

1 AN ACT concerning family law.

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     (3) For purposes of distribution of property under this  
5     Section, all stock options granted to either spouse after the  
6     marriage and before a judgment of dissolution of marriage or  
7     declaration of invalidity of marriage, whether vested or  
8     non-vested or whether their value is ascertainable, are  
9     presumed to be marital property. This presumption of marital  
10    property is overcome by a showing that the stock options were  
11    acquired by a method listed in subsection (a) of this  
12    Section. The court shall allocate stock options between the  
13    parties at the time of the judgment of dissolution of  
14    marriage or declaration of invalidity of marriage recognizing  
15    that the value of the stock options may not be then  
16    determinable and that the actual division of the options may  
17    not occur until a future date. In making the allocation  
18    between the parties, the court shall consider, in addition to  
19    the factors set forth in subsection (d) of this Section, the  
20    following:

21        (i) All circumstances underlying the grant of the  
22        stock option including but not limited to whether the  
23        grant was for past, present, or future efforts, or any  
24        combination thereof.

25        (ii) The length of time from the grant of the  
26        option to the time the option is exercisable.

27        (c) Commingled marital and non-marital property shall be  
28        treated in the following manner, unless otherwise agreed by  
29        the spouses:

30            (1) When marital and non-marital property are  
31            commingled by contributing one estate of property into  
32            another resulting in a loss of identity of the  
33            contributed property, the classification of the  
34            contributed property is transmuted to the estate

1 receiving the contribution, subject to the provisions of  
2 paragraph (2) of this subsection; provided that if  
3 marital and non-marital property are commingled into  
4 newly acquired property resulting in a loss of identity  
5 of the contributing estates, the commingled property  
6 shall be deemed transmuted to marital property, subject  
7 to the provisions of paragraph (2) of this subsection.

8 (2) When one estate of property makes a  
9 contribution to another estate of property, or when a  
10 spouse contributes personal effort to non-marital  
11 property, the contributing estate shall be reimbursed  
12 from the estate receiving the contribution  
13 notwithstanding any transmutation; provided, that no such  
14 reimbursement shall be made with respect to a  
15 contribution which is not retraceable by clear and  
16 convincing evidence, or was a gift, or, in the case of a  
17 contribution of personal effort of a spouse to  
18 non-marital property, unless the effort is significant  
19 and results in substantial appreciation of the  
20 non-marital property. Personal effort of a spouse shall  
21 be deemed a contribution by the marital estate. The  
22 court may provide for reimbursement out of the marital  
23 property to be divided or by imposing a lien against the  
24 non-marital property which received the contribution.

25 (d) In a proceeding for dissolution of marriage or  
26 declaration of invalidity of marriage, or in a proceeding for  
27 disposition of property following dissolution of marriage by  
28 a court which lacked personal jurisdiction over the absent  
29 spouse or lacked jurisdiction to dispose of the property, the  
30 court shall assign each spouse's non-marital property to that  
31 spouse. It also shall divide the marital property without  
32 regard to marital misconduct in just proportions considering  
33 all relevant factors, including:

34 (1) the contribution of each party to the

1 acquisition, preservation, or increase or decrease in  
2 value of the marital or non-marital property, including  
3 the contribution of a spouse as a homemaker or to the  
4 family unit;

5 (2) the dissipation by each party of the marital or  
6 non-marital property;

7 (3) the value of the property assigned to each  
8 spouse;

9 (4) the duration of the marriage;

10 (5) the relevant economic circumstances of each  
11 spouse when the division of property is to become  
12 effective, including the desirability of awarding the  
13 family home, or the right to live therein for reasonable  
14 periods, to the spouse having custody of the children;

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

17 (7) any antenuptial agreement of the parties;

18 (8) the age, health, station, occupation, amount  
19 and sources of income, vocational skills, employability,  
20 estate, liabilities, and needs of each of the parties;

21 (9) the custodial provisions for any children;

22 (10) whether the apportionment is in lieu of or in  
23 addition to maintenance;

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

26 (12) the tax consequences of the property division  
27 upon the respective economic circumstances of the  
28 parties.

29 (e) Each spouse has a species of common ownership in the  
30 marital property which vests at the time dissolution  
31 proceedings are commenced and continues only during the  
32 pendency of the action. Any such interest in marital  
33 property shall not encumber that property so as to restrict  
34 its transfer, assignment or conveyance by the title holder

1 unless such title holder is specifically enjoined from making  
2 such transfer, assignment or conveyance.

3 (f) In a proceeding for dissolution of marriage or  
4 declaration of invalidity of marriage or in a proceeding for  
5 disposition of property following dissolution of marriage by  
6 a court that lacked personal jurisdiction over the absent  
7 spouse or lacked jurisdiction to dispose of the property, the  
8 court, in determining the value of the marital and  
9 non-marital property for purposes of dividing the property,  
10 shall value the property as of the date of trial or some  
11 other date as close to the date of trial as is practicable.

12 (g) The court if necessary to protect and promote the  
13 best interests of the children may set aside a portion of the  
14 jointly or separately held estates of the parties in a  
15 separate fund or trust for the support, maintenance,  
16 education, and general welfare of any minor, dependent, or  
17 incompetent child of the parties. In making a determination  
18 under this subsection, the court may consider, among other  
19 things, the conviction of a party of any of the offenses set  
20 forth in Section 12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-13,  
21 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961  
22 if the victim is a child of one or both of the parties, and  
23 there is a need for, and cost of, care, healing and  
24 counseling for the child who is the victim of the crime.

25 (h) Unless specifically directed by a reviewing court,  
26 or upon good cause shown, the court shall not on remand  
27 consider any increase or decrease in the value of any  
28 "marital" or "non-marital" property occurring since the  
29 assessment of such property at the original trial or hearing,  
30 but shall use only that assessment made at the original trial  
31 or hearing.

32 (i) The court may make such judgments affecting the  
33 marital property as may be just and may enforce such  
34 judgments by ordering a sale of marital property, with

1 proceeds therefrom to be applied as determined by the court.

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

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

13 (2) Any award of contribution to one party from the  
14 other party shall be based on the criteria for division  
15 of marital property under this Section 503 and, if  
16 maintenance has been awarded, on the criteria for an  
17 award of maintenance under Section 504.

18 (3) The filing of a petition for contribution shall  
19 not be deemed to constitute a waiver of the  
20 attorney-client privilege between the petitioning party  
21 and current or former counsel; and such a waiver shall  
22 not constitute a prerequisite to a hearing for  
23 contribution. If either party's presentation on  
24 contribution, however, includes evidence within the scope  
25 of the attorney-client privilege, the disclosure or  
26 disclosures shall be narrowly construed and shall not be  
27 deemed by the court to constitute a general waiver of the  
28 privilege as to matters beyond the scope of the  
29 presentation.

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

34 (5) A contribution award (payable to either the

1           petitioning party or the party's counsel, or jointly, as  
2           the court determines) may be in the form of either a set  
3           dollar amount or a percentage of fees and costs (or a  
4           portion of fees and costs) to be subsequently agreed upon  
5           by the petitioning party and counsel or, alternatively,  
6           thereafter determined in a hearing pursuant to subsection  
7           (c) of Section 508 or previously or thereafter determined  
8           in an independent proceeding under subsection (e) of  
9           Section 508.

10           (6) The changes to this Section 503 made by this  
11           amendatory Act of 1996 apply to cases pending on or after  
12           June 1, 1997, except as otherwise provided in Section  
13           508.

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