

Delaware Divorce Laws

TITLE 13 Domestic Relations

CHAPTER 1. MARRIAGE

§ 101. Void and voidable marriages.

(a) A marriage is prohibited and void between a person and his or her ancestor, descendant, brother, sister, uncle, aunt, niece, nephew, first cousin or between persons of the same gender.

(b) A marriage is prohibited, and is void from the time its nullity is declared by a court of competent jurisdiction at the instance of the innocent party, if either party thereto is:

(1) A person of any degree of unsoundness of mind;

(2) A patient in a mental hospital, unless such person first files with the clerk of the peace to whom such person makes application for a marriage license a certificate signed by the superintendent of the mental hospital in which such person is a patient stating that such person is fit to marry, and unless such person in other respects may lawfully marry;

(3) Venereally diseased or is suffering from any other communicable disease the nature of which is unknown to the other party to the proposed marriage;

(4) An habitual drunkard;

(5) A confirmed user of a narcotic drug;

(6) Divorced, unless a certified copy of the divorce decree (last decree if such person has been divorced more than once) or a certificate of such divorce from the clerk of the court granting the divorce is inspected by the clerk of the peace to whom such person makes application for a marriage license, and unless such person may in other respects lawfully marry; and, if such decree or certificate cannot be obtained, the Resident Judge of the county where such license is desired or the person designated by the Resident Judge to grant such certificates as may be accepted under this paragraph may grant a certificate of the facts as stated by the applicant and the certificate may, for the purposes of this chapter, be accepted in lieu of a certified copy of a divorce decree;

(7) On probation or parole from any court or institution, unless such person first files with the clerk of the peace to whom such person makes application for a marriage license a written consent to such person's proposed marriage from the chief officer of such court or institution or from someone who is appointed by such officer to give such consent, and unless in other respects the applicant may lawfully marry.

(c) A marriage between paupers is prohibited and is void from the time its nullity is declared by a court of competent jurisdiction at the instance of the innocent party.

(d) A marriage obtained or recognized outside the State between persons prohibited by subsection (a) of this section shall not constitute a legal or valid marriage within the State.

§ 102. Entering into a prohibited marriage; penalty.

The guilty party or parties to a marriage prohibited by § 101 of this title shall be fined \$100, and in default of the payment of the fine shall be imprisoned not more than 30 days.

CHAPTER 15. DIVORCE AND ANNULMENT

§ 1501. Short title.

This chapter shall be known and may be cited as the Delaware Divorce and Annulment Act.

§ 1502. Purpose; construction.

This chapter shall be liberally construed and applied to promote its underlying purposes, which are:

- (1) To promote the amicable settlement of disputes that have arisen between parties to a marriage;
- (2) To mitigate the potential harm to spouses and their children caused by the process of legal dissolution of marriage;
- (3) To make the law of divorce more effective for dealing with the realities of matrimonial experience by making irrevocable breakdown of the marriage relationship the sole basis for divorce;
- (4) To permit dissolution of a marriage where the marriage is irretrievably broken despite the objections of an unwilling spouse;
- (5) To award alimony under this chapter to a dependent party but only during the continuance of such dependency;
- (6) To award alimony in appropriate cases so as to encourage parties to become self-supporting;
- (7) [Repealed.]

§ 1503. Definitions.

For purposes of this chapter, unless the context indicates differently:

- (1) "Commencement of the action" means the time of filing the petition.
- (2) "Court" means Family Court of the State.
- (3) "Incompatibility" means marital rift or discord that has destroyed the marriage relation, without regard to the fault of either party.
- (4) "Mental illness" means mental incapacity or infirmity so destructive of the marriage relation that petitioner cannot reasonably be expected to continue in that relation.
- (5) "Misconduct" means conduct so destructive of the marriage relation that petitioner cannot reasonably be expected to continue in that relation; and "misconduct" includes, as examples, adultery, bigamy, conviction of a crime the sentence for which might be incarceration for 1 or more years, repeated physical or oral abuse directed against petitioner or children living in the home, desertion, homosexuality, lesbianism, willful refusal to perform marriage obligations, contracting venereal disease, habitual intemperance, habitual use of illegal drugs or other incapacitating substances and/or other serious offenses destructive of the marriage relation.
- (6) [Repealed.]
- (7) "Separation" means living separate and apart for 6 or more months immediately preceding the ruling upon the petition for a decree of divorce, except that no period of separation is required with respect to a marriage characterized under § 1505(b)(2) of this title; and separation may commence and/or continue while the parties reside under the same roof, provided, during such period, the parties occupy separate bedrooms and do not have sexual relations with each other, except as § 1505(e) of this title may apply.
- (8) "Voluntary separation" means separation by mutual consent or acquiescence; but if respondent denies that the separation was voluntary then mutual consent or acquiescence must be established either by written agreement of the parties or by proof of institution by respondent of

separate judicial proceedings premised upon respondent's consent to or acquiescence in the separation.

