AAML™
AMERICAN ACADEMY OF MATRIMONIAL LAWYERS

ARIZONA CHAPTER

ARIZONA CONDENSED DIVORCE GUIDE BY THE ARIZONA CHAPTER OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS©

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INTRODUCTION

In an effort to improve the administration of justice by encouraging the study and broadening the experience of Arizona judges and family law practitioners, the Arizona Chapter of the American Academy of Matrimonial Lawyers, in conjunction with the presiding judges of the Maricopa and Pima County family law departments, has produced this Condensed Divorce Guide.

The Guide is presented in outline format and addresses various important, complex financial issues often involved in family law cases. It contains references to numerous appellate decisions, statutes, and books/treatises which establish or discuss various principles of family law. All citations are hyperlinked for easy reference.

This Guide is available to all judges statewide on *Wendell* through the Arizona Administrative Office of the Courts (AOC). AOC is responsible for maintaining a statewide system of judicial education and overseeing compliance with judicial education standards. AOC also provides ancillary services to the Arizona Judicial Branch such as curriculum development, educational program development, and audio/visual support for events and programs. The Guide will be included in the materials of the *New Judge Orientation Program* which every newly appointed judge must complete within his/her first year on the bench.

ABOUT THE ARIZONA CHAPTER OF THE AAML

Since 1962, the American Academy of Matrimonial Lawyers (AAML) has operated as a nonprofit association of family law attorneys who have experience and concentrate in all issues related to marriage, divorce, child custody and visitation, annulment, prenuptial and postnuptial agreements, matters affecting unmarried cohabitants, business valuation and property distribution, alimony, and support. There are nearly 1500 Family Lawyers who have earned the distinction of AAML Fellowship practice throughout the United States. Each Fellow is a member of one of the Academy's 33 state/regional Chapters.

AAML's success is achieved through its Members and Chapters. By adherence to the highest principles of matrimonial practice, Academy members have set the standard for the matrimonial bar and have helped improve the quality of family law practice throughout the country for attorneys and litigants alike. The AAML provides access to unparalleled virtual and in-person continuing professional education, seminars, networking opportunities, referrals, and best in class Family Law publications, including the prestigious *Journal of the American Academy of Matrimonial Lawyers*.

Our Chapter's Mission Is Simple: To encourage the study, improve the practice, elevate the standards, and advance the cause of matrimonial law to the end that the welfare of family and society are preserved and protected. Our Chapter's members are recognized by the Arizona bench and bar for their advanced skills in the practice of family law. They are experienced family law attorneys, backed by a legacy of success and the respect of their peers. Our Chapter prides itself on our members and their work helping families navigate complex matrimonial cases with civility, confidence, and compassion.

The current Officers and Fellows of the Arizona Chapter of the AAML are:

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This Guide is truly the product of the entire Arizona Chapter working in concert. Fellows contributed not only to the specific issues or topics each was assigned, but also offered assistance and insight to one another across all the chapters contained herein.

The Guide primarily deals with financial issues involved in divorce. The Chapter intends to supplement this publication with future chapters covering issues such as pre- and postnuptial agreements, parenting, and other areas of family law. The Chapter also shall produce periodic updates so the Guide remains current as family law evolves.

We would like to thank the many people who have contributed their time and energy in helping us consolidate a tremendous amount of information and research into a comprehensive and condensed deep dive into issues involved in family law. Their generous contributions of time and talent have helped immeasurably in creating this Guide. Without their assistance, this endeavor would not have been possible. To each of them, we offer our profound gratitude. Specifically, we wish to recognize our research assistants, Marissa Sites & Sydney Lewin; our legal and technology assistant, Morgan Kane; and the administrative staffs at Karp & Weiss, P.C. and Fromm Smith & Gadow, P.C.

We offer our profound thanks to the Family Law Presiding Judges of Maricopa County (Hon. Bruce Cohen) and Pima County (Hon. Greg Sakall) who were so instrumental in this project. We truly appreciate their input and support throughout this project.

And we would like to acknowledge Allan Koritzinsky and Wisconsin State Bar for providing us copies of the Wisconsin Bench Book used by their Family Law judiciary which greatly aided us in structuring this Guide.

USER'S GUIDE AND ABBREVIATIONS

This Guide is a unique legal publication designed as a highly functional practice aid which is intended to provide quick, easy reference to frequently encountered family law financial issues and principles. Because it is presented in a broad, condensed format, it should be used as a supplement to careful review and analysis of the cases and statues cited; *not as a substitute for same*.

All citations have been hyper-linked to the cases, statutes, and written materials referenced so the reader can personally access and analyze the source material. Standard rules of sentence structure and punctuation have been modified to accommodate the terse outline style used throughout. Easy access to the text of each section can be achieved through the Section Tab System (bookmarks).

Citations appear in the left margin, corresponding to the block of text for which they are authority. While every effort has been made to ensure the citations are accurate and the suggested procedures appropriate, the Guide must be used with caution. The user is advised to constantly test the Guide's citations and suggested procedures against the user's own research, knowledge, and experience.

Occasionally, the user will encounter the words "Memorandum Decision," "Unpublished Opinion," "Recommendation," or "Comment" in place of a citation. These terms indicate that no binding Arizona legal authority has been found that supports the proposition of the text. In Arizona, citation to unpublished or memorandum decisions is restricted to certain limited circumstances pursuant to Arizona Supreme Court Rules 111 and ARCAP 28. However, the Guide authors, editors, and Academy committee members suggest that the proposition presented is appropriate in the absence of binding authority to the contrary. In *no instance* should the user assume that text cited as either "Recommendation" or "Comment" is legally correct.

Citation Abbreviations

A.R.S.	Arizona Revised Statutes
ALR	American Law Reports
ALR2d	American Law Reports, 2nd
Am Jur	American Jurisprudence
Am Jur2d	American Jurisprudence, 2nd
ARCAP	Arizona Rules of Civil Appellate Procedure
ARCP	Arizona Rules of Civil Procedure
ARFLP	Arizona Rules of Family Law Procedure
CA-CV	Court of Appeals-Civil
CJS	Corpus Juris Secundum
Ct. App.	Court of Appeals
Div.	Division
F.2d	Federal Reporter, 2d series
P.3d	Pacific Reporter, 3rd series
¶	Paragraph
§	Section
Supra	Earlier in this writing or above
Infra	later in this writing or below
Id.	Denotes citation to the immediately preceding source

Text Abbreviations

Atty	Attorney
Bd.	Board
Ch.	Chapter
Dept.	Department
IRS	Internal Revenue Service
Pet	Petitioner
Resp	Respondent
UCCJEA	Uniform Child Custody Jurisdiction and Enforcement Act
UIFSA	Uniform Interstate Family Support Act

