

**REPORT OF THE  
FAMILY LAW SECTION OF THE  
VIRGINIA STATE BAR STUDYING**

**The Award of  
Survivor Benefits and  
Life Insurance to  
Divorced Spouses**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 28**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1992**

## **MEMBERS OF COMMITTEE**

Lawrence D. Diehl, Esquire, Chairman  
Lucile J. Annuta, Esquire  
Richard E. Crouch, Esquire  
Ronald S. Evans, Esquire  
Delegate Gladys B. Keating  
Commander Patrick J. Kusiak (Advisory, non-voting member)  
Martha JP McQuade, Esquire  
Frank W. Morrison, Esquire  
Shirley Taft, President, Ex-Pose  
Betty A. Thompson, Esquire

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## INTRODUCTION

The present status of Virginia's equitable distribution statute permits the court to divide pensions, deferred compensation and other retirement plans upon divorce, by the "if, as and when" method. See § 20-107.3(G) and House Document No. 21 (1991). Generally, federal enabling legislation relating to military retirement divisions, civil service pension divisions, qualified private pension plans under ERISA and other federal retirement plans requires plan administrators or government agencies to honor state court orders which also divide survivor benefits or annuity options pursuant to such plans, or which require the designation of a former spouse as beneficiary of all or part of such survivor benefits. See, eg., 5 U.S.C.S. § 8341 (h)(1) [former spouse of deceased civil service employee entitled to survivor annuity "if and to the extent expressly provided for . . . in the terms of any Decree of Divorce or annulment or any court order or court approved property settlement agreement incident to such Decree]; 10 U.S.C.S. § 1448(b)(5), 1450(f)(3)(A), (f)(4)(A) [former spouse of military retiree is entitled to survivor benefit or annuity when made pursuant to the requirements of a "court order"]; IRS Code § 414(p)(5) [qualified private pension plans shall treat a former spouse as surviving spouse for determining survivor benefits to the extent provided in any qualified domestic relations order]; 22 U.S.C.S. § 4060(b) [former spouse's rights in annuity of foreign service employee shall be determined in accordance with court order, to the extent provided in that court order]. In the context of military retirements, legislation was passed by Public Law 99-661, effective November 14, 1986, which permits state Judges to order that a divorced spouse already named

as a beneficiary of a survivor benefit plan ("SBP") be named as former spouse beneficiary at the same level of participation of such benefits.

However, due to the lack of any statutory authority in Virginia's equitable distribution statutes to permit a state court Judge to enter such orders relating to survivor benefits or annuities, and the generally strict construction of Virginia's equitable distribution statutory scheme [See House Document No. 21 (1991) summarizing the history of such strict construction in a more comprehensive and general study made of Virginia's equitable distribution statute], Virginia's court have generally held that they have no authority to enter any orders relating to survivor benefits or annuity plans in divorce actions.

Further, in the context of the issue of life insurance awards, the Virginia Supreme Court has held that trial courts have no authority to award post-death benefits. Lapidus v. Lapidus, 226 Va. 575.

Due to the lack of Virginia's courts specific statutory authority over such issues, the adverse financial impact that can occur to a former spouse upon the death of the other former spouse where no annuity or SBP benefits are awarded, the high military and civil service population in Virginia, and the general federal legislation which would recognize state court orders in such matters, House Joint Resolution No. 430 (See **Appendix A**) requested the Family Law Section of the Virginia State Bar to review the issue and to report its findings back to the General Assembly.

Lawrence D. Diehl, a member of the Board of Governors of the Family Law Section of the Virginia State Bar and its Legislative Chairman, was selected Chairman of the Study Committee. The additional members included current members of the Board of Governors of

the Family Law Section (Richard E. Crouch, Ronald S. Evans and Frank W. Morrison), as well as representatives of the Virginia Trial Lawyers Association (Betty A. Thompson) and the Virginia Women Attorneys Association (Martha JP McQuade). Delegate Gladys B. Keating, patron of the study resolution, Shirley Taft, National President of Ex-Pose [Ex-partners of Servicemen (Women) for Equality], a national organization promoting the rights of former spouses of military servicemen, and Lucille J. Annuta, an attorney specializing in private ERISA benefits and employed by Reynolds Metals Company, also served on the Committee. Also serving in an advisory, non-voting capacity was Commander Patrick J. Kusiak (a member of the Armed Forces Tax Council; Assistant Director, Compensation Directorate, Office of Assistant Secretary of Defense, Force Management and Personnel), who has assisted in the drafting and has testified in Congress on many legislative matters relating to the Uniformed Services Former Spouses Protection Act.