(9) "Actually resided" means was domiciled.

§ 1504. Jurisdiction; residence; procedure.

(a) The Family Court of the State has jurisdiction over all actions for divorce and annulment of marriage where either petitioner or respondent, at the time the action was commenced, actually resided in this State, or was stationed in this State as a member of the armed services of the United States, continuously for 6 or more months immediately preceding the commencement of the action.

(b) The procedure in divorce and annulment shall conform to the rules of the Court where the same do not contravene this title.

§ 1505. Divorce; marriage irretrievably broken and reconciliation improbable; defenses; efforts at reconciliation.

(a) The Court shall enter a decree of divorce whenever it finds that the marriage is irretrievably broken and that reconciliation is improbable.

(b) A marriage is irretrievably broken where it is characterized by:

- (1) Voluntary separation; or
- (2) Separation caused by respondent's misconduct; or
- (3) Separation caused by respondent's mental illness; or
- (4) Separation caused by incompatibility.

(c) Previously existing defenses to divorce of condonation, connivance, recrimination, insanity and lapse of time are preserved but only with respect to marriages characterized under subsection (b)(2) of this section.

(d) The only defense to a divorce action shall be the failure to establish either:

- (1) The marriage of the parties; or
- (2) Jurisdictional requirements of § 1504 of this title; or
- (3) That the marriage is irretrievably broken; or

(4) A defense permitted under subsection (c) of this section because of the characterization of the marriage under subsection (b)(2) of this section.

(e) Bona fide efforts to achieve reconciliation prior to divorce, even those that include, temporarily, sleeping in the same bedroom and resumption of sexual relations, shall not interrupt any period of living separate and apart, provided that the parties have not occupied the same bedroom or had sexual relations with each other within the 30-day period immediately preceding the day the Court hears the petition for divorce.

§ 1506. Annulment.

(a) The Court shall enter a decree of annulment of a marriage entered into under any of the following circumstances:

(1) A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity, or because of the influence of alcohol, drugs or other incapacitating substances;

(2) A party lacked the physical capacity to consummate the marriage by sexual intercourse and the other party did not, at the time the marriage was solemnized, know of the incapacity;

(3) A party was less than legal age and did not have the consent of his or her parents or guardian or judicial approval as provided by law;

(4) One party entered into the marriage in reliance upon a fraudulent act or representation of the other party, which fraudulent act or representation goes to the essence of the marriage;

(5) One or both parties entered into the marriage under duress exercised by the other party, or a third party, whether or not such other party knew of such exercise of duress;

(6) One or both parties entered into the marriage as a jest or dare; or

(7) The marriage is prohibited and void or voidable as provided in § 101 of this title.

(b) A decree of annulment may be sought by any of the following persons, and a petition therefor must be filed within the times specified below, but in no event may a decree of annulment be sought after the death of either party to the marriage, except as provided in this section:

(1) For the reasons set forth in either paragraph (1), (4), (5) or (6) of subsection (a) of this section, by either party to the marriage who was aggrieved by the condition or conditions, or by the legal representative of the party who lacked capacity to consent, no later than 90 days after petitioner obtained knowledge of the described condition.

(2) For the reason set forth in paragraph (2) of subsection (a) of this section, by either party no later than 1 year after petitioner obtained knowledge of the described condition.

(3) For the reason set forth in paragraph (3) of subsection (a) of this section, by the underaged party, his or her parent or guardian, no later than 1 year after the date the marriage was entered into.

(4) A decree of annulment for the reason set forth in paragraph (7) of subsection (a) of this section may be sought by either party, by the legal spouse in case of bigamous, polygamous or incestuous marriages, by the appropriate state official, or by a child of either party at any time prior to the death of either party or prior to the final settlement of the estate of either party and the discharge of the personal representative, executor or administrator of the estate, or prior to 6 months after an order of distribution is made under Chapter 23 of Title 12.

