WEST VIRGINIA CODE CHAPTER 48 ARTICLE 7

WV Legislature

PART 1. MARITAL PROPERTY DISPOSITION.

§48-7-101. Equal division of marital property.

Except as otherwise provided in this section, upon every judgment of annulment, divorce or separation, the court shall divide the marital property of the parties equally between the parties.

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§48-7-102. Division of marital property in accordance with a separation agreement.

In cases where the parties to an action commenced under the provisions of this chapter have executed a separation agreement, then the court shall divide the marital property in accordance with the terms of the agreement, unless the court finds:

(1) That the agreement was obtained by fraud, duress or other unconscionable conduct by one of the parties; or

(2) That the parties, in the separation agreement, have not expressed themselves in terms which, if incorporated into a judicial order, would be enforceable by a court in future proceedings; or

(3) That the agreement, viewed in the context of the actual contributions of the respective parties to the net value of the marital property of the parties, is so inequitable as to defeat the purposes of this section, and such agreement was inequitable at the time the same was executed.

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§48-7-103. Division of marital property without a valid agreement.

In the absence of a valid agreement, the court shall presume that all marital property is to be divided equally between the parties, but may alter this distribution, without regard to any attribution of fault to either party which may be alleged or proved in the course of the action, after a consideration of the following:

(1) The extent to which each party has contributed to the acquisition, preservation and maintenance, or increase in value of marital property by monetary contributions, including, but not limited to:

(A) Employment income and other earnings; and

(B) Funds which are separate property.

(2) The extent to which each party has contributed to the acquisition, preservation and maintenance or increase in value of marital property by nonmonetary contributions, including, but not limited to:

(A) Homemaker services;

(B) Child care services;

(C) Labor performed without compensation, or for less than adequate compensation, in a family business or other business entity in which one or both of the parties has an interest;

(D) Labor performed in the actual maintenance or improvement of tangible marital property; and

(E) Labor performed in the management or investment of assets which are marital property.

(3) The extent to which each party expended his or her efforts during the marriage in a manner which limited or decreased such party's income-earning ability or increased the income-earning ability of the other party, including, but not limited to:

(A) Direct or indirect contributions by either party to the education or training of the other party which has increased the income-earning ability of such other party; and

(B) Foregoing by either party of employment or other income-earning activity through an understanding of the parties or at the insistence of the other party.

(4) The extent to which each party, during the marriage, may have conducted himself or herself so as to dissipate or depreciate the value of the marital property of the parties: Provided, That except for a consideration of the economic consequences of conduct as provided for in this subdivision, fault or marital misconduct shall not be considered by the court in determining the proper distribution of marital property.

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§48-7-104. Determination of worth of marital property.

After considering the factors set forth in section 7-103, the court shall:

(1) Determine the net value of all marital property of the parties as of the date of the separation of the parties or as of such later date determined by the court to be more appropriate for attaining an equitable result. Where the value of the marital property portion of a spouse's entitlement to future payments can be determined at the time of entering a final order in a domestic relations action, the court may include it in reckoning the worth of the marital property assigned to each spouse. In the absence of an agreement between the parties, when the value of the future payments is not known at the time of entering a final order in a domestic relations action, if their receipt is contingent on future events or not reasonably assured, or if for other reasons it is not equitable under the circumstances to include their value in the property assigned at the time of dissolution, the court may decline to do so; and

(A) Fix the spouses' respective shares in such future payments if and when received; or

(B) If it is not possible and practical to fix their share at the time of entering a final order in a domestic relations action, reserve jurisdiction to make an appropriate order at the earliest practical date;

If a valuation is made after a contingent or other future fee has been earned through the personal services or skills of a spouse, the portion that is marital property shall be in the same proportion to the total fee that the personal services or skills expended before the separation of the parties bears to the total personal skills or services expended. The provisions of this subdivision apply to pending cases when the issues of contingent fees or future earned fees have not been finally adjudicated.

(2) Designate the property which constitutes marital property, and define the interest therein to which each party is entitled and the value of their respective interest therein. In the case of an action wherein there is no agreement between the parties and the relief demanded requires the court to consider such factors as are described in subdivisions (1), (2), (3) and (4), section 7-103, if a consideration of factors only under said subdivisions (1) and (2) would result in an unequal division of marital property, and if an examination of the factors described in said subdivisions (3) and (4) produce a finding that a party: (A) Expended his or her efforts during the marriage in a manner which limited or decreased such party's income-earning ability or increased the income-earning ability of the other party; or (B) conducted himself or herself so as to dissipate or depreciate the value of the marital property of the parties, then the court may, in the absence of a fair and just spousal support award under the provisions of section 5-602 which adequately takes into account the facts which underlie the factors described in subdivisions (3) and (4), section 7-103, equitably adjust the definition of the parties' interest in marital property, increasing the interest in marital property of a party adversely affected by the factors considered under said subdivisions who would otherwise be awarded less than one half of the marital

