Equitable Distribution: Virginia Code Section 20-107

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IN Virginia traditional alimony was the only form of recompense allowed to a divorced spouse until 1977. Property was divided according to title, either his, hers or theirs. In 1977, the legislature added the possibility of a “lump sum payment” based upon the “property interests of the parties” after considering “the contributions, monetary and non-monetary, of each party to the well-being of the family,” among other factors. This language gave little guidance as to when such an award might be appropriate or what specific factors were to be considered.

A survey conducted by Ingrid Hillinger for the Family Law Section of the Virginia Bar Association in the fall of 1981 indicated that the role of § 20-107 in property division was unclear. Many attorneys were still filing suits for constructive or resulting trusts. Most believed that Virginia should adopt some form of equitable distribution. The 1981 Virginia Legislature had also recognized the need for change and appointed a committee to study the problem. HB 691 was the result of their study and the Virginia General Assembly adopted their proposal with few changes, replacing § 20-107 with § 20-107.1 - 20-107.3. Some may see § 20-107.1 through § 20-107.3 as a mere extension and outgrowth of the old § 20-107. To some extent, it is, but domestic relations attorneys will find themselves in a new age.

I. § 20-107.3: Overview and Policy Considerations

With a bold stroke of the legislative pen, the 1982 Virginia General Assembly enacted § 20-107.3, thereby bringing to the Commonwealth a form of equitable distribution of marital assets and a revolutionary change in the practice of domestic relations law. Commonly known as the “equitable distribution act,” it will be referred to herein as EDA. § 20-107.3 allows the court, upon decreeing a final (not an a mensa) divorce or annulment, to enter a monetary award “based upon the equities and the rights and interests of each party in the marital property.”

Underlying the enactment is the belief that a spouse should have an interest in assets accumulated during a marriage which are not reflected or protected by the common law title approach to property, which focuses solely on who holds legal title. In spirit, then, the EDA gives courts the power to effect greater justice and fairness between the spouses, i.e., to make the economic incidents of divorce fair and equitable for husband and wife.

In adopting a form of equitable distribution of marital assets, Virginia joins all other jurisdictions except West Virginia and Mississippi. It might be that misery loves company. The New York equitable distribution statute has been described as “a legislative wonder, lawyers’ nightmare, court reporters’ dream and judges’ ball and chain.” This article, drawing on the experiences of other jurisdictions, attempts to highlight some of the problems and pitfalls, both theoretical and practical, which the new Act involves.

Under the EDA, the court must, if requested, determine the legal title, the ownership and value of all real and personal property of the parties, and classify the property as “separate” or “marital” property. The experiences of other jurisdictions indicate that these determinations can be a time-consuming, expensive undertaking, and there is no reason to assume that the Virginia experience will be any different. First, one must identify all property in issue. Second, the court must classify it into separate and marital property and determine legal title to the marital property. According to § 20-107.3(A)(1), separate property is all property of whatever kind acquired before marriage, all property acquired during the marriage by bequest, devise, descent, survivorship or gift from someone other than the other spouse and “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.”
Marital property, on the other hand, is defined by § 20-107.3(A)(2) as “all property titled in the names of both parties...” and “all other property acquired by each party during the marriage which is not separate property.” The Act establishes a presumption that all property acquired during the marriage is marital property.7

Having completed that frequently factious and legally confusing determination of “separate” vs. “marital,” the court must value all the marital property. The methods of such valuation are numerous and complex. Some suggestions regarding valuation of certain types of property are discussed in detail, below.8

After valuation of the marital property, the court then considers eleven factors in determining whether to make a monetary award and, if so, in what amount. Note that nothing in the EDA requires the court to enter a monetary award. The Act provides only that “the court may grant a monetary award” (emphasis added).9

Of the eleven factors, some are akin to support consideration: the duration of the marriage, the ages and physical and mental conditions of the parties. Others derive from property division considerations: the contributions of the parties to the acquisition, care and maintenance of the marital property, how and when specific items were acquired. It is indeed a potpourri, climaxing with a catch-all, “such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable monetary award.”10

