

Title 19-A: DOMESTIC RELATIONS

Chapter 29: DIVORCE

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Maine Revised Statutes
Title 19-A: DOMESTIC RELATIONS
Chapter 29: DIVORCE

Subchapter 1: GROUNDS AND PROCEDURES

§901. ACTION FOR DIVORCE; PROCEDURES

1. Filing of complaint; grounds. A person seeking a divorce may file a complaint for divorce in the District Court if:

- A. The plaintiff has resided in good faith in this State for 6 months prior to the commencement of the action; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. The plaintiff is a resident of this State and the parties were married in this State; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- C. The plaintiff is a resident of this State and the parties resided in this State when the cause of divorce accrued; or [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- D. The defendant is a resident of this State. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

The complaint must state one or more grounds listed in section 902, subsection 1.

[1999, c. 731, Pt. ZZZ, §29 (AMD); 1999, c. 731, Pt. ZZZ, §42 (AFF) .]

2. Guardian ad litem. If the alleged cause is that one of the parties is an incapacitated person, as provided in section 902, subsection 1, paragraph J, the court shall appoint a guardian ad litem to represent the interests of the incapacitated person.

[2005, c. 594, §1 (AMD) .]

3. Exclusion of public. In a divorce action, at the request of either party, personally or through that party's attorney, unless the other party who has entered an appearance objects personally or through that other party's attorney, the court shall exclude the public from the court proceedings.

If the court orders that the public is to be excluded, only the parties, their attorneys, court officers and witnesses may be present.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Corroborating witness not required. When the merits of a divorce action are not contested, whether or not an answer has been filed, there is no requirement that the testimony of the complaining party be corroborated by witnesses.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

5. Fraud. The court may not grant a divorce when the parties seek to procure a divorce for fraudulent purposes.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

6. Attorney's fees and costs. Attorney's fees awarded in the nature of support may be made payable immediately or in installments.

[2005, c. 323, §4 (AMD) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 731, §ZZZ29 (AMD). 1999, c. 731, §ZZZ42 (AFF). 2005, c. 323, §4 (AMD). 2005, c. 594, §1 (AMD).

§902. GROUNDS; DEFENSES

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. Grounds. A divorce may be granted for one of the following causes:

- A. Adultery; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. Impotence; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- C. Extreme cruelty; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- D. Utter desertion continued for 3 consecutive years prior to the commencement of the action; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- E. Gross and confirmed habits of intoxication from the use of liquor or drugs; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- F. Nonsupport, when one spouse has sufficient ability to provide for the other spouse and grossly, wantonly or cruelly refuses or neglects to provide suitable maintenance for the complaining spouse; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- G. Cruel and abusive treatment; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- H. Irreconcilable marital differences; or [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- I. [2005, c. 594, §2 (RP).]
- J. (TEXT EFFECTIVE UNTIL 7/1/19) A judicial determination has been made that one of the parties is an incapacitated person, as defined in Title 18-A, section 5-101, for whom a guardian with full powers has been appointed, other than a temporary guardian appointed pursuant to Title 18-A, section 5-310-A. [2005, c. 594, §3 (NEW).]
- J. (TEXT EFFECTIVE 7/1/19) A court has appointed for one of the parties a guardian with full powers under Title 18-C, section 5-301, other than an emergency guardian appointed pursuant to Title 18-C, section 5-312. [2017, c. 402, Pt. C, §36 (AMD); 2017, c. 402, Pt. F, §1 (AFF).]

[2005, c. 594, §§2, 3 (AMD); 2017, c. 402, Pt. C, §36 (AMD); 2017, c. 402, Pt. F, §1 (AFF) .]

2. Irreconcilable differences; counseling. If one party alleges that there are irreconcilable marital differences and the opposing party denies that allegation, the court upon its own motion or upon motion of either party may continue the case and require both parties to receive counseling by a qualified professional counselor to be selected either by agreement of the parties or by the court. The counselor shall give a written

report of the counseling to the court and to both parties. The failure or refusal of the party who denies irreconcilable marital differences to submit to counseling without good reason is prima facie evidence that the marital differences are irreconcilable.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. Recrimination. Recrimination is a comparative rather than an absolute defense in a divorce action.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Condonation. Condonation of the parties is not an absolute defense to any action for divorce but is discretionary with the court.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2005, c. 594, §§2,3 (AMD). 2017, c. 402, Pt. C, §36 (AMD). 2017, c. 402, Pt. F, §1 (AFF).