Meetings of the Committee were held on August 29, 1991, and November 7, 1991. Various cases, memoranda and articles on the status of Virginia and non-Virginia law on the issues were exchanged and reviewed by the Committee members. Drafts of proposed legislation and the policy arguments on the issues were exchanged between the Committee members.

Due to the fact that many of the issues were not merely legal issues, but were policy issues that required maximum input from those practicing in the field of family law in Virginia, a survey was prepared and sent to all members of the Family Law Section of the Virginia State Bar, and the members of the Virginia Women Attorneys Association (See survey, **Appendix B**). The general policy reasons favoring and opposing the enactment of state legislation relating to the issues of survivor annuities and life insurance were contained in the survey in order that the

responses could reflect these competing policy considerations. The results of the surveys contained extensive comments on the issues, all of which were carefully considered by the Committee. The results of the survey are shown in **Appendix C**.

## **FINDINGS AND CONCLUSIONS**

As a result of the meetings of the Committee, the legal research on the issues, an analysis of the survey results and the comments made in the survey responses, the Committee makes the following findings and recommendations:

**(A) Survivor Benefit Plans and Survivor Annuities**

While recognizing the general historical view in Virginia that the death of a former spouse should terminate all rights and obligations between divorced spouses, the overwhelming consensus was that Virginia should enact legislation permitting the court, in its discretion and pursuant to a consideration of the factors set forth in § 20-107.3(E) of the Code, to require a party to designate a spouse or former spouse as beneficiary of all or part of a survivor benefit or annuity. Such legislation would clarify the trial court's specific authority over this issue which is lacking at the present time and would promote the public policies specified as Items (1) through (6) on pp. 1-2 of the survey. It would specifically provide for the court's discretionary consideration of the financial protection of a former spouse after the death of the other spouse which is recognized by the federal legislation and which is permitted to some degree by case law or statutes of other states. See, eg., Herdt v. Herdt, 447 N.W.2d 66 (Wisc. Ct. App. 1989); In Re Marriage of Cornell, 265 Cal. Repr. 271 (1989); Mich Laws Annot., CH. 208, § 552.18 (West 1988); N.C. Stat. § 50-27 (1987). With Virginia's high military and civil service

population, it would further recognize the need to address an omission in Virginia's equitable distribution scheme which deprives Virginia's citizens, upon divorce, of survivor benefits due to a lack of such state statutory authority. It would further reflect the increased use of survivor annuities as a financial protection for a former spouse upon the death of the retiree.

Based upon all of the policy considerations relating to the issue, the Committee recommends the enactment of an amendment to § 20-107.3(G) as shown in **Appendix D**. The proposed language would provide the state statutory authority to order a party to designate a spouse or former spouse as irrevocable beneficiary during said beneficiary's lifetime of all or a portion of an SBP or annuity plan.

The language specifically recognizes that the Virginia court's authority to make such a designation is limited by applicable federal law. Thus, the language "to the extent permitted by federal or other applicable law" is included since such laws provide the scope of authority relating to specific retirement plans such as military, civil service or private ERISA pension plans.

Second, the statutory authority is intended to make the trial court's decision discretionary and not mandatory. It is to be based upon a consideration of the general factors set forth in § 20-107.3(E).

Third, the court may award less than a full share of such SBP or annuity benefit as set forth by the words "all or a portion" of such benefits. Generally, the plans will recognize an order designating only a portion or percentage of such survivor benefits, which will provide the court with the flexibility to consider the "marital share" of such benefits or other statutory factors. However, in the specific context of military SBP divisions, only one spouse or former



spouse can be designated, thereby precluding a "portion" of an SBP award being made. Such an award in military SBP cases impliedly would be limited by the introductory language of the statute "To the extent permitted by federal law".