Chapter 1 – Equitable Division

Chapter 1 – Equitable Division

	I. Community and Joint Property Should Be Divided Equitably Though Not Necessarily in Kind.
See, A.R.S. § 25-318(A).	a. The court shall divide the community and joint tenancy property equitably, though not necessarily in kind, without regard to marital misconduct.
See, *Cooper v. Cooper*, 130 Ariz. 257 (1981).	b. The court is not required to make an absolutely equal distribution of property as long as the division does not appear inequitable or unfair.
See, *Lindsay v. Lindsay*, 115 Ariz. 322 (App. 1977).	c. The court has wide discretion and is not required to divide property exactly equally.
See, *Neely v. Neely*, 115 Ariz. 47 (App. 1977).	d. Exactly even division is not required; the standard for property apportionment is whether the distribution is equitable.
See, *Hatch v. Hatch*, 113 Ariz. 130 (1976).	e. The court must award substantial equivalents to each spouse.
See, *Lehn v. Al-Thanayyan*, 246 Ariz. 277 (App. 2019).	f. "Equitable" is a concept of fairness dependent on the facts of a particular case.
See, *Barron v. Barron*, 246 Ariz. 580 (App. 2018); *Bobrow v. Bobrow*, 241 Ariz. 592 (App. 2017).	g. Where overall property allocation was equitable, husband not entitled to an equalization payment representing post-petition expenses. *But see*, *Chapter 8, Post-Service Reimbursements (Bobrow Claims), which pre-dates Barron by one year and which was distinguished in Barron.*
See, *Hammett v. Hammett*, 247 Ariz. 556 (2019).	h. The court must equitably divide community assets and debts even in an annulment action. The court has authority to allocate debts even though debts are not expressly mentioned in A.R.S. § 25-318(B). The court is to consider all community assets and debts in making an equitable distribution.
See, *Ivancovich v. Ivancovich*, 24 Ariz. App. 592 (App. 1975).	i. Although there is no requirement of "equality" in division of property, the division should be substantially equal.

	II. Marital Property Should Be Divided Equally Absent Sound Reason.
See, *Dole v. Blair*, 248 Ariz. 629 (App. 2020).	a. Substantially equal division of community joint property is not required if sound reason exists to divide otherwise.
See, *Schickner v. Schickner*, 237 Ariz. 194 (App. 2015).	b. Marital property should be divided substantially equally absent sound reason.
See, *Buttram v. Buttram*, 122 Ariz. 581 (App. 1979).	c. The court is not required to divide property exactly equally but cannot create a gross disparity or make an arbitrary award. Award must be substantially equal unless sound reasons appear in the record.
See, *In re Marriage of Inboden*, 223 Ariz. 542 (App. 2010).	d. Determining what is equitable is a concept of fairness dependent on the facts of a particular case.
See, In re Marriage of Berger, 140 Ariz. 156 (App. 1983); *Tester v. Tester*, 123 Ariz. 41 (App. 1979).	e. The apportionment of community property must be substantially equal absent sound reasons appear in the record.
See, *Toth v. Toth*, 190 Ariz. 218 (1997).	f. An equitable distribution of property does not require an "equal distribution" based on specific facts of each case. Joint tenancy and community property interests should be treated alike in making the property division.
Id.	g. Arizona Supreme Court, reversing the Court of Appeals, which has found that the sound reasons to make a substantially unequal division of property must be based on statutory factors (fraud, excessive or abnormal expenditures, or destruction or concealment of property).
Id.	h. An extremely short marriage and the sole contributions of one spouse towards jointly-held real property could result in an equal division of property not being equitable under the circumstances.
Id.	i. Sound reason for an unequal division of property is not limited to statutory (A.R.S. § 25-318(C)) reasons and can be based on other factors.
See, *Flower v. Flower*, 223 Ariz. 531 (App. 2010).	j. The court's attempt to achieve an equitable division is not limited by statutory factors, and court may consider other factors that bear on the equities of a particular case.

See, *In re Marriage of Inboden,*223 Ariz. at 546.	k. In dividing property, a court may consider excessive or abnormal expenditures or the destruction or concealment of property, but the court is not limited to consideration of those statutory factors in determining the equities.
Id.	l. In making an equitable property division, the court should consider all factors that bear on the equities of the division, including the length of the marriage, the contributions of each spouse to the community (financial or otherwise), the source of funds used to acquire the property to be divided, the allocation of debt, and any other factor.
See, *Hrudka v. Hrudka*, 186 Ariz. 84 (App. 1995).	m. Where the court found waste by a spouse, the court may award community property to the other as compensation for the waste. The court may consider excessive or abnormal expenditures, destruction, concealment, or fraudulent disposition of property when apportioning the assets.
See, *Ivancovich v. Ivancovich*, 24 Ariz. App. 592 (1975).	n. Consideration of a spouse's expenditure of separate funds, where other spouse withheld support, was not an improper consideration of marital misconduct in the property division.
See, *Lehn v. Al-Thanayyan*, 246 Ariz. 277 (App. 2019).	o. Where a party's obstructionist behavior prevents an accurate determination of community property, an award of a greater share to the other party may be appropriate.
	III. Court Discretion in Making Division.
See, *Boncoskey v. Boncoskey*, 216 Ariz. 448 (App. 2007).	a. The court has broad discretion in determining what allocation of property and debt is equitable under the circumstances.
See, *Kay S. v. Mark S.*, 213 Ariz. 373 (App. 2006).	b. Courts might reach different conclusions about the equities, without abusing discretion.
See, *Pangburn v. Pangburn*, 152 Ariz. 227 (App. 1986).	c. The Court's distribution was nearly equal after taking liens into account, along with husband's misuse of community funds.
See, *Dole v. Blair in and for County of Maricopa*, 248 Ariz. 629 (App. 2019).	d. Court may consider factors to arrive at an equitable division of community joint property, including source of funds and other equitable factors.
Id.	e. Court has broad discretion in allocating property but has no authority to compel either party to divest separate property.

See, *Wineinger v. Wineinger*, 137 Ariz. 194 (App. 1983).	f. An award of $46k to one spouse and $54k of property to the other was not error where the disparity reflected conservative values of certain assets.
See, *In re Marriage of Berger*, 140 Ariz. at 168.	g. Equities in one spouse's favor justified an unequal division where one spouse had need for personal property items and had purchased with her separate funds.
See, *Lehn*, 246 Ariz. at 284.	h. An equal allocation of community property was not error due to lack of valuation of a significant asset which was hidden by one party.
	IV. Abuse of Discretion in Dividing Property Unequally.
See, *Valladee v. Valladee*, 149 Ariz. 304 (App. 1986).	a. The court abused its discretion by awarding unequal distribution of joint property in order to reimburse a party for spending separate funds. The reimbursement was inequitable because it was contradictory to joint tenancy reimbursement principles and conflicted with the legal presumption that a gift had been made to the other spouse.
See, *Dole*, 248 Ariz. at 634.	b. While the court may consider the parties' children in allocating property, the court may not impinge on either party's property interests. An order that the parties remain joint owners of an asset post-dissolution impinged on those rights.
See, *Hatch*, 113 Ariz. 130.	c. Court was arbitrary and unreasonable in making uneven distributions which created an unconstitutional deprivation of property interest; distribution should not be made to reward or punish a party.
	V. Specific Circumstances: Businesses, Stocks, Personal Property.
See, *Cotter v. Podhorez*, 245 Ariz. 82 (App. 2018).	a. While marital property should be divided substantially equally, the award of all personal property household furniture presumes that the court considered the value of individual items of property in making the award.
See, *Goldstein v. Goldstein*, 120 Ariz. 23 (1978).	b. When valuing business assets being divided, it was not error for the court to disregard future overhead costs of the business and future, variable tax consequences.
See, *Thorn v. Thorn*, 235 Ariz. 216 (App. 2014).	c. The court had authority to order the return of personal property (stocks) which were found to be a spouse's separate property.