At this point some practitioners may question the necessity of this statutory proceeding, wondering why a support award would not accomplish the same objectives. However, while a support award can reflect a spouse’s monetary and non-monetary contributions to the well-being of the family and his or her property interests,11 the statutory limitations surrounding support make it an imperfect, unreliable vehicle to accomplish equitable distribution. Marital fault precludes a support award.12 The obligor spouse’s death13 and the obligee spouse’s remarriage or death14 terminate any further right to support. Changed circumstances may justify a reduction in its amount.15 In short, the uncertain, precarious nature of a support award will not insure that a spouse will receive his or her equitable share of the accumulated marital assets.16

A monetary award, as a form of property settlement, does not share that uncertainty. By definition, it is fixed, non-modifiable and therefore impervious to changed circumstances.17 Installment payments do not alter its non-modifiable nature.18 Fault will not bar an EDA award, and the only fault which the court is directed to consider is the fault which led to the breakdown of the marital relationship. Post-separation adultery apparently would not even be “considered.”19

Under the EDA, a court may recognize a spouse’s equitable, as well as legal, interest in marital assets. However, it may do so only by means of a monetary award; it cannot affect a spouse’s legal interest in property. It cannot distribute or divide assets unless they are jointly owned by the spouses, in which case, the court may order partition in the divorce decree.20 Virginia and Maryland are the only equitable distribution states which prohibit actual court distribution of property in a divorce proceeding.21 In actual practice, however, the difference between the Maryland-Virginia monetary approach and that of other jurisdictions may be more apparent than real. The court may approve a proposed transfer of property from one spouse to another in satisfaction of a monetary award.22 The EDA, albeit indirectly, countenances the distribution of property.
Finally, one of the results of this Act may be to encourage spouses to execute a reasonable separation agreement. To that end, the EDA provides that the powers granted to the court under § 20-107.3 are not to be construed to prevent the affirmation, ratification or incorporation of the parties' separation agreement.  

II. Practice and Procedure under the EDA

Virginia has no "local rules" but divorce procedures are vastly different throughout the state. Attorneys should check with each court in which they practice to determine if the EDA will cause any changes in local practices. Some of the courts may change their procedure because of the additional duties imposed on the court by the Act. Some may refer all partition matters to Commissioners since they are routinely handled this way in many courts, or may wish to refer to Commissioners the fact-finding of legal title, ownership and valuation of all property of the parties and recommendations as to the characterization of the property as either "separate" or "marital." However, courts are aware of the enormous expense of Commissioner's hearings and may be reluctant to expand the Commissioner's role. Expenses for appraisers for real and personal property, actuaries to prove the value of pensions, annuities and life insurance policies, economists to prove the value of the housewife's services, and accountants to trace funds and proceeds of "separate" property or their commingling with "marital" property will greatly increase the expense of the average divorce.

Since equitable distribution is not automatic, it must be requested by the motion of either party. Ideally it should be part of the prayer for relief in the original Bill of Complaint or Cross-Bill. The Act does not indicate whether or not partition of jointly titled property must be requested or may be ordered by the court on its own motion. The safer course is to request it in the prayer for relief.

Every effort should be made to discover the assets of both parties before filing the suit. Many wives are unaware of all the "marital" assets, including those that are jointly titled. § 20-107.3(B) makes it clear that separately titled property may be disposed of during coverture without interference from the other spouse. Filing an immediate request for a § 20-103 restraining order with the Bill of Complaint may be necessary to prevent the other spouse from disposing of "marital" property which is separately titled. The order may also direct the filing of a lis pendens, or the attorney may attempt to do this on his or her own, although it is not specifically authorized by the statute.

Discovery will be an absolute necessity, particularly if you are interested in discovering the source of funds used to purchase or improve various pieces of property or to discover assets that you may not have known existed. After discovery, your next step will be the divorce hearing itself, since the "circumstances and factors which contributed to the dissolution of the marriage, specifically including any grounds for divorce," are factors to be considered by the court in determining the equitable distribution. After "fault" has been determined, you have reached the final hearing.

