CHAPTER 3

Divorce

ARTICLE 1

Divorces in This State

**SECTION 20‑3‑10.** Grounds for divorce.

No divorce from the bonds of matrimony shall be granted except upon one or more of the following grounds, to wit:

(1) adultery;

(2) desertion for a period of one year;

(3) physical cruelty;

(4) habitual drunkenness; provided, that this ground shall be construed to include habitual drunkenness caused by the use of any narcotic drug; or

(5) on the application of either party if and when the husband and wife have lived separate and apart without cohabitation for a period of one year. A plea of res judicata or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground.

HISTORY: 1962 Code Section 20‑101; 1952 Code Section 20‑101; 1949 (46) 216; 1952 (47) 2142; 1969 (56) 172; 1979 Act No. 10 Section 1.

**SECTION 20‑3‑20.** Effect of collusion.

If it shall appear to the satisfaction of the court that the parties to any divorce proceeding colluded or that the act complained of was done with the knowledge or assent of the plaintiff for the purpose of obtaining a divorce the court shall not grant such divorce.

HISTORY: 1962 Code Section 20‑102; 1952 Code Section 20‑102; 1949 (46) 216.

**SECTION 20‑3‑30.** Residence requirement.

In order to institute an action for divorce from the bonds of matrimony the plaintiff must have resided in this State at least one year prior to the commencement of the action or, if the plaintiff is a nonresident, the defendant must have so resided in this State for this period; provided, that when both parties are residents of the State when the action is commenced, the plaintiff must have resided in this State only three months prior to commencement of the action. The terms 'residents' or 'resided' as used in this section as it applies to a plaintiff or defendant stationed in this State on active duty military service means a continuous presence in this State for the period required regardless of intent to permanently remain in South Carolina.

HISTORY: 1962 Code Section 20‑103; 1952 Code Section 20‑103; 1949 (46) 216; 1951 (47) 539; 1975 (59) 310; 1987 Act No. 17 Section 1, eff March 31, 1987.

**SECTION 20‑3‑40.** Married person deemed of age.

Any married person shall, for the purpose of maintaining or defending an action for divorce and the settlement of property rights arising thereunder, be deemed of age.

HISTORY: 1962 Code Section 20‑104; 1952 Code Section 20‑104; 1949 (46) 216.

**SECTION 20‑3‑50.** Jurisdiction of actions for divorce.

Actions for divorce from the bonds of matrimony shall, except as otherwise provided, be only in the equity jurisdiction of the court of common pleas.

HISTORY: 1962 Code Section 20‑105; 1952 Code Section 20‑105; 1949 (46) 216.

**SECTION 20‑3‑60.** Venue.

Actions for divorce from the bonds of matrimony or for separate support and maintenance must be tried in the county (a) in which the defendant resides at the time of the commencement of the action, (b) in which the plaintiff resides if the defendant is a nonresident or after due diligence cannot be found, or (c) in which the parties last resided together as husband and wife unless the plaintiff is a nonresident, in which case it must be brought in the county in which the defendant resides.

HISTORY: 1962 Code Section 20‑106; 1952 Code Section 20‑106; 1949 (46) 216; 1951 (47) 539; 1985 Act No. 56 Section 1, eff April 29, 1985.

**SECTION 20‑3‑70.** Service of summons on nonresident.

When the person on whom the service of the summons in an action for divorce from the bonds of matrimony is to be made cannot, after due diligence, be found within the State and that fact appears to the satisfaction of the court, or judge thereof, the clerk of the court of common pleas, the master or the probate judge of the county in which the cause is pending and it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made, such court, judge, clerk, master or judge of probate may grant an order that the service be made by the publication of the summons in the manner and with the effect provided in Sections 15‑9‑710 to 15‑9‑740. In lieu of publication of summons as provided in Sections 15‑9‑710 to 15‑9‑740 the plaintiff may cause such process to be served personally upon any nonresident and the service so made shall be sufficient.

HISTORY: 1962 Code Section 20‑107; 1952 Code Section 20‑107; 1949 (46) 216.

**SECTION 20‑3‑80.** Required delays before reference and final decree; exceptions.

No reference shall be had before two months after the filing of the complaint in the office of the Clerk of Court, nor shall a final decree be granted before three months after such filing.

Provided, however, that when the plaintiff seeks a divorce on the grounds of desertion or separation for one year, the hearing may be held and the decree issued after the responsive pleadings have been filed or after the respondent has been adjudged to be in default whichever occurs sooner.