	d. *See*, Chapter 4, Paragraph III, b(3) concerning the date of valuation for assets dissipated before the date of decree.
	VI. Waste.
See, *Martin v. Martin*, 156 Ariz. 452 (1988).	a. When apportioning community property, a court may consider waste or dissipation of community assets by one spouse and award money or property sufficient to compensate the other spouse.
See, *Hrudka*, 186 Ariz. at 93. *Martin,* supra.	b. Wrongful, unreasonable, and improper use of community property may be considered so that neither spouse profits by misuse nor concealment of community property.
See, Martin, supra.	c. The court should add the value of the dissipated property to the existing property and then equitably divide the property or award a spouse a sum of money when the assets are not available for distribution.
See, Martin, supra.	d. The trial court does not have jurisdiction to compensate a spouse for the destruction of separate property by the other spouse.
See, A.R.S. § 25-318(C); *Hrudka*, supra.	e. The court may consider excessive or abnormal expenditures, as well as the destruction, concealment, or fraudulent disposition of community property (often referred to as "waste"). This may include transferring, concealing, and selling assets in violation of a court order, providing evasive dishonest answers regarding the location of assets.
See, *Gutierrez v. Gutierrez*, 193 Ariz. 343 (App. 1998).	f. The burden is on the party alleging waste to establish a prima facie case of "waste;" once established the other spouse then bears the burden to demonstrate the absence of waste.
See, Helland v. Helland, 236 Ariz. 197 (App. 2014).	g. Criminal acts may not necessarily, in and of themselves, establish a claim for waste (where husband sold a medical practice prior to revocation of his medical license, wife was unable to show that the criminal activities devalued the value of the practice based on expert testimony that the actual sales price is the best indicator of value especially when there is a limited market for the business).
See, *Martin*, 156 Ariz. at 456.	h. However, A.R.S. § 25-319(A) does not authorize an award of spousal maintenance because one spouse wrongfully disposes of community property; it is only after the court determines a spouse is entitled to spousal maintenance that a court may consider "excesses" in dealing with common property to establish the amount of maintenance to be paid.

	VII. Burden of Proof.
See, Harmon v. Harmon, 126 Ariz. 242 (App. 1980).	a. When allocating property pursuant to a petition for legal separation or dissolution of marriage, a spouse is required to prove his or her claim by a preponderance of the evidence. husband only required to prove, by a preponderance of the evidence, that he had an agreement with wife that if he gave her $100,000, he would have a 50% interest in real property titled solely in wife's name.
	VIII. Jurisdiction.
See, Mitchell v. Mitchell, 152 Ariz. 317 (1987).	a. Goodwill is a community asset to be equitably allocated in a legal separation or dissolution action. *See*, Business Valuation Section. However, a trial court is not bound by terms of a partnership agreement that places a specific value on the goodwill. The agreement is one factor in a determination of the community interest and should not be deemed conclusive as such agreements address aspects of a business and not the same considerations involved in valuing a business in a dissolution action. This principle applies even if the non-business spouse has signed the partnership agreement (where the partnership agreement addressed a value of goodwill upon a partner leaving the business and the partner was not leaving the business; rather the business is to be valued as an ongoing concern).
See, Kells v. Kells, 182 Ariz. 480 (App. 1995).	b. Trial court erred by finding a buy-sell agreement to be controlling.
See, Garrett v. Garrett, 140 Ariz. 564, 567-68 (App. 1983); *Everson v. Everson*, 24 Ariz. App. 239 (App. 1975).	c. The trial court must also consider the community's interest in contingent fee contracts entered into during the marriage but not fully performed at the time of the dissolution of marriage. Although fees may be received after dissolution, they are not the earning spouse's sole and separate property under A.R.S. § 25-213 and the court has jurisdiction to determine the community's interest in the fee. The contingency contracts are a valuable property right "though the contingency upon which it is based has not been fulfilled…and the community is entitled to be reimbursed for the community labor expended in perfecting or protecting a future asset." The trial court maintains continuing jurisdiction to monitor the value of the services.
Id.	d. While the court recognizes that at some point in time a spouse's motivation to increase the community's interest in an asset may lessen (or even cease), there is no authority allowing the court to allocate property based upon a determination that one should have worked more diligently to increase the community assets. The

concepts of waste and fraud will adequately protect the community without having the court weighing motives for non-productivity.

See, Lee v. Lee, 133 Ariz. 118 (App. 1982).

e. In facilitating the equitable division of community property, the trial court's discretionary powers include the power to order the sale of community property. The trial court does not have jurisdiction, however, over a contested obligation paid out of the sales proceeds to a third-party creditor (the allocation of community liabilities determines the rights and obligation of only the parties before the court with respect to one another and may not order the direct payment of community assets to a non-party creditor).

i. *Note*: In *Lee*, the Appellate Court noted that the third-party creditor did not move to intervene; nor was she joined as a party.

See, Bowart v. Bowart, 128 Ariz. 331 (App. 1980).

f. The trial court may also set a minimum price on a community asset ordered to be sold to prevent the asset from being sold for less than fair market value.

IX. Assets: Gifts or Community Property?

A.R.S. § 25-318(A).

a. In allocating property, the court shall assign to each party their sole and separate and equitably divided community, joint tenancy, and other property held in common.

b. A.R.S. § 25-211(A) also provides that all property acquired by a spouse during marriage is community except for property that is acquired by gift, devise, or descent.

See, Davis v. Davis, 9 Ariz. App. 49 (1969).

c. Pre-Marital Asset or Gift? In Davis, husband allowed wife to wear a diamond he owned prior to marriage. wife argued the diamond was a gift and, therefore, her sole and separate property pursuant to A.R.S. § 25-211(A). husband argued it was not gifted to wife.

See, *Hrudka*, 186 Ariz. 94.

i. The determination of a gift is a question of fact. The Appellate Court determined that as the asset was husband's premarital property, wife bore the burden of showing by a preponderance of the evidence that husband made a gift to wife. Specifically, wife bore the burden to show that husband manifested a clear intent to make a present gift to wife and husband delivered wife full possession and control of the diamond in order to compel husband to divest ownership.

See, Schwartz v. Schwartz, 52 Ariz. 105 (1938).

d. Marital Asset or Gift? A married spouse can give his or her community interest in property to a spouse to make it the sole and separate property of the receiving spouse. The spouse claiming the property is his or her sole and separate property must clearly show that the giving spouse intended to relinquish his or her control in the property.

See, Cameron v. Cameron, 148 Ariz. 558 (App. 1985).

i. Wife claimed a vehicle was her sole and separate property as it was given to her for her birthday and intended for her sole use. The Court was not persuaded with wife's argument, stating assets which are intended for community use, with a designation of a primary user is not dispositive.

See, Hrudka, supra at 93.

ii. Wife claimed some items of jewelry were presents. As the items were purchased during the marriage the burden was on wife to demonstrate by clear and convincing evidence that they were her separate property. Wife argued that as husband physically handed the items over to her with the occurrence of a special occasion (e.g., anniversary, birthday) and she wore them, they were her sole and separate property. The Court disagreed, stating she had to establish all elements of a gift. "Testimony that wife sometimes wore the jewelry does not establish that it was intended as a gift and not an investment."