If you are attempting to claim any property as "separate," your client has the burden of proof, since the Act states that all property acquired during the course of the marriage is presumed to be "marital" property. Since jointly titled property is "marital," the asset must be titled separately. In a long marriage, it may be hard to prove the source of funds used to purchase an asset, resulting in almost all assets being classified as "marital." Absent proof of one of the following, the property will be classified as "marital":

1. property protected by an ante-nuptial agreement.
2. property protected by a valid separation and property settlement agreement pursuant to § 20-109 or § 20-109.1; 26

3. property acquired before the marriage by either party (the statute is silent on property acquired separately but in contemplation of the marriage); 27

4. property acquired during the marriage by bequest, devise, descent, survivorship or gift from a source other than the spouse (although the Act is silent on gifts or inheritance as a result of agreement—for instance, an agreement by a couple to take care of an elderly parent in return for an inheritance—some jurisdictions have carved out an exception for this type of gift or inheritance); 28

5. property acquired during the marriage in exchange for, or proceeds of, the sale of “separate” property, provided that it is “maintained” as separate property—commingling spells the termination of “separate” property; 29

6. income received from, and the increase in value of, separate property during the marriage. 30

Suits for resulting or constructive trusts outside of the divorce suit will not be permitted once the court has “considered” the property for purposes of equitable distribution. If assets are hidden and the court does not “consider” them, no remedy is explicitly provided.

After hearing all the evidence, the court is directed to make the following findings of fact:

(a) legal title as between the parties;
(b) ownership and value of all real and personal property of the parties; and
(c) what is “separate” and what is “marital” property. 31

The Act does not make clear whether the property of the parties is valued and considered at the time of the final decree, at the time of the separation or at the time of the filing of the suit. By implication, the first sentence of § 20-107.3 indicates that the proper point in time is the date of the final decree. Then the court looks at the eleven factors set out in § 20-107.3(E)(1)-(11) and determines whether or not an award should be made and, if so, how much of an award.

The court may also partition jointly-titled property. The Act does not indicate that the procedure would be different from that set forth in § 8.01-81 et seq. However, because of the nature of partition suits, partition would take some time to complete. The final decree could conceivably order a division of real estate or personality in kind. If the property was not partitionable in kind and a sale was necessary, the final decree would only be able to order the division of proceeds as directed by the court. If a sale were ordered, it would be impossible to include as part of the monetary award since there would be no certainty as to the proceeds of sale (which could occur months later). The court might choose to order a percentage division of the proceeds, but the Act requires a sum certain.

§ 20-107.1 directs the court to consider “the provisions made with regard to the marital property under § 20-107.3” before making an alimony or child support award. 32 In many circumstances, the monetary award might dispose of the need for support, the award providing sufficient means for economic self-sufficiency. If the spouses have few accumulated assets, it might not. In such cases, the court can use the support provisions to provide for need or to compensate for contributions made to the well-being of the family.

III. Important EDA Factors

It will be two to three years before any appeals pursuant to the EDA reach the Virginia Supreme Court. Therefore, the practitioner will have to rely on decisions from other states and the local rulings as they
develop in each jurisdiction when arguing factors (E)(1)-(11) to the court. There is not enough space to cover the leading cases in detail, but the cases cited will give the practitioner a starting point. It is important that counsel read a particular state’s equitable distribution statute before relying on that state’s cases.

A. Presumption of Equal Division

The Act provides for equitable distribution, not equal distribution. Some equitable distribution statutes require the distribution to be equal unless that would not be equitable, but there is no such presumption in our statute. Some courts have come to the conclusion that the starting point must be a 50-50 division even when their statute does not contain this presumption. The relationship of a husband and wife is viewed as a partnership in which each contributes equally. For hundreds of years, all property owned as tenants by the entirety or joint tenants was deemed to belong one-half to each spouse and the 50-50 presumption merely continues this view. Other courts have rejected this view. The New Jersey Supreme Court has held that flexibility is required because of the “endless variety of human situations.”

