

1 S.31

2 Introduced by Senators Sears and Hartwell

3 Referred to Committee on Judiciary

4 Date: January 15, 2013

5 Subject: Domestic relations; annulment and divorce; property settlement

6 Statement of purpose: This bill proposes to prohibit a court from consideration  
7 of interests in revocable trusts or wills when making a property settlement in a  
8 divorce proceeding.

9 ~~An act relating to prohibiting a court from consideration of interests in~~  
10 ~~revocable trusts or wills when making a property settlement in a divorce~~  
11 ~~proceeding~~

*An act relating to consideration of interests in revocable estate planning  
instruments when making a property settlement in a divorce proceeding*

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 ~~Sec. 1. 15 V.S.A. § 751 is amended to read:~~

14 § 751. PROPERTY SETTLEMENT

15 \* \* \*

16 (c)(1) Notwithstanding any provision of subsection (b) of this section to the  
17 contrary, in making a property settlement the court shall not consider interests  
18 in revocable trusts, wills, or other estate planning instruments in which the  
19 terms are capable of modification.

1 ~~(2) This subsection shall not apply to estate planning instruments~~  
2 ~~created by the parties of the divorce proceeding.~~

3 ~~(3) A person shall not cause marital property to be placed in an estate~~  
4 ~~planning instrument for the purpose of omitting it from a property settlement.~~

5 ~~(4) A court may request evidence related to an estate planning~~  
6 ~~instrument if it believes marital property may be included in the instrument in~~  
7 ~~violation of subdivision (3) of this subsection or if it believes a party has~~  
8 ~~otherwise acted in bad faith.~~

9 ~~(5) A court may impose all applicable civil and criminal penalties as~~  
10 ~~well as consider interests in an estate planning instrument upon finding that a~~  
11 ~~party acted in bad faith pursuant to subdivisions (2) and (3) of this subsection.~~

12 Sec. 2. EFFECTIVE DATE

13 ~~This act shall take effect on July 1, 2013.~~

~~Sec. 1. 15 V.S.A. § 751 is amended to read:~~

~~§ 751. PROPERTY SETTLEMENT~~

~~\* \* \*~~

~~(c)(1) Notwithstanding any provision of subsection (b) of this section to the contrary, in making a property settlement the court shall not consider the parties' interests in revocable estate planning instruments, including interests that pass at death by operation of law or by contract, unless the interest is vested and not capable of modification or divestment.~~

~~(2) This subsection shall not apply to estate planning instruments created by the parties of the divorce proceeding.~~

~~(3) A person shall not cause marital property to be placed in an estate planning instrument for the purpose of excluding it from a property settlement.~~  
~~A court may order a party to produce evidence related to an estate planning~~

~~instrument if it appears that marital property may be included in the instrument.~~

~~(4) A person who is not party to the divorce may be subjected to discovery or compelled to testify on the subject of his or her own last will and testament, on any revocable trust of which he or she is settlor or, in conjunction with any of these instruments, on his or her assets if the court finds that a party has fraudulently represented his or her opportunity to acquire capital assets and income in the future.~~

~~(5) The court may impose all applicable sanctions, including an award of attorney's fees, upon finding that a party fraudulently represented his or her opportunity to acquire capital assets and income in the future pursuant to this section.~~

~~Sec. 2. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2013.~~

~~Sec. 1. 15 V.S.A. § 751 is amended to read:~~

~~§ 751. PROPERTY SETTLEMENT~~

~~(a) Upon motion of either party to a proceeding under this chapter, the court shall settle the rights of the parties to their property, by including in its judgment provisions which equitably divide and assign the property. All property owned by either or both of the parties, however and whenever acquired, shall be subject to the jurisdiction of the court. Title to the property, whether in the names of the husband, the wife, both parties, or a nominee, shall be immaterial, except where equitable distribution can be made without disturbing separate property.~~

~~(b) In making a property settlement the court may consider all relevant factors, including but not limited to:~~

~~(1) the length of the civil marriage;~~

~~(2) the age and health of the parties;~~

~~(3) the occupation, source, and amount of income of each of the parties;~~

~~(4) vocational skills and employability;~~

~~(5) the contribution by one spouse to the education, training, or increased earning power of the other;~~

~~(6) the value of all property interests, liabilities, and needs of each party;~~

~~(7) whether the property settlement is in lieu of or in addition to maintenance;~~

(8) the opportunity of each for future acquisition of capital assets and income; For purposes of this subdivision:

(A) The court may consider the parties' lifestyle and decisions made during the marriage and any other competent evidence as related to their expectations of gifts or an inheritance. The court shall not speculate as to the value of an inheritance or make a finding as to its value unless there is competent evidence of such value.

(B) A party's interest in an inheritance that has not yet vested and is capable of modification or divestment shall not be included in the marital estate.

~~(C) The court shall honor the provisions of any spendthrift clause as it applies to a party's interest in an irrevocable trust or inheritance.~~

~~(D) A party's interest in a trust with a valid spendthrift provision shall not be included in the marital estate.~~

(E) (C) Notwithstanding any other provision of this subdivision (8), a person who is not a party to the divorce shall not be subject to any subpoena to provide documentation or to give testimony about:

(i) his or her assets, income, or net worth, unless it relates to a party's interest in an instrument that is vested and not capable of modification or divestment; or

(ii) his or her revocable estate planning instruments, including interests that pass at death by operation of law or by contract, unless a party's interest in an instrument is vested and not capable of modification or divestment.

~~(E) (D) This subdivision (8) shall not be construed to limit the testimony given by the parties themselves or what can be obtained through discovery of the parties;~~

(9) the desirability of awarding the family home or the right to live there for reasonable periods to the spouse having custody of the children;

(10) the party through whom the property was acquired;

(11) the contribution of each spouse in the acquisition, preservation, and depreciation or appreciation in value of the respective estates, including the nonmonetary contribution of a spouse as a homemaker; and

(12) the respective merits of the parties.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