Id.

iii. Wife also argued that a Rolls Royce was a Valentine's Day gift as it was presented with a red bow wrapped around it. husband argued it was purchased as an investment, partially paid for with a trade-in of another vehicle. The salesman and the parties' accountant testified that there was a trade-in; the salesman also testified that it was his idea to deliver the vehicle with a red bow as it was so close to Valentine's Day. The trial court also found it significant that the Rolls Royce was kept in a garage and rarely driven to preserve its value. Thus, wife did not sustain her burden.

X. Liabilities.

See, A.R.S. § 25-318(B).

a. In 2008, A.R.S. § 25-318(B) was added and provided that in dividing property "the court may consider all debts and obligations that are related to the property, including accrued or accruing taxes that would become due on the receipt, sale, or other disposition of the property." Case law prior to the change clearly indicated that any liabilities that were speculative would not be taken into consideration when equitably dividing the community property. *See*, Business Valuation Section (f. Taxes), addressing *Goldstein and Goldstein* and *Biddulph v. Biddulph*.

See, Rowe v. Rowe, 154 Ariz. 616 (App. 1987).	b. "Courts need not consider the speculative future effects of taxes or inflation in valuing pensions plans" (citing *Johnson v. Johnson*, 131 Ariz. 38 (1981)), but "If the future maturity date is close to trial, and the tax consequences can be immediately and specifically determined, a court should consider such effects of taxation" (citing *Koelsch v. Koelsch*, 148 Ariz. 176 (1986)).
See, A.R.S. § 25-318(B); *Stickler v. Stickler*, 2020 WL 62473 at *2 (App. Jan. 7, 2020). (Mem. Decision).	c. There are no published opinions regarding how A.R.S. § 25-318(B) is to be applied as currently written, however, some memorandum decisions affirm the court's authority to include debts and obligations. In *Stickler*, debts such as leases and other liabilities associated with a business must be taken into account in a business valuation.
	XI. Court Approval of an Agreement.
See, A.R.S. § 25-317.	a. Parties to a dissolution action may reach an agreement between themselves regarding how their community and joint property is to be allocated.
See, Keller v. Keller, 137 Ariz. 447 (App. 1983).	b. Absent fraud or undue influence, the agreement is binding on the parties.
See, Wick v. Wick, 107 Ariz. 382 (1971).	c. The agreement is not, however, binding on the court and if the court finds the agreement unfair or inequitable, it can modify or reject the agreement. A dissolution action is an equity action, and the court has authority to exercise full equity powers and jurisdiction and an agreement between the parties cannot limit the power conferred on the court by statute.
A.R.S. § 25-317.	d. For enforcement of postnuptial agreements, see *Austin v. Austin*, 237 Ariz. 201 (App. 2015) and *In re Estate of Harber*, 104 Ariz. 79 (1969).
	XII. Discretion of Court.
See, Miller v. Miller, 140 Ariz. 520 (App. 1984).	a. The allocation of community property rests within the discretion of the trial court.

Chapter 2 – Commingling and Tracing

I. Presumptions.

a. Community Property Presumption.

i. A.R.S. § 25-211. All property acquired by either husband or wife during the marriage is the community property of the husband and wife except for property that is:

1. Acquired by gift, devise, or descent; or

2. Acquired after service of a petition for dissolution of marriage, legal separation, or annulment if the petition results in a decree of dissolution of marriage, legal separation, or annulment.

ii. Property acquired during the marriage is presumed to be community property. This presumption is rebuttable only by clear and convincing evidence.

See, e.g., Sommerfield v. Sommerfield, 121 Ariz. 575, 577 (1979); *Porter v. Porter*, 67 Ariz. 273, 279 (1948); *Arizona Cent. Credit Union v. Holden*, 6 Ariz. App. 310, 213 (App. 1967); *In re Marriage of Foster*, 240 Ariz. 99 (App. 2016).

b. Separate Property Presumption.

i. A.R.S. § 25-213. A spouse's real and personal property that is owned by that spouse before marriage and that is acquired by that spouse during the marriage by gift, devise, or descent, and the increase, rents, issues, and profits of that property is the separate property of that spouse.

See, Porter, 67 Ariz. at 282

ii. The rights of married persons in their separate property are as impregnable and as thoroughly fixed as their right in their community property.

See, Hatcher v. Hatcher, 188 Ariz. 154 (App. 1996); *Evans v. Evans*, 79 Ariz. 284, 286 (1955).

iii. The presumption is that all property acquired by either spouse during marriage is community property, *except* that which is acquired by gift, devise, or descent. (Emphasis added). This presumption is rebuttable only by clear and convincing evidence.

See, *Rueschenberg v. Rueschenberg*, 219 Ariz. 249, 252-53 (App. 2008); *Cockrill v. Cockrill*, 124 Ariz. 50, 53 (1979).

c. Liens on Separate Property.

i. "The community may be entitled to an equitable interest in a portion of a separate property business's increase in value and/or distributable earnings during the marriage. These are referred to as "*Cockrill*" or "*Rueschenberg*" (pronounced "Roo-shen-berg") cases. These cases can be complex, they involve expert testimony and the various rebuttable presumptions and burdens of proof shift between the parties."

II. Standard of Proof.

See, e.g., Blaine v. Blaine, 63 Ariz. 100 (1945); *Carroll v. Lee*, 148 Ariz. 10, 16 (1986); *Cockrill v. Cockrill*, 124 Ariz. 50, 52 (1979); *Davis v. Davis*, 149 Ariz. 100, 102 (App. 1985); *Arizona Cent. Credit Union v. Holden*, 6 Ariz. App. 310; *Porter v. Porter*, 67 Ariz. 273; *Cooper v. Cooper*, 130 Ariz. 257 (1981); *Bourne v. Lord*, 19 Ariz. App. 228 (App. 1973).

a. Presumption of community or separate property must be overcome by clear and convincing evidence.

See, Rundle v. Winters, 38 Ariz. 239 (1931); *Laughlin v. Laughlin*, 61 Ariz. 6 (1943); *Potthoff v. Potthoff*, 128 Ariz. 557, 562 (App. 1981).

b. The parties' *conduct and intentions* at the time of commingling are relevant to the analysis, but this principle has not been universally applied – see, for example, the cases on joint titling of real estate and *Potthoff*. (The commingling concept "is simply not applicable to real property because of the 'unique' nature of that type of property. You cannot mix Black Acre with White Acre and obtain Gray Acre.")

See, Blaine, 63 Ariz. at 111

c. Statements made by husband five years after purchase of property he did not intend to vest any interests in such property in wife was not "reasonable evidence" where "overwhelming weight of evidence [was] to the contrary."

See, Honnas v. Honnas, 133 Ariz. 39 (1982); *Everson v. Everson*, 24 Ariz. App. 239 (App. 1975).

d. Property takes its character as community property or separate property at the time of its acquisition and cannot thereafter be changed except by agreement or operation of law.

See, Cooper, 130 Ariz. at 260.

e. A party must first show that there was commingling, which then triggers the presumption that the entirety of the asset is community. The party "claiming that the commingled funds, or any portion of them, are separate bears the burden to prove that fact by clear and satisfactory evidence."