HISTORY: 1962 Code Section 20‑108; 1952 Code Section 20‑108; 1949 (46) 216; 1979 Act No. 10 Section 2.

**SECTION 20‑3‑90.** Attempt at reconciliation.

In all cases referred to a master or special referee, such master or special referee shall, except in default cases, summon the party or parties within the jurisdiction of the court before him and shall in all cases make an earnest effort to bring about a reconciliation between the parties if they appear before him. No judgment of divorce shall be granted in such case unless the master or special referee to whom such cause may have been referred shall certify in his report or, if the cause has not been referred, unless the trial judge shall state in the decree that he has attempted to reconcile the parties to such action and that such efforts were unavailing.

HISTORY: 1962 Code Section 20‑110; 1952 Code Section 20‑110; 1949 (46) 216; 1950 (46) 2363.

**SECTION 20‑3‑100.** Attempt at reconciliation when one party is in armed forces overseas.

When either of the parties is a member of the armed forces and is serving without the continental limits of the United States, an affidavit by such party, taken before any officer of the armed forces authorized to administer an oath, to the effect that, so far as he is concerned, a reconciliation is impossible shall be accepted by the court in lieu of the certification that an unsuccessful attempt to reconcile the parties has been made.

HISTORY: 1962 Code Section 20‑110.1; 1952 Code Section 20‑110.1; 1951 (47) 538.

**SECTION 20‑3‑110.** Injunctions incident to divorce suits.

The court, pending the termination of the action or by final order, may restrain or enjoin either party to the cause from in any manner interposing any restraint upon the personal liberty of, or from harming, interfering with or molesting, the other party to the cause during the pendency of the suit or after final judgment. It may also, during the pendency of such action, restrain or enjoin any other person who is made a party to the action from doing or threatening to do any act calculated to prevent or interfere with a reconciliation of the husband and wife or other amicable adjustment of the action.

HISTORY: 1962 Code Section 20‑111; 1952 Code Section 20‑111; 1949 (46) 216.

**SECTION 20‑3‑120.** Alimony and suit money.

In every divorce action from the bonds of matrimony either party may in his or her complaint or answer or by petition pray for the allowance to him or her of alimony and suit money and for the allowance of such alimony and suit money pendente lite. If such claim shall appear well‑founded the court shall allow a reasonable sum therefor.

HISTORY: 1962 Code Section 20‑112; 1952 Code Section 20‑112; 1949 (46) 216; 1979 Act No. 71 Section 5.

**SECTION 20‑3‑125.** Petition to enforce award of attorney fee.

Any attorney whose client has been awarded an attorney fee by the family court may petition the family court for the circuit in which the order was filed to enforce the payment of such fee.

HISTORY: 1984 Act No. 301.

**SECTION 20‑3‑130.** Award of alimony and other allowances.

(A) In proceedings for divorce from the bonds of matrimony, and in actions for separate maintenance and support, the court may grant alimony or separate maintenance and support in such amounts and for such term as the court considers appropriate as from the circumstances of the parties and the nature of case may be just, pendente lite, and permanently. No alimony may be awarded a spouse who commits adultery before the earliest of these two events: (1) the formal signing of a written property or marital settlement agreement or (2) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties.

(B) Alimony and separate maintenance and support awards may be granted pendente lite and permanently in such amounts and for periods of time subject to conditions as the court considers just including, but not limited to:

(1) Periodic alimony to be paid but terminating on the remarriage or continued cohabitation of the supported spouse or upon the death of either spouse (except as secured in subsection (D)) and terminable and modifiable based upon changed circumstances occurring in the future. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it appropriate to order the payment of alimony on an ongoing basis where it is desirable to make a current determination and requirement for the ongoing support of a spouse to be reviewed and revised as circumstances may dictate in the future.

(2) Lump‑sum alimony in a finite total sum to be paid in one installment, or periodically over a period of time, terminating only upon the death of the supported spouse, but not terminable or modifiable based upon remarriage or changed circumstances in the future. The purpose of this form of support may include, but not be limited to, circumstances where the court finds alimony appropriate but determines that such an award be of a finite and nonmodifiable nature.

(3) Rehabilitative alimony in a finite sum to be paid in one installment or periodically, terminable upon the remarriage or continued cohabitation of the supported spouse, the death of either spouse (except as secured in subsection (D)) or the occurrence of a specific event to occur in the future, or modifiable based upon unforeseen events frustrating the good faith efforts of the supported spouse to become self‑supporting or the ability of the supporting spouse to pay the rehabilitative alimony. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it appropriate to provide for the rehabilitation of the supported spouse, but to provide modifiable ending dates coinciding with events considered appropriate by the court such as the completion of job training or education and the like, and to require rehabilitative efforts by the supported spouse.