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property, to an interest not to exceed one half of the marital property;

(3) Designate the property which constitutes separate property of the respective parties or the separate property of their children;

(4) Determine the extent to which marital property is susceptible to division in accordance with the findings of the court as to the respective interests of the parties therein;

(5) In the case of any property which is not susceptible to division, ascertain the projected results of a sale of such property;

(6) Ascertain the projected effect of a division or transfer of ownership of income-producing property, in terms of the possible pecuniary loss to the parties or other persons which may result from an impairment of the property's capacity to generate earnings; and

(7) Transfer title to such component parts of the marital property as may be necessary to achieve an equitable distribution of the marital property. To make such equitable distribution, the court may:

(A) Direct either party to transfer their interest in specific property to the other party;

(B) Permit either party to purchase from the other party their interest in specific property;

(C) Direct either party to pay a sum of money to the other party in lieu of transferring specific property or an interest therein, if necessary to adjust the equities and rights of the parties, which sum may be paid in installments or otherwise, as the court may direct;

(D) Direct a party to transfer his or her property to the other party in substitution for property of the other party of equal value which the transferor is permitted to retain and assume ownership of; or

(E) Order a sale of specific property and an appropriate division of the net proceeds of such sale: Provided, That such sale may be by private sale, or through an agent or by judicial sale, whichever would facilitate a sale within a reasonable time at a fair price.

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§48-7-105. Transfers of property to achieve equitable distribution of marital property.

In order to achieve the equitable distribution of marital property, the court shall, unless the parties otherwise agree, order, when necessary, the transfer of legal title to any property of the parties, giving preference to effecting equitable distribution through periodic or lump sum payments: Provided, That the court may order the transfer of legal title to motor vehicles, household goods and the former marital domicile without regard to such preference where the court determines it to be necessary or convenient. In any case involving the equitable distribution of: (1) Property acquired by bequest, devise, descent, distribution or gift; or (2) ownership interests in a business entity, the court shall, unless the parties otherwise agree, give preference to the retention of the ownership interests in such property. In the case of such business interests, the court shall give preference to the party having the closer involvement, larger ownership interest or greater dependency upon the business entity for income or other resources required to meet responsibilities imposed under this article, and shall also consider the effects of transfer or retention in terms of which alternative will best serve to preserve the value of the business entity or protect the business entity from undue hardship or from interference caused by one of the parties or by the divorce, annulment or decree of separate maintenance: Provided, however, That the court may, unless the parties otherwise agree, sever the business relationship of the parties and order the transfer of legal title to ownership interests in the business entity from one party to the other, without regard to the limitations on the transfer of title to such property otherwise provided in this subsection, if such transfer is required to achieve the other purposes of this article: Provided further, That in all such cases the court shall order, or the agreement of the parties shall provide for, equitable payment or transfer of legal title to other property, of fair value in money or moneys' worth, in lieu of any ownership interests in a business entity which are ordered to be transferred under this subsection: And provided further, That the court may order the transfer of such business interests to a third party (such as the business entity itself or another principal in the business entity) where the interests of the parties under this article can be protected and at least one party consents thereto.

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§48-7-106. Findings; rationale for division of property.

In any order which divides or transfers the title to any property, determines the ownership or value of any property, designates the specific property to which any party is entitled or grants any monetary award, the court shall set out in detail its findings of fact and conclusions of law, and the reasons for dividing the property in the manner adopted.

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§48-7-107. Refusal to transfer property; appointment of special commissioner.

If an order entered in accordance with the provisions of this article requires the transfer of title to property and a party fails or refuses to execute a deed or other instrument necessary to convey title to such property, the deed or other instrument shall be executed by a special commissioner appointed by the court for the purpose of effecting such transfer of title pursuant to section seven, article twelve, chapter fifty-five of this code.

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§48-7-108. Interest or title in property prior to judicial determination.