III. Colliding Presumptions. These usually occur when a party acquires separate property during marriage.

See, *Martin v. Martin*, 156 Ariz. 440 (App. 1986); *Potthoff*, 128 Ariz. 557; *Cooper*, 130 Ariz. 257.

a. Community property rights and separate property rights "*are of equal importance*." *But see*, *Foster*, *Bender*, and *Messer* below.

See, *In re Marriage of Foster*, 240 Ariz. 99; *Bender v. Bender*, 123 Ariz. 90 (App. 1979); *Matter of Estate of Messer,* 118 Ariz. 291 (App. 1978); *Bourne v. Lord*, 19 Ariz. App. 228 (App. 1973).

b. If the community and separate presumptions collide and the property was acquired after marriage, it is presumed to be community property. The separate property claimant has the burden of proving by clear and satisfactory evidence that these assets were purchased with their separate funds.

See, *Noble v. Noble*, 26 Ariz. App. 89, 93 (App. 1976).

c. The parties' intentions regarding the character of property as separate or community is relevant and such intent can be "colored by what the parties conceived to be the state of the law as to separate and community property."

IV. Joint Financial Account Presumption

a. A.R.S. § 14-6211. Ownership of Accounts.

i. *Subsection A.* During the lifetime of all parties an account belongs to the parties in proportion to the net contribution of each to the sums on deposit unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.

ii. *Subsection D.* For the purposes of subsection A of this section, "net contribution" means the sum of all deposits to an account made by or for the party, less all payments from the account that are made to or for the party and that have not been

	paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. Net contribution includes deposit life insurance proceeds added to the account by reason of the death of the party whose net contribution is in question. (Note: the legislature passed this after *O'Hair*—seemingly codifying the *O'Hair* holding, *see below*.)
See, *In the Matter of the Estate of Harriet K. Nelson,* 134 Ariz. 439 (1982).	b. The funds in joint bank accounts belong to the parties in direct proportion to the sums contributed by each. (Citing A.R.S. § 14-6103, the predecessor to A.R.S. § 14-6211.)
See, O'Hair v. O'Hair, 109 Ariz. 236, 239 (1973), later codified in A.R.S. § 14-6211 (Superseded by statute on (unrelated) support grounds as provided in *Provinzano v. Provinzano,* 116 Ariz. 571 (App. 1977)),	c. Unlike jointly titled real estate (which requires clear and convincing evidence to show that no gift was intended), a jointly titled financial account has no such presumption and requires no such evidence. Joint titling does not change the separate property character of the funds in the financial account (here, one spouse had deposited significant separate property funds into joint accounts and both parties used the accounts).
See, *O'Hair,* 109 Ariz. at 240 (Quoting *Rasmussen v. Oshkosh Savings & Loan Ass'n,* 151 N.W.2d 730, 732 (1967)).	d. The logic is this: joint custody of an account in itself negates any idea of a gift since the essential element of a gift of personal property requires intent on the part of the donor to divest himself of all dominion and control. "*Gifts from a husband to his wife are not presumed from the marital relationship* but are governed by the same rules as gifts between strangers, namely, there must be an intention to part with the interest in and dominion over the property and there must be delivery of the property."
See, Grant v. Grant, 119 Ariz. 470 (App. 1978).	e. Evidence that party instructed her attorney to transfer titling of stock was evidence of gift. "Even when the joint tenancy applies to real property the presumption of a gift can be rebutted….In the final analysis, the fact that a spouse puts separate property into joint tenancy with the other spouse must be an inference or indication that a gift was intended, but this is considered only with all the other evidence bearing upon the issue of intent."
See, *Stevenson v. Stevenson*, 132 Ariz. 44 (1982); *O'Hair*, 109. Ariz. at 240..	f. Deposit of separate funds into a joint account does not create a presumption of a gift, but a court may find a gift by clear and convincing evidence produced by the person claiming the gift.

See, Noble, 26 Ariz. App. at 89; *O'Hair,* 109 Ariz. 240

i. The depositor's intention controls whether deposit of separate funds into a community account constitutes a gift.

V. Transmutation of Separate Funds in Joint Account

See, *Potthoff*, 128 Ariz. at 562.

a. Property retains its character established at date of acquisition unless changed by agreement or operation of law.

b. Transmutation can occur in one of three ways:

See generally, *In Re Marriage of Cupp*, 152 Ariz. 161 (App. 1986); *Blaine,* 63 Ariz. 100 (1945).

i. *Commingling* (but if still traceable, no transmutation). Transmutation of property of identical character (e.g. money), happens only when the money is so mixed together that a court is unable to tell how much money was originally separate and how much was community (*Cupp* and *Blaine*: real estate purchased close in time to separate property deposit in a joint account may be separate property (but for the fact that there was joint titling of the real property) because it was then traceable);

See, *Davis v. Davis*, 9 Ariz. App. 49 (App. 1969).

ii. *Agreement* between the parties to alter the character of the property, or;

See, Armer v. Armer, 105 Ariz. 284 (1970); *Neely v. Neely,* 115 Ariz. 47, 51 (App. 1977).

iii. *Gift*. "The essential elements of a gift *inter vivos* are 'that the doner manifest a clear intent to give to the party claiming as donee and give to the latter before death full possession and control of the property (emphasis supplied by the court).'" (citing *O'Hair*,) "In short, there must be donative intent, delivery, and a vesting of irrevocable title upon such delivery." (citing *Armer*). The burden is upon the alleged donee to establish these elements by clear and convincing evidence.

See, *Bay v. Bay*, 2010 Ariz. App. 88 2010 WL 264, 3174, CA-CV 09-0481 (App. 2010) (Memorandum Decision) and *Nationwide Resources Corp. v. Massabni*, 143 Ariz. 460, 465 (App. 1984).

c. "In making proof of a transmutation of the character of property by gift, the usual rules of evidence as to sufficiency apply."

See, *Moser v. Moser*, 117 Ariz. 312, 314 (App. 1977).

d. Intent controls whether separate assets have been transmuted. "Donative intent must be ascertained in light of all the circumstances."

VI. *De Minimus* Commingling

See, *Noble,* 26 Ariz. App at 95-96; *Battiste v. Battiste*, 135 Ariz. 470, 472-73 (App. 1983); *Guthrie v. Guthrie*, 73 Ariz. 423 (1952); *Bowart v. Bowart*, 128 Ariz. 331 (App. 1980).

a. The commingling of a "negligible" amount of community funds with a substantial separate funds will not necessarily result in a presumption that the entire amount is community – even if the separate and community interests can no longer be identified.

See, *Battiste*, *supra*.

b. If all funds in joint account have separate source, then entire balance is separate regardless of whether the account was used to pay community expenses – effectively no commingling occurred.

VII. Presumption of Community Property If Not Commingled and Not Traceable

See generally, Roden v. Roden, 190 Ariz. 407, 410 (App. 1997) *Cooper*, 130 Ariz. 257.

a. If a party can show that community and separate property were commingled, then all of the property is presumed to be community property *unless* the separate or community property can be identified and traced.

b. "The standard of tracing is by explicitly clear and satisfactory evidence."

See generally, Evans, 79 Ariz. 284; *Blaine*, 63 Ariz. 100; *Porter*, 67 Ariz. 273, 281; *Guthrie*, 73 Ariz. 423; *Bourne,* 19 Ariz. App. 228*; Ivancovich v. Ivancovich*, 24 Ariz. App. 592 (App. 1975); *Flowers v. Flowers*, 118 Ariz. 577 (App. 1978).

c. Where property of identical character, *such as money*, is so mixed together that a court is unable to tell how much money was originally separate and how much money was originally community, a transmutation of separate money into community money occurs.