(c) Children born of an annulled marriage are legitimate. Marriages annulled under this section shall be so declared as of the date of the marriage.

(d) The provisions of this chapter relating to the property rights of spouses are applicable to annulment.

(e) "Separation" as defined in § 1503(7) of this title is inapplicable to annulment proceedings; and a petition may be filed whenever a circumstance exists as defined by, and within the time limit specified in, this section.

§ 1507. Petition for divorce or annulment.

(a) A petition for divorce or annulment of marriage shall be captioned:

IN THE FAMILY COURT OF THE STATE OF DELAWARE

IN AND FOR COUNTY

In re the Marriage of
.....,
 Petitioner,
AND
 No., 19. . .
.....,
 Respondent.

PETITION FOR DIVORCE (OR ANNULMENT)

(b) The petition shall be verified by petitioner and shall set forth:

(1) The age, occupation and residence (including county in Delaware) of each party and length of residence in the State, showing compliance with the jurisdictional requirements of subsection (a) of § 1504 of this title;

(2) Address where it is most likely that mail will be received by respondent, or that no such address can be ascertained with reasonable diligence;

(3) Under proper circumstances, that it is unlikely that jurisdiction can be acquired over respondent other than by mailing or publication of notice as provided in § 1508 of this title;

(4) If respondent is a foreign national or has resided in a foreign country within 2 years prior to the filing of the petition, the address of a representative (preferably the nearest) of such foreign country in the United States;

(5) The date of the marriage and the place at which it was registered;

(6) The date on which the parties separated;

(7) The names, ages and addresses of all living children of the marriage and whether the wife is pregnant;

(8) Whether there have been any prior matrimonial proceedings between the parties and, if so, the date, name and place of the court, and the disposition of the same;

(9) An allegation that the marriage is irretrievably broken and how it is characterized; or if the petition is for annulment, averment of the applicable circumstances specified in subsection (a) of § 1506 of this title and that the petition has been filed within the applicable time limit recited in subsection (b) of § 1506 of this title;

(10) Any other relevant facts;

(11) Relief prayed for.

(c) The petition shall be filed either in the county wherein petitioner resides or the county wherein respondent resides.

(d) The petition shall be filed with the Clerk of the Court, along with such deposit to cover costs as the Court may fix, and a praecipe instructing the Clerk how service is to be made or jurisdiction otherwise sought or acquired over respondent.

(e) A petition for divorce may be filed at any time following the separation of the parties if the requirements of § 1504(a) of this title have been satisfied although no ruling shall be made to determine whether to grant a divorce until after the parties have been separated for 6 months; provided, however, that relief under § 1509 of this title shall be available to the parties during the interim.

(f) The relief prayed for under subsection (b)(11) of this section may include, where appropriate under the facts and law, in addition to a prayer for a decree of divorce or annulment, prayers for

other relief that may be available under this title, including, without limitation, prayers for interim relief (§ 1509), alimony (§ 1512), property disposition (§ 1513), resumption of prior name (§ 1514), costs and attorneys' fees (§ 1515), support for a child (subchapter I, Chapter 5) and custody and/or child visitation (subchapter II, Chapter 7).

(g) In any case where there are living children of the marriage, the petitioner shall submit with the petition an affidavit signed by the petitioner showing that the petitioner has read or has been advised of the following children's rights, which shall be set forth in full in said affidavit:

- (1) The right to a continuing relationship with both parents.
- (2) The right to be treated as an important human being, with unique feelings, ideas and desires.
- (3) The right to continuing care and guidance from both parents.
- (4) The right to know and appreciate what is good in each parent without one parent degrading the other.
- (5) The right to express love, affection and respect for each parent without having to stifle that love because of fear of disapproval by the other parent.
- (6) The right to know that the parents' decision to divorce was not the responsibility of the child.
- (7) The right not to be a source of argument between the parents.
- (8) The right to honest answers to questions about the changing family relationships.
- (9) The right to be able to experience regular and consistent contact with both parents and the right to know the reason for any cancellation of time or change of plans.
- (10) The right to have a relaxed, secure relationship with both parents without being placed in a position to manipulate one parent against the other.

