

Virginia Divorce Laws

Title 20 - DOMESTIC RELATIONS.

Chapter 6 - Divorce, Affirmation and Annulment

§ 20-89.1. Suit to annul marriage.

(a) When a marriage is alleged to be void or voidable for any of the causes mentioned in §§ 20-13, 20-38.1, 20-45.1 or by virtue of fraud or duress, either party may institute a suit for annulling the same; and upon proof of the nullity of the marriage, it shall be decreed void by a decree of annulment.

(b) In the case of natural or incurable impotency of body existing at the time of entering into the marriage contract, or when, prior to the marriage, either party, without the knowledge of the other, had been convicted of a felony, or when, at the time of the marriage, the wife, without the knowledge of the husband, was with child by some person other than the husband, or where the husband, without knowledge of the wife, had fathered a child born to a woman other than the wife within ten months after the date of the solemnization of the marriage, or where, prior to the marriage, either party had been, without the knowledge of the other, a prostitute, a decree of annulment may be entered upon proof, on complaint of the party aggrieved.

(c) No annulment for a marriage alleged to be void or voidable under subsection (b) of § 20-45.1, subsection (b) of this section or by virtue of fraud or duress shall be decreed if it appears that the party applying for such annulment has cohabited with the other after knowledge of the facts giving rise to what otherwise would have been grounds for annulment; and, in no event shall any such decree be entered if the parties had been married for a period of two years prior to the institution of such suit for annulment.

(d) A party who, at the time of such marriage as is mentioned in § 20-48 or § 20-49, was capable of consenting with a party not so capable, shall not be permitted to institute a suit for the purpose of annulling such marriage.

§ 20-90. Suit to affirm marriage.

When the validity of any marriage shall be denied or doubted by either of the parties, the other party may institute a suit for affirmance of the marriage, and upon due proof of the validity thereof, it shall be decreed to be valid, and such decree shall be conclusive upon all persons concerned.

§ 20-91. Grounds for divorce from bond of matrimony; contents of decree.

A. A divorce from the bond of matrimony may be decreed:

(1) For adultery; or for sodomy or buggery committed outside the marriage;

(3) Where either of the parties subsequent to the marriage has been convicted of a felony, sentenced to confinement for more than one year and confined for such felony subsequent to such conviction, and cohabitation has not been resumed after knowledge of such confinement (in which case no pardon granted to the party so sentenced shall restore such party to his or her conjugal rights);

(6) Where either party has been guilty of cruelty, caused reasonable apprehension of bodily hurt, or willfully deserted or abandoned the other, such divorce may be decreed to the innocent party after a period of one year from the date of such act; or

(9) (a) On the application of either party if and when the husband and wife have lived separate and apart without any cohabitation and without interruption for one year. In any case where the parties have entered into a separation agreement and there are no minor children either born of the parties, born of either party and adopted by the other or adopted by both parties, a divorce may be decreed on application if and when the husband and wife have lived separately and apart without cohabitation and without interruption for six months. A plea of res adjudicata or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground; nor shall it be a bar that either party has been adjudged insane, either before or after such separation has commenced, but at the expiration of one year or six months, whichever is applicable, from the commencement of such separation, the grounds for divorce shall

be deemed to be complete, and the committee of the insane defendant, if there be one, shall be made a party to the cause, or if there be no committee, then the court shall appoint a guardian ad litem to represent the insane defendant.

(b) This subdivision (9) shall apply whether the separation commenced prior to its enactment or shall commence thereafter. Where otherwise valid, any decree of divorce hereinbefore entered by any court having equity jurisdiction pursuant to this subdivision (9), not appealed to the Supreme Court of Virginia, is hereby declared valid according to the terms of said decree notwithstanding the insanity of a party thereto.

(c) A decree of divorce granted pursuant to this subdivision (9) shall in no way lessen any obligation any party may otherwise have to support the spouse unless such party shall prove that there exists in the favor of such party some other ground of divorce under this section or § 20-95.

B. A decree of divorce shall include each party's social security number, or other control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.

§ 20-93. Insanity of guilty party after commencement of desertion no defense.

When the suit is for divorce from the bond of matrimony for willful desertion or abandonment, it shall be no defense that the guilty party has, since the commencement of such desertion, and within one year thereafter, become and has been adjudged insane, but at the expiration of one year from the commencement of such desertion the ground for divorce shall be deemed to be complete, and the committee of the insane defendant, if there be one, shall be made a party to the cause, or if there be no committee, then the court shall appoint a guardian ad litem to represent the insane defendant. This section shall apply whether the desertion or abandonment commenced heretofore or shall commence hereafter.

§ 20-94. Effect of cohabitation after knowledge of adultery, sodomy or buggery; lapse of five years.

When the suit is for divorce for adultery, sodomy, or buggery, the divorce shall not be granted, if it appear that the parties voluntarily cohabited after the knowledge of the fact of adultery, sodomy or buggery, or that it occurred more than five years before the institution of the suit, or that it was committed by the procurement or connivance of the party alleging such act.

§ 20-95. Grounds for divorces from bed and board.

A divorce from bed and board may be decreed for cruelty, reasonable apprehension of bodily hurt, willful desertion or abandonment.

§ 20-97. Domicile and residential requirements for such suits.

No suit for annulling a marriage or for divorce shall be maintainable, unless one of the parties is and has been an actual bona fide resident and domiciliary of this Commonwealth for at least six months preceding the commencement of the suit; nor shall any suit for affirming a marriage be maintainable, unless one of the parties be domiciled in, and is and has been an actual bona fide resident of this Commonwealth at the time of bringing such suit.

For the purposes of this section only:

1. If a member of the armed forces of the United States has been stationed or resided in this Commonwealth and has lived for a period of six months or more in this Commonwealth next preceding the commencement of the suit, then such person shall be presumed to be domiciled in and to have been a bona fide resident of this Commonwealth during such period of time.

2. Being stationed or residing in the Commonwealth includes, but is not limited to, a member of the armed forces being stationed or residing upon a ship having its home port in this Commonwealth or at an air, naval or military base located within this Commonwealth over which the United States enjoys exclusive federal jurisdiction.

3. Any member of the armed forces of the United States who (i) at the time the suit is commenced is stationed in any territory or foreign country and (ii) was domiciled in the Commonwealth for the six month period immediately preceding his being stationed in such territory or country, shall be deemed to have been domiciled in and to have been a bona fide resident of the Commonwealth during the six months preceding commencement of a suit for annulment or divorce.

4. Upon separation of the husband and wife, the wife may establish her own and separate domicile, though the separation may have been caused under such circumstances as would entitle the wife to a divorce or annulment.

§ 20-99. How such suits instituted and conducted; costs.

Such suit shall be instituted and conducted as other suits in equity, except as otherwise provided in this section:

1. No divorce, annulment, or affirmation of a marriage shall be granted on the uncorroborated testimony of the parties or either of them.
2. Whether the defendant answers or not, the cause shall be heard independently of the admissions of either party in the pleadings or otherwise.
3. Process or notice in such proceedings shall be served in this Commonwealth by any of the methods prescribed in § 8.01-296 by any person authorized to serve process under § 8.01-293. Service may be made on a nonresident by any of the methods prescribed in § 8.01-296 by any person authorized to serve process under § 8.01-320.
4. In cases where such suits have been commenced and an appearance has been made on behalf of the defendant by counsel, then notices to take depositions and of hearings, motions, and other proceedings except contempt proceedings, may be served by delivering or mailing a copy to counsel for opposing party, the foot of such notices bearing either acceptance of service or a certificate of counsel in compliance with the Rules of the Supreme Court of Virginia. "Counsel for opposing party" shall include a pro se party who (i) has entered a general appearance in person or by filing a pleading or endorsing an order of withdrawal of that party's counsel, or (ii) has signed a pleading in the case or who has notified the other parties and the clerk that he appears in the case.
5. Costs may be awarded to either party as equity and justice may require.

§ 20-99.1:1. How defendant may accept service; waive service.

A. A defendant in such suits may accept service of process by signing the proof of service before any officer authorized to administer oaths. This proof of service shall, when filed with the papers in the suit, have the same effect as if it had been served upon the defendant by a person authorized to serve process. In addition, service of process may be accepted or waived by any party, upon voluntary execution of a notarized writing specifying an intent to accept or waive any particular process, or by a defendant by filing an answer in the suit. Such notarized writing may be provided in the clerk's office of any circuit court and may be signed by such party to the proceedings before any clerk or deputy clerk of any circuit court, under oath, or may be drafted and filed by counsel in the proceeding, and shall, when filed with the papers in the suit, have the same effect as if the process specified had been personally served upon the defendant by a person authorized to serve process. The court may enter any order or decree without further notice unless a defendant has filed an answer in the suit.

B. When service is accepted pursuant to this section by a nonresident person out of the Commonwealth, such service shall have the same effect as an order of publication duly executed.

C. Any process served outside the Commonwealth executed in such manner as provided for in this section is validated.

§ 20-99.2. Service in divorce and annulment cases.

A. In any suit for divorce or annulment or affirmation of a marriage, process may be served in any manner authorized under § 8.01-296.

B. Any such process served prior to July 1, 1984, shall not be invalidated solely because service was made as prescribed under § 8.01-296.

§ 20-102. When not necessary to allege or prove offer of reconciliation.

It shall not be necessary, in any suit for divorce from the bond of matrimony or from bed and board upon the ground of willful desertion or abandonment, to allege or prove an offer of reconciliation.

§ 20-103. Court may make orders pending suit for divorce, custody or visitation, etc.

A. In suits for divorce, annulment and separate maintenance, and in proceedings arising under subdivision A 3 or subsection L of § 16.1-241, the court having jurisdiction of the matter may, at any time pending a suit pursuant to this chapter, in the discretion of such court, make any order that may be proper (i) to compel a spouse to pay any sums necessary for the maintenance and support of the petitioning spouse, including an order that the other spouse provide health care coverage for the petitioning spouse, unless it is shown that such coverage cannot be obtained, (ii) to enable such spouse to carry on the suit, (iii) to prevent either spouse from imposing any restraint on the personal liberty of the other spouse, (iv) to provide for the custody and maintenance of the minor children of the parties, including an order that either party provide health care coverage for the children, (v) to provide support, calculated in accordance with § 20-108.2, for any child of the parties to whom a duty of support is owed and to continue to support any child over the age of 18 who meets the requirements set forth in subsection C of § 20-124.2, (vi) for the exclusive use and possession of the family residence during the pendency of the suit, (vii) to preserve the estate of either spouse, so that it be forthcoming to meet any decree which may be made in the suit, or (viii) to compel either spouse to give security to abide such decree. The parties to any petition where a child whose custody, visitation, or support is contested shall show proof that they have attended within the 12 months prior to their court appearance or that they shall attend within 45 days thereafter an educational seminar or other like program conducted by a qualified person or organization approved by the court except that the court may require the parties to attend such seminar or program in uncontested cases only if the court finds good cause. The seminar or other program shall be a minimum of four hours in length and shall address the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution and financial responsibilities. Once a party has completed one educational seminar or other like program, the required completion of additional programs shall be at the court's discretion. Parties under this section shall include natural or adoptive parents of the child, or any person with a legitimate interest as defined in § 20-124.1. The fee charged a party for participation in such program shall be based on the party's ability to pay; however, no fee in excess of \$50 may be charged. Whenever possible, before participating in mediation or alternative dispute resolution to address custody, visitation or support, each party shall have attended the educational seminar or other like program. The court may grant an exemption from attendance of such program for good cause shown or if there is no program reasonably available. Other than statements or admissions by a party admitting criminal activity or child abuse, no statement or admission by a party in such seminar or program shall be admissible into evidence in any subsequent proceeding.