See, *Noble,* 26 Ariz. App. at 95; *Potthoff*, 128 Ariz. at 564; *In re Marriage of Cupp*, 152 Ariz. at 161;

d. The caveat is that transmutation of separate to community property by operation of law does not occur simply because of commingling. Rather, the commingling must be such that the identity of the property as separate or community is lost. Or,

Porter, 67 Ariz. at 280; *Guthrie*, 73 Ariz. at 423; *Roden*, 190 Ariz. at 410. *Sommerfield*, 121 Ariz. 575; *Bourne*, supra.	unless one of the other (separate or community property), can be identified and traced. The burden is on the one who claims a separate property component.
See, Blaine, 63 Ariz. at 110.	e. In *Blaine*, all deposits and withdrawals were identifiable except a large amount of checks drawn to cash. Ordinarily, the entire account would be deemed to be community, but as to the purchase of a parcel of real property from the commingled account, Husband may have been able to establish that it was his separate property had he not jointly titled it with Wife, based on his conduct and intentions contemporaneous to the purchase and that he had deposited the amount to purchase the property a "few days" prior to the purchase of the property. "In other words, evidence clearly shows that this particular purchase was made with separate funds marked for such purpose at the time they were deposited."
See, Porter, 67 Ariz. at 280.	f. In *Porter*, commingling in a joint account did not transmute separate funds to community funds, where party's bookkeeper kept well itemized, meticulous, and contemporaneous records of all expenses and deposits to a commingled account so that the court could gather a "*very clear picture* of what took place."
	VIII. Use of Separate Funds to Pay Community Obligations is Not Reimbursable Unless Involuntary Expenditure
See, *Baum v. Baum*, 120 Ariz. 140, 146 (App. 1978); *Mori v. Mori,* 124 Ariz. 193 (1979).	a. Voluntary use of separate funds to pay community obligations is not reimbursable absent agreement.
See, *Ivancovich*, 24 Ariz. App. at 592.	b. However, reimbursement is allowed even in the absence of agreement where spouse prevented access to community funds and was thereby compelled to use separate funds for normal living expenses. i. This decision is based, in part, upon "the duty of the husband to support his wife."
See, *Bobrow v. Bobrow,* 241 Ariz. 592 (App. 2017).	c. "[G]ifts from a husband to his wife are not presumed from the marital relationship but are governed by the same rules as gifts between stranger… [,]" so payments toward community obligations by separate property spouse with separate property funds post termination of the community are evaluated under the

gift theory and, therefore, are very likely reimbursable.

See, *Hrudka v. Hrudka*, 186 Ariz. 84, 94 (App. 1985).

d. Reimbursement permitted where spouse had no choice but to pay community obligation with separate property. Here, where one spouse refused to "agree to a creditor-workout agreement or otherwise cooperate in the liquidation of community assets to satisfy these [community] obligations."

See, *Valladee v. Valladee,* 149 Ariz. 304, 307-08 (App. 1986).

See also, Real Property Section, below.

e. *Baum* reimbursement rule does not apply where jointly titled investment properties are purchased with separate funds. Joint tenancy rules apply between husband and wife and the treatment of joint tenancy property versus community property is different. In joint tenancy, gift of one-half of the down payment or one-half of the net equity value at the time of transfer is generally presumed.

i. This holding has been superseded by the Arizona Supreme Court's decision in *Toth* – community and joint tenancy are to be treated the same.

See, *Toth v. Toth*, 190 Ariz. 218 (1997).

f. In *Toth*, the court held that there should be no difference in treatment between joint and community property – both must be divided equitably. Husband had used $140,000 of his separate funds the day after marriage to purchase a home that he then jointly titled with his wife. The marriage lasted two days before they separated and eventually filed for divorce. While the court determined that Husband had made a gift to Wife, the court nevertheless gave the husband credit for most of his contributions, stating: "statute requiring equitable division of joint tenancy property upon dissolution [A.R.S. § 25-318] does not require equal division of joint property and does not limit inquiry to parties' conduct concerning property."

i. This does not abrogate the usual presumption that equitable division usually means an equal division absent extraordinary circumstances.

IX. Personal Injury Awards/Disability Payments

See, *Jurek v. Jurek*, 124 Ariz. 596 (1980).

a. That portion of a personal injury award related to lost wages during marriage is community property, while that portion related to pain and suffering is separate property.

See, *Hefner v. Hefner*, 248 Ariz. 54, 58 (App. 2019).

b. Because the entirety of the personal injury award is presumed to be the injured spouse's separate property, the burden of proof is on the community property claimant to prove that

	portion of the personal injury proceeds that they claim to be community property, i.e., lost community income or community payment of medical bills.
See, Hatcher, 188 Ariz. at 158.	c. Lump sum disability settlement and monthly structured payments for lost wages for an injury suffered during marriage deposited into a joint account were part community and part separate – depending upon whether the wages were lost for the period during which the marriage existed (community) or thereafter (separate).
	X. Workers' Compensation Awards
See, *Bugh v. Bugh*, 125 Ariz. 190 (App. 1980).	a. Workers' Compensation awards are designated as for "lost earning capacity" ("not an award for personal injuries or pain and suffering") and should be distinguished between that representing marital (community property) earning capacity and post- marital (separate property) earning capacity.
	XI. Attorneys' Contingent Case Fees
See, *Garrett v. Garrett,* 140 Ariz. 564 (App. 1983).	a. The fees for an attorney spouse's contingency fee cases are either community or separate property depending on whether fees were earned (regardless of when paid) prior to or after termination of the community.
	XII. Insurance Commissions
See, *Pangburn v. Pangburn*, 152 Ariz. 227 (App. 1986).	a. Spouse's right to commissions on renewal of insurance policy contracts acquired during the marriage that renew after divorce ("book of business") may be mixture of community and separate property—depending upon the extent of toil and effort expended on the contracts during and after marriage.
	XIII. Stock Options
See, *Brebaugh v. Deane*, 211 Ariz. 95 (App. 2005).	a. The Court of Appeals recognized that stock options can be part community and part separate property, depending on the *intentions* of the grantor employer and the timeline of when they vest.
	XIV. Disability Payments
See, *Hatcher*, 188 Ariz. 154.	a. Disability payments are either community or separate property, based on whether the payments were in lieu of marital or

post-marital lost earning capacity.

i. Disability settlement received during the marriage and deposited into a joint bank account used to purchase real property in joint tenancy.

XV. Tracing Methods

a. Recapitulation or Family Expense Arguments.

See, *Porter,* 67 Ariz. at 280.

i. *Porter* is sometimes cited as a "recapitulation" or "family expense" case. The recapitulation or family expense principle commonly refers to a method of tracing where one party shows as to a commingled account that community expenses exceeded community deposits; and ergo, the remainder of the account must be separate. However, note that these methods were not adopted by the Court. Rather, the facts in *Porter* were very clear and included strong evidence of the husband's conduct and intentions – contemporaneous to the time of the events. Explicit and contemporaneous records were kept of all transactions of in the account by a non-party bookkeeper "so as to make it possible to keep the various things straight and make them easily accessible." Also, the amount of community property commingled into the account was "comparatively small" relative to the separate amounts.

b. Lowest Intermediate Balance Approach.