(h) In any case where there are living children of the marriage up to the age of 17, the Court shall order that the parties pay for and participate in a "Parenting Education Course" unless the Court, upon motion, determines that participation in the course is deemed not necessary. The "Parenting Education Course" shall be a course which is certified by the Department of Services for Children, Youth and Their Families to meet the goal of educating divorce litigants on the impact on children of the restructuring of families. The course, in order to be certified by the Department of Services for Children, Youth and Their Families, shall consist of at least four (4) hours of instruction and at a minimum provide instruction regarding the following items:

- (1) Information on the developmental stages of children;
- (2) Adjustment of children to parental separation;
- (3) Dispute resolution and conflict management;
- (4) Guidelines for visitation;
- (5) Stress reduction in children; and
- (6) Cooperative parenting.

A litigant who has a demonstrable history of domestic violence shall be ordered to participate in a separate and more intensive course which shall include, at a minimum, the topics required in paragraphs (1) through (6) and education regarding domestic violence, its prevention and its effect upon children.

Parties do not have to attend the same course.

§ 1508. Obtaining jurisdiction over respondent.

(a) After the filing of the petition, jurisdiction may be acquired over respondent in any of the following ways:

(1) By issuance of summons by the Clerk of the Family Court, and service thereof by the sheriff upon respondent, by delivering a copy of the summons, petition and any affidavit to respondent personally or by delivering copies thereof to an agent authorized by appointment or by law to receive service of process;

(2) By appearance of respondent, either personally or by executing and filing an appearance document in a form approved by the Court, with or without issuance of summons;

(3) By appearance of counsel for respondent, with or without issuance of summons;

(4) Under a court rule not inconsistent with this section.

(b) If the petition avers that it is unlikely that jurisdiction can be acquired over respondent except by mailing and publication, or by publication only, whether respondent is a resident or a nonresident of this State, jurisdiction may be acquired over respondent by mailing and publication, or by publication only, under subsection (d) of this section.

(c) If an effort has been made unsuccessfully to obtain jurisdiction over respondent as provided in subsection (a) of this section, then jurisdiction may be acquired over respondent by mailing and publication, or by publication only, under subsection (d) of this section.

(d) When service is to be made upon respondent by mailing and publication, the Clerk of the Family Court shall:

(1) Send a copy of the summons, petition and any affidavit to respondent by registered or certified mail, return receipt requested, to the address that petitioner had averred it is most likely that mail will be received by respondent; and

(2) Cause a notice in the form prescribed by subsection (e) of this section to be published once in a newspaper of general circulation in the county where the action is pending.

If petitioner has averred that he or she knows of no address where it is most likely that mail will be received by respondent there shall be no mailing.

No further notice shall be required unless the Court, deeming the circumstances exceptional, requires further notice.

(e) The form of notice shall be as follows:

NOTICE OF DIVORCE (OR ANNULMENT) ACTION

TO: (John R. Doe), Respondent
FROM: CLERK OF THE FAMILY COURT, (NEW CASTLE) COUNTY, DELAWARE

(Mary C. Doe), petitioner, has brought suit against you for divorce (or annulment) in the Family Court of the State of Delaware in and for (New Castle) County, in Civil Action No., 19 If you do not serve a response to the petition on petitioner's attorney (John C. Dodge, 400 Delaware Avenue, Wilmington, Delaware) within 20 days after the day of publication of this notice as required by statute, the action will be tried without further notice by the Family Court in (Wilmington).

(f) When the petition avers that respondent is a resident of this State, the summons shall be delivered to an officer for service in the county where it appears most likely that service can be effected on respondent.

(g) The expense of mailing and publication shall be taxed as part of the costs of the case.

(h) Original process, whether an original, alias or pluries writ, is returnable 20 days after the issuance of the writ, except that the Court by rule, or by order after application for cause shown, may provide that the writ be returnable sooner or later.

§ 1509. Preliminary injunction; interim orders pending final hearing.