§903. PRELIMINARY INJUNCTION, EFFECT; ATTACHMENT OR TRUSTEE PROCESS

1. Issue of preliminary injunction. In all actions for divorce or for spousal or child support following divorce by a court that lacked personal jurisdiction over the absent spouse, the clerk of the court, pursuant to order of the District Court, shall issue a preliminary injunction in the following manner.

A. The preliminary injunction must bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties and state the name and address of the plaintiff's attorney. The preliminary injunction may be obtained in blank from the clerk and must be filled out by the plaintiff's attorney. The plaintiff's attorney is responsible for serving this preliminary injunction, along with the summons and complaint, on the defendant. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. The preliminary injunction must be directed to each party to the action and must contain the following orders:

- (1) That each party is enjoined from transferring, encumbering, concealing, selling or otherwise disposing of the property of either or both of the parties, except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court;
- (2) That each party is enjoined from imposing restraint on the personal liberty of the other party or of a biological or adopted child of either or both of the parties; and
- (3) That each party is enjoined from voluntarily removing the other party or a child of the parties from a policy of health insurance that provides coverage for the other party or the child of the parties. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

C. The preliminary injunction must include the following statement:

"Warning

This is an official court order. If you disobey this order the court may find you in contempt of court.

This court order is effective until the earliest of the following:

- (1) The court revokes or modifies it;
- (2) A final divorce judgment or decree of judicial separation is entered; or

(3) The action is dismissed." [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. The preliminary injunction is effective against the plaintiff upon the commencement of the action and against the defendant upon service of a copy of both the complaint and order in accordance with the Maine Rules of Civil Procedure. The plaintiff is deemed to have accepted service of the plaintiff's copy of the preliminary injunction and to have actual notice of its contents by filing or causing the complaint to be served. The plaintiff shall cause a copy of the preliminary injunction to be served upon the defendant with a copy of the summons and complaint. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E. The preliminary injunction has the force and effect of an order of a Judge of the Probate Court or District Court or Justice of Superior Court and is enforceable by all remedies made available by law, including contempt of court. The order remains in effect until entry of a final decree, until the case is dismissed or until otherwise ordered by the court. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1999, c. 731, Pt. ZZZ, §30 (AMD); 1999, c. 731, Pt. ZZZ, §42 (AFF) .]

2. Revocation or modification. A preliminary injunction may be revoked or modified after hearing for good cause shown. The party seeking to revoke or modify the preliminary injunction shall file a motion together with an affidavit that demonstrates the good cause necessary for revocation or modification.

A. Notwithstanding any law to the contrary, on 7 days' notice to the other party or on shorter notice as the court may order, either party subject to an order may appear and move the dissolution or modification of the order, and in that event the court shall proceed to hear and determine the motion as expeditiously as justice requires. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Mediation is not required before a hearing on a motion to revoke or modify a preliminary injunction except as directed by the court. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. A preliminary injunction does not prejudice the rights of the parties or a child that are to be adjudicated at subsequent hearings in the proceeding and does not limit the power of the court to issue other injunctive relief that may be proper under the circumstances. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. A preliminary injunction terminates when:

- (1) The court revokes or modifies it;
- (2) A final divorce judgment or decree of judicial separation is entered; or
- (3) The action is dismissed. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. Remedies. The court may enforce a preliminary injunction issued pursuant to this section:

A. By finding a person who disobeys or resists the injunction in contempt of court; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. By requiring a person who disobeys or resists the injunction to pay the costs and attorney's fees that the other party incurred to enforce the preliminary injunction; or [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. By appropriate processes as in other actions. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

The remedies provided in this subsection for enforcement of a preliminary injunction are in addition to any other civil or criminal remedies available, including civil contempt of court. The use of one remedy does not prevent the simultaneous or subsequent use of any other remedy.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Mutual order of protection or restraint. Orders issued pursuant to this section do not supersede orders issued pursuant to chapter 101.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

5. Attachment of property; trustee process. Attachment of real or personal property or on trustee process may be used in connection with an action for divorce or spousal or child support following divorce by a court that lacked personal jurisdiction over the absent spouse.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

6. Application. The injunction authorized in this section does not apply to post-divorce actions.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 731, §ZZZ30 (AMD). 1999, c. 731, §ZZZ42 (AFF).

