide forms for petitions filed pursuant to this section and for answers filed pursuant to section 5-403. The forms shall be made available for distribution in the offices of the clerks of the circuit courts and in the offices of the secretary-clerks to the family court judges.

WV Legislature

§48-5-403. Answer to petition.

(a) The responsive pleading to a petition for divorce is denominated an answer. The form and requisites for an answer to a petition for divorce are governed by the rules of civil procedure.

(b) Except as provided in subsection (c) of this section, an allegedly guilty party who relies upon an affirmative defense must assert such defense by both pleadings and proof. Affirmative defenses include, but are not limited to, condonation, connivance, collusion, recrimination, insanity and lapse of time.

(c) In an action in which a party seeks a divorce based on an allegation that the parties have lived separate and apart in separate places of abode without any cohabitation and without interruption for one year, the affirmative defenses, including, but not limited to, condonation, connivance, collusion, recrimination, insanity and lapse of time, shall not be raised.

WV Legislature

§48-5-404. Advance filing of divorce petition in actions alleging abandonment or voluntary separation.

(a) At any time after the parties to a marriage have lived separate and apart in separate places of abode without any cohabitation or after a party is abandoned or deserted, either party living separate and apart or the party abandoned may apply for temporary relief in accordance with the provisions of part 5 of this article by instituting an action for divorce alleging that the petitioner reasonably believes that the period of living separate and apart or of abandonment will continue for the periods prescribed by the applicable provisions of sections 5-202 and 5-208.

(b) If the period of abandonment or living separate and apart continues for the period prescribed by the applicable provisions of sections 5-202 and 5-208, the divorce action may proceed to a final hearing without a new petition being filed.

(c) The petitioner shall give the respondent at least twenty days' notice of the time, place and purpose of the final hearing, unless the respondent files a verified waiver of notice of further proceedings. If the notice is required to be served, it must be served in the same manner as original process under rule 4(d) of the rules of civil procedure, regardless of whether the respondent has appeared or answered.

WV Legislature

§48-5-405. Amendments to pleadings.

Amendments to pleadings in an action for divorce are permitted upon the same general considerations which govern the practice in other proceedings, and are properly allowed for the purpose of making the allegations of the pleading more definite and certain, of asserting an essential allegation which has been omitted, or of including allegations of misconduct committed subsequent to the commencement of the action.

WV Legislature

PART 5. TEMPORARY RELIEF DURING PENDENCY

OF ACTION FOR DIVORCE.

§48-5-501. Relief that may be included in temporary order of divorce.

At the time of the filing of the complaint or at any time after the commencement of an action for divorce under the provisions of this article and upon motion for temporary relief, notice of hearing and hearing, the court may order all or any portion of the following temporary relief described in this part 5, to govern the marital rights and obligations of the parties during the pendency of the action.

WV Legislature

§48-5-502. Temporary spousal support.

The court may require either party to pay temporary spousal support in the form of periodic installments, or a lump sum, or both, for the maintenance of the other party.

WV Legislature

§48-5-503. Temporary parenting order; child support.

(a) The court shall enter a temporary parenting order in accordance with the provisions of sections 9-203 and 9-204 of this chapter that incorporates a temporary parenting plan.

(b) When the action involves a minor child or children, the court shall require either party to pay temporary child support in the form of periodic installments for the maintenance of the minor children of the parties.

(c) When the action involves a minor child or children, the court shall provide for medical support for any minor children.

WV Legislature

§48-5-504. Attorney's fees and court costs.

(a) The court may compel either party to pay attorney's fees and court costs reasonably necessary to enable the other party to prosecute or defend the action. The question of whether or not a party is entitled to temporary spousal support is not decisive of that party's right to a reasonable allowance of attorney's fees and court costs.