(4) Reimbursement alimony to be paid in a finite sum, to be paid in one installment or periodically, terminable on the remarriage or continued cohabitation of the supported spouse, or upon the death of either spouse (except as secured in subsection (D)) but not terminable or modifiable based upon changed circumstances in the future. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it necessary and desirable to reimburse the supported spouse from the future earnings of the payor spouse based upon circumstances or events that occurred during the marriage.

(5) Separate maintenance and support to be paid periodically, but terminating upon the continued cohabitation of the supported spouse, upon the divorce of the parties, or upon the death of either spouse (except as secured in subsection (D)) and terminable and modifiable based upon changed circumstances in the future. The purpose of this form of support may include, but is not limited to, circumstances where a divorce is not sought, but it is necessary to provide for support of the supported spouse by way of separate maintenance and support when the parties are living separate and apart.

(6) Such other form of spousal support, under terms and conditions as the court may consider just, as appropriate under the circumstances without limitation to grant more than one form of support.

For purposes of this subsection and unless otherwise agreed to in writing by the parties, "continued cohabitation" means the supported spouse resides with another person in a romantic relationship for a period of ninety or more consecutive days. The court may determine that a continued cohabitation exists if there is evidence that the supported spouse resides with another person in a romantic relationship for periods of less than ninety days and the two periodically separate in order to circumvent the ninety‑day requirement.

(C) In making an award of alimony or separate maintenance and support, the court must consider and give weight in such proportion as it finds appropriate to all of the following factors:

(1) the duration of the marriage together with the ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance action between the parties;

(2) the physical and emotional condition of each spouse;

(3) the educational background of each spouse, together with need of each spouse for additional training or education in order to achieve that spouse's income potential;

(4) the employment history and earning potential of each spouse;

(5) the standard of living established during the marriage;

(6) the current and reasonably anticipated earnings of both spouses;

(7) the current and reasonably anticipated expenses and needs of both spouses;

(8) the marital and nonmarital properties of the parties, including those apportioned to him or her in the divorce or separate maintenance action;

(9) custody of the children, particularly where conditions or circumstances render it appropriate that the custodian not be required to seek employment outside the home, or where the employment must be of a limited nature;

(10) marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce or separate maintenance decree if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage, except that no evidence of personal conduct which may otherwise be relevant and material for the purpose of this subsection may be considered with regard to this subsection if the conduct took place subsequent to the happening of the earliest of (a) the formal signing of a written property or marital settlement agreement or (b) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(11) the tax consequences to each party as a result of the particular form of support awarded;

(12) the existence and extent of any support obligation from a prior marriage or for any other reason of either party; and

(13) such other factors the court considers relevant.

(D) In making an award of alimony or separate maintenance and support, the court may make provision for security for the payment of the support including, but not limited to, requiring the posting of money, property, and bonds and may require a spouse, with due consideration of the cost of premiums, insurance plans carried by the parties during marriage, insurability of the payor spouse, the probable economic condition of the supported spouse upon the death of the payor spouse, and any other factors the court may deem relevant, to carry and maintain life insurance so as to assure support of a spouse beyond the death of the payor spouse.

(E) In making an award of alimony or separate maintenance and support, the court may order the direct payment to the supported spouse, or may require that the payments be made through the Family Court and allocate responsibility for the service fee in connection with the award. The court may require the payment of debts, obligations, and other matters on behalf of the supported spouse.

(F) The court may elect and determine the intended tax effect of the alimony and separate maintenance and support as provided by the Internal Revenue Code and any corresponding state tax provisions. The Family Court may allocate the right to claim dependency exemptions pursuant to the Internal Revenue Code and under corresponding state tax provisions and to require the execution and delivery of all necessary documents and tax filings in connection with the exemption.

(G) The Family Court may review and approve all agreements which bear on the issue of alimony or separate maintenance and support, whether brought before the court in actions for divorce from the bonds of matrimony, separate maintenance and support actions, or in actions to approve agreement where the parties are living separate and apart. The failure to seek a divorce, separate maintenance, or a legal separation does not deprive the court of its authority and jurisdiction to approve and enforce the agreements. The parties may agree in writing if properly approved by the court to make the payment of alimony as set forth in items (1) through (6) of subsection (B) nonmodifiable and not subject to subsequent modification by the court.