Fourth, the statutory proposal clearly intends to omit the consideration of life insurance benefits as an implied type of survivor benefits or annuity plan. This is based on the clear rejection of the award of life insurance benefits as an equitable distribution matter that was contained in the survey results in the responses to questions 3 and 4.

Finally, the proposed statute recognizes the discretionary authority of the court to consider who should bear the costs of such SBP benefits as between the parties. With the variety of plans and costs related to survivor benefit plans, the required payment by a particular spouse of the costs attributable to the benefits was not favored by the Committee. As in all matters involving the consideration of marital debts or spousal support issues, it was the Committee's recommendation that the court's authority as to the apportionment of such costs should be flexible, but that by the use of the word "shall determine", the court should clearly address the issue so that the parties will know which party shall bear such costs.

**(B) Life Insurance**

The general consensus of the Committee, as confirmed by the survey results and responses, was that the trial courts should not have the authority to mandate the award of life insurance benefits in the context of equitable distribution. The traditional policy of the courts relating to life insurance in Virginia as expressed in the Lapidus case was confirmed by many comments in the survey responses. Concerns about the escalating costs of the premiums of term insurance at older ages for spouses; the issue of "insurable interests" of a spouse after a

divorce; the potential for increased litigation after finalization of a divorce relating to future insurability issues, the reasonableness of future costs and the changing reasonable insurance needs of a former spouse in the future; and the general preference for resolving such matters through negotiations in the formation of property settlements, were all repeatedly articulated policy reasons against such authority. Thus, it was the Committee's unanimous recommendation that § 20-107.3 not be amended to provide the trial court with authority to require beneficiary designations of life insurance benefits in the context of equitable distribution.

The Committee, however, recognized the financial protection that can be provided to a child or spouse relating to support needs upon the death of the other spouse. The specific policy issues of the financial hardships that can result to the custodial parent upon the death of a non-custodial parent paying child support were fully considered by the Committee. The survey results overwhelmingly favored consideration of legislation to permit the court to mandate the continuation of existing policies of life insurance for the benefit of a child to extend only during the period such child support is owed according to statute. Although question 5 of the survey also addressed the issue of such coverage for spouses in addition to children, of the 225 responses favoring generally such legislation, the comments of approximately 60 responses favored limiting the enactment of such legislation to the area of child support only. Thus, the Committee was of the opinion that any legislation should be limited, at the present time, to the benefit of children of the parties.

The legislative authority of a court to order the designation of children as beneficiaries of existing life insurance policies was recognized by the Committee to exist in other states. See, eg., Del. Code. Annot., Title 13, § 1513(e) (Supp. 1988); 23 Pennsylvania Stat. Annot., §

401(i) (Purdon Supp. 1988); N.Y. Dom. Rel. Law, § 236 (8)(a) (McKinney 1986) (Supp. 1989), and Tenn Code. Annot, § 36-5-101(g) (1990 Supp.)

Based upon the policy considerations set forth above, the Committee recommends the enactment of an amendment to § 20-108.1(B)(6) and the addition of a new subsection, § 20-108.1(D), as shown in **Appendix E**.

The proposed legislation would provide the court with discretionary authority to require a party to maintain an existing life insurance policy owned by said party on the life of either party, for the benefit of a child of the parties. The court would not have any authority to require a party to acquire a new policy for such benefit.

The legislation would also limit the court's authority to the duration of a party's statutory obligation to pay child support. The court's authority would not be prolonged by any obligation for child support beyond the child's statutory emancipation, such as that created by disability or a property settlement.

The legislation would also recognize that if such a benefit is ordered by the court, the costs of such benefit shall be considered a justification for deviation from the presumptive amount of child support as calculated pursuant to § 20-108.2. Any payments ordered to be made for such life insurance would be a factor under the proposed amendment to § 20-108.1(B)(6).