B. In addition to the terms provided in subsection A, upon a showing by a party of reasonable apprehension of physical harm to that party by such party's family or household member as that term is defined in § 16.1-228, and consistent with rules of the Supreme Court of Virginia, the court may enter an order excluding that party's family or household member from the jointly owned or jointly rented family dwelling. In any case where an order is entered under this paragraph, pursuant to an ex parte hearing, the order shall not exclude a family or household member from the family dwelling for a period in excess of 15 days from the date the order is served, in person, upon the person so excluded. The order may provide for an extension of time beyond the 15 days, to become effective automatically. The person served may at any time file a written motion in the clerk's office requesting a hearing to dissolve or modify the order. Nothing in this section shall be construed to prohibit the court from extending an order entered under this subsection for such longer period of time as is deemed appropriate, after a hearing on notice to the parties.

C. In cases other than those for divorce in which a custody or visitation arrangement for a minor child is sought, the court may enter an order providing for custody, visitation or maintenance pending the suit as provided in subsection A. The order shall be directed to either parent or any person with a legitimate interest who is a party to the suit.

D. Orders entered pursuant to this section which provide for custody or visitation arrangements pending the suit shall be made in accordance with the standards set out in Chapter 6.1 (§ 20-124.1 et seq.) of this title. Orders entered pursuant to subsection B shall be certified by the clerk and forwarded as soon as possible to the local police department or sheriff's office which shall, on the date of receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia crime information network system established and maintained by the Department of State Police pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. If the order is later dissolved or modified, a copy of the dissolution or modification shall also be certified, forwarded and entered in the system as described above.

E. An order entered pursuant to this section shall have no presumptive effect and shall not be determinative when adjudicating the underlying cause.

§ 20-104. Order of publication against nonresident defendant.

In any suit for annulment, for divorce, either a vinculo matrimonii or a mensa et thoro, or for affirmance of a marriage, an affidavit shall be filed that the defendant is not a resident of the Commonwealth of Virginia, or that diligence has been used by or on behalf of the plaintiff to ascertain in what county or city such defendant is, without effect, an order of publication shall be entered against such defendant by the court, or by the clerk of the court wherein such suit is pending, either in term time or vacation, which order shall state the object of the suit and the grounds thereof, and the order of publication shall be published as required by law. No depositions in the suit shall be commenced until at least ten days shall have elapsed after the order of publication has been duly published as required by law.

All annulments or divorces heretofore granted in suits in which the defendant was proceeded against by an order of publication which required the defendant to appear within ten days after due publication thereof, and in which depositions were taken less than fifteen days, but not less than ten days, after such due publication and in suits in which the defendant was proceeded against by an order of publication issued on an affidavit that diligence had been used by or on behalf of the plaintiff to ascertain in what county or city such defendant was, without effect, or wherein the order of publication was entered by the court, are hereby validated and declared to be binding upon the parties to such suit, when the other proceedings therein were regular and the annulment or divorce otherwise valid.

The cost of such publication shall be paid by the petitioner or applicant.

§ 20-104.1. Orders of publication may be combined.

Orders of publication as provided for in § 20-104 in any two or more suits for annulment or divorce may be combined into a single order to be published as required by law; provided that, at such time as the clerk may direct the plaintiff in each case shall pay to the clerk a pro rata share of the expense of such publication. Payments made by any plaintiff shall be subject to the provisions of § 20-99 as to costs.

§ 20-105. Permissible form for orders of publication.

Any orders of publication under the provisions of § 20-104 may be substantially in the form following:

Virginia: In the Court of ,
. , 20.

(Here set forth Style of Cause)

The object of this suit is to obtain (an annulment of marriage) (a divorce from bed and board) (a divorce from the bond of matrimony) from the defendant on the ground of ,

(here set forth grounds)

.
(here set forth other relief prayed for, if any)

.
(here set forth the styles and objects of the suits for divorce or annulment combined)

It appearing from an affidavit (that the defendant(s) is not a resident (are not residents) of this Commonwealth,) (or) (that diligence has been used by or on behalf of plaintiff(s) to ascertain in what county or city the defendant(s) is (are), without effect,) it is ordered that the defendant appear before this court (within ten days after due publication of this notice) (before , 20.) and protect (his) (her) (their) interests herein.

An Extract-Teste:

. p.q.
..... (Clerk)

§ 20-105.1. Alternative procedures.

The provisions of Title 8.01 for orders of publication shall be construed as alternatives to the procedures set forth in §§ 20-104 through 20-105 and not in conflict therewith.

§ 20-106. Testimony may be required to be given orally; how certified; same footing as deposition.

In any suit for divorce the trial court may require the whole or any part of the testimony to be given orally in open court, and if either party desires it, such testimony and the rulings of the court on the exceptions thereto, if any, shall be reduced to writing, and the judge shall certify that such evidence was given before him and such rulings made. When so certified the same shall stand on the same footing as a deposition regularly taken in the cause; provided, however, that no such oral evidence shall be given or heard unless and until after such notice to the adverse party as is required by law to be given of the taking of depositions, or when there has been no service of process within this Commonwealth upon, or appearance by the defendant against whom such testimony is sought to be introduced.

§ 20-107.1. Court may decree as to maintenance and support of spouses.

A. Pursuant to any proceeding arising under subsection L of § 16.1-241 or upon the entry of a decree providing (i) for the dissolution of a marriage, (ii) for a divorce, whether from the bond of matrimony or from bed and board, (iii) that neither party is entitled to a divorce, or (iv) for separate maintenance, the court may make such further decree as it shall deem expedient concerning the maintenance and support of the spouses. However, the court shall have no authority to decree maintenance and support payable by the estate of a deceased spouse.

B. Any maintenance and support shall be subject to the provisions of § 20-109, and no permanent maintenance and support shall be awarded from a spouse if there exists in such spouse's favor a ground of divorce under the provisions of subdivision (1) of § 20-91. However, the court may make such an award notwithstanding the existence of such ground if the court determines from clear and convincing evidence, that a denial of support and maintenance would constitute a manifest injustice, based upon the respective degrees of fault during the marriage and the relative economic circumstances of the parties.

C. The court, in its discretion, may decree that maintenance and support of a spouse be made in periodic payments for a defined duration, or in periodic payments for an undefined duration, or in a lump sum award, or in any combination thereof.

D. In addition to or in lieu of an award pursuant to subsection C, the court may reserve the right of a party to receive support in the future. In any case in which the right to support is so reserved, there shall be a rebuttable presumption that the reservation will continue for a period equal to 50 percent of the length of time between the date of the marriage and the date of separation. Once granted, the duration of such a reservation shall not be subject to modification.

E. The court, in determining whether to award support and maintenance for a spouse, shall consider the circumstances and factors which contributed to the dissolution of the marriage, specifically including adultery and any other ground for divorce under the provisions of subdivision (3) or (6) of § 20-91 or § 20-95. In determining the nature, amount and duration of an award pursuant to this section, the court shall consider the following:

1. The obligations, needs and financial resources of the parties, including but not limited to income from all pension, profit sharing or retirement plans, of whatever nature;
2. The standard of living established during the marriage;
3. The duration of the marriage;
4. The age and physical and mental condition of the parties and any special circumstances of the family;
5. The extent to which the age, physical or mental condition or special circumstances of any child of the parties would make it appropriate that a party not seek employment outside of the home;
6. The contributions, monetary and nonmonetary, of each party to the well-being of the family;
7. The property interests of the parties, both real and personal, tangible and intangible;
8. The provisions made with regard to the marital property under § 20-107.3;
9. The earning capacity, including the skills, education and training of the parties and the present employment opportunities for persons possessing such earning capacity;

10. The opportunity for, ability of, and the time and costs involved for a party to acquire the appropriate education, training and employment to obtain the skills needed to enhance his or her earning ability;

11. The decisions regarding employment, career, economics, education and parenting arrangements made by the parties during the marriage and their effect on present and future earning potential, including the length of time one or both of the parties have been absent from the job market;

12. The extent to which either party has contributed to the attainment of education, training, career position or profession of the other party; and

13. Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

F. In contested cases in the circuit courts, any order granting, reserving or denying a request for spousal support shall be accompanied by written findings and conclusions of the court identifying the factors in subsection E which support the court's order. If the court awards periodic support for a defined duration, such findings shall identify the basis for the nature, amount and duration of the award and, if appropriate, a specification of the events and circumstances reasonably contemplated by the court which support the award.

G. For purposes of this section and § 20-109, "date of separation" means the earliest date at which the parties are physically separated and at least one party intends such separation to be permanent provided the separation is continuous thereafter and "defined duration" means a period of time (i) with a specific beginning and ending date or (ii) specified in relation to the occurrence or cessation of an event or condition other than death or termination pursuant to § 20-110.

H. Where there are no minor children whom the parties have a mutual duty to support, an order directing the payment of spousal support, including those orders confirming separation agreements, entered on or after October 1, 1985, whether they are original orders or modifications of existing orders, shall contain the following:

1. If known, the name, date of birth and social security number of each party and, unless otherwise ordered, each party's residential and, if different, mailing address, residential and employer telephone number, driver's license number, and the name and address of his employer; however, when a protective order has been issued or the court otherwise finds reason to believe that a party is at risk of physical or emotional harm from the other party, information other than the name of the party at risk shall not be included in the order;

2. The amount of periodic spousal support expressed in fixed sums, together with the payment interval, the date payments are due, and the date the first payment is due;

3. A statement as to whether there is an order for health care coverage for a party;

4. If support arrearages exist, (i) to whom an arrearage is owed and the amount of the arrearage, (ii) the period of time for which such arrearage is calculated, and (iii) a direction that all payments are to be credited to current spousal support obligations first, with any payment in excess of the current obligation applied to arrearages;

5. If spousal support payments are ordered to be paid directly to the obligee, and unless the court for good cause shown orders otherwise, the parties shall give each other and the court at least 30 days' written notice, in advance, of any change of address and any change of telephone number within 30 days after the change; and

6. Notice that in determination of a spousal support obligation, the support obligation as it becomes due and unpaid creates a judgment by operation of law.