As to any third party, the doctrine of equitable distribution of marital property and the provisions of this article shall be construed as creating no interest or title in property until and unless an order is entered under this article judicially defining such interest or approving a separation agreement which defines such interest. Neither this article nor the doctrine of equitable distribution of marital property shall be construed to create community property nor any other interest or estate in property except those previously recognized in this state. A husband or wife may alienate property at any time prior to the entry of an order under the provisions of this article or prior to the recordation of a notice of lis pendens in accordance with the provisions of part 7-401, et seq., and at anytime and in any manner not otherwise prohibited by an order under this chapter, in like manner and with like effect as if this article and the doctrine of equitable distribution had not been adopted: Provided, That as to any transfer prior to the entry of an order under the provisions of this article, a transfer other than to a bona fide purchaser for value shall be voidable if the court finds such transfer to have been effected to avoid the application of the provisions of this article or to otherwise be a fraudulent conveyance. Upon the entry of any order under this article or the admission to record of any notice with respect to an action under this article, restraining the alienation of property of a party, a bona fide purchaser for value shall take such title or interest as he or she might have taken prior to the effective date of this section and no purchaser for value need see to the application of the proceeds of such purchase except to the extent he or she would have been required so to do prior to the effective date of this section: Provided, however, That as to third parties nothing in this section shall be construed to limit or otherwise defeat the interests or rights to property which any husband or wife would have had in property prior to the enactment of this section or prior to the adoption of the doctrine of equitable distribution by the Supreme Court of Appeals on May 25, 1983: Provided further, That no order entered under this article shall be construed to defeat the title of a third party transferee thereof except to the extent that the power to effect such a transfer of title or interest in such property is secured by a valid and duly perfected lien and, as to any personal property, secured by a duly perfected security interest.

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§48-7-109. Tax consequences of transfer of interest or title.

Notwithstanding the provisions of chapter eleven of this code, no transfer of interest in or title to property under this article is taxable as a transfer of property without consideration nor, except as to spousal support, create liability for sales, use, inheritance and transfer or income taxes due the state or any political subdivision nor require the payment of the excise tax imposed under article twenty-two, chapter eleven of this code.

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§48-7-110. Requiring sums to be paid out of disposable retired or retainer pay.

Whenever under the terms of this article a court enters an order requiring a division of property, if the court anticipates the division of property will be effected by requiring sums to be paid out of "disposable retired or retainer pay" as that term is defined in 10 U.S.C. §1408, relating to members or former members of the uniformed services of the United States, the court shall specifically provide for the payment of an amount, expressed in dollars or as a percentage of disposable retired or retainer pay, from the disposable retired or retainer pay of the payor party to the payee party.

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§48-7-111. No equitable distribution of property between individuals not married to one another.

A court may not award spousal support or order equitable distribution of property between individuals who are not married to one another in accordance with the provisions of article one of this chapter.

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§48-7-112. Prospective effect of prior amendments.

The amendments to this section effected by the reenactment of section 48-2-32 during the regular session of the Legislature, 1996, are to be applied prospectively and have no application to any action for annulment, divorce or separate maintenance that was commenced on or before June 7, 1996.

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PART 2. DISCLOSURE OF ASSETS REQUIRED.

§48-7-201. Required disclosure and updates.

In all divorce actions and in any other action involving child support, all parties shall fully disclose their assets and liabilities within forty days after the service of summons or at such earlier time as ordered by the court. The information contained on these forms shall be updated on the record to the date of the hearing.

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§48-7-202. Assets that are required to be disclosed.

The disclosure required by this part 2 may be made by each party individually or by the parties jointly. Assets required to be disclosed shall include, but are not limited to, real property, savings accounts, stocks and bonds, mortgages and notes, life insurance, health insurance coverage, interest in a partnership or corporation, tangible personal property, income from employment, future interests whether vested or nonvested and any other financial interest or source.

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PART 2. DISCLOSURE OF ASSETS REQUIRED.

§48-7-203. Forms for disclosure of assets.

The Supreme Court of Appeals shall prepare and make available a standard form for the disclosure of assets and liabilities required by this part. The clerk of the circuit court and the secretary-clerk of the family court shall make these forms available to all parties in any divorce action or other action involving child support. All disclosure required by this part shall be on a form that substantially complies with the form promulgated by the Supreme Court of Appeals. The form used shall contain a statement in conspicuous print that complete disclosure of assets and liabilities is required by law and deliberate failure to provide complete disclosure as ordered by the court constitutes false swearing.

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§48-7-204. Discovery under rules; optional disclosure of tax returns.

Nothing contained in this part 2 shall be construed to prohibit the court from ordering discovery pursuant to rule eighty-one of the rules of civil procedure. Additionally, the court may on its own initiative and shall at the request of either party require the parties to furnish copies of all state and federal income tax returns filed by them for the past two years and may require copies of such returns for prior years.

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§48-7-205. Confidentiality of disclosed information.

Information disclosed under this part 2 is confidential and may not be made available to any person for any purpose other than the adjudication, appeal, modification or enforcement of judgment of an action affecting the family of the disclosing parties. The court shall include in any order compelling disclosure of assets such provisions as the court considers necessary to preserve the confidentiality of the information ordered disclosed.