**RESPECTFULLY SUBMITTED,**

Lawrence D. Diehl, Esquire, Chairman  
Lucile J. Annuta, Esquire  
Richard E. Crouch, Esquire  
Ronald S. Evans, Esquire  
Delegate Gladys B. Keating  
Commander Patrick J. Kusiak  
Martha JP McQuade, Esquire  
Frank W. Morrison, Esquire  
Shirley Taft, President, Ex-Pose  
Betty A. Thompson, Esquire

1991 SESSION  
ENGROSSED

Appendix A

HP9171500

HOUSE JOINT RESOLUTION NO. 430

House Amendments in [ ] - January 31, 1991

*Requesting the Family Law Section of the Virginia State Bar to study the award of Survivor Benefit Plan and other annuity plan benefits to former spouses.*

Patrons—Keating, Cooper, Christian, Van Landingham, Darner, Byrne, Munford, Cunningham, J.W., Marshall, Plum, Croshaw, Andrews, Callahan, Moss, Marks, Jackson, Smith, Parrish and Glasscock; Senators: Miller, Y.B., Miller, E.F., Scott, Stallings, Gartlan, Waddell and Michie

Referred to the Committee on Rules

WHEREAS, the Survivor Benefit Plan (SBP) is a type of annuity which provides benefits for the surviving spouse of a retired service member or retired federal worker; and

WHEREAS, when the member or worker retires or becomes retirement eligible that person is automatically enrolled in the SBP at the maximum amount unless that person and that person's spouse agree in writing not to participate or to participate at a lower level; and

WHEREAS, once enrolled in the plan the member or worker cannot withdraw as long as that person has a beneficiary eligible spouse; and

WHEREAS, until the passage of the Uniformed Services Former Spouses Protection Act (FSPA), a divorced spouse could not continue as a beneficiary; and

WHEREAS, Public Law 99-661 which was passed by Congress on November 14, 1986, allows judges, in their discretion, to order that a divorced spouse already a named beneficiary of the SBP be named as former spouse beneficiary at the same level of participation; and

WHEREAS, no judge in Virginia has allowed this benefit to a divorced spouse because there is nothing in the Code of Virginia specifically allowing this benefit; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Family Law Section of the Virginia State Bar study the desirability of allowing judges, in their discretion, to award SBP benefits to a former spouse [ by amending and to determine the amendments necessary to ] the Code of Virginia to [ ~~include~~ provide ] language granting such authorization; and, be it

RESOLVED FURTHER, by the House of Delegates, the Senate concurring, That the Family Law Section of the Virginia State Bar also study the desirability of amending the Code of Virginia to permit judges, in their discretion, to award annuity and life insurance benefits to divorced spouses.

The Family Law Section of the Virginia State Bar shall complete its work in time to submit its findings and recommendations to the Governor and the 1992 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

THE FAMILY LAW SECTION  
OF THE  
VIRGINIA STATE BAR

House Joint Resolution No. 430 - Survey

The 1991 General Assembly enacted House Joint Resolution No. 430 directing our Section to study the authority of a trial court upon entry of an equitable distribution award to (1) direct the selection of a spouse/former spouse as beneficiary of a survivor benefit plan or survivor annuity retirement benefit and/or (2) to direct a spouse to either maintain or procure for the benefit of a former spouse a policy of life insurance. In accordance with the directives of the Committee formed for purposes of this study, the following questionnaire has been prepared relating to these issues. The confidentiality of all responses will be maintained. Your response to the survey will be critical to the success of our study and, accordingly, we hope you will complete the survey to provide our Committee with as much data as possible. All responses are due no later than October 31, 1991 and should be mailed to the Committee's Chairman as follows: Lawrence D. Diehl, Marks & Harrison, P.O. Box 170, Hopewell, VA 23860.

DEMOGRAPHIC INFORMATION:

City/County Of Your Office: \_\_\_\_\_  
Judicial Circuits Of Your Practice: \_\_\_\_\_  
Age: \_\_\_\_\_ Years In Practice: \_\_\_\_\_  
Percent of Practice Relating To Family Law: \_\_\_\_\_

INDICATE YOUR CAPACITY IN RESPONDING TO THIS STUDY (CHECK ONE ONLY)

- 1. Member, Family Law Section \_\_\_\_\_
- 2. Member, Virginia Trial Lawyer Association \_\_\_\_\_
- 3. Virginia Women Attorneys Association \_\_\_\_\_

BACKGROUND AND POLICY CONSIDERATIONS

It was the general consensus of the Committee that, due to the lack of statutory authority, and the general strict construction of Virginia's divorce laws, Virginia courts do not have the authority to designate a former spouse as the beneficiary for purposes of survivor benefit plans, such a military SBP's, or survivor annuity plans, such as Civil Service or private pension plans. The Committee recognized that most other states recognize the court's authority for such purposes, either based upon direct state statutory authority, implied authority due to federal legislation which generally requires the recognition of state court orders requiring such beneficiary elections, or general implied authority pursuant to the state's case law.