§ 20-107.2. Court may decree as to custody and support of minor children.

Upon entry of a decree providing (i) for the dissolution of a marriage, (ii) for a divorce, whether from the bond of matrimony or from bed and board, (iii) that neither party is entitled to a divorce, or (iv) for separate maintenance, the court may make such further decree as it shall deem expedient concerning the custody or visitation and support of the minor children of the parties as provided in Chapter 6.1 (§ 20-124.1 et seq.) of Title 20, including an order that either party provide health care coverage.

§ 20-107.3. Court may decree as to property of the parties.

A. Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce from the bond of matrimony, or upon the filing with the court as provided in subsection J of a certified copy of a final divorce decree obtained without the Commonwealth, the court, upon request of either party,

shall determine the legal title as between the parties, and the ownership and value of all property, real or personal, tangible or intangible, of the parties and shall consider which of such property is separate property, which is marital property, and which is part separate and part marital property in accordance with subdivision A 3. The court shall determine the value of any such property as of the date of the evidentiary hearing on the evaluation issue. Upon motion of either party made no less than 21 days before the evidentiary hearing the court may, for good cause shown, in order to attain the ends of justice, order that a different valuation date be used. The court, on the motion of either party, may retain jurisdiction in the final decree of divorce to adjudicate the remedy provided by this section when the court determines that such action is clearly necessary, and all decrees heretofore entered retaining such jurisdiction are validated.

1. Separate property is (i) all property, real and personal, acquired by either party before the marriage; (ii) all property acquired during the marriage by bequest, devise, descent, survivorship or gift from a source other than the other party; (iii) all property acquired during the marriage in exchange for or from the proceeds of sale of separate property, provided that such property acquired during the marriage is maintained as separate property; and (iv) that part of any property classified as separate pursuant to subdivision A 3. Income received from separate property during the marriage is separate property if not attributable to the personal effort of either party. The increase in value of separate property during the marriage is separate property, unless marital property or the personal efforts of either party have contributed to such increases and then only to the extent of the increases in value attributable to such contributions. The personal efforts of either party must be significant and result in substantial appreciation of the separate property if any increase in value attributable thereto is to be considered marital property.

2. Marital property is (i) all property titled in the names of both parties, whether as joint tenants, tenants by the entirety or otherwise, except as provided by subdivision A 3, (ii) that part of any property classified as marital pursuant to subdivision A 3, or (iii) all other property acquired by each party during the marriage which is not separate property as defined above. All property including that portion of pensions, profit-sharing or deferred compensation or retirement plans of whatever nature, acquired by either spouse during the marriage, and before the last separation of the parties, if at such time or thereafter at least one of the parties intends that the separation be permanent, is presumed to be marital property in the absence of satisfactory evidence that it is separate property. For purposes of this section marital property is presumed to be jointly owned unless there is a deed, title or other clear indicia that it is not jointly owned.

3. The court shall classify property as part marital property and part separate property as follows:
a. In the case of income received from separate property during the marriage, such income shall be marital property only to the extent it is attributable to the personal efforts of either party. In the case of the increase in value of separate property during the marriage, such increase in value shall be marital property only to the extent that marital property or the personal efforts of either party have contributed to such increases, provided that any such personal efforts must be significant and result in substantial appreciation of the separate property.

For purposes of this subdivision, the nonowning spouse shall bear the burden of proving that (i) contributions of marital property or personal effort were made and (ii) the separate property increased in value. Once this burden of proof is met, the owning spouse shall bear the burden of proving that the increase in value or some portion thereof was not caused by contributions of marital property or personal effort.

"Personal effort" of a party shall be deemed to be labor, effort, inventiveness, physical or intellectual skill, creativity, or managerial, promotional or marketing activity applied directly to the separate property of either party.

b. In the case of any pension, profit-sharing, or deferred compensation plan or retirement benefit, the marital share as defined in subsection G shall be marital property.

c. In the case of any personal injury or workers' compensation recovery of either party, the marital share as defined in subsection H of this section shall be marital property.

d. When marital property and separate property are commingled by contributing one category of property to another, resulting in the loss of identity of the contributed property, the classification of the contributed property shall be transmuted to the category of property receiving the contribution. However, to the extent the contributed property is retraceable by a preponderance of the evidence and was not a gift, such contributed property shall retain its original classification.

e. When marital property and separate property are commingled into newly acquired property resulting in the loss of identity of the contributing properties, the commingled property shall be deemed transmuted to marital property. However, to the extent the contributed property is

retraceable by a preponderance of the evidence and was not a gift, the contributed property shall retain its original classification.

f. When separate property is retitled in the joint names of the parties, the retitled property shall be deemed transmuted to marital property. However, to the extent the property is retraceable by a preponderance of the evidence and was not a gift, the retitled property shall retain its original classification.

g. Subdivisions A 3 d, e and f of this section shall apply to jointly owned property. No presumption of gift shall arise under this section where (i) separate property is commingled with jointly owned property; (ii) newly acquired property is conveyed into joint ownership; or (iii) existing property is conveyed or retitled into joint ownership. For purposes of this subdivision A 3, property is jointly owned when it is titled in the name of both parties, whether as joint tenants, tenants by the entireties, or otherwise.

B. For the purposes of this section only, both parties shall be deemed to have rights and interests in the marital property. However, such interests and rights shall not attach to the legal title of such property and are only to be used as a consideration in determining a monetary award, if any, as provided in this section.

C. Except as provided in subsection G, the court shall have no authority to order the division or transfer of separate property or marital property which is not jointly owned. The court may, based upon the factors listed in subsection E, divide or transfer or order the division or transfer, or both, of jointly owned marital property, or any part thereof. The court shall also have the authority to apportion and order the payment of the debts of the parties, or either of them, that are incurred prior to the dissolution of the marriage, based upon the factors listed in subsection E.

As a means of dividing or transferring the jointly owned marital property, the court may transfer or order the transfer of real or personal property or any interest therein to one of the parties, permit either party to purchase the interest of the other and direct the allocation of the proceeds, provided the party purchasing the interest of the other agrees to assume any indebtedness secured by the property, or order its sale by private sale by the parties, through such agent as the court shall direct, or by public sale as the court shall direct without the necessity for partition. All decrees entered prior to July 1, 1991, which are final and not subject to further proceedings on appeal as of that date, which divide or transfer or order the division or transfer of property directly between the parties are hereby validated and deemed self-executing. All orders or decrees which divide or transfer or order division or transfer of real property between the parties shall be recorded and indexed in the names of the parties in the appropriate grantor and grantee indexes in the land records in the clerk's office of the circuit court of the county or city in which the property is located.

D. In addition, based upon (i) the equities and the rights and interests of each party in the marital property, and (ii) the factors listed in subsection E, the court has the power to grant a monetary award, payable either in a lump sum or over a period of time in fixed amounts, to either party. The party against whom a monetary award is made may satisfy the award, in whole or in part, by conveyance of property, subject to the approval of the court. An award entered pursuant to this subsection shall constitute a judgment within the meaning of § 8.01-426 and shall not be docketed by the clerk unless the decree so directs. The provisions of § 8.01-382, relating to interest on judgments, shall apply unless the court orders otherwise.

Any marital property, which has been considered or ordered transferred in granting the monetary award under this section, shall not thereafter be the subject of a suit between the same parties to transfer title or possession of such property.

E. The amount of any division or transfer of jointly owned marital property, and the amount of any monetary award, the apportionment of marital debts, and the method of payment shall be determined by the court after consideration of the following factors:

1. The contributions, monetary and nonmonetary, of each party to the well-being of the family;
2. The contributions, monetary and nonmonetary, of each party in the acquisition and care and maintenance of such marital property of the parties;
3. The duration of the marriage;
4. The ages and physical and mental condition of the parties;
5. The circumstances and factors which contributed to the dissolution of the marriage, specifically including any ground for divorce under the provisions of subdivisions (1), (3) or (6) of § 20-91 or § 20-95;
6. How and when specific items of such marital property were acquired;
7. The debts and liabilities of each spouse, the basis for such debts and liabilities, and the property which may serve as security for such debts and liabilities;
8. The liquid or nonliquid character of all marital property;

9. The tax consequences to each party;

10. The use or expenditure of marital property by either of the parties for a nonmarital separate purpose or the dissipation of such funds, when such was done in anticipation of divorce or separation or after the last separation of the parties; and

11. Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable monetary award.

F. The court shall determine the amount of any such monetary award without regard to maintenance and support awarded for either party or support for the minor children of both parties and shall, after or at the time of such determination and upon motion of either party, consider whether an order for support and maintenance of a spouse or children shall be entered or, if previously entered, whether such order shall be modified or vacated.

G. In addition to the monetary award made pursuant to subsection D, and upon consideration of the factors set forth in subsection E:

1. The court may direct payment of a percentage of the marital share of any pension, profit-sharing or deferred compensation plan or retirement benefits, whether vested or nonvested, which constitutes marital property and whether payable in a lump sum or over a period of time. The court may order direct payment of such percentage of the marital share by direct assignment to a party from the employer trustee, plan administrator or other holder of the benefits. However, the court shall only direct that payment be made as such benefits are payable. No such payment shall exceed 50 percent of the marital share of the cash benefits actually received by the party against whom such award is made. "Marital share" means that portion of the total interest, the right to which was earned during the marriage and before the last separation of the parties, if at such time or thereafter at least one of the parties intended that the separation be permanent.

2. To the extent permitted by federal or other applicable law, the court may order a party to designate a spouse or former spouse as irrevocable beneficiary during the lifetime of the beneficiary of all or a portion of any survivor benefit or annuity plan of whatsoever nature, but not to include a life insurance policy. The court, in its discretion, shall determine as between the parties, who shall bear the costs of maintaining such plan.

H. In addition to the monetary award made pursuant to subsection D, and upon consideration of the factors set forth in subsection E, the court may direct payment of a percentage of the marital share of any personal injury or workers' compensation recovery of either party, whether such recovery is payable in a lump sum or over a period of time. However, the court shall only direct that payment be made as such recovery is payable, whether by settlement, jury award, court award, or otherwise. "Marital share" means that part of the total personal injury or workers' compensation recovery attributable to lost wages or medical expenses to the extent not covered by health insurance accruing during the marriage and before the last separation of the parties, if at such time or thereafter at least one of the parties intended that the separation be permanent.

I. Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties pursuant to §§ 20-109 and 20-109.1. Agreements, otherwise valid as contracts, entered into between spouses prior to the marriage shall be recognized and enforceable.

J. A court of proper jurisdiction under § 20-96 may exercise the powers conferred by this section after a court of a foreign jurisdiction has decreed a dissolution of a marriage or a divorce from the bond of matrimony, if (i) one of the parties was domiciled in this Commonwealth when the foreign proceedings were commenced, (ii) the foreign court did not have personal jurisdiction over the party domiciled in the Commonwealth, (iii) the proceeding is initiated within two years of receipt of notice of the foreign decree by the party domiciled in the Commonwealth, and (iv) the court obtains personal jurisdiction over the parties pursuant to subdivision A 9 of § 8.01-328.1, or in any other manner permitted by law.

K. The court shall have the continuing authority and jurisdiction to make any additional orders necessary to effectuate and enforce any order entered pursuant to this section, including the authority to:

1. Order a date certain for transfer or division of any jointly owned property under subsection C or payment of any monetary award under subsection D;

2. Punish as contempt of court any willful failure of a party to comply with the provisions of any order made by the court under this section;

3. Appoint a special commissioner to transfer any property under subsection C where a party refuses to comply with the order of the court to transfer such property; and

4. Modify any order entered in a case filed on or after July 1, 1982, intended to affect or divide any pension, profit-sharing or deferred compensation plan or retirement benefits pursuant to the United

States Internal Revenue Code or other applicable federal laws, only for the purpose of establishing or maintaining the order as a qualified domestic relations order or to revise or conform its terms so as to effectuate the expressed intent of the order.

§ 20-108. Revision and alteration of such decrees.

The court may, from time to time after decreeing as provided in § 20-107.2, on petition of either of the parents, or on its own motion or upon petition of any probation officer or the Department of Social Services, which petition shall set forth the reasons for the relief sought, revise and alter such decree concerning the care, custody, and maintenance of the children and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require. The intentional withholding of visitation of a child from the other parent without just cause may constitute a material change of circumstances justifying a change of custody in the discretion of the court.

No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification in any court, but only from the date that notice of such petition has been given to the responding party.

§ 20-108.1. Determination of child or spousal support.

A. In any proceeding on the issue of determining spousal support, the court shall consider all evidence presented relevant to any issues joined in that proceeding. The court's decision shall be rendered based upon the evidence relevant to each individual case.

B. In any proceeding on the issue of determining child support under this title or Title 16.1 or Title 63.2, the court shall consider all evidence presented relevant to any issues joined in that proceeding. The court's decision in any such proceeding shall be rendered upon the evidence relevant to each individual case. However, there shall be a rebuttable presumption in any judicial or administrative proceeding for child support, including cases involving split custody or shared custody, that the amount of the award which would result from the application of the guidelines set out in § 20-108.2 is the correct amount of child support to be awarded. Liability for support shall be determined retroactively for the period measured from the date that the proceeding was commenced by the filing of an action with any court provided the complainant exercised due diligence in the service of the respondent or, if earlier, the date an order of the Department of Social Services entered pursuant to Title 63.2 and directing payment of support was delivered to the sheriff or process server for service on the obligor.

In order to rebut the presumption, the court shall make written findings in the order, which findings may be incorporated by reference, that the application of such guidelines would be unjust or inappropriate in a particular case. The finding that rebuts the guidelines shall state the amount of support that would have been required under the guidelines, shall give a justification of why the order varies from the guidelines, and shall be determined by relevant evidence pertaining to the following factors affecting the obligation, the ability of each party to provide child support, and the best interests of the child:

1. Actual monetary support for other family members or former family members;
2. Arrangements regarding custody of the children;
3. Imputed income to a party who is voluntarily unemployed or voluntarily under-employed; provided that income may not be imputed to the custodial parent when a child is not in school, child care services are not available and the cost of such child care services are not included in the computation;
4. Debts of either party arising during the marriage for the benefit of the child;
5. Debts incurred for production of income;
6. Direct payments ordered by the court for health care coverage, maintaining life insurance coverage pursuant to subsection D, education expenses, or other court-ordered direct payments for the benefit of the child and costs related to the provision of health care coverage pursuant to subdivision 7 of § 20-60.3;
7. Extraordinary capital gains such as capital gains resulting from the sale of the marital abode;
8. Age, physical and mental condition of the child or children, including unreimbursed medical or dental expenses, and child-care expenses;
9. Independent financial resources, if any, of the child or children;
10. Standard of living for the family established during the marriage;
11. Earning capacity, obligations and needs, and financial resources of each parent;

12. Education and training of the parties and the ability and opportunity of the parties to secure such education and training;
 13. Contributions, monetary and nonmonetary, of each party to the well-being of the family;
 14. Provisions made with regard to the marital property under § 20-107.3;
 15. Tax consequences to the parties regarding claims for dependent children and child care expenses;
 16. A written agreement between the parties which includes the amount of child support;
 17. A pendente lite decree, which includes the amount of child support, agreed to by both parties or by counsel for the parties; and
 18. Such other factors, including tax consequences to each party, as are necessary to consider the equities for the parents and children.
- C. In any proceeding under this title or Title 16.1 or Title 63.2 on the issue of determining child support, the court shall have the authority to order a party to provide health care coverage, as defined in § 63.2-1900, for dependent children if reasonable under all the circumstances and health care coverage for a spouse or former spouse.
- D. In any proceeding under this title, Title 16.1 or Title 63.2 on the issue of determining child support, the court shall have the authority to order a party to (i) maintain any existing life insurance policy on the life of either party provided the party so ordered has the right to designate a beneficiary and (ii) designate a child or children of the parties as the beneficiary of all or a portion of such life insurance for so long as the party so ordered has a statutory obligation to pay child support for the child or children.
- E. Except when the parties have otherwise agreed, in any proceeding under this title, Title 16.1 or Title 63.2 on the issue of determining child support, the court shall have the authority to and may, in its discretion, order one party to execute all appropriate tax forms or waivers to grant to the other party the right to take the income tax dependency exemption for any tax year or future years, for any child or children of the parties for federal and state income tax purposes.

§ 20-108.2. Guideline for determination of child support; quadrennial review by Child Support Guidelines Review Panel; executive summary.

- A. There shall be a rebuttable presumption in any judicial or administrative proceeding for child support under this title or Title 16.1 or 63.2, including cases involving split custody or shared custody, that the amount of the award which would result from the application of the guidelines set forth in this section is the correct amount of child support to be awarded. In order to rebut the presumption, the court shall make written findings in the order as set out in § 20-108.1, which findings may be incorporated by reference, that the application of the guidelines would be unjust or inappropriate in a particular case as determined by relevant evidence pertaining to the factors set out in §§ 20-107.2 and 20-108.1. The Department of Social Services shall set child support at the amount resulting from computations using the guidelines set out in this section pursuant to the authority granted to it in Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 and subject to the provisions of § 63.2-1918.
- B. For purposes of application of the guideline, a basic child support obligation shall be computed using the schedule set out below. For combined monthly gross income amounts falling between amounts shown in the schedule, basic child support obligation amounts shall be extrapolated. However, unless one of the following exemptions applies where the sole custody child support obligation as computed pursuant to subdivision G 1 is less than \$65 per month, there shall be a presumptive minimum child support obligation of \$65 per month payable by the payor parent. Exemptions from this presumptive minimum monthly child support obligation shall include: parents unable to pay child support because they lack sufficient assets from which to pay child support and who, in addition, are institutionalized in a psychiatric facility; are imprisoned with no chance of parole; are medically verified to be totally and permanently disabled with no evidence of potential for paying child support, including recipients of Supplemental Security Income (SSI); or are otherwise involuntarily unable to produce income. "Number of children" means the number of children for whom the parents share joint legal responsibility and for whom support is being sought.

SCHEDULE OF MONTHLY BASIC CHILD SUPPORT OBLIGATIONS

COMBINED

MONTHLY

GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
0-599	65	65	65	65	65	65
600	110	111	113	114	115	116
650	138	140	142	143	145	146
700	153	169	170	172	174	176
750	160	197	199	202	204	206
800	168	226	228	231	233	236
850	175	254	257	260	263	266
900	182	281	286	289	292	295
950	189	292	315	318	322	325
1000	196	304	344	348	351	355
1050	203	315	373	377	381	385
1100	210	326	402	406	410	415
1150	217	337	422	435	440	445
1200	225	348	436	465	470	475
1250	232	360	451	497	502	507
1300	241	373	467	526	536	542
1350	249	386	483	545	570	576
1400	257	398	499	563	605	611
1450	265	411	515	581	633	645
1500	274	426	533	602	656	680
1550	282	436	547	617	672	714
1600	289	447	560	632	689	737
1650	295	458	573	647	705	754
1700	302	468	587	662	721	772
1750	309	479	600	676	738	789
1800	315	488	612	690	752	805

1850	321	497	623	702	766	819
1900	326	506	634	714	779	834
1950	332	514	645	727	793	848
2000	338	523	655	739	806	862
2050	343	532	666	751	819	877
2100	349	540	677	763	833	891
2150	355	549	688	776	846	905
2200	360	558	699	788	860	920
2250	366	567	710	800	873	934
2300	371	575	721	812	886	948
2350	377	584	732	825	900	963
2400	383	593	743	837	913	977
2450	388	601	754	849	927	991
2500	394	610	765	862	940	1006
2550	399	619	776	874	954	1020
2600	405	627	787	886	967	1034
2650	410	635	797	897	979	1048
2700	415	643	806	908	991	1060
2750	420	651	816	919	1003	1073
2800	425	658	826	930	1015	1085
2850	430	667	836	941	1027	1098
2900	435	675	846	953	1039	1112
2950	440	683	856	964	1052	1125
3000	445	691	866	975	1064	1138
3050	450	699	876	987	1076	1152
3100	456	707	886	998	1089	1165
3150	461	715	896	1010	1101	1178
3200	466	723	906	1021	1114	1191
3250	471	732	917	1032	1126	1205
3300	476	740	927	1044	1139	1218