(a) Upon the filing of a petition for divorce or annulment, a preliminary injunction shall be issued against both parties to the action, enjoining them from:

(1) Transferring, encumbering, concealing or in any way disposing of any property except in the usual course of business or for the necessities of life, and requiring the parties to notify the other of any proposed extraordinary expenditures and to account to the Court for all extraordinary expenditures after the preliminary injunction becomes effective;

(2) Molesting or disturbing the peace of the other party;

(3) Removing any natural or adopted child of the parties then residing in Delaware from the jurisdiction of this Court without the prior written consent of the parties or the permission of the Court;

(4) Utilizing credit cards or otherwise incurring any debt for which the other party is or may be liable except in connection with the marital litigation or necessities of life for the benefit of the party or the parties' minor children.

The preliminary injunction shall be effective against the petitioner upon the filing of the petition for divorce and upon the respondent upon service of a copy of the petition.

(b) Petitioner in the petition for divorce or annulment, or by motion filed simultaneously with the petition, or either party by motion filed after the filing of the petition, may move for 1 or more of the following interim orders:

(1) For temporary alimony for himself or herself;

(2) Restraining a party from transferring, encumbering, concealing or in any way disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him or her to notify the moving party of any proposed extraordinary expenditures and to account to the Court for all extraordinary expenditures made after the order is issued;

(3) Enjoining a party from molesting or disturbing the peace of the other party;

(4) Excluding a party from the family home or from the home of the other party even though such party has a legal or equitable interest in the same, upon a showing that physical or emotional harm might otherwise result;

(5) Requiring a party to make available to his or her spouse designated personal property and/or fixtures, even though titled in such party's name alone or jointly with someone else, upon such terms and conditions as the Court may impose;

(6) Requiring 1 party to pay such sum to the other party as deemed necessary to defray the other party's expenses in conducting the proceedings;

(7) For support of a child under Chapter 5 of this title;

(8) For custody and/or visitation of a child under Chapter 7 of this title.

(c) A motion shall be accompanied by an affidavit setting forth the factual basis for the motion and any amounts of money requested. The Court may issue any of the above orders solely or

collectively without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury would result to the moving party if an order were not issued until the time for responding has elapsed.

(d) Where appropriate under the facts and law, relief afforded a party under paragraphs (1), (3), (4) and/or (5) of subsection (b) of this section may be continued and/or included in the relief granted under § 1518(b) of this title.

§ 1510. Enforcement of interim orders.

Whenever there is exhibited to any duly authorized sheriff, constable or police officer a certified copy of an order issued by the Court in an action for divorce, or annulment, enjoining any person from threatening, beating, striking, assaulting any other person, or requiring the person to remove himself or herself from certain premises and to refrain from loitering, entering or remaining near the premises thereafter and the copy of the order shows under signature of the person so serving that a copy of the order has been properly served upon the person named in the order and the person named commits an apparent violation of its terms, it shall be the duty of the sheriff, constable or police officer to take him or her immediately before the Court issuing the order or if that Court is not in session then to the nearest jail until bail is fixed and provided or until the convening of its next session, to await further action for the violation.

§ 1511. Response; counterclaim; prayers; reply to counterclaim.

(a) Respondent may file a verified response, move or otherwise plead in answer to the petition, and may counterclaim for divorce or annulment against petitioner, within 20 days after personal service, receipt of service by mail, appearance personally or by counsel, or the date of publication of notice.

(b) Respondent may seek an award of interim relief under § 1509 of this title, alimony where appropriate under § 1512 of this title, disposition of property, attorney's fees, resumption of former name or any other relief available to a petitioner.

(c) Petitioner may reply, move or otherwise plead in response to a counterclaim for divorce or annulment within 20 days after service of the counterclaim.

(d) For good cause shown, the Court may extend the time stipulated for responding to the petition or a counterclaim.

(e) In any case where there are living children of the marriage, the respondent shall submit with the response, or other responsive pleading, an affidavit signed by the respondent showing that the respondent has read or been advised of the children's rights set forth in § 1507(g) of this title, which rights shall be set forth in full in said affidavit.

§ 1512. Alimony in divorce and annulment actions; award; limitations.

(a) The Court may award interim alimony to a dependent party during the pendency of an action for divorce or annulment.

(b) A party may be awarded alimony only if he or she is a dependent party after consideration of all relevant factors contained in subsection (c) of this section in that he or she:

(1) Is dependent upon the other party for support and the other party is not contractually or otherwise obligated to provide that support after the entry of a decree of divorce or annulment;

(2) Lacks sufficient property, including any award of marital property made by the Court, to provide for his or her reasonable needs; and

(3) Is unable to support himself or herself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that he or she not be required to seek employment.