Among the policy factors favoring the enactment of legislation in Virginia to permit (but not require) the court to require the designation of a former spouse as a beneficiary of SBP's or other survivor annuity plans are (1) marital funds during the marriage in many cases were used to fund said plans (2) a post-death retirement benefit is the reasonable expectation of a spouse during the marriage and is an expected economic benefit in today's society, (3) such post-death benefits would provide further financial stability to a former spouse in

accordance with the reasonable expectations of the parties during their marriage, (4) federal laws relating to military pension benefits, civil service retirement plans, private ERISA pension plans and other federal retirement plans, all recognize the requirement that such retirement plans honor state court orders relating to such beneficiary designations, implying a federal public policy that state courts have such authority, (5) having the discretionary authority to make such designations would place Virginia into conformity with the authority found in most other states, thus eliminating the perceived discrimination to Virginia spouses who cannot even have the court's consider such issue and (6) the need to have such authority due to the high military and civil service population in Virginia affected by their residency in Virginia.

As to the issue of life insurance, the policy issues discussed by the Committee were more in issue. Generally, authority to maintain or procure life insurance has not been permitted in Virginia and has been recognized in other states to a much more limited degree than in the area of SBP's and annuity retirement benefits. The general financial protection of families upon death of a payor spouse in today's society and the use of marital funds to pay premiums for an existing life insurance policy were factors which could favor such authority.

On the other hand, legitimate policy reasons exist as to why no authority for a trial court on these issues should exist. These conflicting policy reasons are generally set out by the attached Memo from Richard E. Crouch, and is attached for your further consideration. Since the issues now before the Committee are generally ones of policy for our state, your consideration of all factors and your response and comments to the following questions would be appreciated.

**SURVEY QUESTIONS**

1. Do you favor or oppose Legislation which would provide a Virginia trial court with the discretionary authority [based upon the factors set forth in §20-107.3(E)] to require the designation of a spouse/former spouse as beneficiary of a survivor benefit plan or other similar survivor annuity retirement benefit?

I FAVOR LEGISLATION \_\_\_\_\_ I OPPOSE LEGISLATION \_\_\_\_\_ NO OPINION \_\_\_\_\_

2. If you favor such Legislation, would you favor or oppose a limitation on such designation, to the extent permitted by federal law, to the extent of the "marital share" of such survivor or annuity [similar to "marital share" award of retirement benefits now contained in §20-107.3(G)]?

I FAVOR SUCH LIMITATION \_\_\_\_\_ I OPPOSE SUCH LIMITATION \_\_\_\_\_ NO OPINION \_\_\_\_\_

3. Do you favor or oppose Legislation which would provide a Virginia trial court, upon entry of an equitable distribution decree, with the discretionary authority to require a spouse to continue to maintain for the benefit of a spouse/former spouse a life insurance policy purchased prior to the entry of such decree?

I FAVOR LEGISLATION \_\_\_\_\_ I OPPOSE LEGISLATION \_\_\_\_\_ NO OPINION \_\_\_\_\_

4. Do you favor or oppose Legislation which would provide a Virginia trial

court, upon entry of an equitable distribution decree, with the discretionary authority to require a spouse to purchase a policy of life insurance for the benefit of a spouse/former spouse?

I FAVOR LEGISLATION \_\_\_\_\_ I OPPOSE LEGISLATION \_\_\_\_\_ NO OPINION \_\_\_\_\_

5. Do you favor or oppose Legislation which would provide a Virginia trial court with discretionary authority as part of a support award, to require a spouse or parent of a child to continue to maintain for the benefit of a spouse/former spouse or the children of such parent an existing policy of life insurance?