(b) An order for temporary relief awarding attorney fees and court costs may be modified at any time during the pendency of the action, as the exigencies of the case or equity and justice may require, including, but not limited to, a modification which would require full or partial repayment of fees and costs by a party to the action to whom or on whose behalf payment of fees and costs was previously ordered. If an appeal is taken or an intention to appeal is stated, the court may further order either party to pay attorney fees and costs on appeal.

(c) If it appears to the court that a party has incurred attorney fees and costs unnecessarily because the opposing party has asserted unfounded claims or defenses for vexatious, wanton or oppressive purposes, thereby delaying or diverting attention from valid claims or defenses asserted in good faith, the court may order the offending party, or his or her attorney, or both, to pay reasonable attorney fees and costs to the other party.

WV Legislature

§48-5-505. Costs of health care and hospitalization.

As an incident to requiring the payment of temporary spousal support, the court may order either party to continue in effect existing policies of insurance covering the costs of health care and hospitalization of the other party. If there is no such existing policy or policies, the court may order that such health care insurance coverage be paid for by a party if the court determines that such health care coverage is available to that party at a reasonable cost. Payments made to an insurer pursuant to this subdivision, either directly or by a deduction from wages, may be deemed to be temporary spousal support.

WV Legislature

§48-5-506. Use and occupancy of the marital home.

(a) The court may grant the exclusive use and occupancy of the marital home to one of the parties during the pendency of the action, together with all or a portion of the household goods, furniture and furnishings, reasonably necessary for such use and occupancy.

(b) The court may require payments to third parties in the form of home loan installments, land contract payments, rent, payments for utility services, property taxes and insurance coverage. If these third party payments are ordered, the court may specify whether such payments or portions of payments are temporary spousal support, temporary child support, a partial distribution of marital property or an allocation of marital debt.

(c) If the court does not set forth in the temporary order that all or a portion of payments made to third parties pursuant to this section are to be deemed temporary child support, then all the payments made pursuant to this section are deemed to be temporary spousal support. The court may order third party payments to be made without denominating them as either temporary spousal support or temporary child support, reserving such decision until the court determines the interests of the parties in marital property and equitably divides the same. At the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made to third parties under the provisions of this subdivision have affected the rights of the parties in marital property and may treat these payments as a partial distribution of marital property notwithstanding the fact that these payments were denominated temporary spousal support or temporary child support or not so denominated under the provisions of this section.

(d) If the payments are not designated in an order and the parties have waived any right to receive spousal support, the court may designate the payments upon motion by any party.

(e) Nothing contained in this section shall abrogate an existing contract between either of the parties and a third party, or affect the rights and liabilities of either party or a third party under the terms of a contract.

WV Legislature

§48-5-507. Use and possession of motor vehicles.

(a) As an incident to requiring the payment of temporary alimony, the court may grant the exclusive use and possession of one or more motor vehicles to either of the parties during the pendency of the action.

(b) The court may require payments to third parties in the form of automobile loan installments or insurance coverage, and payments made to third parties pursuant to this section are deemed to be temporary spousal support, subject to any reservation provided for in subsection (c) of this section.

(c) The court may order that third party payments made pursuant to this section be made without denominating them as temporary spousal support, reserving that decision until the court determines the interests of the parties in marital property and equitably divides the same. At the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made to third parties under the provisions of this section have affected the rights of the parties in marital property and may treat such payments as a partial distribution of marital property notwithstanding the fact that such payments have been denominated temporary spousal support or not so denominated under the provisions of this section.

(d) Nothing contained in this section will abrogate an existing contract between either of the parties and a third party or affect the rights and liabilities of either party or a third party under the terms of a contract.

WV Legislature

§48-5-508. Preservation of the properties of the parties.

(a) If the pleadings include a specific request for specific property or raise issues concerning the equitable division of marital property, the court may enter an order that is reasonably necessary to preserve the estate of either or both of the parties.

(b) The court may impose a constructive trust, so that the property is forthcoming to meet any order that is made in the action, and may compel either party to give security to comply with the order, or may require the property in question to be delivered into the temporary custody of a third party.