§904. ORDERS PENDING DIVORCE

In accordance with section 251, subsection 2, pending a divorce action, the court may: [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

1. Attorney's fees.

[2005, c. 323, §5 (RP) .]

2. Support.

Make reasonable provision for either spouse's separate support;

[2005, c. 323, §6 (AMD) .]

3. Minor children. Enter an order for the parental rights and responsibilities with respect to the minor children of the parties in accordance with chapter 55;

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Enforcement.

Enforce obedience by appropriate processes;

[2005, c. 323, §6 (AMD) .]

5. Determine possession. Determine the possession of owned or rented real and personal property pending the final divorce decree; or

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

6. Free from restraint. On motion of either spouse, prohibit a spouse from imposing restraint on the moving spouse's personal liberty. This subsection does not preclude the court from incarcerating either spouse for nonpayment of child support, spousal support or attorney's fees in violation of a court order to do so.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2005, c. 323, §§5,6 (AMD) .

§905. INVESTIGATION WHEN CUSTODY OF CHILDREN INVOLVED

Whenever in a divorce action the custody of a minor child is involved, the court may request the department to investigate conditions and circumstances of the child and the child's parents. Upon completion of the investigation, the department shall submit a written report to the court and to counsel of record at least 3 days before the date of hearing. The report may not be further copied or distributed by anyone. A person who violates a provision of this section commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. Upon request of an interested party, the court shall require the person making the report to testify at the time of hearing. Whoever participates in making a report under this section or participates in a judicial proceeding as a result of the report is immune from civil or criminal liability, unless that person acted in bad faith or with malicious purpose. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

If the court requests an investigation for purposes other than suspected abuse or neglect as defined in Title 22, chapter 1071, the court shall order either or both parties to pay to the department part or all of the costs of services under this chapter, unless the court has made a finding of inability to pay. Revenue from investigations or services provided under this chapter are dedicated to the department to defray the cost of these services. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF) .

§906. CERTAIN DIVORCES VALIDATED

1. Writ of attachment. All divorces already granted in this State on libels inserted in a writ of attachment, and otherwise valid except for the want of attachment nominal or otherwise upon the writ, are validated.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Pendency of another claim. All judgments or orders already entered granting a divorce, annulment, disposition of property under section 953 or former Title 19, section 722-A or other disposition, award or division of property incident upon a divorce or annulment, and otherwise final except for the pendency of another claim or counterclaim in the same action, are declared final, nonappealable and effective for all purposes as of the date of entry of the judgment or order. This subsection does not apply to any judgment for divorce, annulment or property disposition in which the appeal period, including any extensions, has commenced but has not expired as of June 30, 1981.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. Finalization. In an action for divorce under section 902, the trial court may, upon motion for entry of final judgment during the pendency of the appeal period, grant a final judgment of annulment or divorce between the parties if the court expressly finds that there is not just cause for delay and entry of judgment will

not prejudice the legal or equitable rights of a party during the pendency of an appeal. The filing of a motion under this subsection does not stay an award of child or spousal support or parental rights and responsibilities, except by order of the court under the Maine Rules of Civil Procedure.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

§907. OUT-OF-STATE DIVORCES

When residents of the State go out of the State for the purpose of obtaining a divorce for causes that occurred here while the parties lived here or that do not authorize a divorce here, and a divorce is thus obtained, the divorce is void in this State. In all other cases, a divorce decreed out of the State according to the law of the place, by a court having jurisdiction of the cause and of both parties, is valid here. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

The validity of a custody determination contained in or ancillary to a valid divorce decree granted by another state is governed by the Uniform Child Custody Jurisdiction and Enforcement Act. [2013, c. 424, Pt. B, §6 (AMD).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2013, c. 424, Pt. B, §6 (AMD).