(c) The alimony order shall be in such amount and for such time as the Court deems just, without regard to marital misconduct, after consideration of all relevant factors, including, but not limited to:

(1) The financial resources of the party seeking alimony, including the marital or separate property apportioned to him or her, and his or her ability to meet all or part of his or her reasonable needs independently;

(2) The time necessary and expense required to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment;

(3) The standard of living established during the marriage;

(4) The duration of the marriage;

(5) The age, physical and emotional condition of both parties;

(6) Any financial or other contribution made by either party to the education, training, vocational skills, career or earning capacity of the other party;

(7) The ability of the other party to meet his or her needs while paying alimony;

(8) Tax consequences;

(9) Whether either party has foregone or postponed economic, education or other employment opportunities during the course of the marriage; and

(10) Any other factor which the Court expressly finds is just and appropriate to consider.

(d) A person shall be eligible for alimony for a period not to exceed 50% of the term of the marriage with the exception that if a party is married for 20 years or longer, there shall be no time limit as to his or her eligibility; however, the factors contained in subsection (c) of this section shall apply and shall be considered by the Court.

(e) Any person awarded alimony has a continuing affirmative obligation to make good faith efforts to seek appropriate vocational training, if necessary, and employment unless the Court specifically finds, after a hearing, that it would be inequitable to require a person awarded alimony to do so (i) at any time, due to (A) a severe and incapacitating mental or physical illness or disability or (B) his or her age, or (ii) immediately, after consideration of the needs of a minor child or children living with him or her.

(f) A party who has in writing before, during or after the marriage waived or released his or her right to alimony shall have no remedy under this section.

(g) Unless the parties agree otherwise in writing, the obligation to pay future alimony is terminated upon the death of either party or the remarriage or cohabitation of the party receiving alimony. As used in this section, "cohabitation" means regularly residing with an adult of the same or opposite sex, if the parties hold themselves out as a couple, and regardless of whether the relationship confers a financial benefit on the party receiving alimony. Proof of sexual relations is admissible but not required to prove cohabitation. A party receiving alimony shall promptly notify the other party of his or her remarriage or cohabitation.

§ 1513. Disposition of marital property; imposition of lien; insurance policies.

(a) In a proceeding for divorce or annulment, the Court shall, upon request of either party, equitably divide, distribute and assign the marital property between the parties without regard to marital misconduct, in such proportions as the Court deems just after considering all relevant factors including:

- (1) The length of the marriage;
- (2) Any prior marriage of the party;
- (3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties;
- (4) Whether the property award is in lieu of or in addition to alimony;
- (5) The opportunity of each for future acquisitions of capital assets and income;
- (6) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker, husband, or wife;
- (7) The value of the property set apart to each party;
- (8) The economic circumstances of each party at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the party with whom any children of the marriage will live;
- (9) Whether the property was acquired by gift, except those gifts excluded by subsection (b)(1) of this section;
- (10) The debts of the parties; and
- (11) Tax consequences.

(b) For purposes of this chapter only, "marital property" means all property acquired by either party subsequent to the marriage except:

(1) Property acquired by an individual spouse by bequest, devise or descent or by gift, except gifts between spouses, provided the gifted property is titled and maintained in the sole name of the donee spouse, or a gift tax return is filed reporting the transfer of the gifted property in the sole name of the donee spouse or a notarized document, executed before or contemporaneously with the transfer, is offered demonstrating the nature of the transfer.

(2) Property acquired in exchange for property acquired prior to the marriage;

(3) Property excluded by valid agreement of the parties; and

(4) The increase in value of property acquired prior to the marriage.

(c) All property acquired by either party subsequent to the marriage is presumed to be marital property regardless of whether title is held individually or by the parties in some form of co-ownership such as joint tenancy, tenancy in common or tenancy by the entirety. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in paragraphs (1) through (4) of subsection (b) of this section. Property transferred by gift from 1 spouse to the other during the marriage is marital property.

(d) The Court may also impose a lien or charge upon the marital property assigned to a party as security for the payment of alimony or other allowance or award for the other party.

(e) The Court may also direct the continued maintenance and beneficiary designations of existing policies insuring the life of either party. The Court's power under this subsection shall extend only to policies originally purchased during the marriage and owned by or within the effective control of either party.