(c) The court may order either or both of the parties to pay the costs and expenses of maintaining and preserving the property of the parties during the pendency of the action. At the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made for the maintenance and preservation of property under the provisions of this section have affected the rights of the parties in marital property and may treat such payments as a partial distribution of marital property. The court may release all or any part of such protected property for sale and substitute all or a portion of the proceeds of the sale for such property.

WV Legislature

§48-5-509. Enjoining abuse, emergency protective order.

(a) The court may enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other, or interfering with the custodial or visitation rights of the other. This order may enjoin the offending party from:

(1) Entering the school, business or place of employment of the other for the purpose of molesting or harassing the other;

(2) Contacting the other, in person or by telephone, for the purpose of harassment or threats; or

(3) Harassing or verbally abusing the other in a public place.

(b) Any order entered by the court to protect a party from abuse may grant any other relief authorized by the provisions of article twenty-seven of this chapter, if the party seeking the relief has established the grounds for that relief as required by the provisions of said article.

(c) The court, in its discretion, may enter a protective order, as provided in article twenty-seven of this chapter, as part of the final relief granted in a divorce action, either as a part of an order for temporary relief or as part of a separate order. Notwithstanding the provisions of section five hundred five of said article, a protective order entered pursuant to the provisions of this subsection shall remain in effect until a final order is entered in the divorce, unless otherwise ordered by the judge.

WV Legislature

§48-5-510. Consideration of financial factors in ordering temporary relief.

(a) In ordering temporary relief under the provisions of this part 5, the court shall consider the financial needs of the parties, the present income of each party from any source, their income-earning abilities and the respective legal obligations of each party to support himself or herself and to support any other persons.

(b) Except in extraordinary cases supported by specific findings set forth in the order granting relief, payments of temporary spousal support and temporary child support are to be made from a party's income and not from the corpus of a party's separate estate, and an award of such relief shall not be disproportionate to a party's ability to pay as disclosed by the evidence before the court: Provided, That child support shall be established in accordance with the child support guidelines set forth in article 13 of this chapter.

WV Legislature

§48-5-511. Disclosure of assets.

To facilitate the resolution of issues arising at a hearing for temporary relief, the court may, or upon the motion of either party shall, order the parties to comply with the disclosure requirements set forth in article 7 of this chapter prior to the hearing for temporary relief. The form for this disclosure shall substantially comply with the form promulgated by the Supreme Court of Appeals, pursuant to said section. If either party fails to timely file a complete disclosure as required by this section or as ordered by the court, the court may accept the statement of the other party as accurate.

WV Legislature

§48-5-512. Ex parte orders granting temporary relief.

An ex parte order granting all or part of the relief provided for in this part 5 may be granted without written or oral notice to the adverse party if:

(1) It appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or such party's attorney can be heard in opposition. The potential injury, loss or damage may be anticipated when the following conditions exist: Provided, That the following list of conditions is not exclusive:

(A) There is a real and present threat of physical injury to the applicant at the hands or direction of the adverse party;

(B) The adverse party is preparing to quit the state with a minor child or children of the parties, thus depriving the court of jurisdiction in the matter of child custody;

(C) The adverse party is preparing to remove property from the state or is preparing to transfer, convey, alienate, encumber or otherwise deal with property which could otherwise be subject to the jurisdiction of the court and subject to judicial order under the provisions of this section or part 5-601, et seq.; and

(2) The moving party or his or her attorney certifies in writing any effort that has been made to give the notice and the reasons supporting his or her claim that notice should not be required.

WV Legislature

§48-5-513. Granting of ex parte relief.

(a) Every ex parte order granted without notice must:

(1) Be endorsed with the date and hour of issuance;

(2) Be filed forthwith in the circuit clerk's office and entered of record; and

(3) Set forth the finding of the court that unless the order is granted without notice there is probable cause to believe that existing conditions will result in immediate and irreparable injury, loss or damage to the moving party before the adverse party or his or her attorney can be heard in opposition.