(H) The court, from time to time after considering the financial resources and marital fault of both parties, may order one party to pay a reasonable amount to the other for attorney fees, expert fees, investigation fees, costs, and suit money incurred in maintaining an action for divorce from the bonds of matrimony, as well as in actions for separate maintenance and support, including sums for services rendered and costs incurred before the commencement of the proceeding and after entry of judgment, pendente lite and permanently.

HISTORY: 1962 Code Section 20‑113; 1952 Code Section 20‑113; 1949 (46) 216; 1979 Act No. 71 Section 6; 1990 Act No. 518, Section 1, eff six months after approval by the Governor and applies to all actions filed on or after that date (approved May 29, 1990); 2002 Act No. 328, Section 1, eff June 18, 2002.

**SECTION 20‑3‑135.** Spousal support obligation when marriage declared void due to fraud.

A marriage that would otherwise be lawful that is declared void ab initio by reason of fraud, does not relieve the party committing the fraud of the duty to provide spousal support that would have otherwise existed pursuant to Section 20‑3‑130.

HISTORY: 2008 Act No. 291, Section 1, eff June 11, 2008.

**SECTION 20‑3‑140.** Allowance of alimony and suit money in suits for separate support and maintenance and similar actions.

In all actions for separate support and maintenance, legal separation, or other marital litigation between the parties, allowances of alimony and suit money and allowances of alimony and suit money pendente lite shall be made according to the principles controlling such allowance and actions for divorce a vinculo matrimonii.

HISTORY: 1962 Code Section 20‑113.1; 1952 Code Section 20‑113.1; 1951 (47) 436; 1979 Act No. 71 Section 4B.

**SECTION 20‑3‑145.** Attorney fee to constitute lien; payment to estate.

In any divorce action any attorney fee awarded by the court shall constitute a lien on any property owned by the person ordered to pay the attorney fee and such attorney fee shall be paid to the estate of the person entitled to receive it under the order if such person dies during the pendency of the divorce action.

HISTORY: 1979 Act No. 71 Section 7.

**SECTION 20‑3‑150.** Segregation of allowance between spouse and children; effect of remarriage of spouse.

If the court awards the custody of the children to the spouse receiving alimony the court, by its decree, unless good cause to the contrary be shown, shall allocate any award for permanent alimony and support between the supported spouse and the children and upon the remarriage or continued cohabitation of the supported spouse the amount fixed in the decree for his or her support shall cease, and no further alimony payments may be required from the supporting spouse.

For purposes of this section and unless otherwise agreed to in writing by the parties, "continued cohabitation" means the supported spouse resides with another person in a romantic relationship for a period of ninety or more consecutive days. The court may determine that a continued cohabitation exists if there is evidence that the supported spouse resides with another person in a romantic relationship for periods of less than ninety days and the two periodically separate in order to circumvent the ninety‑day requirement.

HISTORY: 1962 Code Section 20‑114; 1952 Code Section 20‑114; 1949 (46) 216; 1979 Act No. 71 Section 8; 2002 Act No. 328, Section 2, eff June 18, 2002.

**SECTION 20‑3‑160.** Care, custody, and maintenance of children.

In any action for divorce from the bonds of matrimony the court may at any stage of the cause, or from time to time after final judgment, make such orders touching the care, custody and maintenance of the children of the marriage and what, if any, security shall be given for the same as from the circumstances of the parties and the nature of the case and the best spiritual as well as other interests of the children may be fit, equitable and just.

HISTORY: 1962 Code Section 20‑115; 1952 Code Section 20‑115; 1949 (46) 216.

**SECTION 20‑3‑170.** Modification, confirmation, or termination of alimony; retirement by supporting spouse.

(A) Whenever any husband or wife, pursuant to a judgment of divorce from the bonds of matrimony, has been required to make his or her spouse any periodic payments of alimony and the circumstances of the parties or the financial ability of the spouse making the periodic payments shall have changed since the rendition of such judgment, either party may apply to the court which rendered the judgment for an order and judgment decreasing or increasing the amount of such alimony payments or terminating such payments and the court, after giving both parties an opportunity to be heard and to introduce evidence relevant to the issue, shall make such order and judgment as justice and equity shall require, with due regard to the changed circumstances and the financial ability of the supporting spouse, decreasing or increasing or confirming the amount of alimony provided for in such original judgment or terminating such payments. Thereafter the supporting spouse shall pay and be liable to pay the amount of alimony payments directed in such order and judgment and no other or further amount and such original judgment, for the purpose of all actions or proceedings of every nature and wherever instituted, whether within or without this State, shall be deemed to be and shall be modified accordingly, subject in every case to a further proceeding or proceedings under the provisions of this section in relation to such modified judgment.