3350	481	748	937	1055	1151	1231
3400	486	756	947	1067	1164	1245
3450	492	764	957	1078	1176	1258
3500	497	772	967	1089	1189	1271
3550	502	780	977	1101	1201	1285
3600	507	788	987	1112	1213	1298
3650	512	797	997	1124	1226	1311
3700	518	806	1009	1137	1240	1326
3750	524	815	1020	1150	1254	1342
3800	530	824	1032	1163	1268	1357
3850	536	834	1043	1176	1283	1372
3900	542	843	1055	1189	1297	1387
3950	547	852	1066	1202	1311	1402
4000	553	861	1078	1214	1325	1417
4050	559	871	1089	1227	1339	1432
4100	565	880	1101	1240	1353	1448
4150	571	889	1112	1253	1367	1463
4200	577	898	1124	1266	1382	1478
4250	583	907	1135	1279	1396	1493
4300	589	917	1147	1292	1410	1508
4350	594	926	1158	1305	1424	1523
4400	600	935	1170	1318	1438	1538
4450	606	944	1181	1331	1452	1553
4500	612	954	1193	1344	1467	1569
4550	618	963	1204	1357	1481	1584
4600	624	972	1216	1370	1495	1599
4650	630	981	1227	1383	1509	1614
4700	635	989	1237	1395	1522	1627
4750	641	997	1247	1406	1534	1641
4800	646	1005	1257	1417	1546	1654

4850	651	1013	1267	1428	1558	1667
4900	656	1021	1277	1439	1570	1679
4950	661	1028	1286	1450	1582	1692
5000	666	1036	1295	1460	1593	1704
5050	671	1043	1305	1471	1605	1716
5100	675	1051	1314	1481	1616	1728
5150	680	1058	1323	1492	1628	1741
5200	685	1066	1333	1502	1640	1753
5250	690	1073	1342	1513	1651	1765
5300	695	1081	1351	1524	1663	1778
5350	700	1088	1361	1534	1674	1790
5400	705	1096	1370	1545	1686	1802
5450	710	1103	1379	1555	1697	1815
5500	714	1111	1389	1566	1709	1827
5550	719	1118	1398	1576	1720	1839
5600	724	1126	1407	1587	1732	1851
5650	729	1133	1417	1598	1743	1864
5700	734	1141	1426	1608	1755	1876
5750	739	1148	1435	1619	1766	1888
5800	744	1156	1445	1629	1778	1901
5850	749	1163	1454	1640	1790	1913
5900	753	1171	1463	1650	1801	1925
5950	758	1178	1473	1661	1813	1937
6000	763	1186	1482	1672	1824	1950
6050	768	1193	1491	1682	1836	1962
6100	773	1201	1501	1693	1847	1974
6150	778	1208	1510	1703	1859	1987
6200	783	1216	1519	1714	1870	1999
6250	788	1223	1529	1724	1882	2011
6300	792	1231	1538	1735	1893	2023

6350	797	1238	1547	1745	1905	2036
6400	802	1246	1557	1756	1916	2048
6450	807	1253	1566	1767	1928	2060
6500	812	1261	1575	1777	1940	2073
6550	816	1267	1583	1786	1949	2083
6600	820	1272	1590	1794	1957	2092
6650	823	1277	1597	1801	1965	2100
6700	827	1283	1604	1809	1974	2109
6750	830	1288	1610	1817	1982	2118
6800	834	1293	1617	1824	1990	2127
6850	837	1299	1624	1832	1999	2136
6900	841	1304	1631	1839	2007	2145
6950	845	1309	1637	1847	2016	2154
7000	848	1315	1644	1855	2024	2163
7050	852	1320	1651	1862	2032	2172
7100	855	1325	1658	1870	2041	2181
7150	859	1331	1665	1878	2049	2190
7200	862	1336	1671	1885	2057	2199
7250	866	1341	1678	1893	2066	2207
7300	870	1347	1685	1900	2074	2216
7350	873	1352	1692	1908	2082	2225
7400	877	1358	1698	1916	2091	2234
7450	880	1363	1705	1923	2099	2243
7500	884	1368	1712	1931	2108	2252
7550	887	1374	1719	1938	2116	2261
7600	891	1379	1725	1946	2124	2270
7650	895	1384	1732	1954	2133	2279
7700	898	1390	1739	1961	2141	2288
7750	902	1395	1746	1969	2149	2297
7800	905	1400	1753	1977	2158	2305

7850	908	1405	1758	1983	2164	2313
7900	910	1409	1764	1989	2171	2320
7950	913	1414	1770	1995	2178	2328
8000	916	1418	1776	2001	2185	2335
8050	918	1423	1781	2007	2192	2343
8100	921	1428	1787	2014	2198	2350
8150	924	1432	1793	2020	2205	2357
8200	927	1437	1799	2026	2212	2365
8250	929	1441	1804	2032	2219	2372
8300	932	1446	1810	2038	2226	2380
8350	935	1450	1816	2045	2232	2387
8400	937	1455	1822	2051	2239	2395
8450	940	1459	1827	2057	2246	2402
8500	943	1464	1833	2063	2253	2410
8550	945	1468	1839	2069	2260	2417
8600	948	1473	1845	2076	2266	2425
8650	951	1478	1850	2082	2273	2432
8700	954	1482	1856	2088	2280	2440
8750	956	1487	1862	2094	2287	2447
8800	959	1491	1868	2100	2294	2455
8850	962	1496	1873	2107	2300	2462
8900	964	1500	1879	2113	2307	2470
8950	967	1505	1885	2119	2314	2477
9000	970	1509	1891	2125	2321	2484
9050	973	1514	1896	2131	2328	2492
9100	975	1517	1901	2137	2334	2498
9150	977	1521	1905	2141	2339	2503
9200	979	1524	1909	2146	2344	2509
9250	982	1527	1914	2151	2349	2514
9300	984	1531	1918	2156	2354	2520

9350	986	1534	1922	2160	2359	2525
9400	988	1537	1926	2165	2365	2531
9450	990	1541	1930	2170	2370	2536
9500	993	1544	1935	2175	2375	2541
9550	995	1547	1939	2179	2380	2547
9600	997	1551	1943	2184	2385	2552
9650	999	1554	1947	2189	2390	2558
9700	1001	1557	1951	2194	2396	2563
9750	1003	1561	1956	2198	2401	2569
9800	1006	1564	1960	2203	2406	2574
9850	1008	1567	1964	2208	2411	2580
9900	1010	1571	1968	2213	2416	2585
9950	1012	1574	1972	2218	2421	2590
10000	1014	1577	1977	2222	2427	2596

For gross monthly income between \$10,000 and \$20,000, add the amount of child support for \$10,000 to the following percentages of gross income above \$10,000:

ONE	TWO	THREE	FOUR	FIVE	SIX
CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
3.1%	5.1%	6.8%	7.8%	8.8%	9.5%

For gross monthly income between \$20,000 and \$50,000, add the amount of child support for \$20,000 to the following percentages of gross income above \$20,000:

ONE	TWO	THREE	FOUR	FIVE	SIX
CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
2%	3.5%	5%	6%	6.9%	7.8%

For gross monthly income over \$50,000, add the amount of child support for \$50,000 to the following percentages of gross income above \$50,000:

ONE	TWO	THREE	FOUR	FIVE	SIX
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CHILD CHILDREN CHILDREN CHILDREN CHILDREN CHILDREN

1% 2% 3% 4% 5% 6%

C. For purposes of this section, -it "gross income" means all income from all sources, and shall include, but not be limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits except as listed below, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans' benefits, spousal support, rental income, gifts, prizes or awards.

If a parent's gross income includes disability insurance benefits, it shall also include any amounts paid to or for the child who is the subject of the order and derived by the child from the parent's entitlement to disability insurance benefits. To the extent that such derivative benefits are included in a parent's gross income, that parent shall be entitled to a credit against his or her ongoing basic child support obligation for any such amounts, and, if the amount of the credit exceeds the parent's basic child support obligations, the credit may be used to reduce arrearages.

Gross income shall be subject to deduction of reasonable business expenses for persons with income from self-employment, a partnership, or a closely held business. "Gross income" shall not include:

1. Benefits from public assistance and social services programs as defined in § 63.2-100;
2. Federal supplemental security income benefits;
3. Child support received; or
4. Income received by the payor from secondary employment income not previously included in "gross income," where the payor obtained the income to discharge a child support arrearage established by a court or administrative order and the payor is paying the arrearage pursuant to the order. "Secondary employment income" includes but is not limited to income from an additional job, from self-employment, or from overtime employment. The cessation of such secondary income upon the payment of the arrearage shall not be the basis for a material change in circumstances upon which a modification of child support may be based.

For purposes of this subsection: (i) spousal support received shall be included in gross income and spousal support paid shall be deducted from gross income when paid pursuant to an order or written agreement and (ii) one-half of any self-employment tax paid shall be deducted from gross income.

Where there is an existing court or administrative order or written agreement relating to the child or children of a party to the proceeding, who are not the child or children who are the subject of the present proceeding, then there is a presumption that there shall be deducted from the gross income of the party subject to such order or written agreement, the amount that the party is actually paying for the support of a child or children pursuant to such order or agreement.

Where a party to the proceeding has a natural or adopted child or children in the party's household or primary physical custody, and the child or children are not the subject of the present proceeding, there is a presumption that there shall be deducted from the gross income of that party the amount as shown on the Schedule of Monthly Basic Child Support Obligations contained in subsection B that represents that party's support obligation based solely on that party's income as being the total income available for the natural or adopted child or children in the party's household or primary physical custody, who are not the subject of the present proceeding. Provided, however, that the existence of a party's financial responsibility for such a child or children shall not of itself constitute a material change in circumstances for modifying a previous order of child support in any modification proceeding. Any adjustment to gross income under this subsection shall not create or reduce a support obligation to an amount which seriously impairs the custodial parent's ability to maintain minimal adequate housing and provide other basic necessities for the child, as determined by the court.

In cases in which retroactive liability for support is being determined, the court or administrative agency may use the gross monthly income of the parties averaged over the period of retroactivity.

D. Except for good cause shown or the agreement of the parties, in addition to any other child support obligations established pursuant to this section, any child support order shall provide that the parents pay in proportion to their gross incomes, as used for calculating the monthly support obligation, any reasonable and necessary unreimbursed medical or dental expenses that are in excess of \$250 for any calendar year for each child who is the subject of the obligation. The method of payment of those expenses shall be contained in the support order. Each parent shall pay his respective share of expenses as those expenses are incurred. Any amount paid under this

subsection shall not be adjusted by, nor added to, the child support calculated in accordance with subsection G. For the purposes of this section, medical or dental expenses shall include but not be limited to eyeglasses, prescription medication, prosthetics, orthodontics, and mental health or developmental disabilities services, including but not limited to services provided by a social worker, psychologist, psychiatrist, counselor, or therapist.

E. Any costs for health care coverage as defined in § 63.2-1900 and dental care coverage, when actually being paid by a parent, to the extent such costs are directly allocable to the child or children, and which are the extra costs of covering the child or children beyond whatever coverage the parent providing the coverage would otherwise have, shall be added to the basic child support obligation.