(b) The order granting ex parte relief must fix a time for a hearing for temporary relief to be held within a reasonable time, not to exceed twenty days, unless before the time fixed for hearing, the hearing is continued for good cause shown or with the consent of the party against whom the ex parte order is directed. The reasons for the continuance must be entered of record. Within the time limits described herein, when an ex parte order is made, a motion for temporary relief must be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. If the party who obtained the ex parte order fails to proceed with a motion for temporary relief, the court shall set aside the ex parte order.

(c) At any time after ex parte relief is granted, and on two days' notice to the party who obtained the relief or on such shorter notice as the court may direct, the adverse party may appear and move the court to set aside or modify the ex parte order on the grounds that the effects of the order are onerous or otherwise improper. In that event, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

WV Legislature

§48-5-514. Temporary order not subject to appeal or review.

An order granting temporary relief may not be the subject of an appeal or a petition for review.

WV Legislature

PART 6. JUDGMENT ORDERING DIVORCE.

§48-5-601. Relief that may be included in final order of divorce.

In ordering a divorce, the court may order additional relief, including, but not limited to, the relief described in the following sections of this part 6.

WV Legislature

§48-5-602. Court may require payment of spousal support.

The court, in ordering a divorce may require either party to pay spousal support in accordance with the provisions of article 8-101, et seq., of this chapter.

WV Legislature

§48-5-603. Relief regarding minor child or children.

(a) If the action involves a minor child or children, the court may, if appropriate, order the allocation of custodial responsibility and the allocation of decision-making responsibility in accordance with the provisions of article 9-101, et seq., of this chapter.

(b) If the action involves a minor child or children, the court shall order either or both parties to pay child support in accordance with the provisions of articles 11-101, et seq., and 13-101, et seq., of this chapter.

(c) If the action involves a minor child or children, the court shall order medical support to be provided for the child or children in accordance with the provisions of article 12-101, et seq., of this chapter.

WV Legislature

PART 6. JUDGMENT ORDERING DIVORCE.

§48-5-604. Use and occupancy of marital home.

(a) The court may award the exclusive use and occupancy of the marital home to a party. An order granting use and occupancy of the marital home shall include the use of any necessary household goods, furniture and furnishings. The order shall establish a definite period for the use and occupancy, ending at a specific time set forth in the order, subject to modification upon the petition of either party.

(b) Generally, an award of the exclusive use and occupancy of the marital home is appropriate when necessary to accommodate rearing minor children of the parties. Otherwise, the court may award exclusive use and occupancy only in extraordinary cases supported by specific findings set forth in the order that grants relief.

(c) An order awarding the exclusive use and occupancy of the marital home may also require payments to third parties for home loan installments, land contract payments, rent, property taxes and insurance coverage. When requiring third-party payments, the court shall reduce them to a fixed monetary amount set forth in the order. The court shall specify whether third-party payments or portions of payments are spousal support, child support, a partial distribution of marital property or an allocation of marital debt. Unless the court identifies third-party payments as child support payments or as installment payments for the distribution of marital property, then such payments are spousal support. If the court does not identify the payments and the parties have waived any right to receive spousal support, the court may identify the payments upon motion by any party.

(d) This section is not intended to abrogate a contract between either party and a third party or affect the rights and liabilities of either party or a third party under the terms of a contract.

WV Legislature

§48-5-605. Use and possession of motor vehicles.

(a) The court may award the exclusive use and possession of a motor vehicle or vehicles to either of the parties.

(b) The court may require payments to third parties in the form of automobile loan installments or insurance coverage, if coverage is available at reasonable rates. When requiring third-party payments, the court shall reduce them to a fixed monetary amount set forth in the order. The court shall specify whether third-party payments or portions of payments are spousal support or installment payments for the distribution of marital property.