§908. DISCLOSURE AND RECORDING OF SOCIAL SECURITY NUMBERS

An individual who is a party to a divorce action must disclose that individual's social security number to the court. The social security number of any individual who is subject to a divorce decree must be placed in the court records relating to the decree. The record of an individual's social security number is confidential and is not open to the public. The court shall disclose an individual's social security number to the department for child support enforcement purposes. [1997, c. 537, §13 (NEW); 1997, c. 537, §62 (AFF).]

SECTION HISTORY

1997, c. 537, §13 (NEW). 1997, c. 537, §62 (AFF).

Subchapter 2: SPOUSAL SUPPORT AND PROPERTY RIGHTS

§951. SPOUSAL SUPPORT

(REPEALED)

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 9, §2 (AMD). 1997, c. 9, §3 (AFF). 1997, c. 629, §1 (AMD). 1999, c. 634, §2 (RP).

§951-A. SPOUSAL SUPPORT

1. Statement by court. An order granting, denying or modifying spousal support must state:

A. The type or types of support, if support is awarded; [1999, c. 634, §3 (NEW).]

B. The method or methods of payment, and the term and limitations imposed, if support is awarded; [1999, c. 634, §3 (NEW).]

C. If the support awarded is not, in whole or in part, subject to future modification; and [1999, c. 634, §3 (NEW).]

D. The factors relied upon by the court in arriving at its decision to award or deny spousal support, if the proceeding was contested. [1999, c. 634, §3 (NEW).]

[1999, c. 634, §3 (NEW).]

2. Types of spousal support. The court may, after consideration of all factors set forth in subsection 5, award or modify spousal support for one or more of the following reasons.

A. General support may be awarded to provide financial assistance to a spouse with substantially less income potential than the other spouse so that both spouses can maintain a reasonable standard of living after the divorce.

(1) There is a rebuttable presumption that general support may not be awarded if the parties were married for less than 10 years as of the date of the filing of the action for divorce. There is also a rebuttable presumption that general support may not be awarded for a term exceeding 1/2 the length of the marriage if the parties were married for at least 10 years but not more than 20 years as of the date of the filing of the action for divorce.

(2) If the court finds that a spousal support award based upon a presumption established by this paragraph would be inequitable or unjust, that finding is sufficient to rebut the applicable presumption. [1999, c. 634, §3 (NEW).]

B. Transitional support may be awarded to provide for a spouse's transitional needs, including, but not limited to:

(1) Short-term needs resulting from financial dislocations associated with the dissolution of the marriage; or

(2) Reentry or advancement in the work force, including, but not limited to, physical or emotional rehabilitation services, vocational training and education. [1999, c. 634, §3 (NEW).]

C. Reimbursement support may be awarded to achieve an equitable result in the overall dissolution of the parties' financial relationship in response to exceptional circumstances. Exceptional circumstances include, but are not limited to:

(1) Economic misconduct by a spouse; and

(2) Substantial contributions a spouse made towards the educational or occupational advancement of the other spouse during the marriage.

Reimbursement support may be awarded only if the court determines that the parties' financial circumstances do not permit the court to fully address equitable considerations through its distributive order pursuant to section 953. [1999, c. 634, §3 (NEW).]

D. Nominal support may be awarded to preserve the court's authority to grant spousal support in the future. [1999, c. 634, §3 (NEW).]

E. Interim support may be awarded to provide for a spouse's separate support during the pendency of an action for divorce or judicial separation. [1999, c. 634, §3 (NEW).]

[1999, c. 634, §3 (NEW).]

3. Methods of payment; term and limitations. The order must state the method or methods of payment that the court determines just, including, but not limited to, lump-sum and installment payments. The order must also state the term of and any limitations on the award that the court determines just, including, but not limited to:

A. A limit on any increases or decreases in the amount of support; [1999, c. 634, §3 (NEW).]

B. A limit on any increases or decreases in the term of support; [1999, c. 634, §3 (NEW).]

C. A limit on the method or methods of payment of support; [1999, c. 634, §3 (NEW).]

D. A limit on the payment of support related to the remarriage of the payee; and [1999, c. 634, §3 (NEW).]

E. A limit on the payment of support related to cohabitation by the payee. [1999, c. 634, §3 (NEW).]

[1999, c. 634, §3 (NEW) .]