F. Any child-care costs incurred on behalf of the child or children due to employment of the custodial parent shall be added to the basic child support obligation. Child-care costs shall not exceed the amount required to provide quality care from a licensed source. When requested by the noncustodial parent, the court may require the custodial parent to present documentation to verify the costs incurred for child care under this subsection. Where appropriate, the court shall consider the willingness and availability of the noncustodial parent to provide child care personally in determining whether child-care costs are necessary or excessive. Upon the request of either party, and upon a showing of the tax savings a party derives from child-care cost deductions or credits, the court shall factor actual tax consequences into its calculation of the child-care costs to be added to the basic child support obligation.

G. 1. Sole custody support. The sole custody total monthly child support obligation shall be established by adding (i) the monthly basic child support obligation, as determined from the schedule contained in subsection B, (ii) costs for health care coverage to the extent allowable by subsection E, and (iii) work-related child-care costs and taking into consideration all the factors set forth in subsection B of § 20-108.1. The total monthly child support obligation shall be divided between the parents in the same proportion as their monthly gross incomes bear to their monthly combined gross income. The monthly obligation of each parent shall be computed by multiplying each parent's percentage of the parents' monthly combined gross income by the total monthly child support obligation.

However, the monthly obligation of the noncustodial parent shall be reduced by the cost for health care coverage to the extent allowable by subsection E when paid directly by the noncustodial parent. Unreimbursed medical and dental expenses shall be calculated and allocated in accordance with subsection D.

2. Split custody support. In cases involving split custody, the amount of child support to be paid shall be the difference between the amounts owed by each parent as a noncustodial parent, computed in accordance with subdivision 1, with the noncustodial parent owing the larger amount paying the difference to the other parent. Unreimbursed medical and dental expenses shall be calculated and allocated in accordance with subsection D.

For the purpose of this section and § 20-108.1, split custody shall be limited to those situations where each parent has physical custody of a child or children born of the parents, born of either parent and adopted by the other parent or adopted by both parents. For the purposes of calculating a child support obligation where split custody exists, a separate family unit exists for each parent, and child support for that family unit shall be calculated upon the number of children in that family unit who are born of the parents, born of either parent and adopted by the other parent or adopted by both parents. Where split custody exists, a parent is a custodial parent to the children in that parent's family unit and is a noncustodial parent to the children in the other parent's family unit.

3. Shared custody support.

(a) Where a party has custody or visitation of a child or children for more than 90 days of the year, as such days are defined in subdivision G 3 (c), a shared custody child support amount based on the ratio in which the parents share the custody and visitation of any child or children shall be calculated in accordance with this subdivision. The presumptive support to be paid shall be the shared custody support amount, unless a party affirmatively shows that the sole custody support amount calculated as provided in subdivision G 1 is less than the shared custody support amount. If so, the lesser amount shall be the support to be paid. For the purposes of this subsection, the following shall apply:

(i) Income share. "Income share" means a parent's percentage of the combined monthly gross income of both parents. The income share of a parent is that parent's gross income divided by the combined gross incomes of the parties.

(ii) Custody share. "Custody share" means the number of days that a parent has physical custody, whether by sole custody, joint legal or joint residential custody, or visitation, of a shared child per year divided by the number of days in the year. The actual or anticipated "custody share" of the parent who has or will have fewer days of physical custody shall be calculated for a one-year period. The "custody share" of the other parent shall be presumed to be the number of days in the year less the number of days calculated as the first parent's "custody share." For purposes of this calculation, the year may begin on such date as is determined in the discretion of the court, and the day may begin at such time as is determined in the discretion of the court. For purposes of this calculation, a day shall be as defined in subdivision G 3 (c).

(iii) Shared support need. "Shared support need" means the presumptive guideline amount of needed support for the shared child or children calculated pursuant to subsection B of this section, for the combined gross income of the parties and the number of shared children, multiplied by 1.4.

(iv) Sole custody support. "Sole custody support" means the support amount determined in accordance with subdivision G 1.

(b) Support to be paid. The shared support need of the shared child or children shall be calculated pursuant to subdivision G 3 (a) (iii). This amount shall then be multiplied by the other parent's custody share. To that sum for each parent shall be added the other parent's cost of health care coverage to the extent allowable by subsection E, plus the other parent's work-related child-care costs to the extent allowable by subsection F. This total for each parent shall be multiplied by that parent's income share. The support amounts thereby calculated that each parent owes the other shall be subtracted one from the other and the difference shall be the shared custody support one parent owes to the other, with the payor parent being the one whose shared support is the larger. Unreimbursed medical and dental expenses shall be calculated and allocated in accordance with subsection D.

(c) Definition of a day. For the purposes of this section, "day" means a period of 24 hours; however, where the parent who has the fewer number of overnight periods during the year has an overnight period with a child, but has physical custody of the shared child for less than 24 hours during such overnight period, there is a presumption that each parent shall be allocated one-half of a day of custody for that period.

(d) Minimum standards. Any calculation under this subdivision shall not create or reduce a support obligation to an amount which seriously impairs the custodial parent's ability to maintain minimal adequate housing and provide other basic necessities for the child. If the gross income of either party is equal to or less than 150 percent of the federal poverty level promulgated by the U.S. Department of Health and Human Services from time to time, then the shared custody support calculated pursuant to this subsection shall not be the presumptively correct support and the court may consider whether the sole custody support or the shared custody support is more just and appropriate.

(e) Support modification. When there has been an award of child support based on the shared custody formula and one parent consistently fails to exercise custody or visitation in accordance with the parent's custody share upon which the award was based, there shall be a rebuttable presumption that the support award should be modified.

(f) In the event that the shared custody support calculation indicates that the net support is to be paid to the parent who would not be the parent receiving support pursuant to the sole custody calculation, then the shared support shall be deemed to be the lesser support.

H. The Secretary of Health and Human Resources shall ensure that the guideline set out in this section is reviewed by October 31, 2001, and every four years thereafter, by the Child Support Guidelines Review Panel, consisting of 15 members comprised of four legislative members and 11 nonlegislative citizen members. Members shall be appointed as follows: three members of the House Committee for Courts of Justice, upon the recommendation of the chairman of such committee, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; one member of the Senate Committee for Courts of Justice, upon the recommendation of the chairman of such committee, to be appointed by the Senate Committee on Rules; and one representative of a juvenile and domestic relations district court, one representative of a circuit court, one representative of the Department of Social Services' Division of Child Support Enforcement, three members of the Virginia State Bar, two custodial parents, two noncustodial parents, and one child advocate, upon the recommendation of the Secretary of Health and Human Resources, to be appointed by the Governor. The Panel shall determine the adequacy of the guideline for the determination of appropriate awards for the support of children by considering current research and data on the cost of and expenditures necessary for rearing children, and any other resources it

deems relevant to such review. The Panel shall report its findings to the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports before the General Assembly next convenes following such review.

Legislative members shall serve terms coincident with their terms of office. Nonlegislative citizen members shall serve at the pleasure of the Governor. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

Legislative members shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department of Social Services.

The Department of Social Services shall provide staff support to the Panel. All agencies of the Commonwealth shall provide assistance to the Panel, upon request.

The chairman of the Panel shall submit to the Governor and the General Assembly a quadrennial executive summary of the interim activity and work of the Panel no later than the first day of 2006 regular session of the General Assembly and every four years thereafter. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

§ 20-109. Changing maintenance and support for a spouse; effect of stipulations as to maintenance and support for a spouse; cessation upon cohabitation, remarriage or death.

A. Upon petition of either party the court may increase, decrease, or terminate the amount or duration of any spousal support and maintenance that may thereafter accrue, whether previously or hereafter awarded, as the circumstances may make proper. Upon order of the court based upon clear and convincing evidence that the spouse receiving support has been habitually cohabiting with another person in a relationship analogous to a marriage for one year or more commencing on or after July 1, 1997, the court shall terminate spousal support and maintenance unless (i) otherwise provided by stipulation or contract or (ii) the spouse receiving support proves by a preponderance of the evidence that termination of such support would be unconscionable. The provisions of this subsection shall apply to all orders and decrees for spousal support, regardless of the date of the suit for initial setting of support, the date of entry of any such order or decree, or the date of any petition for modification of support.

B. The court may consider a modification of an award of spousal support for a defined duration upon petition of either party filed within the time covered by the duration of the award. Upon consideration of the factors set forth in subsection E of § 20-107.1, the court may increase, decrease or terminate the amount or duration of the award upon finding that (i) there has been a material change in the circumstances of the parties, not reasonably in the contemplation of the parties when the award was made or (ii) an event which the court anticipated would occur during the duration of the award and which was significant in the making of the award, does not in fact occur through no fault of the party seeking the modification. The provisions of this subsection shall apply only to suits for initial spousal support orders filed on or after July 1, 1998, and suits for modification of spousal support orders arising from suits for initial support orders filed on or after July 1, 1998.

C. In suits for divorce, annulment and separate maintenance, and in proceedings arising under subdivision A 3 or subsection L of § 16.1-241, if a stipulation or contract signed by the party to whom such relief might otherwise be awarded is filed before entry of a final decree, no decree or order directing the payment of support and maintenance for the spouse, suit money, or counsel fee or establishing or imposing any other condition or consideration, monetary or nonmonetary, shall be entered except in accordance with that stipulation or contract. If such a stipulation or contract is filed after entry of a final decree and if any party so moves, the court shall modify its decree to conform to such stipulation or contract.

D. Unless otherwise provided by stipulation or contract, spousal support and maintenance shall terminate upon the death of either party or remarriage of the spouse receiving support. The spouse

entitled to support shall have an affirmative duty to notify the payor spouse immediately of remarriage at the last known address of the payor spouse.

§ 20-109.1. Affirmation, ratification and incorporation by reference in decree of agreement between parties.

Any court may affirm, ratify and incorporate by reference in its decree dissolving a marriage or decree of divorce whether from the bond of matrimony or from bed and board, or by a separate decree prior to or subsequent to such decree, or in a decree entered in a suit for annulment or separate maintenance, and in a proceeding arising under subsection A 3 or L of § 16.1-241, any valid agreement between the parties, or provisions thereof, concerning the conditions of the maintenance of the parties, or either of them and the care, custody and maintenance of their minor children, or establishing or imposing any other condition or consideration, monetary or nonmonetary. Provisions in such agreements for the modification of child support shall be valid and enforceable. Unless otherwise provided for in such agreement or decree incorporating such agreement, such future modifications shall not require a subsequent court decree. This section shall be subject to the provisions of § 20-108. Where the court affirms, ratifies and incorporates by reference in its decree such agreement or provision thereof, it shall be deemed for all purposes to be a term of the decree, and enforceable in the same manner as any provision of such decree. The provisions of this section shall apply to any decree hereinbefore or hereinafter entered affirming, ratifying and incorporating an agreement as provided herein. Upon the death or remarriage of the spouse receiving support, spousal support shall terminate unless otherwise provided by stipulation or contract. In any case where jurisdiction is obtained over a nonresident defendant by order of publication or by acceptance of service pursuant to § 20-99.1:1, any properly acknowledged and otherwise valid agreement entered into between the parties may be affirmed, ratified and incorporated as provided in this section.