I FAVOR LEGISLATION \_\_\_\_\_ I OPPOSE LEGISLATION \_\_\_\_\_ NO OPINION \_\_\_\_\_

COMMENTS ON ABOVE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PLEASE RETURN ALL QUESTIONNAIRES TO:**

**Lawrence D. Diehl, Esquire  
Marks & Harrison  
P.O. Box 170  
Hopewell, VA 23860**

**DUE DATE: OCTOBER 31, 1991**

Richard E. Crouch  
Attorney at Law  
2111 Wilson Boulevard, Suite 550  
Arlington, Virginia 22201

(703) JA 8-6700

September 13, 1991

TO: The Members of the HJR430 Committee

RE: Amending Code §20-107.3 to Allow Award of Survivor Benefit

Dear Committee Members:

After our last discussion of this issue, I was asked to try to articulate the reasons General Assembly members would resist this proposal. I think most opposition would be along the lines set forth below. These considerations keep me from being able to support the proposal. Though I have drafted a great many proposed amendments to increase the power of Virginia courts to distribute marital property and income, I think this goes too far.

The Virginia courts have been loath to attempt to read into the equitable distribution statute a right to award the SBP because the courts long ago took the view in *Lapidus v. Lapidus*, 226 Va. 575 that they do not have the right to award in a divorce any post-death benefit: that the power of divorce courts, though extensive, does not reach beyond death.

Of course we are speaking of increasing the statutory grant of power by legislative amendment, but there are reasons why increasing the power of the statute over the private lives of citizens in this way has been an unpopular idea before. The Legislature, along with the courts, has probably felt that there is something deeply contrary to public policy, if not unconstitutional, about forcing one person to provide for another -- no longer joined to him by the bonds of marriage -- beyond his death. Traditional alimony does not extend beyond death, and this represents a way around that limitation. Such a device certainly violates the principles of *Reid v. Reid*, 7 Va. App. 553, 375 S.E. 2d 533 (1989) that property division looks only backward so as to distribute property interests as of the time of divorce, while only alimony looks forward into the future.

The theory of this proposal contemplates that a court in a divorce can order that a wage earner, after retirement and after divorce, must in addition to dividing his retirement with an ex-wife, also live on a further reduced retirement annuity in order to contribute to a fund that will be enjoyed by the ex-wife after he dies. Though the marriage was over many years before retirement, he will be forced to give up even his survivor benefit to an ex-wife, and will not be allowed to save even this for a new wife or children.

Many think this illogical and unfair, and as more and more women enter the work force and are placed in the position of this wage earner, they will increasingly perceive this notion to be unfair. We can argue from the case of the older couple who divorce after years of retirement, so that the wife who has herself shared in the reduction of retirement income in order to save for the period beyond her husband's death can then lose the expectation of that post-death benefit if he runs off with a sweet young thing before keeling over. However, that is a relatively rare case, and such anomalous examples should not drive public policy. What is more persuasive, I think, is a deep and basic feeling that the power of the state over the individual ought to stop somewhere.



# VA STATE BAR

Appendix C

TOTAL Responses : 346

## SURVEY QUESTIONS

1. Do you favor or oppose Legislation which would provide a Virginia trial court with the discretionary authority [based upon the factors set forth in §20-107.3(E)] to require the designation of a spouse/former spouse as beneficiary of a survivor benefit plan or other similar survivor annuity retirement benefit?

I FAVOR LEGISLATION  $\frac{248}{(71.7\%)}$  I OPPOSE LEGISLATION  $\frac{93}{(26.9\%)}$  NO OPINION  $\frac{5}{(1.4\%)}$

2. If you favor such Legislation, would you favor or oppose a limitation on such designation, to the extent permitted by federal law, to the extent of the "marital share" of such survivor or annuity [similar to "marital share" award of retirement benefits now contained in §20-107.3(G)]?

I FAVOR SUCH LIMITATION  $\frac{209}{(60.4\%)}$  I OPPOSE SUCH LIMITATION  $\frac{41}{(11.8\%)}$  NO OPINION  $\frac{96}{(27.8\%)}$

3. Do you favor or oppose Legislation which would provide a Virginia trial court, upon entry of an equitable distribution decree, with the discretionary authority to require a spouse to continue to maintain for the benefit of a spouse/former spouse a life insurance policy purchased prior to the entry of such decree?