B. Division of Joint Property

The Maryland equitable distribution statute provides that the court may settle any dispute between the spouses with respect to ownership of real property and prohibits the court from transferring ownership of property from one spouse to the other (similar to provisions contained in our EDA). In Ward a Maryland trial court awarded the husband all the interest in a residence held as tenants by the entirety, except for $10,000 which was deemed to be the wife’s share. There was no dispute over the ownership of the property since the parties admitted that it was held as tenants by the entireties, each with a one-half, undivided interest in the property. The Maryland Court of Special Appeals held that the award was improper because the trial court was attempting to transfer a portion of the wife’s one-half share to the husband and was a violation of the statute prohibiting transfer of ownership. The Court of Special Appeals criticized the trial court’s ruling since no specific monetary award was made and there was nothing in the record to show whether or not the order was based upon statutorily enumerated factors. It is unclear whether or not the trial court could have awarded the husband a sum certain equal to the equity in the residence less $10,000 if the award had been based upon statutorily enumerated factors.

C. Professional and Business Licenses, Partnership Interests

Some statutes specifically exclude professional licenses or degrees from property subject to equitable distribution; the EDA does not. Most jurisdictions have ruled that a spouse who helped put the other through professional school and/or contributed to the success of a professional practice is entitled to a special consideration in the division of “marital” property. If spouses are divorced immediately after graduation from a professional school or there are no “marital” assets at the time of divorce, the courts recognize the unfairness of the results. This view is best expressed by the dissent in the Colorado case of In re Marriage of Graham: “in cases such as this, equity demands that courts seek extraordinary remedies to prevent extraordinary injustice. If the parties had remained married long enough after the husband had completed his post-graduate education so that they could have accumulated substantial property, there would have been no problem. . . Unquestionably the law, in other contexts, recognizes future earning capacity as an asset whose wrongful deprivation is compensable. Thus, one who tortiously destroys or impairs another’s future earning capacity must pay as damages the amount the injured party has lost in anticipated future earnings. . . . The day before the divorce the wife had a legally recognized interest in her husband’s earning capacity.”

Some courts have carved out a special exception for this situation. In Horsman, the Iowa Supreme Court held that a law degree was not property, but the increase in earning potential was. The court added the wife’s financial contributions to household living expenses and subtracted the husband’s contributions during the time he was attending law school and awarded the wife the difference—$18,000. The Kentucky Court of Appeals also has carved out an exception from their rule that professional licenses are not normally considered “property” subject to equitable distribution. Inman involved a wife who helped her husband through dental school and helped him build a dental practice. The parties had a net worth of $0 after considering the liabilities at the time of divorce. The Kentucky court decided that it would be inequitable not to award the wife a lump sum in recognition of her efforts. It determined the amount of the award by adding “the amount spent for direct support and school expenses during the period of education, plus reasonable interest and adjustments for inflation.
Oklahoma also subscribed to this view in the Hubbard case. Mrs. Hubbard spent 12 years working and putting her husband through medical school. The court felt that she had an equitable claim for unjust enrichment and limited their holding to the facts of the case.

Most courts that hold a professional license or degree is not property, have ruled that alimony is the spouse’s remedy. If the spouse does not qualify for alimony according to state law (as in the Graham case), the spouse has no remedy. In Hill, the wife was enrolled in dental school at the time of the divorce and had made the larger financial contribution to the husband’s expense while he was in dental school. The New Jersey Appellate Division ruled that the wife was entitled to rehabilitative alimony to allow her to finish her educational. On the other hand, in Mahoney, the same court denied rehabilitative alimony to the wife since the court found both parties had advanced degrees and approximately equal earning capacity. In Virginia, alimony has been the traditional remedy for a spouse in the “putting hubby through” situation. Yet § 20-107.1 still bars alimony if the wife is found to be at “fault.”

Most states seem to agree that a spouse’s interest in a business, partnership, or corporation is marital property to the extent acquired during the marriage. With medical, dental and law practices, a large portion of the value of the business is goodwill. California and many other community property states have long recognized the value of goodwill although it is difficult to determine. Some cases have used opinion evidence, others “capitalization of excess earnings” for determining the value of goodwill in a professional corporation, or the value of goodwill has been determined by an arm’s length agreement between partners the husband was allowing into his professional practice.