4. Modification. An award of spousal support issued before October 1, 2013 is subject to modification when it appears that justice requires unless and to the extent the order awarding or modifying spousal support expressly states that the award, in whole or in part, is not subject to future modification. An award of spousal support issued on or after October 1, 2013 is subject to modification when it appears that justice requires.

[2013, c. 327, §1 (AMD) .]

5. Factors. The court shall consider the following factors when determining an award of spousal support:

A. The length of the marriage; [1999, c. 634, §3 (NEW).]

B. The ability of each party to pay; [1999, c. 634, §3 (NEW).]

C. The age of each party; [1999, c. 634, §3 (NEW).]

D. The employment history and employment potential of each party; [1999, c. 634, §3 (NEW).]

E. The income history and income potential of each party; [1999, c. 634, §3 (NEW).]

F. The education and training of each party; [1999, c. 634, §3 (NEW).]

G. The provisions for retirement and health insurance benefits of each party; [1999, c. 634, §3 (NEW).]

H. The tax consequences of the division of marital property, including the tax consequences of the sale of the marital home, if applicable; [1999, c. 634, §3 (NEW).]

I. The health and disabilities of each party; [1999, c. 634, §3 (NEW).]

J. The tax consequences of a spousal support award; [1999, c. 634, §3 (NEW).]

K. The contributions of either party as homemaker; [1999, c. 634, §3 (NEW).]

L. The contributions of either party to the education or earning potential of the other party; [1999, c. 634, §3 (NEW).]

M. Economic misconduct by either party resulting in the diminution of marital property or income; [1999, c. 634, §3 (NEW).]

N. The standard of living of the parties during the marriage; [1999, c. 634, §3 (NEW).]

O. The ability of the party seeking support to become self-supporting within a reasonable period of time; [1999, c. 634, §3 (NEW).]

P. The effect of the following on a party's need for spousal support or a party's ability to pay spousal support:

(1) Actual or potential income from marital or nonmarital property awarded or set apart to each party as part of the court's distributive order pursuant to section 953; and

(2) Child support for the support of a minor child or children of the marriage pursuant to chapter 63; and [1999, c. 634, §3 (NEW).]

Q. Any other factors the court considers appropriate. [1999, c. 634, §3 (NEW).]

[1999, c. 634, §3 (NEW) .]

6. Enforcement. The court may use all necessary legal provisions to enforce its decrees.

[1999, c. 634, §3 (NEW) .]

7. Real estate and other property; life insurance and other security. The court may order part of the obligated party's real estate or other property, as well as the rents, profits or income from real estate or other property, to be assigned and set out to the other party for life or for such other period determined to be just. The court may also order the obligated party to maintain life insurance or to otherwise provide security for the payment of spousal support in the event the obligation may survive the obligated party's death.

[1999, c. 634, §3 (NEW) .]

8. Cessation upon death of payee or payor. An order awarding, denying or modifying spousal support may provide that the award survives the death of the payee or payor, or both. Unless otherwise stated in the order awarding spousal support, the obligation to make any payment pursuant to this section ceases upon the death of either the payee or the payor with respect to any payment not yet due and owing as of the date of death.

[1999, c. 634, §3 (NEW) .]

9. Effect of no award or termination of spousal support. A final judgment that does not award spousal support forever precludes such an award in that action. The complete termination of a spousal support award pursuant to the terms of the award or a final post-judgment order forever precludes the reinstatement of spousal support in that action.

[1999, c. 634, §3 (NEW) .]

10. Application. This section applies to:

A. Orders granting or denying spousal support entered on or after September 1, 2000; and [1999, c. 634, §3 (NEW).]

B. The modification, termination and enforcement of orders granting spousal support entered on or after September 1, 2000. [1999, c. 634, §3 (NEW).]

[1999, c. 634, §3 (NEW) .]

11. Support while pending. The trial court may make, modify or enforce an award of spousal support under this section while an action is pending, including while on appeal.

[2005, c. 594, §4 (NEW) .]