See, *Cooper*, 130 Ariz. at 260.

i. The Court did not recognize (or discuss) the "lowest intermediate balance" approach to tracing. A.R.S. § 47-9315 discussed the "lowest intermediate balance" in comment 3 in the context of security interest.

See, *Blaine*, 63 Ariz. at 110.

c. Payments from a commingled account for charges against separate property or for separate uses are deemed to be paid out of the separate funds. Here, community was not entitled to credit for amount paid by separate property spouse for taxes on his separate property and as gifts to members of his family by previous marriages. Separate property spouse had contributed separate property in excess of those expenditures. Based on this, community not entitled to credit for the separate expenses of husband paid from the commingled account, when the evidence established that the separate funds were in excess of separate expenditures. The doctrine of commingling does not deprive a spouse from taking credit for advancements to the community. *But see, Baum v. Baum*, 120 Ariz. 140 (App. 1978), which ordinarily precludes reimbursement for the voluntary expenditure of separate

funds for community expenses absent a written agreement.

XVI. Effect of Securing Debt with a Mortgage Placed on Separate Property After Marriage

a. A loan used for community purposes was not husband's separate debt even though it was secured by his separate property.

See, In re Hammett, 247 Ariz. 556 (App. 2019).

b. Property paid for with separate funds remains separate property, even if the mortgage is guaranteed by the community, provided the mortgage is paid for with separate funds.

See generally, Horton, 35 Ariz. 378.

XVII. Separate Property Reimbursements, where Property is Jointly Titled

a. When one spouse buys property with separate funds and places it in joint tenancy, there is presumption that spouse intended to make gift to his spouse of one half of the property. Restatement (Second) of Trusts § 440.

See generally, *Toth*, 190 Ariz. 218.

b. Where separate funds of one spouse have been used to purchase real property and title has been taken in joint tenancy, a presumption arises that a gift to the noncontributing spouse was intended.

See, Sloane v. Sloane 132 Ariz. 414 (App. 1982); *Batesole v. Batesole,* 24 Ariz. App. 83 (App. 1975).

c. The burden of proof is upon the contributing spouse to establish by clear and convincing evidence that a gift was not intended.

See, *Blaine*, 63 Ariz. at 111.

XVIII. Reimbursements for Contributions by Joint Tenant

a. Although separate property funds that are used to purchase joint tenancy property may be presumed to be a gift, post-acquisition, a joint tenant has a right to contribution from their cotenant for expenditures or obligations made for the benefit of the common property, provided that there existed a common obligation or liability.

See, Becchelli v. Becchelli, 109 Ariz. 229 (1973); *Collier v. Collier*, 73 Ariz. 405 (1952); *Blaine v. Blaine*, supra; *Oppenheimer v. Oppenheimer*, 22 Ariz. App. 238 (App. 1974).

XIX. Community Liens/Reimbursements on Separate Real Property

a. *See*, Chapter 3, Section IV.

See, Tester v. Tester, 123 Ariz. 41, 44 (App. 1979).	**XX. Fair Rental Value Claims** a. In a claim for reimbursement for community labor and funds expended on separate property, "because of the equitable nature of the husband's claim, it is appropriate also to take into account the fact that the [married couple] lived in the [ ] separate property rent free [during the marriage]." i. Note: *Tester's* analysis of a fair rental value claim has not been overruled.

Chapter 3 – Real Property

I. Community Property.

See, A.R.S. § 25-211(A).

a. All property acquired during marriage is community property except property:

i. Acquired by gift, devise, or descent;

ii. Acquired after service of petition for dissolution, legal separation, or annulment which results in a final decree.

II. Separate Property.

See, A.R.S. § 25-213.

a. Separate Property is defined as:

i. Property owned by a spouse before marriage;

ii. Property acquired by a spouse during marriage by gift, devise, or descent;

iii. Rents, issues, and profits of separate property;

iv. Property acquired after service of petition for dissolution, legal separation, or annulment which results in a final decree;

See, A.R.S. § 25-213 and *Drahos v. Rens*, 149 Ariz. 248, 249 (App. 1985).

b. Property owned by a spouse prior to marriage does not change its character as separate property after the marriage except by agreement or operation of law.

III. Presumptions and Burden of Proof as to whether Property is Community or Separate.

See, *Sommerfield v. Sommerfield*, 121 Ariz. 575, 577 (1979).

a. All property acquired during marriage is presumed to be community property.

See, *American Express Travel Related Services, Inc. v. Parmeter*, 186 Ariz. 652 (App. 1996).

b. All debts incurred during marriage are presumed to be community debts.

See, *In re Marriage of Foster*, 240 Ariz. 99 (App. 2016) and *Cockrill v. Cockrill*, 124 Ariz. 50 (1979).

c. Burden of proof to overcome the community property presumption is clear and convincing evidence.

IV. Community Liens/Reimbursements on Separate Real Property Owned Before Marriage by One Spouse.

See, Honnas v. Honnas, 133 Ariz. 39 (1982); *Lawson v. Ridgeway*, 72 Ariz. 253 (1951).

a. The "value at dissolution," as opposed to reimbursement for the actual amounts expended, is the formula for separate real property cases where the separate real property has increased in value during marriage due to improvements made by community labor and/or funds. The question is not "How much in community funds were expended?" The question is "To what extent did the community labor and/or funds *enhance the value* of the separate real property?"

See, Drahos v. Rens, 149 Ariz. 248 (App. 1985).

b. Community is entitled to equitable lien against separate property for its contributions to the payment of the mortgage – but only the principal portions of the payment are considered, not the interest, taxes, or insurance portions. Basically, the community shares in the appreciated value of the separate real property in proportion to the amount of principal for which the community paid. Expressed in mathematical formula. The *Drahos* formula for calculating the community lien is:

C + ((C/B) x A), where:

A = Appreciation in Value During Marriage (calculated from date of purchase);

B = Purchase Price; and

C = Community Contribution to Principal Reduction.

i. Note: This formula is derived from a California case, *In re Marriage of Marsden*, 130 Cal. App. 3d 426 (1982). The formula works only if the mortgage is fully paid off before the date of divorce.