(B) Retirement by the supporting spouse is sufficient grounds to warrant a hearing, if so moved by a party, to evaluate whether there has been a change of circumstances for alimony. The court shall consider the following factors:

(1) whether retirement was contemplated when alimony was awarded;

(2) the age of the supporting spouse;

(3) the health of the supporting spouse;

(4) whether the retirement is mandatory or voluntary;

(5) whether retirement would result in a decrease in the supporting spouse's income; and

(6) any other factors the court sees fit.

HISTORY: 1962 Code Section 20‑116; 1952 Code Section 20‑116; 1949 (46) 216; 1979 Act No. 71 Section 9; 2012 Act No. 260, Section 1, eff June 18, 2012.

**SECTION 20‑3‑180.** Change of name after divorce or separation.

The court, upon the granting of final judgment of divorce or an order of separate maintenance, may allow a party to resume a former surname or the surname of a former spouse.

HISTORY: 1962 Code Section 20‑117; 1952 Code Section 20‑117; 1949 (46) 216; 1998 Act No. 431, Section 1, eff June 23, 1998.

**SECTION 20‑3‑190.** Divorced wife barred of dower.

On the granting of any final decree of divorce, the wife shall thereafter be barred of dower in lands formerly owned, then owned, or thereafter acquired by her former husband.

HISTORY: 1962 Code Section 20‑118; 1952 Code Section 20‑118; 1949 (46) 216; 1950 (46) 2251; 1953 (48) 318.

**SECTION 20‑3‑200.** Divorce shall not render children illegitimate.

No judgment of divorce from the bonds of matrimony shall render illegitimate the children begotten of the marriage.

HISTORY: 1962 Code Section 20‑119; 1952 Code Section 20‑119; 1949 (46) 216.

**SECTION 20‑3‑210.** Unlawful advertising for purpose of procuring divorce.

It shall be unlawful for any person to print, publish, distribute or circulate or cause to be printed, published, distributed or circulated any card, handbill, advertisement, printed paper, book, newspaper or notice of any kind offering or otherwise to advertise to procure, attempt to procure or aid in procuring any divorce either in this State or elsewhere. But this section shall not apply to the printing or publishing of any notice or advertisement required or authorized by the laws of this State.

HISTORY: 1962 Code Section 20‑120; 1952 Code Section 20‑120; 1949 (46) 216.

**SECTION 20‑3‑220.** Unlawful advertising for purpose of procuring divorce; penalty.

Any person violating any of the provisions of Section 20‑3‑210 shall, upon conviction, be punished for each offense by a fine of not less than one hundred dollars and not more than one thousand dollars or by imprisonment for not less than one month or more than one year, or both such fine and such imprisonment, at the discretion of the court.

HISTORY: 1962 Code Section 20‑121; 1952 Code Section 20‑121; 1949 (46) 216.

**SECTION 20‑3‑230.** Clerks of court shall file reports of divorces and annulments with Division of Vital Statistics.

Whenever a divorce or annulment is decreed by a court having jurisdiction, the clerk of court shall, no later than thirty days following the filing of the final decree, send a report to the Registrar of the Division of Vital Statistics of the Department of Health and Environmental Control showing such information as may be required on a certificate to be furnished by the Division of Vital Statistics of the Department of Health and Environmental Control.

HISTORY: 1962 Code Section 20‑122; 1962 (52) 2157.

**SECTION 20‑3‑235.** Decree to set forth social security numbers or alien identification numbers of parties in divorce.

A decree of divorce shall set forth the social security numbers, or the alien identification numbers assigned to resident aliens who do not have social security numbers, of the parties in the divorce. Filing the required form with the Department of Health and Environmental Control complies with the requirements of this section.

HISTORY: 1997 Act No. 71, Section 1, eff June 10, 1997; 1999 Act No. 100, Part II, Section 105, eff June 30, 1999.

