WEST VIRGINIA CODE CHAPTER 48 ARTICLE 6

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PART I. DEFINITIONS.

§48-6-101. Property settlement or separation agreement defined.

(a) "Property settlement or separation agreement" means a written agreement between a husband and wife whereby they agree to live separate and apart from each other. A separation agreement may also:

(1) Settle the property rights of the parties;

(2) Provide for child support;

(3) Provide for the allocation of custodial responsibility and the determination of decision-making responsibility for the children of the parties;

(4) Provide for the payment or waiver of spousal support by either party; or

(5) Otherwise settle and compromise issues arising from the marital rights and obligations of the parties.

(b) To the extent that an antenuptial agreement affects the property rights of the parties or the disposition of property after an annulment of the marriage or after a divorce or separation of the parties, the antenuptial agreement is a separation agreement.

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PART II. RELIEF BASED ON AGREEMENT.

§48-6-201. Effect of separation agreement.

(a) In cases where the parties to an action commenced under the provisions of this chapter have executed a separation agreement, if the court finds that the agreement is fair and reasonable, and not obtained by fraud, duress or other unconscionable conduct by one of the parties, and further finds that the parties, through the separation agreement, have expressed themselves in terms which, if incorporated into a judicial order, would be enforceable by a court in future proceedings, then the court shall conform the relief which it is authorized to order under the provisions of parts 5 and 6, article 5 of this chapter to the separation agreement of the parties. The separation agreement may contractually fix the division of property between the parties and may determine whether spousal support shall be awarded, whether an award of spousal support, other than an award of rehabilitative spousal support or spousal support in gross, may be reduced or terminated because a de facto marriage exists between the spousal support payee and another person, whether a court shall have continuing jurisdiction over the amount of a spousal support award so as to increase or decrease the amount of spousal support to be paid, whether spousal support shall be awarded as a lump sum settlement in lieu of periodic payments, whether spousal support shall continue beyond the death of the payor party or the remarriage of the payee party, or whether the spousal support award shall be enforceable by contempt proceedings or other judicial remedies aside from contractual remedies.

(b) Any award of periodic payments of spousal support shall be deemed to be judicially decreed and subject to subsequent modification unless there is some explicit, well expressed, clear, plain and unambiguous provision to the contrary set forth in the court-approved separation agreement or the order granting the divorce. Child support shall, under all circumstances, always be subject to continuing judicial modification.

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§48-6-202. Agreement for spousal support beyond the death of the payor.

When a separation agreement is the basis for an award of spousal support, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for spousal support to continue beyond the death of the payor or the payee or to cease in such event. When spousal support is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of spousal support is to continue beyond the death of the payor or payee or is to cease, or when the parties have not entered into a separation agreement and spousal support is awarded, the court shall have the discretion to determine, as a part of its order, whether such payments of spousal support are to be continued beyond the death of the payor or payee or cease. In the event neither an agreement nor an order makes provision for the death of the payor or payee, spousal support other than rehabilitative spousal support or spousal support in gross shall cease on the death of the payor or payee. In the event neither an agreement nor an order makes provision for the death of the payor, rehabilitative spousal support continues beyond the payor's death, in the absence of evidence that the payor's estate is likely to be insufficient to meet other obligations or that other matters would make continuation after death inequitable. Rehabilitative spousal support ceases with the payee's death. In the event neither an agreement nor an order makes provision for the death of the payor or payee, spousal support in gross continues beyond the payor's or payee's death.

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§48-6-203. Agreement for spousal support beyond the remarriage of the payee.

When a separation agreement is the basis for an award of spousal support, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for spousal support to continue beyond the remarriage of the payee or to cease in such event. When spousal support is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of spousal support is to continue beyond the remarriage of the payee or is to cease, or when the parties have not entered into a separation agreement and spousal support is awarded, the court shall have the discretion to determine, as a part of its order, whether such payments of spousal support are to be continued beyond the remarriage of the payee. In the event neither an agreement nor an order makes provision for the remarriage of the payee, spousal support other than rehabilitative spousal support or spousal support in gross shall cease on the remarriage of the payee. Rehabilitative spousal support does not cease upon the remarriage of the payee during the first four years of a rehabilitative period. In the event neither an agreement nor an order makes provision for the remarriage of the payee, spousal support in gross continues beyond the payee's remarriage.

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§48-6-301. Factors considered in awarding spousal support and separate maintenance.

(a) In cases where the parties to an action commenced under the provisions of this article have not executed a separation agreement, or have executed an agreement which is incomplete or insufficient to resolve the outstanding issues between the parties, or where the court finds the separation agreement of the parties not to be fair and reasonable or clear and unambiguous, the court shall proceed to resolve the issues outstanding between the parties.

(b) The court shall consider the following factors in determining the amount and duration of spousal support and separate maintenance, if any, to be ordered under the provisions of parts V and VI, §48-5-1 et seq. of this code as a supplement to or in lieu of the separation agreement:

(1) The length of time the parties were married;

(2) The period of time during the marriage when the parties actually lived together as husband and wife;

(3) The present employment income and other recurring earnings of each party from any source;

(4) The income-earning abilities of each of the parties, based upon such factors as educational background, training, employment skills, work experience, length of absence from the job market, and custodial responsibilities for children;

(5) The distribution of marital property to be made under the terms of a separation agreement or by the court under the provisions of §48-7-6 et seq. of this code, insofar as the distribution affects or will affect the earnings of the parties and their ability to pay or their need to receive spousal support and separate maintenance: Provided, That for the purposes of determining a spouse’s ability to pay spousal support, the court may not consider the income generated by property allocated to the payor spouse in connection with the division of marital property unless the court makes specific findings that a failure to consider income from the allocated property would result in substantial inequity;

(6) The ages and the physical, mental, and emotional condition of each party;

(7) The educational qualifications of each party;

(8) Whether either party has foregone or postponed economic, education, or employment opportunities during the course of the marriage;

(9) The standard of living established during the marriage;

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(10) The likelihood that the party seeking spousal support and separate maintenance can substantially increase his or her income-earning abilities within a reasonable time by acquiring additional education or training;

(11) Any financial or other contribution made by either party to the education, training, vocational skills, career, or earning capacity of the other party;

(12) The anticipated expense of obtaining the education and training described in §48-6-301(b)(10) of this code;

(13) The costs of educating minor children;

(14) The costs of providing health care for each of the parties and their minor children;

(15) The tax consequences to each party;

(16) The extent to which it would be inappropriate for a party, because that party will be the custodian of a minor child or children, to seek employment outside the home;

(17) The financial need of each party;

(18) The legal obligations of each party to support himself or herself and to support any other person;

(19) Costs and care associated with a minor or adult child's physical or mental disabilities; and

(20) Any other factors as the court determines necessary or appropriate to consider in order to arrive at a fair and equitable grant of spousal support and separate maintenance.

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