(c) This section is not intended to abrogate a contract between either party and a third party or affect the rights and liabilities of either party or a third party under the terms of a contract.

WV Legislature

§48-5-606. Relief regarding costs of health care and hospitalization.

As an incident to requiring the payment of spousal support or child support, the court may order either party to provide medical support to the other party. Payments made to an insurer pursuant to this subdivision, either directly or by a deduction from wages, shall be deemed to be spousal support or installment payments for the distribution of marital property, in such proportion as the court shall direct: Provided, That if the court does not set forth in the order that a portion of the payments is to be deemed installment payments for the distribution of marital property, then all payments made pursuant to this section are spousal support. The designation of insurance coverage as spousal support under the provisions of this subdivision shall not, in and of itself, give rise to a subsequent modification of the order to provide for spousal support other than insurance for covering the costs of health care and hospitalization.

WV Legislature

§48-5-607. Court may order transfer of accounts for recurring expenses.

The court may order either party to take necessary steps to transfer utility accounts and other accounts for recurring expenses from the name of one party into the name of the other party or from the joint names of the parties into the name of one party. This section is not intended to affect the liability of the parties for indebtedness on any account incurred before the transfer of the account.

WV Legislature

§48-5-608. Injunctive relief or protective orders.

(a) When allegations of abuse have been proved, the court shall enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other or interfering with the custodial or visitation rights of the other. The order may permanently enjoin the offending party from entering the school, business or place of employment of the other for the purpose of molesting or harassing the other or from entering or being present in the immediate environs of the residence of the petitioner or from contacting the other, in person or by telephone, for the purpose of harassment or threats; or from harassing or verbally abusing the other. The relief afforded by the provisions of this subsection may be ordered whether or not there are grounds for relief under subsection (c) of this section and whether or not an order is entered pursuant to such subsection.

(b) Any order entered by the court to protect a party from abuse may grant any other relief authorized to be awarded by the provisions of article twenty-seven of this chapter, if the party seeking the relief has established the grounds for that relief as required by the provisions of said article. The relief afforded by the provisions of this subsection may be ordered whether or not there are grounds for relief under subsection (c) of this section and whether or not an order is entered pursuant to subsection (c) of this section.

(c) The court, in its discretion, may enter a protective order, as provided by the provisions of article twenty-seven of this chapter, as part of the final relief in a divorce action, either as a part of a order for final relief or in a separate written order. A protective order entered pursuant to the provisions of this subsection shall remain in effect for the period of time ordered by the court not to exceed one hundred eighty days: Provided, That the court may extend the protective order for whatever period the court deems necessary to protect the safety of the petitioner and others threatened or at risk, if the court determines:

(A) That a violation of a protective order entered during or extended by the divorce action has occurred; or

(B) Upon a motion for modification, that a violation of a provision of a final order entered pursuant to this section has occurred.

WV Legislature

§48-5-609. Court may restore to either party his or her property.

Upon ordering a divorce, the court has the power to award to either of the parties whatever of his or her property, real or personal, may be in the possession, or under the control, or in the name, of the other, and to compel a transfer or conveyance.

WV Legislature

§48-5-610. Court may order just and equitable distribution of property.

(a) When the pleadings include a specific request for specific property or raise issues concerning the equitable division of marital property, the court shall order such relief as may be required to effect a just and equitable distribution of the property and to protect the equitable interests of the parties therein.

(b) In addition to the disclosure requirements set forth in part 7-201, et seq., of this chapter, the court may order accounts to be taken as to all or any part of marital property or the separate estates of the parties and may direct that the accounts be taken as of the date of the marriage, the date upon which the parties separated or any other time in assisting the court in the determination and equitable division of property.

WV Legislature

§48-5-611. Suit money, counsel fees and costs.