Editor's Note

The Preamble of 1997 Act No. 71 provides as follows:

"Whereas, it is the sense of Congress that all states shall have in effect certain laws relative to the enforcement of child support in order to remain eligible for federal funding under Title IV‑D of the Social Security Act. Therefore, this act amends the Code of Laws of South Carolina, 1976, to, among other things, require the collection and use of social security numbers on certain state‑issued documents and applications; to provide authority for the imposition of administrative liens in child support cases; to enhance the information requirements of the parties to a paternity or child support action; to enhance procedures establishing paternity; to conform the state's Uniform Interstate Family Support Act (UIFSA) to changes made by the National Conference of Commissioners on Uniform State Laws; to enhance income withholding; to provide authority for the Department of Social Services to administratively change the payee in Title IV‑D child support cases; to provide authority for the issuance and enforcement of administrative subpoenas; to enhance the ability to void conveyances fraudulently conducted for purposes of avoiding payment of a child support obligation; to eliminate the payment of a child support disregard check in accordance with the elimination of federal financial participation in the same; to require employers, state and local agencies, financial institutions, and utility companies to provide certain information necessary for the establishment or enforcement of child support obligations; to establish a mandatory new hire reporting program; and to establish a state registry of child support cases."

ARTICLE 3

Uniform Divorce Recognition Act

**SECTION 20‑3‑410.** Short title.

This article may be cited as the "Uniform Divorce Recognition Act."

HISTORY: 1962 Code Section 20‑131; 1952 Code Section 20‑131; 1950 (46) 2390.

**SECTION 20‑3‑420.** Nonresident divorce shall be void if parties were domiciled here.

A divorce from the bonds of matrimony obtained in another jurisdiction shall be of no force or effect in this State if both parties to the marriage were domiciled in this State at the time the proceeding for the divorce was commenced.

HISTORY: 1962 Code Section 20‑132; 1952 Code Section 20‑132; 1950 (46) 2390.

**SECTION 20‑3‑430.** Prima facie evidence of domicile.

Proof that a person obtaining a divorce from the bonds of matrimony in another jurisdiction was (a) domiciled in this State within twelve months prior to the commencement of the proceeding therefor and resumed residence in this State within eighteen months after the date of his departure therefrom or (b) at all times after his departure from this State and until his return maintained a place of residence within this State shall be prima facie evidence that the person was domiciled in this State when the divorce proceeding was commenced. But the provisions of this section shall not apply in cases of divorce when the decree of divorce was issued prior to June 3, 1950.

HISTORY: 1962 Code Section 20‑133; 1952 Code Section 20‑133; 1950 (46) 2390.

**SECTION 20‑3‑440.** Construction.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact substantially identical legislation.

HISTORY: 1962 Code Section 20‑134; 1952 Code Section 20‑134; 1950 (46) 2390.

ARTICLE 5

Equitable Apportionment of Marital Property

**SECTION 20‑3‑610.** Spousal equity and ownership rights.

During the marriage a spouse shall acquire, based upon the factors set out in Section 20‑3‑620, a vested special equity and ownership right in the marital property as defined in Section 20‑3‑630, which equity and ownership right are subject to apportionment between the spouses by the family courts of this State at the time marital litigation is filed or commenced as provided in Section 20‑3‑620.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

Editor's Note

Prior laws. 1986 Act No. 522 Section 1; 1976 Code Section 20‑7‑471.

**SECTION 20‑3‑620.** Apportionment factors.

(A) In a proceeding for divorce a vinculo matrimonii or separate support and maintenance, or in a proceeding for disposition of property following a prior decree of dissolution of a marriage by a court which lacked personal jurisdiction over an absent spouse or which lacked jurisdiction to dispose of the property, and in other marital litigation between the parties, the court shall make a final equitable apportionment between the parties of the parties' marital property upon request by either party in the pleadings.

(B) In making apportionment, the court must give weight in such proportion as it finds appropriate to all of the following factors:

(1) the duration of the marriage together with the ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance or other marital action between the parties;

(2) marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce as such, if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage; provided, that no evidence of personal conduct which would otherwise be relevant and material for purposes of this subsection shall be considered with regard to this subsection if such conduct shall have taken place subsequent to the happening of the earliest of:

(a) entry of a pendente lite order in a divorce or separate maintenance action;

(b) formal signing of a written property or marital settlement agreement; or

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(3) the value of the marital property, whether the property be within or without the State. The contribution of each spouse to the acquisition, preservation, depreciation, or appreciation in value of the marital property, including the contribution of the spouse as homemaker; provided, that the court shall consider the quality of the contribution as well as its factual existence;

(4) the income of each spouse, the earning potential of each spouse, and the opportunity for future acquisition of capital assets;

(5) the health, both physical and emotional, of each spouse;

(6) the need of each spouse or either spouse for additional training or education in order to achieve that spouses's income potential;

(7) the nonmarital property of each spouse;