(f) The Court may order a party to execute and deliver any deed, document or other paper necessary to effectuate an order entered under this chapter, and if the party so ordered fails to do

what he or she has been ordered to do, the Court, in addition to any penalty or sanction it may decide to impose upon that party for such disobedience, may direct the Clerk of the Court to do what the party was ordered to do, and such performance by the Clerk shall be as effective as the performance of the party would have been.

§ 1514. Resumption of maiden or former name.

The Court, upon the request of a party by pleading or motion, may order that such party resume a maiden or former name.

§ 1515. Attorney's fees.

The Court from time to time after considering the financial resources of both parties may order a party to pay all or part of the cost to the other party of maintaining or defending any proceeding under this title and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after the entry of judgment. The Court may order that the amount be paid directly to the attorney, who may enforce the order in his or her name.

§ 1516. Hearings; use of masters; impoundment; assignment of counsel.

(a) All hearings and trials shall be private, but for reasons appearing sufficient to the Court any hearing or trial may be opened to any person who has a direct and legitimate interest in the particular case, or a legitimate educational or research interest in the work of the Court.

(b) A judge, sitting without a jury, shall conduct all hearings and trials where there is a contest; but, pursuant to Court rule, hearings in uncontested proceedings may be conducted by a master, sitting without a jury, in accordance with § 913 of Title 10.

(c) Whenever it seems appropriate, in the interest of justice, the Court may designate a disinterested attorney to defend, or otherwise participate in, a proceeding before the Court, and a fee for such attorney shall be taxed as part of the costs.

(d) No record or evidence in any case shall be impounded or access thereto refused.

§ 1517. Contested and noncontested petitions; opportunity for counseling; review of record; disposition of prayers for relief.

(a) Whenever the petition for divorce or annulment is not contested by respondent, the allegations thereof are presumed to be accurate and true, and the Court shall rule upon the petition either after a hearing at which only petitioner need testify, or without a hearing after the submission of a request for finalization and affidavit which reaffirms the petition and verifies service of process and military status of the respondent. If petitioner's testimony or the affidavit fails to support the petition in any essential respect, the Court may deny the petition or require corroborating testimony or other evidence before ruling thereon.

(b) In contested cases, after a hearing the Court shall:

(1) Rule upon the petition; or

(2) Continue the matter with the consent of both parties for further hearing not more than 60 days later so that the parties may seek counseling, either with a qualified private counselor or an accredited counseling agency, public or private. No party who objects shall be forced to submit to counseling, and all counseling or interviews shall be confidential and privileged and only the fact that further efforts at reconciliation are impractical or not in the interest of the parties shall be reported to the Court. At the adjourned hearing the Court shall finally determine whether the marriage is irretrievably broken.

(c) Before entering a decree the Court shall review the record to determine that:

- (1) The averments of the petition satisfy §§ 1504(a), 1505 or 1506, and 1507 of this title;
 - (2) Jurisdiction has been acquired over respondent under § 1508 of this title;
 - (3) In uncontested cases, whether the time for respondent to file a responsive pleading has expired;
 - (4) The parties to a divorce proceeding have continued to be separated since the commencement of this action, except as § 1505(e) of this title may apply;
 - (5) A certified copy of the parties' marriage record has been filed; and
 - (6) The affidavit of nonmilitary service, wherever required by federal statute, has been filed.
- (d) Where either party has requested property disposition, alimony or other relief provided for in this title, and a decree of divorce or annulment shall be entered, or if such a decree is refused and, nevertheless, the Court deems it appropriate to enter an order concerning some or all of the relief requested, the Court shall finally determine such requests for relief.

§ 1518. Decree in divorce or annulment proceedings; costs; notice of entry; effect on mentally incompetent spouse; effect on subsequent petitions; temporary alimony.

(a) A decree granting or denying a petition for divorce or annulment is final when entered, subject to the right of appeal. An appeal that does not challenge the decree of divorce or annulment, but challenges only rulings with respect to relief awarded under other sections of this chapter, or other matters incidental or collateral to such decree, shall not delay the finality of the decree of divorce or annulment, and the parties may remarry while the appeal is pending.

(b) Whenever the Court enters a decree granting a petition for divorce or annulment, a certified copy of such decree shall be made available to the parties within 30 days after such ruling; but following a contested proceeding, such a copy of the decree shall only be made available to the parties 30 days after such ruling, and after the furnishing of such proof as the Court may require that no appeal challenging the decree of divorce or annulment is pending.