§ 20-110. Maintenance and support for a spouse to cease on remarriage.

If any former spouse to whom support and maintenance has been awarded shall thereafter marry, such support and maintenance shall cease as of the date of such marriage. The spouse entitled to current support shall have an affirmative duty to notify the payor spouse immediately of such remarriage. Failure of such spouse to notify the payor shall entitle the payor to restitution equal to the amount of any current support and maintenance paid after the date of the remarriage, together with interest from the date of the remarriage and reasonable attorney's fees and costs.

§ 20-111. Decree of divorce from bond of matrimony extinguishes contingent property rights.

Upon the entry of a decree of divorce from the bond of matrimony, all contingent rights of either consort in the real and personal property of the other then existing, or thereafter acquired, including the right of survivorship in real or personal property title to which is vested in the parties as joint tenants or as tenants by the entirety, with survivorship as at common law, shall be extinguished, and such estate by the entirety shall thereupon be converted into a tenancy in common.

§ 20-111.1. Revocation of death benefits by divorce or annulment.

Upon the entry of a decree of annulment or divorce from the bond of matrimony on and after July 1, 1993, any revocable beneficiary designation contained in a then existing written contract owned by one party that provides for the payment of any death benefit to the other party is revoked. A death benefit prevented from passing to a former spouse by this section shall be paid as if the former spouse had predeceased the decedent. The payor of any death benefit shall be discharged from all liability upon payment in accordance with the terms of the contract providing for the death benefit, unless the payor receives written notice of a revocation under this section prior to payment.

The term "death benefit" includes any payments under a life insurance contract, annuity, retirement arrangement, compensation agreement or other contract designating a beneficiary of any right, property or money in the form of a death benefit.

This section shall not apply (i) to the extent a decree of annulment or divorce from the bond of matrimony, or a written agreement of the parties provides for a contrary result as to specific death benefits, or (ii) to any trust or any death benefit payable to or under any trust.

§ 20-112. Notice when proceedings reopened.

When the proceedings are reopened to increase, decrease or terminate maintenance and support for a spouse or for a child, or to request additional orders to effectuate previous orders entered pursuant to § 20-107.3, the petitioning party shall give such notice to the other party by service of process or by order of publication as is required by law. Except as provided by § 20-110, no support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification in any court, but only from the date that notice of such petition has been given to the responding party.

§ 20-113. Procedure when respondent fails to perform order for support and maintenance of child or spouse or owes support and maintenance or additional support and maintenance.

The court, when it finds the respondent has failed to perform the order of the court concerning the custody or the maintenance and support of the child or support and maintenance of the spouse, or under the existing circumstances is under the duty to render support or additional support to the child or to pay for the support and maintenance of the spouse, may proceed to deal with the respondent as provided in §§ 20-79.1, 20-114 and 20-115. The court may revise and alter its decree as to the child or support and maintenance of the spouse, and grant leave to the petitioner to proceed in the appropriate juvenile and domestic relations district court in conformity with any applicable law; or it may, at the application of any party or on its own motion certify its final order granting support of the child or support and maintenance of the spouse to such juvenile and domestic relations district court for enforcement of collection as though such order had been made in such juvenile and domestic relations district court, in accordance with § 20-79 (c).

§ 20-114. Recognizance for compliance with order or decree.

Upon the entry, or thereafter, of any order or decree for support and maintenance for a spouse or a child or children in a pending or concluded divorce suit, a mensa et thoro or a vinculo matrimonii or suit for separate maintenance, the court in its discretion may require the giving of a recognizance, with or without surety, for compliance therewith, by the party against whom such order or decree is entered.

§ 20-115. Commitment and sentence for failure to comply with order or decree.

Upon failure or refusal to give the recognizance provided for in § 20-114, or upon conviction of any party for contempt of court in (i) failing or refusing to comply with any order or decree for support and maintenance for a spouse or for a child or children or (ii) willfully failing or refusing to comply with any order entered pursuant to § 20-103 or § 20-107.3, the court (i) may commit and sentence such party to a local correctional facility as provided for in § 20-61 and (ii) may assign the party to a work release program pursuant to § 53.1-131 or to perform public service work; in either event the assignment shall be for a fixed or indeterminate period or until the further order of the court. However, in no event shall commitment or work assignment be for more than twelve months. The sum or sums as provided for in § 20-63, shall be paid as therein set forth, to be used for the support and maintenance of the spouse or the child or children for whose benefit such order or decree provided.

§ 20-116. Effect of divorce from bed and board and what court may decree.

In granting a divorce from bed and board, the court may decree that the parties be perpetually separated and protected in their persons and property. Such decree shall operate upon property thereafter acquired, and upon the personal rights and legal capacities of the parties, as a decree for a divorce from the bond of matrimony, except that neither party shall marry again during the life of the other.

§ 20-117. Divorce from bond of matrimony after divorce from bed and board.

The granting of a divorce from bed and board shall not be a bar to either party obtaining a divorce from the bonds of matrimony on any ground which would justify a divorce from the bonds of matrimony if no divorce from bed and board had been granted, unless the cause for absolute divorce was existing and known to the party applying for the divorce from the bonds of matrimony before the decree of divorce from bed and board was entered.

§ 20-118. Prohibition of remarriage pending appeal from divorce decree; certain marriages validated.

On the dissolution of the bond of matrimony for any cause arising subsequent to the date of the marriage, if objections or exceptions are noted or filed to the final decree and a bond is given staying the execution thereof, the court shall decree that neither party shall remarry pending the perfecting of an appeal from said final judgment of the trial court.

Marriages heretofore celebrated in violation of any prohibition against remarriage shall not hereafter be deemed to be invalid because of the violation of such prohibition, provided that the parties to such a marriage have continued to reside together as husband and wife until the first day of July, 1960, or until such time as one of the parties dies prior to July 1, 1960.

§ 20-120. Revocation of decree from bed and board.

A decree of divorce from bed and board entered in a suit pursuant to § 20-95 shall at any time thereafter, upon submission of an order endorsed by both parties or counsel, be revoked by the same court which entered such decree of divorce.

§ 20-121. Merger of decree for divorce from bed and board with decree for divorce from bond of matrimony.

In any case where a decree of divorce from bed and board has been granted, and the court shall determine that one year has elapsed since the event which gave rise to such divorce or, in any case where the parties have entered into a separation agreement and there are no minor children either born of the parties, born of either party and adopted by the other or adopted by both parties, that six months has elapsed since such event, and the parties have been separated without interruption since such divorce was granted and no reconciliation is probable, it may merge such decree into a decree for divorce from the bond of matrimony upon application of either party. The injured party need not give the guilty party notice of his application to the court if such application is limited to such merger nor of the taking of depositions in support thereof, but shall give due notice if he raises new matters. If the guilty party initiates proceedings for such merger he shall give the other party ten days' notice thereof. No final decree for divorce entered in such a case shall terminate or otherwise affect any restraining order, or order for the payment of costs, counsel fees, support and maintenance for a spouse or child or children except as specifically provided in such decree. The provisions of this section shall apply to the divorces from bed and board, which have been heretofore granted.

§ 20-121.01. Decree of divorce from bonds of matrimony without decree from bed and board.

In any case where willful desertion or cruelty is the ground for divorce and the bill of complaint prays for a divorce from bed and board the court may enter a decree of divorce from the bonds of matrimony without the entry of a decree from bed and board if the statutory period, as set out in § 20-121, has elapsed prior to the entry of said decree and if the court shall be of the opinion that no reconciliation has taken place, or is probable.

§ 20-121.02. Decree of divorce without amended bill or amended cross-bill.

In any divorce suit wherein a bill of complaint or cross-bill prays for a divorce from the bonds of matrimony under § 20-91 or prays for a divorce from bed and board under § 20-95, at such time as there exists in either party's favor grounds for a divorce from the bonds of matrimony under § 20-91 (9), either party may move the court wherein such divorce suit is pending for a divorce from

the bonds of matrimony on the grounds set out in § 20-91 (9) without amending the bill of complaint or cross-bill.

§ 20-121.03. Identifying information confidential; separate addendum.

Any petition, pleading, motion, order, or decree filed under this chapter, including any agreements of the parties or transcripts, shall not contain the social security number of any party or of any minor child of any party, or any financial information of any party that provides identifying account numbers for specific assets, liabilities, accounts, or credit cards. Such information if required by law to be provided to a governmental agency or required to be recorded for the benefit or convenience of the parties, shall be contained in a separate addendum filed by the attorney or party. Such separate addendum shall be used to distribute the information only as required by law. Such addendum shall otherwise be made available only to the parties, their attorneys, and to such other persons as the court in its discretion may allow. The attorney or party who prepares or submits a petition, pleading, motion, agreement, order, or decree shall ensure that any information protected pursuant to this section is removed prior to filing with the clerk.

§ 20-121.1. Reinstatement of suit.

In any suit which has been stricken from the docket, and in which complete relief has not been obtained, upon the motion or application of either party to the original proceedings, the same shall be reinstated upon the docket for such purposes as may be necessary to grant full relief to all parties.

§ 20-121.2. Validation of absolute divorce granted where no decree from bed and board.

Any absolute divorce granted in this Commonwealth under circumstances in which the bill of complaint prayed for a divorce from bed and board with leave to merger the same into an absolute divorce at the end of the statutory period and in which the decree of absolute divorce was entered with no decree from bed and board because the statutory period elapsed prior to the entry of said decree, is hereby validated, provided such divorce proceeding was otherwise conducted according to law.

§ 20-121.3. Validation of certain divorces granted prior to April 23, 1962.

Every divorce granted by any court of record of this Commonwealth prior to April 23, 1962, and otherwise valid shall be valid notwithstanding the fact that depositions were taken, and not continued or adjourned, on a date other than that specified in the notice to take depositions.

§ 20-121.4. Restoration of former name.

Upon decreeing a divorce from the bond of matrimony the court shall, on motion of a party who changed his or her name by reason of the marriage, restore such party's former name or maiden name by separate order meeting the requirements of § 8.01-217.

§ 20-122. Advertising offer to obtain divorces.