New York is an equitable distribution state and has recognized goodwill as an asset, approving the “capitalization of excess earnings” approach to determine value. In Nehorayoff, the court cited IRS Rev. Ruling 59-60 as a guide in determining the value of goodwill for a professional corporation. Since the net assets of a professional practice are not usually appropriate for valuing the business, nor are dividends paid an appropriate method, the formula used by the court was: the amount actually paid to the husband - a reasonable compensation for the services rendered = the earnings of the corporation. Then the “capitalization of earnings or capitalization of goodwill equalled the net annual earnings.” The California case of Lopez contained a formula for valuing a law practice: goodwill + fixed assets (cash, furniture, equipment, supplies and law library) + other assets (accounts receivable, costs advanced with adjustments for collectibility) + work in progress + work completed but not yet billed + husband’s capital account - liabilities. In Stern, the New Jersey Supreme Court looked to the husband’s law firm’s partnership agreement to determine its value and calculated it as the amount the husband’s estate would have received on his death + the husband’s capital account. The court suggested an alternate method of valuation: (value of partners’ capital accounts + accounts receivable + value of work in progress + appreciation of tangible personal property over the book value + goodwill - liabilities) × the husband’s share of the partnership. The California case of Fonstein used a similar method of valuation. It looked to the partnership agreement and computed the husband’s interest in the partnership as equal to his payment due upon his withdrawal or death. Both Stern and Fonstein held that it was error to reduce the value of the husband’s interest by the tax consequences to the husband should he receive the payment from the firm. The court was to value his interest for purposes of determining an equitable distribution.

D. Tax Consequences of EDA

The tax consequences of a transfer of appreciated assets in the name of one spouse to the other spouse in satisfaction of an equitable distribution award could be harsh. Since our EDA does not mandate an award and does not transfer or divide separately-titled “marital” property, it would probably result in capital gains to the transferor spouse.

E. Pensions and Retirement Plans

Most equitable distribution and community property states recognize pension and retirement plans as property. Some make a distinction between vested and nonvested, matured or unmatured. However, that is not an issue in Virginia, since § 20-107.3(E)(8) allows vested and nonvested rights to be considered.

Courts have adopted different methods for valuing this type of property. The New Jersey Appellate Division in DiPietro adopted the “total offset method” which assumes “that over the long run, the rate of inflation runs parallel with and equal to the rate of interest and thereby precludes the necessity of discounting to arrive at present value.” The court noted that Pennsylvania and Alaska had approved this method in other cases. The Maryland Supreme Court in Deering suggested some ways of arriving at a value for an unmatured pension or retirement plan:
1. add the amount of the employee's contributions to the fund plus interest and award the other spouse an equitable share; 
2. figure the present value of the retirement benefits when they vest—benefits payable in the future would be discounted for interest, mortality and vesting; 
3. determine a fixed percentage for the non-employee spouse to receive from the employee spouse's retirement plan when the monies are actually received.

*Deering* method #3 would seem simplest and is suggested by the language of § 20-107.3(G), except that the "present value" of such benefits is to be considered pursuant to § 20-107.3(E)(8). Thus, a court in Virginia may have to go through a double calculation—figuring the present value, then figuring in what monthly amount the award is to be paid if and when the retirement payments are received. However, the court is directed to make "a monetary award, payable either in a lump sum or over a period of time in fixed amounts." This forces the court to make presumptions as to the rate of inflation when ordering a specific dollar amount to be paid. If a spouse dies after receiving some retirement payments, but not all of the payments necessary to pay off the monetary award, a fixed, definite award is changed into a contingent award.