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§48-7-206. Failure to disclose required financial information.

Any failure to timely or accurately disclose financial information required by this part 2 may be considered as follows:

(1) Upon the failure by either party timely to file a complete disclosure statement as required by this part 2 or as ordered by the court, the court may accept the statement of the other party as accurate.

(2) If any party deliberately or negligently fails to disclose information which is required by this part 2 and in consequence thereof any asset or assets with a fair market value of $500 or more is omitted from the final distribution of property, the party aggrieved by the nondisclosure may at any time petition a court of competent jurisdiction to declare the creation of a constructive trust as to all undisclosed assets, for the benefit of the parties and their minor or dependent children, if any, with the party in whose name the assets are held declared the constructive trustee, such trust to include such terms and conditions as the court may determine. The court shall impose the trust upon a finding of a failure to disclose such assets as required under this part 2.

(3) Any assets with a fair market value of $500 or more which would be considered part of the estate of either or both of the parties if owned by either or both of them at the time of the action, but which was transferred for inadequate consideration, wasted, given away or otherwise unaccounted for by one of the parties, within five years prior to the filing of the petition or length of the marriage, whichever is shorter, shall be presumed to be part of the estate and shall be subject to the disclosure requirement contained in this part 2. With respect to such transfers the spouse shall have the same right and remedies as a creditor whose debt was contracted at the time the transfer was made under article one-a, chapter forty of this code. Transfers which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed when such assets are otherwise identified in the statement of net worth.

(4) A person who knowingly provides incorrect information or who deliberately fails to disclose information pursuant to the provisions of this part 2 is guilty of false swearing.

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PART 3. INJUNCTION; SETTING ASIDE CERTAIN TRANSFERS.

§48-7-301. Injunction to prevent removal or disposition of property.

Where it appears to the court that a party is about to remove himself or herself or his or her property from the jurisdiction of the court or is about to dispose of, alienate or encumber property in order to defeat a fair distribution of marital property, or the payment of alimony, child support or separate maintenance, an injunction may issue to prevent the removal or disposition and the property may be attached as provided by this code. The court may issue such injunction or attachment without bond.

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§48-7-302. Notice of hearing for injunction; temporary injunction.

Any such injunction may be granted upon proper hearing after notice. For good cause shown, a temporary injunction may be issued after an ex parte proceeding with notice and proper hearing for a permanent injunction to be held forthwith thereafter.

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§48-7-303. Applicability of injunction procedures to sale of goods or disposition of major business assets.

The procedures of this part 3 are not intended to apply to the sale of goods in the ordinary course of operating a business but shall apply to the disposition of the major assets of a business.

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§48-7-304. Setting aside encumbrance or disposition of property to third persons.

Any encumbrance or disposition of property to third persons, except to bona fide purchasers without notice for full and adequate consideration, may be set aside by the court.

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PART 4. LIS PENDENS.

§48-7-401. Lis pendens.

Upon the commencement of an action under the provisions of this article, any party claiming an interest in real property in which the other party has an interest, may cause a notice of lis pendens to be recorded in the office of the clerk of the county commission of the county wherein the property is located.

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§48-7-402. Notice of lis pendens.

The notice shall contain the names of the parties, the nature of the complaint, the court having jurisdiction, the date the complaint was filed, and a description of the real property. Such notice shall, from the time of the recording only, be notice to any person thereafter acquiring any interest in such property of the pendency of the complaint. Each person whose conveyance or encumbrance is subsequently executed or subsequently recorded or whose interest is thereafter acquired by descent, or otherwise, shall be deemed to be a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the recording of the notice, to the same extent as if he were made a party to the complaint. A notice of lis pendens recorded in accordance with this section may be discharged by the court upon substitution of a bond with surety in an amount established by the court, if the court finds that the claim against the property subject to the notice of lis pendens can be satisfied by a monetary award. In cases in which the sale of property is already in process when the notice of lis pendens is filed, and upon application, proper notice and hearing, the court may substitute a lien on the net proceeds of the sale.

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PART 5. MISCELLANEOUS PROVISIONS RELATING TO EQUITABLE DISTRIBUTION.

§48-7-501. Retroactive effect of amendments.

Amendments made to the provisions of former article two of this chapter during the 1984 regular session of the Legislature, shall be of retroactive effect to the extent that such amended provisions shall apply to the distribution of marital property, but not an award of spousal support, in all actions filed under the provisions of former article two of this chapter after May 25, 1983, or actions pending on that date in which a claim for equitable distribution of marital property had been pleaded: Provided, That the amendments are not applicable to actions where, prior to the effective date of the amendments, there has been a final decree entered or the taking of evidence has been completed and the case has been submitted for decision.

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