

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.)