Whosoever prints, publishes, distributes, or circulates, or causes to be printed, published, distributed, or circulated, any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or notice of any kind, offering to procure, or aid in procuring, any divorce, or the severance, dissolution, or annulment of any marriage, either in this Commonwealth or elsewhere, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than \$190 nor more than \$300, provided that the provisions of this section shall not apply to a duly licensed attorney-at-law, partnership composed of duly licensed attorneys-at-law or a professional corporation incorporated for the practice of law so long as such attorney, partnership or professional corporation conducts such advertisement in accordance with the Rules of Court promulgated by the Supreme Court of Virginia. This section shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this Commonwealth or orders of any court.

§ 20-124. Sequestration of record.

Upon motion of a party to any suit under this chapter, the court may order the record thereof or any agreement of the parties, filed therein, to be sealed and withheld from public inspection and thereafter the same shall only be opened to the parties, their respective attorneys, and to such other persons as the judge of such court at his discretion decides have a proper interest therein.

Chapter 6.1 - Custody and Visitation Arrangements for Minor Children

§ 20-124.1. Definitions.

As used in this chapter:

"Joint custody" means (i) joint legal custody where both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child even though the child's primary residence may be with only one parent, (ii) joint physical custody where both parents share physical and custodial care of the child, or (iii) any combination of joint legal and joint physical custody which the court deems to be in the best interest of the child.

"Person with a legitimate interest" shall be broadly construed and includes, but is not limited to grandparents, stepparents, former stepparents, blood relatives and family members provided any such party has intervened in the suit or is otherwise properly before the court. The term shall be broadly construed to accommodate the best interest of the child. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a person whose parental rights have been terminated, either voluntarily or involuntarily, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was conceived as a result of such violation.

"Sole custody" means that one person retains responsibility for the care and control of a child and has primary authority to make decisions concerning the child.

§ 20-124.2. Court-ordered custody and visitation arrangements.

A. In any case in which custody or visitation of minor children is at issue, whether in a circuit or district court, the court shall provide prompt adjudication, upon due consideration of all the facts, of custody and visitation arrangements, including support and maintenance for the children, prior to other considerations arising in the matter. The court may enter an order pending the suit as provided in § 20-103. The procedures for determining custody and visitation arrangements shall insofar as practical, and consistent with the ends of justice, preserve the dignity and resources of family members. Mediation shall be used as an alternative to litigation where appropriate. When mediation is used in custody and visitation matters, the goals may include development of a proposal addressing the child's residential schedule and care arrangements, and how disputes between the parents will be handled in the future.

B. In determining custody, the court shall give primary consideration to the best interests of the child. The court shall assure minor children of frequent and continuing contact with both parents, when appropriate, and encourage parents to share in the responsibilities of rearing their children. As between the parents, there shall be no presumption or inference of law in favor of either. The court shall give due regard to the primacy of the parent-child relationship but may upon a showing by clear and convincing evidence that the best interest of the child would be served thereby award custody or visitation to any other person with a legitimate interest. The court may award joint custody or sole custody.

C. The court may order that support be paid for any child of the parties. The court shall also order that support will continue to be paid for any child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the party seeking or receiving child support until such child reaches the age of 19 or graduates from high school, whichever first occurs. The court may also order the continuation of support for any child over the age of 18 who is (i) severely and permanently mentally or physically disabled, (ii) unable to live independently and support himself, and (iii) resides in the home of the parent seeking or receiving child support.

In addition, the court may confirm a stipulation or agreement of the parties which extends a support obligation beyond when it would otherwise terminate as provided by law. The court shall have no authority to decree support of children payable by the estate of a deceased party. The court may make such further decree as it shall deem expedient concerning support of the minor children, including an order that any party provide health care coverage.

D. In any case in which custody or visitation of minor children is at issue, whether in a circuit or district court, the court may order an independent mental health or psychological evaluation to assist the court in its determination of the best interests of the child. The court may enter such order as it deems appropriate for the payment of the costs of the evaluation by the parties.

E. The court shall have the continuing authority and jurisdiction to make any additional orders necessary to effectuate and enforce any order entered pursuant to this section or § 20-103 including the authority to punish as contempt of court any willful failure of a party to comply with the provisions of the order.

§ 20-124.2:1. In camera interviews of child; record.

In any proceeding in a court of record to determine custody or visitation, when the court conducts an in camera interview of a minor child whose custody or visitation is at issue without the presence of the parties or their counsel, a record of the interview shall be prepared, unless the parties otherwise agree. The record of the interview shall be made a part of the record in the case unless a decision is made by the court that doing so would endanger the safety of the child. The cost of creating the record shall be taxed as costs to the parties to the proceeding.

§ 20-124.3. Best interests of the child; visitation.

In determining best interests of a child for purposes of determining custody or visitation arrangements including any pendente lite orders pursuant to § 20-103, the court shall consider the following:

1. The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs;
2. The age and physical and mental condition of each parent;
3. The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual and physical needs of the child;
4. The needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers and extended family members;
5. The role that each parent has played and will play in the future, in the upbringing and care of the child;
6. The propensity of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child;
7. The relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child;
8. The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference;
9. Any history of family abuse as that term is defined in § 16.1-228. If the court finds such a history, the court may disregard the factors in subdivision 6; and
10. Such other factors as the court deems necessary and proper to the determination.

The judge shall communicate to the parties the basis of the decision either orally or in writing.

§ 20-124.3:1. Custody and visitation; mental health care records; admissibility.

A. Notwithstanding any other provision of law, in any case in which custody or visitation of a minor child is at issue pursuant to § 20-124.2, whether in a circuit or district court, the records concerning a parent, kept by any licensed mental health care provider and any information obtained during or from therapy shall be privileged and confidential.

B. In any case in which custody or visitation of a minor child is at issue pursuant to § 20-124.2, whether in a circuit or district court, a mental health care provider licensed in the Commonwealth may not be required to testify on behalf of or against a parent or any of the parent's adult

relatives, and may do so only with the advance written consent of the parent. If the mental health care provider testifies, such testimony shall be limited to the custody or visitation case in question, and the provider's records and notes regarding that parent shall be admissible in the court proceeding. However, the court may order a licensed mental health care provider to testify on matters specifically related and limited to suspicion of an abused or neglected child as defined in § 63.2-100 of the Code of Virginia.

C. Nothing in this section shall supercede the provisions of § 63.2-1509 of the Code of Virginia related to the required reporting of suspicion of an abused or neglected child.

D. This section shall not apply to mental health care providers who have conducted or are conducting an independent mental health evaluation pursuant to a court order.

§ 20-124.4. Mediation.

In any appropriate case the court shall refer the parents or persons with a legitimate interest to a dispute resolution evaluation session to be conducted by a mediator certified pursuant to guidelines promulgated by the Judicial Council at no cost and in accordance with the procedures set out in Chapter 20.2 (§ 8.01-576.4 et seq.) of Title 8.01. In assessing the appropriateness of a referral, the court shall ascertain upon motion of a party whether there is a history of family abuse. If an agreement is not reached on any issue through further mediation as agreed to by the parties, prior to the return date set by the court pursuant to § 8.01-576.5, the court shall proceed with a hearing on any unresolved issue, unless a continuance has been granted by the court. The fee of a mediator appointed in any custody, support or visitation case shall be \$100 per appointment and shall be paid by the Commonwealth from the funds appropriated for payment of appointments made pursuant to subsection B of § 16.1-267.

§ 20-124.5. Notification of relocation.

In any proceeding involving custody or visitation, the court shall include as a condition of any custody or visitation order a requirement that thirty days' advance written notice be given to the court and the other party by any party intending to relocate and of any intended change of address, unless the court, for good cause shown, orders otherwise. The court may require that the notice be in such form and contain such information as it deems proper and necessary under the circumstances of the case.

§ 20-124.6. Access to minor's records.

A. Notwithstanding any other provision of law, neither parent, regardless of whether such parent has custody, shall be denied access to the academic or health records of that parent's minor child unless otherwise ordered by the court for good cause shown or pursuant to subsection B.

B. In the case of health records, access may also be denied if the minor's treating physician or the minor's treating clinical psychologist has made a part of the minor's record a written statement that, in the exercise of his professional judgment, the furnishing to or review by the requesting parent of such health records would be reasonably likely to cause substantial harm to the minor or another person. If a health care entity denies a parental request for access to, or copies of, a minor's health record, the health care entity denying the request shall comply with the provisions of subsection F of § 32.1-127.1:03. The minor or his parent, either or both, shall have the right to have the denial reviewed as specified in subsection F of § 32.1-127.1:03 to determine whether to make the minor's health record available to the requesting parent.

C. For the purposes of this section, the meaning of the term "health record" or the plural thereof and the term "health care entity" shall be as defined in subsection B of § 32.1-127.1:03.

Chapter 8 - Premarital Agreement Act

§ 20-147. Application.

This chapter shall apply to any premarital agreement executed on or after July 1, 1986.

§ 20-148. Definitions.

As used in this chapter:

"Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

"Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

§ 20-149. Formalities of premarital agreement.

A premarital agreement shall be in writing and signed by both parties. Such agreement shall be enforceable without consideration and shall become effective upon marriage.

§ 20-150. Content of agreement.

Parties to a premarital agreement may contract with respect to:

1. The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
2. The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
3. The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;
4. Spousal support;
5. The making of a will, trust, or other arrangement to carry out the provisions of the agreement;
6. The ownership rights in and disposition of the death benefit from a life insurance policy;
7. The choice of law governing the construction of the agreement; and
8. Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

§ 20-151. Enforcement; void marriage.

A. A premarital agreement is not enforceable if the person against whom enforcement is sought proves that:

1. That person did not execute the agreement voluntarily; or
2. The agreement was unconscionable when it was executed and, before execution of the agreement, that person (i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party; and (ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided.

B. Any issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law. Recitations in the agreement shall create a prima facie presumption that they are factually correct.

C. If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement shall be enforceable only to the extent necessary to avoid an inequitable result.

§ 20-152. Limitation of actions.

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

§ 20-153. Amendment or revocation of agreement.

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

§ 20-154. Prior agreements.

All written agreements entered into prior to the enactment of this chapter between prospective spouses for the purpose affecting any of the subjects specified in § 20-150 shall be valid and enforceable if otherwise valid as contracts.

§ 20-155. Marital agreements.

Married persons may enter into agreements with each other for the purpose of settling the rights and obligations of either or both of them, to the same extent, with the same effect, and subject to the same conditions, as provided in §§ 20-147 through 20-154 for agreements between prospective spouses, except that such marital agreements shall become effective immediately upon their execution. If the terms of such agreement are (i) contained in a court order endorsed by counsel or the parties or (ii) recorded and transcribed by a court reporter and affirmed by the parties on the record personally, the agreement is not required to be in writing and is considered to be executed. A reconciliation of the parties after the signing of a separation or property settlement agreement shall abrogate such agreement unless otherwise expressly set forth in the agreement.