(a) Costs may be awarded to either party as justice requires, and in all cases the court, in its discretion, may require payment of costs at any time and may suspend or withhold any order until the costs are paid.

(b) The court may compel either party to pay attorney's fees and court costs reasonably necessary to enable the other party to prosecute or defend the action. An order for temporary relief awarding attorney's fees and court costs may be modified at any time during the pendency of the action, as the exigencies of the case or equity and justice may require, including, but not limited to, a modification which would require full or partial repayment of fees and costs by a party to the action to whom or on whose behalf payment of such fees and costs was previously ordered. If an appeal be taken or an intention to appeal be stated, the court may further order either party to pay attorney fees and costs on appeal.

(c) When it appears to the court that a party has incurred attorney's fees and costs unnecessarily because the opposing party has asserted unfounded claims or defenses for vexatious, wanton or oppressive purposes, thereby delaying or diverting attention from valid claims or defenses asserted in good faith, the court may order the offending party, or his or her attorney, or both, to pay reasonable attorney's fees and costs to the other party.

WV Legislature

§48-5-612. Court may order a party to deliver separate property.

Unless a contrary disposition is ordered pursuant to other provisions of this section, then upon the motion of either party, the court may compel the other party to deliver to the moving party any of his or her separate estate which may be in the possession or control of the respondent party and may make such further order as is necessary to prevent either party from interfering with the separate estate of the other.

WV Legislature

§48-5-613. Former name of party; restoration.

The court, upon ordering a divorce, shall if requested to do so by either party, allow such party to resume the name used prior to his or her marriage without the necessity of filing a separate petition pursuant to section one hundred one, article twenty-five, chapter forty-eight of this code. If a name change is requested, the court shall also issue a certificate of divorce reflecting that change in name. The certificate shall be no longer than one page. For purpose of confidentiality, the certificate shall not be considered an order. The certificate shall include the style of the divorce case, the name on the birth certificate of the party requesting the name change, that party's date of birth, that party's social security number, the date on which the name change is effective, and the new name of that party. In order to be valid, the certificate shall be certified by a clerk of the court. The certified certificate may be used by that person for all lawful purposes, including as a proof of legal name change for driver licensing purposes or state identification card at the Division of Motor Vehicles.

WV Legislature

PART 7. MODIFICATION OF FINAL DIVORCE ORDER.

§48-5-701. Revision of order concerning spousal support.

After the entry of a final divorce order, the court may revise the order concerning spousal support or the maintenance of the parties and enter a new order concerning the same, as the circumstances of the parties may require.

WV Legislature

§48-5-702. Revision of order enjoining abuse.

After entering an order enjoining abuse in accordance with the provisions of section 5-509, the court may, from time to time afterward, upon motion of either of the parties and upon proper service, revise the order and enter a new order concerning the same as the circumstances of the parties and the benefit of children may require.

WV Legislature

§48-5-703. Revision of order allocating custodial responsibility and decision-making responsibility.

After entering an order allocating custodial responsibility and decision-making responsibility in accordance with the provisions of sections 9-206 and 9-207, the court may also from time to time afterward, upon the motion of either of the parties or other proper person having actual or legal custody of the minor child or children of the parties, revise or alter the order concerning the allocation of custodial responsibility or allocation of decision-making responsibility in accordance with the provisions of article 9 of this chapter, and make a new order concerning the same, issuing it forthwith, as the circumstances of the parents or other proper person or persons and the benefit of the children may require.

WV Legislature

§48-5-704. Revision of order establishing child support.

(a) After entering an order establishing child support in accordance with the provisions of section 5-603, the court may from time to time afterward, upon the motion of either of the parties or other proper person having actual or legal custody of the minor child or children of the parties, revise or alter the order concerning the support of the children, and make a new order concerning the same, issuing it forthwith, as the circumstances of the parents or other proper person or persons and the benefit of the children may require.

(b) All orders modifying an award of child support must conform to the provisions regarding child support guidelines that are set forth in article 13 of this chapter.

