

1 AN ACT in relation to families.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Illinois Marriage and Dissolution of
5 Marriage Act is amended by changing Section 503 as follows:

6 (750 ILCS 5/503) (from Ch. 40, par. 503)

7 Sec. 503. Disposition of property.

8 (a) For purposes of this Act, "marital property" means
9 all property acquired by either spouse subsequent to the
10 marriage, except the following, which is known as
11 "non-marital property":

12 (1) property acquired by gift, legacy or descent;

13 (2) property acquired in exchange for property
14 acquired before the marriage or in exchange for property
15 acquired by gift, legacy or descent;

16 (3) property acquired by a spouse after a judgment
17 of legal separation;

18 (4) property excluded by valid agreement of the
19 parties;

20 (5) any judgment or property obtained by judgment
21 awarded to a spouse from the other spouse;

22 (6) property acquired before the marriage;

23 (7) the increase in value of property acquired by a
24 method listed in paragraphs (1) through (6) of this
25 subsection, irrespective of whether the increase results
26 from a contribution of marital property, non-marital
27 property, the personal effort of a spouse, or otherwise,
28 subject to the right of reimbursement provided in
29 subsection (c) of this Section; and

30 (8) income from property acquired by a method
31 listed in paragraphs (1) through (7) of this subsection

1 if the income is not attributable to the personal effort
2 of a spouse.

3 (b)(1) For purposes of distribution of property pursuant
4 to this Section, all property acquired by either spouse after
5 the marriage and before a judgment of dissolution of marriage
6 or declaration of invalidity of marriage, including
7 non-marital property transferred into some form of
8 co-ownership between the spouses, is presumed to be marital
9 property, regardless of whether title is held individually or
10 by the spouses in some form of co-ownership such as joint
11 tenancy, tenancy in common, tenancy by the entirety, or
12 community property. The presumption of marital property is
13 overcome by a showing that the property was acquired by a
14 method listed in subsection (a) of this Section.

15 (2) For purposes of distribution of property pursuant to
16 this Section, all pension benefits (including pension
17 benefits under the Illinois Pension Code) acquired by either
18 spouse after the marriage and before a judgment of
19 dissolution of marriage or declaration of invalidity of the
20 marriage are presumed to be marital property, regardless of
21 which spouse participates in the pension plan. The
22 presumption that these pension benefits are marital property
23 is overcome by a showing that the pension benefits were
24 acquired by a method listed in subsection (a) of this
25 Section. The right to a division of pension benefits in just
26 proportions under this Section is enforceable under Section
27 1-119 of the Illinois Pension Code.

28 The value of pension benefits in a retirement system
29 subject to the Illinois Pension Code shall be determined in
30 accordance with the valuation procedures established by the
31 retirement system.

32 The recognition of pension benefits as marital property
33 and the division of those benefits pursuant to a Qualified
34 Illinois Domestic Relations Order shall not be deemed to be a

1 diminishment, alienation, or impairment of those benefits.
2 The division of pension benefits is an allocation of property
3 in which each spouse has a species of common ownership.

4 (c) Commingled marital and non-marital property shall be
5 treated in the following manner, unless otherwise agreed by
6 the spouses:

7 (1) When marital and non-marital property are
8 commingled by contributing one estate of property into
9 another resulting in a loss of identity of the
10 contributed property, the classification of the
11 contributed property is transmuted to the estate
12 receiving the contribution, subject to the provisions of
13 paragraph (2) of this subsection; provided that if
14 marital and non-marital property are commingled into
15 newly acquired property resulting in a loss of identity
16 of the contributing estates, the commingled property
17 shall be deemed transmuted to marital property, subject
18 to the provisions of paragraph (2) of this subsection.

19 (2) When one estate of property makes a
20 contribution to another estate of property, or when a
21 spouse contributes personal effort to non-marital
22 property, the contributing estate shall be reimbursed
23 from the estate receiving the contribution
24 notwithstanding any transmutation; provided, that no such
25 reimbursement shall be made with respect to a
26 contribution which is not retraceable by clear and
27 convincing evidence, or was a gift, or, in the case of a
28 contribution of personal effort of a spouse to
29 non-marital property, unless the effort is significant
30 and results in substantial appreciation of the
31 non-marital property. Personal effort of a spouse shall
32 be deemed a contribution by the marital estate. The
33 court may provide for reimbursement out of the marital
34 property to be divided or by imposing a lien against the

1 non-marital property which received the contribution.