I FAVOR LEGISLATION  $\frac{173}{(50\%)}$  I OPPOSE LEGISLATION  $\frac{163}{(47.1\%)}$  NO OPINION  $\frac{10}{(2.9\%)}$

4. Do you favor or oppose Legislation which would provide a Virginia trial

court, upon entry of an equitable distribution decree, with the discretionary authority to require a spouse to purchase a policy of life insurance for the benefit of a spouse/former spouse?

I FAVOR LEGISLATION  $\frac{123}{(35.5\%)}$  I OPPOSE LEGISLATION  $\frac{209}{(60.5\%)}$  NO OPINION  $\frac{14}{(4.0\%)}$

5. Do you favor or oppose Legislation which would provide a Virginia trial court with discretionary authority as part of a support award, to require a spouse or parent of a child to continue to maintain for the benefit of a spouse/former spouse or the children of such parent an existing policy of life insurance?

I FAVOR LEGISLATION  $\frac{225}{(65.0\%)}$  I OPPOSE LEGISLATION  $\frac{114}{(32.9\%)}$  NO OPINION  $\frac{7}{(2.1\%)}$

\*

# VWAA

TOTAL Responses : 26

## SURVEY QUESTIONS

1. Do you favor or oppose Legislation which would provide a Virginia trial court with the discretionary authority (based upon the factors set forth in §20-107.3(E)) to require the designation of a spouse/former spouse as beneficiary of a survivor benefit plan or other similar survivor annuity retirement benefit?

I FAVOR LEGISLATION 25 I OPPOSE LEGISLATION 1 NO OPINION 0  
(46.2%) (3.8%)

2. If you favor such Legislation, would you favor or oppose a limitation on such designation, to the extent permitted by federal law, to the extent of the "marital share" of such survivor or annuity (similar to "marital share" award of retirement benefits now contained in §20-107.3(G))?

I FAVOR SUCH LIMITATION 18 I OPPOSE SUCH LIMITATION 3 NO OPINION 5  
(69.2%) (11.5%) (19.3%)

3. Do you favor or oppose Legislation which would provide a Virginia trial court, upon entry of an equitable distribution decree, with the discretionary authority to require a spouse to continue to maintain for the benefit of a spouse/former spouse a life insurance policy purchased prior to the entry of such decree?

I FAVOR LEGISLATION 22 I OPPOSE LEGISLATION 2 NO OPINION 2  
(84.6%) (7.7%) (7.7%)

4. Do you favor or oppose Legislation which would provide a Virginia trial

court, upon entry of an equitable distribution decree, with the discretionary authority to require a spouse to purchase a policy of life insurance for the benefit of a spouse/former spouse?

I FAVOR LEGISLATION 17 I OPPOSE LEGISLATION 6 NO OPINION 3  
(65.4%) (23.1%) (11.5%)

5. Do you favor or oppose Legislation which would provide a Virginia trial court with discretionary authority as part of a support award, to require a spouse or parent of a child to continue to maintain for the benefit of a spouse/former spouse or the children of such parent an existing policy of life insurance?

I FAVOR LEGISLATION 22 I OPPOSE LEGISLATION 2 NO OPINION 2  
(84.6%) (7.7%) (7.7%)

**PROPOSED AMENDMENT TO SECTION 20-107.3(G):**

G. In addition to the monetary award made pursuant to subsection D, and upon consideration of the factors set forth in subsection E<sub>7</sub>:

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 fifty 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 said 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.

## PROPOSED AMENDMENT TO §20-108.1

**§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 63.1, 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 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. 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 as determined by relevant evidence pertaining to the following factors affecting the obligation and the ability of each party to provide child support:

1. Actual monetary support for other children, 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 plan coverage, life insurance coverage, education expenses, or other court-ordered direct payments for the benefit of the child;
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 extraordinary 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; and

16. 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 63.1 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 § 63.1-250, 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 or Title 16.1 or 63.1 on the issue of determining child support, the court may order a party to designate a child or children of the parties as the beneficiary of all or a portion of any life insurance owned by that party on the life of either party for so long as said party has a statutory obligation to pay child support for said child or children.