After the U.S. Supreme Court's decision in *McCarty*, military retirement pay (whether matured or not) could not be "considered" under § 20-107.3(E)(8). Prior to *McCarty*, the California community property law allowed the division of military retirement pay upon divorce. *McCarty* held that California community property laws were preempted by the federal scheme of military retirement benefits. After the *McCarty* decision, the Supreme Court denied certiorari in *Russell* and *Cose*. Both these cases denied consideration of military retirement benefits in equitable distribution states. The Supreme Court also vacated the judgment of the Supreme Court of Montana in *Miller* when the Montana court held that military retirement pay was subject to equitable distribution. Thus, it appeared that equitable distribution states are also precluded from considering military retirement pay as part of the marital property distribution scheme.

The *McCarty* decision followed the Supreme Court's earlier *Hisquierdo* decision, which held that railroad retirement pay is also not divisible upon divorce. *Hisquierdo* supposedly carved out a narrow exception based upon an overriding federal interest. Justice Rehnquist's dissent in *McCarty* raised fears about where the Supreme Court was headed next. “Questions concerning the appropriate disposition of property upon the dissolution of marriage, therefore, such as the question in this case, are particularly within the control of the states, and the authority of the states should not be displaced except pursuant to the clearest direction from Congress... Today's decision is not simply a logical extension of prior precedent.”

What other retirement plans would the Supreme Court decide to preempt? Private pensions and retirement plans regulated by the Employee Retirement Income Security Act? Congress acted to show a clear legislative intent. On September 9, 1982, President Reagan signed HR 6030 into law. As we go to press, a copy of the act was not available, but some of its provisions are known. The act effectively reverses the *McCarty* decision by allowing state law to determine whether or not military retirement pay is "property."

However, the act adds restrictive requirements:

1. The state court may exercise this authority only if it has jurisdiction over the service member:
   a. by reason of the member's residence in the state other than because of military orders, 
   b. the member's domicile is in the state, or 
   c. the member consents.

2. The Court order must certify that the rights of the service member under the Soldiers' and Sailors' Civil Relief Act were complied with.

The new law is helpful in many respects, but it still leaves *McCarty* in place for contested divorces in which the service member's domicile is elsewhere and he or she resides in this state only because he or she is stationed here. If it is impossible for a spouse to meet the residence and domicile requirements of the member's state of domicile, the spouse may be out of luck unless the state of domicile authorizes an equitable distribution or community property division after divorce in another state.

**IV. Suggestions for Legislative Change to the EDA**

Total reliance on a monetary award to reflect a spouse's equitable interest in marital property has one distinct disadvantage: it may overcompensate or undercompensate the receiver spouse. Of necessity, the monetary award must be based on the value of the property at the time of the decree. After the decree, that value may change substantially. The risk of loss (decrease in the value of the property) and the possi-
bility of gain (increase in the value of the property) rest entirely with the legal title holder. Other jurisdictions avoid this problem because actual distribution of the assets distributes the risk of gain or loss. On the other hand, the monetary award approach avoids the hardship entailed in “distributing” an asset that is distinctly nondistributable, such as the family farm, or an on-going business.71

Equitable distribution, if ordered to be paid in installments, still may not give 100 percent protection to a spouse. As a property settlement, it is subject to discharge in bankruptcy.72 Also, some obligor spouses have a habit of disappearing into the night, never to be found again, making enforcement impossible. A lump sum award avoids these problems.

The EDA’s definitions of “marital” and “separate” property pose several different questions. The Act does not, for example, define how one “maintains” property as separate property. Is title conclusive or will use be influential? Assume H buys a home before marriage. It is separate property because it was acquired before marriage. After marriage, title remaining only in H’s name, W pays the mortgage or substantially renovates it, increasing its value significantly. According to the definition, the house is separate property and unavailable as a basis for a monetary award. That potential unfairness prompted New York to exclude from separate property appreciation in separate property due to the contribution or efforts of the other spouse.73 Although it involves complicated tracing problems, the New York approach seems fairer.

Until the moment before the divorce decree, all property acquired by either party will be deemed to be marital property. This would include property acquired after the parties’ separation, and regardless of the length of their separation. The definition of marital property should have an earlier concluding point than the divorce decree. Property acquired after separation, or an a mensa decree or the institution of divorce proceedings should be deemed separate property.