(c) In the decree granting or denying a petition for divorce or annulment, or by separate order or orders preceding or following such decree, the Court shall dispose of all other prayers for relief, where appropriate under the facts and law; but an application for such relief and a hearing thereon must be presented in the petition or response, or by motion after notice to the other party prior to the entry or denial of such decree.

(d) Court costs, including any fee for the services of an attorney allowed by the Court, shall be taxed by the Court at or about the time of the granting or denial of the decree of divorce or annulment, at the time of disposition of other prayers for relief in accordance with subsection (c) of this section, following the disposition of an appeal, or at such other time or times as the Court may deem appropriate.

(e) The Clerk of the Family Court shall give notice of the entry of a decree of divorce or annulment:

(1) If the marriage is registered in this State, to the clerk of the peace of the county where the marriage is registered and such clerk shall enter the fact of divorce or annulment in his or her records; or

(2) If the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he or she enter the fact of divorce or annulment in the appropriate record.

(f) No decree that may enter shall relieve a spouse from any obligation imposed by law as a result of the marriage for the support or maintenance of a spouse adjudicated to be mentally incompetent prior to the decree, unless such spouse has sufficient property or means of support.

(g) A decree denying a petition for divorce or annulment shall not foreclose a subsequent petition for such relief if the subsequent petition involves factual or legal premises not directly or by necessary implication decided by the decree on the former petition.

(h) Every decree granting a petition for divorce or annulment shall include the social security number of each party.

§ 1519. Modification or termination of decree or order; termination of alimony; enforcement of alimony order.

(a) A decree or separate order entered under § 1518 of this title may be modified or terminated only as follows:

(1) Support for a child, only as provided in Chapter 5 of this title, or otherwise;

(2) Custody and/or visitation of a child, only as provided in Chapter 7 of this title, or otherwise;

(3) Property disposition, only upon a showing of circumstances that would justify the opening or vacation of a judgment under the Rules of the Superior Court of this State;

(4) Alimony or any other relief awarded, only upon a showing of real and substantial change of circumstances.

(b) Unless otherwise agreed by the parties in writing and expressly provided in the decree, the obligation to pay future alimony is terminated upon the death of either party or the remarriage of the party receiving alimony.

(c) Any alimony order entered pursuant to § 1512 of this title shall be enforced in this State exclusively by the Family Court in the county wherein the respondent resides or is found, or in the county where petitioner resides if respondent does not reside and cannot be found in this State, regardless of whether such petitioner was the petitioner or the respondent in the divorce action, and such Family Court, on proper showing of either of such petitioner or such respondent or on its own motion, may modify or terminate support obligations formerly decreed by the Superior Court.

§ 1520. Independence of provisions of decree or temporary order.

If a party fails to comply with a provision of a decree or temporary order, the obligation of the other party to make alimony payments is not suspended; but he or she may move the Court to grant an appropriate order.

§ 1521. Decrees of courts of other states and countries.

Full faith and credit shall be given in all the courts of this State to a decree of divorce or annulment of marriage by a court of competent jurisdiction in another state, territory or possession of the United States. Nothing herein contained shall be construed to limit the power of any court of this State to give such effect to a decree of divorce or annulment by a court of a foreign country as may be justified by the rules of international comity.

§ 1522. Procedural rights.

(a) All parties to any of the proceedings brought pursuant to this chapter shall possess all the procedural rights which those parties would have heretofore possessed in any of the proceedings brought pursuant to this chapter in the Superior Court of this State including but not limited to the following:

(1) Right to institute and retain complete control of the suit;

(2) Right to select counsel;

(3) Right to appeal to the Supreme Court of this State on the record from interlocutory or final orders for judgment; such appeal shall be in the form and manner provided by the rules of the Supreme Court.

(b) A complete record shall be made of all proceedings in which testimony is taken under this section by a court stenographer, tape recorder or other device which method shall be at the discretion of the Court.

§ 1523. Time for appeal.

No appeal from an interim or final decree, judgment or order entered pursuant to this chapter shall be received or entertained unless the praecipe, notice of appeal or other document or documents required for the appeal is or are duly filed with the proper appellate court within 30 days after the date of the same.