12. Cessation upon cohabitation. When it appears that justice requires, an order awarding spousal support is subject to modification to terminate spousal support when it can be shown that the payee and another person have entered into a mutually supportive relationship that is the functional equivalent of marriage that has existed for at least 12 months of a period of 18 consecutive months.

[2013, c. 327, §2 (NEW) .]

SECTION HISTORY

1999, c. 634, §3 (NEW). 2005, c. 594, §4 (AMD). 2013, c. 327, §§1, 2 (AMD).

§952. PAYMENT OF SPOUSAL SUPPORT, FEES AND SUPPORT

1. Definition. As used in this section, "decree of spousal support, support or costs" means a decree or order:

- A. For spousal support or payment of money instead of spousal support; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. For support of children; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- C. For support pending a divorce action; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- D. For payment of related attorney's fees; [2005, c. 323, §7 (AMD).]
- E. For alteration of an existing decree or order for the custody or support of a child; or [2005, c. 323, §7 (AMD).]
- F. For division and disposition of property ancillary to a divorce judgment, including, but not limited to, proceedings to effectuate a qualified domestic relations order; to reach, attach or liquidate property; or to quiet title. [2005, c. 323, §8 (NEW).]

[2005, c. 323, §§7, 8 (AMD) .]

2. Order pending petition. Pending a petition to enforce a decree of spousal support, support or costs and after notice and opportunity for a hearing, the court may order either spouse to pay to the other spouse or to the other spouse's attorney sufficient money for the prosecution of or defense against the petition.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

3. Attorney's fees. Attorney's fees awarded in the nature of support may be made payable immediately or in installments.

[2005, c. 323, §9 (AMD) .]

4. Enforcement. The court may enforce an order as provided under chapter 65.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 2005, c. 323, §§7-9 (AMD).

§953. DISPOSITION OF PROPERTY

1. Disposition. In a proceeding for a divorce, for legal separation or for disposition of property following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall set apart to each spouse the spouse's property and shall divide the marital property in proportions the court considers just after considering all relevant factors, including:

- A. The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- B. The value of the property set apart to each spouse; and [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live in the home for reasonable periods to the spouse having custody of the children. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Definition. For purposes of this section, "marital property" means all property acquired by either spouse subsequent to the marriage, except:

A. Property acquired by gift, bequest, devise or descent; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise or descent; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. Property acquired by a spouse after a decree of legal separation; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

D. Property excluded by valid agreement of the parties; and [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

E. The increase in value of property acquired prior to the marriage and the increase in value of a spouse's nonmarital property as defined in paragraphs A to D.

(1) "Increase in value" includes:

(a) Appreciation resulting from market forces; and

(b) Appreciation resulting from reinvested income and capital gain unless either or both spouses had a substantial active role during the marriage in managing, preserving or improving the property.

(2) "Increase in value" does not include:

(a) Appreciation resulting from the investment of marital funds or property in the nonmarital property;

(b) Appreciation resulting from marital labor; and

(c) Appreciation resulting from reinvested income and capital gain if either or both spouses had a substantial active role during the marriage in managing, preserving or improving the property. [1999, c. 665, §1 (AMD); 1999, c. 665, §2 (AFF).]

[1999, c. 665, §1 (AMD); 1999, c. 665, §2 (AFF) .]

3. Acquired subsequent to marriage. All property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation is presumed to be marital property regardless of whether title is held individually or by the spouses in some form of coownership such as joint tenancy, tenancy in common, tenancy by the entirety or community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection 2.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

4. Disposition of marital property. If both parties to a divorce action also request the court in writing to order disposition of marital property acquired by either or both of the parties to the divorce prior to January 1, 1972, or nonmarital property owned by the parties to the divorce action, the court shall also order disposition in accordance with subsection 1.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

5. Decree contents. If the final divorce decree disposes of real property, it must name the party or parties responsible for preparing and recording the decree of divorce or abstract of the decree and paying the recording fee after the clerk has prepared or approved the abstract. The decree may name different parties to be responsible for different parcels.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

6. Nonowner spouse claims. Notwithstanding the actual notice provisions of Title 14, section 4455 or any other laws, a claim of a nonowner spouse to real estate as "marital property," as defined in this section, does not affect title to the real estate of the owner spouse until the nonowner spouse records in the appropriate registry of deeds either:

A. A copy of the divorce complaint as filed in court; [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

B. A clerk's certificate of the divorce complaint, as described in Title 14, section 4455, subsection 2; or [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

C. A decree or abstract of the decree as described in this section. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

This recording requirement applies to all divorce proceedings in this State or in any other jurisdiction.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

6-A. Nonowner spouse interest in certain payments or accounts. After the filing of a divorce complaint under section 901, a nonowner spouse has an inchoate equitable ownership interest, without the need to obtain an attachment, levy or court order, in the individual retirement account or similar plan or contract on account of illness, disability, death, age or length of service of the owner spouse, to the extent the account or plan is either exempt or beyond the reach of an attaching or judgment lien creditor under state or federal law.

[2005, c. 298, §1 (NEW) .]

7. Decree or abstract as deed. All rights acquired under former Title 19, section 721 or 723 on or before December 31, 1971 and all rights acquired under this section by a party in the real estate of the other party are effective against a person when the decree of divorce or an abstract of the decree is filed in the registry of deeds for the county or registry district where the real estate is situated. The decree or abstract, at a minimum, must contain:

A. The caption of the case, including the names of the parties, and any changes to the parties' names after the decree; [2003, c. 18, §1 (NEW).]

B. The date the judgment is final and the court that issued the decree; [2003, c. 18, §1 (NEW).]

C. An adequate description of the real estate, such as by reference to the volume and page number of an instrument recorded in the registry of deeds or the probate court record, or an adequate description by metes and bounds or by reference to the volume and page number of the registry of deeds' records of a survey plan of the property; [2003, c. 18, §1 (NEW).]

D. Any provision of the decree intended by the court to constitute an encumbrance against real estate, including any conditions pertaining to the encumbrance, in the verbatim language used by the court. If the abstract does not contain the provision required by this paragraph, an encumbrance may not be considered effective against a 3rd party unless the encumbrance has been memorialized in a separate, duly recorded instrument; and [2003, c. 18, §1 (NEW).]

E. A clear statement of the ownership interest of the parties in the real estate intended by the court to result from that decree. [2003, c. 18, §1 (NEW).]

An inconsequential failure to provide all the details required pursuant to paragraphs A to E does not create an invalid abstract for purposes of this section.

The failure of a party to record the decree or an abstract of the decree within a time period prescribed by former Title 19, section 725 does not affect the rights of that party as against the other party or the other party's heirs or devisees. The recording of the decree or abstract of the decree has the force and effect of a quitclaim deed releasing all interest in the real estate described in the decree or abstract of the decree, whether the interest is in fee or by statute.

[2003, c. 18, §1 (RPR) .]

8. Out-of-state divorce decrees. When a divorce has been granted out of the State, the plaintiff, or the plaintiff's attorney, shall cause a duly authenticated copy of the order to be recorded with the register of deeds in each of the counties where the real estate or any part of the real estate is situated. The appropriate recording fee must be paid prior to the recording.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

9. Omitted property. If a final divorce decree fails to set apart or divide marital property over which the court had jurisdiction, the omitted property is deemed held by both parties as tenants in common. On the motion of either party, the court may set aside or divide the omitted property between the parties, as justice may require.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 665, §1 (AMD). 1999, c. 665, §2 (AFF). 2003, c. 18, §1 (AMD). 2005, c. 298, §1 (AMD).

§954. INCOME WITHHOLDING

1. Availability and establishment of income withholding. Spousal support orders issued or modified by the courts in this State must have a provision for the withholding of income to ensure that withholding as a means of obtaining spousal support is available if arrearages occur. Except as provided in chapter 65, subchapter IV, income withholding against all spousal support obligations ordered by a court within the State must be implemented as follows.

A. New orders of spousal support must include a provision withholding the amount of spousal support from the income, regardless of the source, of the person obligated to pay the support. If an existing order of alimony or spousal support does not include a withholding order, the obligee may file a motion to amend the spousal support order to include an order for withholding, which the court shall grant.

[1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF).]