(8) the existence or nonexistence of vested retirement benefits for each or either spouse;

(9) whether separate maintenance or alimony has been awarded;

(10) the desirability of awarding the family home as part of equitable distribution or the right to live therein for reasonable periods to the spouse having custody of any children;

(11) the tax consequences to each or either party as a result of any particular form of equitable apportionment;

(12) the existence and extent of any support obligations, from a prior marriage or for any other reason or reasons, of either party;

(13) liens and any other encumbrances upon the marital property, which themselves must be equitably divided, or upon the separate property of either of the parties, and any other existing debts incurred by the parties or either of them during the course of the marriage;

(14) child custody arrangements and obligations at the time of the entry of the order; and

(15) such other relevant factors as the trial court shall expressly enumerate in its order.

(C) The court's order as it affects distribution of marital property shall be a final order not subject to modification except by appeal or remand following proper appeal.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

Editor's Note

Prior laws. 1986 Act No. 522 Section 1; 1976 Code Section 20‑7‑472.

**SECTION 20‑3‑630.** Marital property; nonmarital property.

(A) The term "marital property" as used in this article means all real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of filing or commencement of marital litigation as provided in Section 20‑3‑620 regardless of how legal title is held, except the following, which constitute nonmarital property:

(1) property acquired by either party by inheritance, devise, bequest, or gift from a party other than the spouse;

(2) property acquired by either party before the marriage and property acquired after the happening of the earliest of:

(a) entry of a pendente lite order in a divorce or separate maintenance action;

(b) formal signing of a written property or marital settlement agreement; or

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(3) property acquired by either party in exchange for property described in items (1) and (2) of this section;

(4) property excluded by written contract of the parties. "Written contract" includes any antenuptial agreement of the parties which must be considered presumptively fair and equitable so long as it was voluntarily executed with both parties separately represented by counsel and pursuant to the full financial disclosure to each other that is mandated by the rules of the family court as to income, debts, and assets;

(5) any increase in value in nonmarital property, except to the extent that the increase resulted directly or indirectly from efforts of the other spouse during marriage.

Interspousal gifts of property, including gifts of property from one spouse to the other made indirectly by way of a third party, are marital property which is subject to division.

(B) The court does not have jurisdiction or authority to apportion nonmarital property.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

Editor's Note

Prior laws. 1986 Act No. 522 Section 1; 1976 Code Section 20‑7‑473.

**SECTION 20‑3‑640.** Declining values of contributions.

In determining the value of contributions prior to making an equitable apportionment, the court:

(1) shall make findings of fact from credible evidence of the values of property and services, if any;

(2) is empowered to take judicial notice of official reports of the federal and state governments, including official bulletins, publications, and reports of general public interest where these reports are made and published by authority of law or have been adopted by state statute;

(3) has the authority to appoint experts as necessary for the purpose of valuation of property and contributions and to assess the cost against any or all parties to the action.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

Editor's Note

Prior laws. 1986 Act No. 522 Section 1; 1976 Code Section 20‑7‑474.

**SECTION 20‑3‑650.** Sequestration of property.

(A) At any stage of a proceeding under this article where it appears to the court that personal jurisdiction may not be obtained over an absent party or where a party refuses to comply with an order of the court, the court may, upon appropriate petition, order the sequestration of that party's real and personal property which is within this State. The court may also appoint a sequestrator and, by injunction or otherwise, authorize the sequestrator to take the property into possession and control. In the case of an absent party, the court may appoint the party residing in this State as sequestator.

(B) The property sequestered and the income from it may be applied in whole or in part, at the direction of the court and as justice may require, so as to achieve an equitable apportionment of property as set forth in this article.

(C) Additionally, the court, in its discretion, if the property and income from it which may be sequestered is insufficient to pay what is required, may, upon terms and conditions as it considers in the interests of justice, direct the mortgaging of or the public or private sale of a sufficient amount of the sequestered property to pay what is required.

(D) The family court in which the action is filed has jurisdiction and venue to sequester property located within this State.

(E) The remedies in this section are cumulative to all other remedies which may be available to the parties.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

Editor's Note

Prior laws. 1986 Act No. 522 Section 1; 1976 Code Section 20‑7‑475.

**SECTION 20‑3‑660.** Court's authority to achieve equitable apportionment.

(A) The court may direct a party to execute and deliver any deed, bill of sale, note, mortgage, or other document necessary to carry out its order of equitable apportionment. If a party so directed fails to comply, the court may direct the clerk of court in the county in which the property involved is situate to execute and deliver the document, and this performance by the clerk is as effective as the performance of the party would have been. The court in making an equitable apportionment may order the public or private sale of all or any portion of the marital property upon terms it determines.