(c) An order providing for child support payments may be revised or altered for the reason, inter alia, that the existing order provides for child support payments in an amount that is less than eighty-five percent or more than one hundred fifteen percent of the amount that would be required to be paid under the provisions of the child support guidelines that are set forth in article 13 of this chapter.

WV Legislature

§48-5-705. Bureau for child support enforcement may seek revision of order establishing child support.

The Bureau for Child Support enforcement may review a child support order and, if appropriate, file a motion with the court for modification of the child support order.

WV Legislature

§48-5-706. Revision of order concerning distribution of marital property.

In modifying a final divorce order, the court may, when other means are not conveniently available, alter any prior order of the court with respect to the distribution of marital property, if:

(1) The property is still held by the parties;

(2) The alteration of the prior order as it relates the distribution of marital property is necessary to give effect to a modification of spousal support, child support or child custody; or

(3) The alteration of the prior order as it relates the distribution of marital property is necessary to avoid an inequitable or unjust result which would be caused by the manner in which the modification will affect the prior distribution of marital property.

WV Legislature

§48-5-707. Reduction or termination of spousal support because of de facto marriage.

(a)(1) In the discretion of the court, an award of spousal support may be reduced or terminated upon specific written findings by the court that since the granting of a divorce and the award of spousal support a de facto marriage has existed between the spousal support payee and another person.

(2) In determining whether an existing award of spousal support should be reduced or terminated because of an alleged de facto marriage between a payee and another person, the court should elicit the nature and extent of the relationship in question. The court should give consideration, without limitation, to circumstances such as the following in determining the relationship of an ex-spouse to another person:

(A) The extent to which the ex-spouse and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife", or otherwise conducting themselves in a manner that evidences a stable marriage-like relationship;

(B) The period of time that the ex-spouse has resided with another person not related by consanguinity or affinity in a permanent place of abode;

(C) The duration and circumstances under which the ex-spouse has maintained a continuing conjugal relationship with the other person;

(D) The extent to which the ex-spouse and the other person have pooled their assets or income or otherwise exhibited financial interdependence;

(E) The extent to which the ex-spouse or the other person has supported the other, in whole or in part;

(F) The extent to which the ex-spouse or the other person has performed valuable services for the other;

(G) The extent to which the ex-spouse or the other person has performed valuable services for the other's company or employer;

(H) Whether the ex-spouse and the other person have worked together to create or enhance anything of value;

(I) Whether the ex-spouse and the other person have jointly contributed to the purchase of any real or personal property;

(J) Evidence in support of a claim that the ex-spouse and the other person have an express agreement regarding property sharing or support; or

WV Legislature

(K) Evidence in support of a claim that the ex-spouse and the other person have an implied agreement regarding property sharing or support.

(3) On the issue of whether spousal support should be reduced or terminated under this subsection, the burden is on the payor to prove by a preponderance of the evidence that a de facto marriage exists. If the court finds that the payor has failed to meet burden of proof on the issue, the court may award reasonable attorney's fees to a payee who prevails in an action that sought to reduce or terminate spousal support on the ground that a de facto marriage exists.

(4) The court shall order that a reduction or termination of spousal support is retroactive to the date of service of the petition on the payee, unless the court finds that reimbursement of amounts already paid would cause an undue hardship on the payee.

(5) An award of rehabilitative spousal support shall not be reduced or terminated because of the existence of a de facto marriage between the spousal support payee and another person.

(6) An award of spousal support in gross shall not be reduced or terminated because of the existence of a de facto marriage between the spousal support payee and another person.

(7) An award of spousal support shall not be reduced or terminated under the provisions of this subsection for conduct by a spousal support payee that occurred before October 1, 1999.

(b) Nothing in this subsection shall be construed to abrogate the requirement that every marriage in this state be solemnized under a license or construed to recognize a common law marriage as valid.

WV Legislature