B. Each order for withholding must provide for a conspicuous notice to the obligor that withholding may result if the obligor fails to make the spousal support payments and that no withholding may be made until the following conditions are met:

- (1) Either the obligor requests that income withholding be implemented or the obligee determines that the payments the obligor has failed to make under the spousal support order are at least equal to the amount payable for one month;
- (2) The obligee serves written notice of the amount of arrearage upon the obligor and informs the obligor that the obligee has procured a court order for income withholding;
- (3) The obligee mails a copy of the determination of arrearage and a copy of the court's withholding order to the payor of funds;

(4) The obligee mails to the Department of Health and Human Services a copy of the determination of arrearage and a copy of the court's withholding order to enable the department to proceed pursuant to subsection 2; and

(5) The obligor has a 20-day period, after receiving the notice pursuant to subparagraph (2), to file a motion for determination of arrearages with respect to the amount of spousal support owed and to simultaneously request an ex parte stay of service on the payor of funds until the motion for determination is heard. Any stay issued by the court under this subsection expires in 60 days and may be reissued only upon a showing by the obligor that the obligor has made reasonable efforts to obtain a hearing on the motion for determination of arrearages during the effective period of the stay. [1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF); 2003, c. 689, Pt. B, §6 (REV).]

C. An order modifying the amount of spousal support issued after a hearing on a motion to modify spousal support may provide that payments be made outright by withholding. If so, paragraph B does not apply. [1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF).]

D. Notwithstanding any law to the contrary, the withholding order is binding on the payor of funds once service has been made upon the payor. The payor is liable for any amounts the payor fails to withhold after receiving notice. The payor shall withhold from the income payable to the obligor the amount specified in the order and shall monthly or more frequently remit the amounts withheld to the department. The payor may withhold a \$2 processing fee in addition to the amount withheld for support. The amount withheld may not exceed the limitations imposed by section 2356 or by 15 United States Code, Section 1673. An employer who, in contravention of this section, discharges from employment, refuses to employ or takes disciplinary action against any obligor because of the existence of an order and the obligations or additional obligations that it imposes upon the employer is subject to a fine in an amount not to exceed \$5,000. [1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF).]

E. When a withholding order is in effect and the obligor's employment is terminated or the periodic payment terminates, the obligor's employer or other payor of funds shall notify the department of the termination within 30 days of the termination date. The notice must include the obligor's home address and the name and address of the obligor's new employer or payor of funds, if known. [1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF).]

F. The order of withholding with regard to a current support obligation must be terminated if:

- (1) The department is unable to forward funds to the obligee for 3 months; or
- (2) The spousal support obligation has been eliminated by a subsequent court order.

A termination may not occur while an arrearage remains unless other provisions for its repayment have been made. [1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF).]

If the department is unable to forward the funds to the obligee for 3 months the funds must be returned to the obligor and notice must be given to the obligor's employer or other payor to cease withholding.

[1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

2. Department designated as administering agency. The department is designated as the agency responsible for adopting and administering procedures to receive, record and disburse all spousal support payments collected pursuant to this section.

[1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF) .]

3. Liability of payor to obligee. An obligee may maintain an action for compensatory damages, including attorney's fees and court costs, against a payor who knowingly fails to comply with this section.

[1997, c. 433, §1 (NEW); 1997, c. 433, §2 (AFF) .]

SECTION HISTORY

1997, c. 433, §1 (NEW). 1997, c. 433, §2 (AFF). 2003, c. 689, §B6 (REV).

Subchapter 3: PARENTAL RIGHTS AND RESPONSIBILITIES

§1001. PARENTAL RIGHTS AND RESPONSIBILITIES

The court entering an order for divorce may make an order awarding parental rights and responsibilities with respect to a minor child of the parties in accordance with chapter 55. [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

Subchapter 4: CHANGE OF NAME

§1051. NAME CHANGE

Upon the request of either spouse to change that person's own name, the court, when entering judgment for divorce: [1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

1. Former name. Shall change the name of that spouse to a former name requested; or

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Any other name requested. May change the name of that spouse to any other name requested.

[1995, c. 694, Pt. B, §2 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §B2 (NEW). 1995, c. 694, §E2 (AFF).

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