2 (d) In a proceeding for dissolution of marriage or
3 declaration of invalidity of marriage, or in a proceeding for
4 disposition of property following dissolution of marriage by
5 a court which lacked personal jurisdiction over the absent
6 spouse or lacked jurisdiction to dispose of the property, the
7 court shall assign each spouse's non-marital property to that
8 spouse. It also shall divide the marital property without
9 regard to marital misconduct in just proportions considering
10 all relevant factors, including:

11 (1) the contribution of each party to the
12 acquisition, preservation, or increase or decrease in
13 value of the marital or non-marital property, including
14 the contribution of a spouse as a homemaker or to the
15 family unit;

16 (2) the dissipation by each party of the marital or
17 non-marital property;

18 (3) the value of the property assigned to each
19 spouse;

20 (4) the duration of the marriage;

21 (5) the relevant economic circumstances of each
22 spouse when the division of property is to become
23 effective, including the desirability of awarding the
24 family home, or the right to live therein for reasonable
25 periods, to the spouse having custody of the children;

26 (6) any obligations and rights arising from a prior
27 marriage of either party;

28 (7) any antenuptial agreement of the parties;

29 (8) the age, health, station, occupation, amount
30 and sources of income, vocational skills, employability,
31 estate, liabilities, and needs of each of the parties;

32 (9) the custodial provisions for any children;

33 (10) whether the apportionment is in lieu of or in
34 addition to maintenance;

1 (11) the reasonable opportunity of each spouse for
2 future acquisition of capital assets and income; and

3 (12) the tax consequences of the property division
4 upon the respective economic circumstances of the
5 parties.

6 (e) Each spouse has a species of common ownership in the
7 marital property which vests (i) at the time of the marriage,
8 if the dissolution proceedings are commenced within 3 years
9 after that time, or (ii) 3 years before the dissolution
10 proceedings are commenced, if the marriage occurred more than
11 3 years before the dissolution proceedings are commenced.
12 This common ownership and continues only during the pendency
13 of the action. Any such interest in marital property shall
14 not encumber that property so as to restrict its transfer,
15 assignment or conveyance by the title holder unless such
16 title holder is specifically enjoined from making such
17 transfer, assignment or conveyance.

18 (f) In a proceeding for dissolution of marriage or
19 declaration of invalidity of marriage or in a proceeding for
20 disposition of property following dissolution of marriage by
21 a court that lacked personal jurisdiction over the absent
22 spouse or lacked jurisdiction to dispose of the property, the
23 court, in determining the value of the marital and
24 non-marital property for purposes of dividing the property,
25 shall value the property as of the date of trial or some
26 other date as close to the date of trial as is practicable.

27 (g) The court if necessary to protect and promote the
28 best interests of the children may set aside a portion of the
29 jointly or separately held estates of the parties in a
30 separate fund or trust for the support, maintenance,
31 education, and general welfare of any minor, dependent, or
32 incompetent child of the parties. In making a determination
33 under this subsection, the court may consider, among other
34 things, the conviction of a party of any of the offenses set

1 forth in Section 12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-13,
2 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961
3 if the victim is a child of one or both of the parties, and
4 there is a need for, and cost of, care, healing and
5 counseling for the child who is the victim of the crime.

6 (h) Unless specifically directed by a reviewing court,
7 or upon good cause shown, the court shall not on remand
8 consider any increase or decrease in the value of any
9 "marital" or "non-marital" property occurring since the
10 assessment of such property at the original trial or hearing,
11 but shall use only that assessment made at the original trial
12 or hearing.

13 (i) The court may make such judgments affecting the
14 marital property as may be just and may enforce such
15 judgments by ordering a sale of marital property, with
16 proceeds therefrom to be applied as determined by the court.

17 (j) After proofs have closed in the final hearing on all
18 other issues between the parties (or in conjunction with the
19 final hearing, if all parties so stipulate) and before
20 judgment is entered, a party's petition for contribution to
21 fees and costs incurred in the proceeding shall be heard and
22 decided, in accordance with the following provisions:

23 (1) A petition for contribution, if not filed
24 before the final hearing on other issues between the
25 parties, shall be filed no later than 30 days after the
26 closing of proofs in the final hearing or within such
27 other period as the court orders.

28 (2) Any award of contribution to one party from the
29 other party shall be based on the criteria for division
30 of marital property under this Section 503 and, if
31 maintenance has been awarded, on the criteria for an
32 award of maintenance under Section 504.

33 (3) The filing of a petition for contribution shall
34 not be deemed to constitute a waiver of the

1 attorney-client privilege between the petitioning party
2 and current or former counsel; and such a waiver shall
3 not constitute a prerequisite to a hearing for
4 contribution. If either party's presentation on
5 contribution, however, includes evidence within the scope
6 of the attorney-client privilege, the disclosure or
7 disclosures shall be narrowly construed and shall not be
8 deemed by the court to constitute a general waiver of the
9 privilege as to matters beyond the scope of the
10 presentation.

11 (4) No finding on which a contribution award is
12 based or denied shall be asserted against counsel or
13 former counsel for purposes of any hearing under
14 subsection (c) or (e) of Section 508.

15 (5) A contribution award (payable to either the
16 petitioning party or the party's counsel, or jointly, as
17 the court determines) may be in the form of either a set
18 dollar amount or a percentage of fees and costs (or a
19 portion of fees and costs) to be subsequently agreed upon
20 by the petitioning party and counsel or, alternatively,
21 thereafter determined in a hearing pursuant to subsection
22 (c) of Section 508 or previously or thereafter determined
23 in an independent proceeding under subsection (e) of
24 Section 508.

25 (6) The changes to this Section 503 made by this
26 amendatory Act of 1996 apply to cases pending on or after
27 June 1, 1997, except as otherwise provided in Section
28 508.

29 (Source: P.A. 90-731, eff. 7-1-99; 91-445, eff. 1-1-00.)