(B) The court may utilize any other reasonable means to achieve equity between the parties, which means are subject to and may not be inconsistent with the other provisions of this article and may include making a monetary award to achieve an equitable apportionment. Any monetary award made does not constitute a payment which is treated as ordinary income to the recipient under either the provisions of Chapter 6, Title 12 or, to the extent lawful, under the United States Internal Revenue Code.

HISTORY: 2008 Act 361, Section 3, eff June 16, 2008.

Editor's Note

Prior laws. 1986 Act No. 522 Section 1; 1976 Code Section 20‑7‑476.

**SECTION 20‑3‑670.** Notice of pendency of action.

(A)(1) In a proceeding under this article, either party may record a notice of the pendency of proceedings in the manner provided in civil actions generally, which has the same effect as a notice in civil actions. The rights and interests of each spouse in the other's property created by this article are not effective against third parties:

(a) with regard to any parcel of real property in which an interest under this article is claimed until a Notice of Pendency of Action is filed as provided in Section 15‑11‑10 with the clerk of court of the county in which such parcel of real property is situated; and

(b) with regard to personal property, until the third party has received written notice from either spouse in a proceeding under this article that marital litigation has been filed.

(2) Prior rights and interests of third parties:

(a) in real property are not affected by filing a Notice of Pendency of Action; and

(b) in personal property are not affected by receipt of written notice of such a filing.

(B)(1) Upon entry of judgment against a party requiring payment of money or transfer of property, whether by interlocutory order or final decree, a party may apply to the court for issuance of a transcript of judgment in the form prescribed in Section 20‑3‑680. This transcript may be recorded in the office of the clerk of court of common pleas and indexed in the books of abstracts of judgments of any county of this State as provided by law.

(2) After the order or decree has been duly recorded and indexed in the office of the clerk of court of common pleas, the order or decree has all force and effect of judgments of the courts of common pleas as provided by law, the recording and indexing constituting record notice to all persons of the order or decree recorded and indexed.

(3) The recordation and filing of a transcript of judgment does not prevent the court from exercising any equitable or other presently existing power of enforcement of the order or decree which is within its jurisdiction.

(C) The statutory lien created by Section 20‑3‑145 is not effective as against third parties unless this section has been complied with.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

Editor's Note

Prior laws. 1986 Act No. 522 Section 1; 1987 Act No. 14 Section 2; 1976 Code Section 20‑7‑477.

**SECTION 20‑3‑680.** Form of transcript of judgment.

A transcript of judgment may be substantially in the following form:

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|  | STATE OF SOUTH CAROLINA | |  |
|  | COUNTY OF | | IN THE FAMILY COURT |
|  | , | |  |
|  |  | Petitioner, |  |
|  | vs. |  |  |
|  | , | | TRANSCRIPT OF JUDGMENT |
|  |  | Respondent. |  |

NOTICE IS HEREBY GIVEN that in the above‑captioned proceeding, (family court docket # of proceeding or domestic judgment #), filed in the family court of the State and county aforesaid, judgment was entered against \_\_\_\_\_\_\_\_\_\_, the \_\_\_\_\_\_\_\_\_ in the action, on the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_, [in the amount of \_\_\_\_\_\_\_\_\_\_, as and by reason of (an award of attorney's fees, equitable division of property, etc.)] OR (requiring conveyance to \_\_\_\_\_\_\_\_\_\_ of the real property described as following:) Attorneys of record are \_\_\_\_\_\_\_\_\_\_, representing the petitioner and \_\_\_\_\_\_\_\_\_\_, representing the respondent.

FURTHER NOTICE IS GIVEN that interest will accrue at the statutory rate from the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_, together with costs in the amount of \_\_\_\_\_\_\_\_\_\_.

|  |  |
| --- | --- |
|  |  |
|  |  |
|  | Judge of the Family Court |
|  |  |
| place |  |
| date . |  |

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

Editor's Note

Prior laws. 1986 Act No. 522 Section 1; 1976 Code Section 20‑7‑478.

**SECTION 20‑3‑690.** Subject matter jurisdiction over contracts.

The family courts of this State have subject matter jurisdiction over all contracts relating to property which is involved in a proceeding under this article and over the construction and enforcement of those contracts.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

Editor's Note

Prior laws. 1986 Act No. 522 Section 1; 1976 Code Section 20‑7‑479.