The EDA should require the court to state the reasoning for its monetary award determination.74 Such a requirement would limit the potential for arbitrary judicial action and make appellate review possible.

The EDA fails to provide the court with jurisdiction to enter a monetary award after an ex parte divorce decree in another state. Many states allow such an award, but Virginia courts have jurisdiction to consider a monetary award only upon annulment or divorce. An ex parte decree from another state would preclude the court from assuming that jurisdiction.

For purposes of clarity, separate property should be defined to include “property described as separate property by written agreement of the parties. . . .”75 This would reinforce the thought contained in § 20-107.3(H) that valid ante-nuptial agreements are enforceable.

Although not specifically mentioned in the EDA, the degree to which a spouse dissipates assets should be considered. Some statutes76 specifically mention it and certainly it should be a factor in determining a spouse’s equitable interest in the existing assets.

V. Conclusion

As the courts begin to apply the EDA, practitioners will learn more about it. Inevitably, the legislature will make modifications to fine tune the Act. For all its complexity and difficulties, the EDA should ensure a fairer distribution of assets upon divorce.

Footnotes
2. Foster and Freed, Marital Property and the Chancellor’s Foot, 10 Fam. L. Q. 73 (1976).
3. Freed and Foster, Divorce in the Fifty States: An Overview as of August 1, 1981, 7 Fam. L. Rep. 4056 (BNA 1981). Therein the authors note a question over whether South Carolina has opted back into the title approach to property.
6. See e.g., Hefron, 566 S.W.2d 829 (Mo.App.1978); In re Carruthers, 577 P.2d 775 (Colo.App.1977); Kujawinski, 71 Ill.2d 563, 576 N.E.2d 1382 (1978).
8. See, Part III, infra.
10. Id. § 20-107.3(E)(1)-(11).
11. Id. § 20-107.1(6), (7).
12. Id. § 20-107.1.
13. Id.
15. Id.
18. The statute authorizes the court to “grant a monetary award, payable either in a lump sum or over a period of time in fixed amounts. . . .” Va. Code § 20-107.3(D).
20. Id. § 20-107.3(C).
23. Id. § 20-107.3(E)(5).
24. Id. § 20-107.3(A)(2).
25. Id. § 20-107.3(H).
26. Id.
27. Id. § 20-107.3(A)(1).
28. *Id.* § 20-107.3(A)(i)(ii); see fn.16, supra.
30. *Id.* § 20-107.3(A)(1).
31. *Id.* § 20-107.3(A)(1)(ii).
32. *Id.* § 20-107.1(8).
37. See, fn. 21, supra.
40. 574 P.2d at 79.
41. 263 N.W.2d 885 (Iowa 1978).
43. 263 N.W.2d 885 (Iowa 1978).
44. 578 S.W.2d 266 (Ky.App. 1979).
45. Id. at 270.
46. 603 P.2d 747 (Okla. 1979).
47. 182 N.J.Super. 598, 442 A.2d 1072 (1982).
48. See, fn. 41, supra.
49. But see, *Nail*, 486 S.W.2d 761 (Tex. 1972), holding that a medical practice was not subject to division upon divorce.
55. See, fn. 52, supra.
56. See, fn. 41, supra.
57. 17 Cal.3d 738, 131 Cal.Rptr. 873, 552 P.2d 1169 (1976).
59. 183 N.J.Super. 69, 443 A.2d 244 (1982).
60. 443 A.2d at 245.
65. 605 S.W.2d 33 (Ky.App.1980).
67. 609 P.2d 1185 (Mont. 1980); vac. and rem. 69 L.Ed.2d 1000, 101 S.Ct. 3152 (U.S. 1981) (for reconsideration in light of *McCarty*).
69. 69 L.Ed.2d at 609, 613.
70. 29 U.S.C. §§ 1001 et seq.
71. In New York, the court is directed to distribute the marital assets unless distribution would involve a serious hardship. In that instance, the court is authorized to enter a "distributive award" which is comparable to the Virginia "monetary award." See *N.Y. Dom. Rel. Law* § 236B (McKinney 1980).
75. See, fn. 73, supra.