See, Barnett v. Jedynak, 219 Ariz. 550 (App. 2009).

c. Twenty-five years after *Drahos* in *Barnett v. Jednyak*, the Court of Appeals provided a revised formula for calculating the community's equitable lien in separate real property. The *Barnett* Court observed that in *Drahos*, "…the husband purchased the property the day before the marriage. … Therefore, the increase in value from the date of purchase to the date of dissolution was the same as the increase in value from the date of the marriage." *Barnett* observed that since the community's interest in the home begins on the date of the

	marriage, the relevant value for determining the interest is the value on the date of the marriage. Thus, the *Barnett* formula for calculating the community lien is: C + (C/B x A), where: A = Appreciation in Value During Marriage (calculated from date of marriage to the date of service of a petition); B = Fair Market Value at Date of Marriage; and C = Community Contribution to Principal Reduction. i. Note the subtle difference between the *Barnett* and *Drahos* formulas – B is "Purchase Price" in *Drahos*, but it is "Fair Market Value at Date of Marriage" in *Barnett*. Explaining its reasoning, the *Barnett* Court stated we "… find support in *Drahos* for adjusting the *Drahos/ Marsden* formula to more fully compensate [the separate property owner] for prenuptial appreciation. The *Marsden* formula awards the community a percentage of post-nuptial appreciation, rather than all appreciation since purchase, but calculates that percentage as a function of the original purchase price of the home. We conclude that since the community's interest in the home begins on the date of the marriage, the relevant value for determining the community's interest in later appreciation is the value on the date of the marriage." *Barnett*, 219 Ariz. @ 555, 200 P.3d @ 1052.
See, Valento v. Valento, 225 Ariz. 477 (App. 2010).	d. In *Valento*, the Court of Appeals addressed the situation in which the community makes mortgage payments on separate real property which *depreciates* from the date of marriage to the date of termination of the community. If *positive* equity exists (i.e., the property lost value but the fair market value at the date of termination nevertheless remains greater than the loan balance), the community lien equals the amount of principal reduction on the loan paid by the community. If *negative* equity exists (i.e., the property lost value and the fair market value is less than the remaining balance of the loan), the community equitable lien is calculated by the following formula: C - (C/B) x D), where B = Fair Market Value at Date of Marriage; C = Community Contributions to Principal Reduction; and D = Depreciation in Value During Marriage.

V. Disclaimer Deeds.

See, Femiano v. Maust, 248 Ariz. 613 (App. 2020), review denied, CV-20-0153 (Dec. 15, 2020).

a. In *Femiano v. Maust* (later disapproved in the Arizona Supreme Court opinion in Saba v. Khoury - see below), Division One upheld the trial court's determination of a community lien equal to 100% of the equity in the real property where one spouse acquired a piece of real property during marriage and the other spouse signed a disclaimer deed, but community funds were used for the down payment and all mortgage payments. Unlike *Drahos* and related cases, *Femiano* involved property acquired during marriage and paid for solely with community funds. Thus, the case was found distinguishable from *Drahos.*

i. Note: no claim of fraud was made by the disclaiming spouse in relation to the disclaimer deed.

See, Saba v. Khoury, (App. 2021), as amended (Feb. 23, 2021), as amended (Mar. 23, 2021); review granted on August 24, 2021.

b. In *Saba v. Khoury*, decided just a few months after *Femiano*, a different panel of Division One upheld a calculation of a community equitable lien on property acquired during marriage and disclaimed to one spouse wherein, once again, the down payment and all mortgage payments were made with community funds. The trial court in *Saba* applied the *Drahos* formula which resulted in a dramatically reduced lien compared to the *Femiano* approach.

i. Note: Again, no claim of fraud was made by the disclaiming spouse in relation to the disclaimer deed.

See, *Saba v. Khoury*, No. CV-21-0023-PR, 2022 WL 4231038 (Ariz. Sept. 14, 2022)

c. On September 14, 2022, the Arizona Supreme Court released its opinion in *Saba v. Khoury* in which the Court disapproved of the Court of Appeals opinion in *Femiano v. Maust* and reenforced the *Drahos/Barnett* formula for calculating community equitable liens in separate property. The Court specifically held the "*Drahos/Barnett* formula is an appropriate starting point for courts to calculate a marital community's equitable lien on a spouse's separate property…. In our view, a fair return on the amount paid to reduce the principal balance of the mortgage would be the rate of return that money would have otherwise earned for the community and may be reimbursed by a share of the increase in the home's value proportionate to the amount paid to reduce the principal balance of the mortgage. The *Drahos/Barnett* formula accounts for this return: it reimburses the community for the contributions made and apportions a share of the property's increase in value based on those contributions. The *Drahos/Barnett* formula therefore properly recognizes the nature of the separate property as separate while apportioning a fair and equitable reimbursement to the community." WL 4231038, at *3 (Cleaned up.) However, the Saba opinion states that it was not

mandating the strict use of the *Drahos/ Barnett* formula in every case, and courts should not ignore additional factors which are unique to a given case.

See, *In re Estate of Sims*, 13 Ariz. App. 215 (1970).

d. No transmutation of character of pre-marital separate property in absence of evidence of conduct contemporaneous with conveyance of said separate property indicating an intention that property should be community property.

i. *Note*: Community funds were used for the mortgage, but there was no discussion of a community lien.

See, *Bender v. Bender*, 123 Ariz. 90 (App. 1979).

e. Deed from wife to husband disclaiming any interest in trailer park had to be given its full effect. Deed stated (1) that the property was husband's separate property; (2) that it was purchased with his separate funds; (3) that wife had no past or present right, title, interest, claim, or lien of any kind to or against the property; and (4) that the deed was executed not for purpose of making gift but solely for purpose of showing absence of any claims on part of wife to the property. Thus, such property was husband's sole and separate property even though it was acquired during marriage. The community property presumption was overcome by clear and convincing evidence.

i. The Court of Appeals also held that such a conveyance of community property interests must not only be documented by a written instrument but must have contemporaneous conduct coupled with such instrument indicating intention that the grantee spouse should have the property.

See, *Bell-Kilbourn v. Bell-Kilbourn*, 216 Ariz. 521 (App. 2007).

f. In *Bell-Kilbourn*, wife purchased home during marriage and husband signed a disclaimer deed. The community property presumption was rebutted by the disclaimer deed. Husband did not assert his signing the deed was due to fraud or mistake. Community assets were not used to purchase the home and the seller advanced the down payment, which wife repaid with separately borrowed funds. A disclaimer deed rebuts the presumption that a property purchased during marriage is community property unless the disclaiming party proves that the deed was procured by fraud or mistake. While a disclaimer deed serves to disclaim interest in the actual ownership of the property rendering it the other spouse's separate property, the court still must determine the amount of any community equitable lien.

See, *Saba v. Khoury*, 250 Ariz. 492 (App. 2021); as amended (Feb. 23, 2021), as amended (Mar. 23, 2021); review granted on August 24, 2021.	g. Court rejected disclaiming party's argument that the disclaimer deed should be given the same heightened scrutiny as a post-nuptial agreement under *In re Harber's Estate*, 104 Ariz. 79 (1969). A disclaimer deed is signed by just one party and does not define each spouse's property rights in the event of death or divorce – the deed simply renounces ownership in the property.

Chapter 4 – Business Entities and Goodwill

I. Business Valuation – *Standards of Value*.

The term "value," as applied to any asset, including a business, is not a single, objective, universal concept. There are many different Standards of Value in appraisal practice, and each, when applied to a specific asset, will likely result in significantly different value conclusions. The most commonly seen Standards of Value in the divorce context for a business are:

See, SHANNON P. PRATT & ALINA V. NILCULITA, VALUING A BUSINESS: THE ANALYSIS AND APPRAISAL OF CLOSELY HELD COMPANIES, 41-42 (5th ed, 2008); IRS Revenue Ruling 59-60.

a. Fair Market Value. Defined as "the amount at which a particular asset or property would change hands between a willing seller and a willing buyer when neither is acting under compulsion to buy/sell and when both have reasonable knowledge of the relevant facts." Fair market value can involve application of discounts if the interest being valued is not a controlling interest (i.e., is not greater than 50%) and/or discounts for marketability if the asset being valued cannot readily be converted to cash.

Id. at 45-46.

b. Fair Value. Sometimes referred to as investment value, *Fair Value* is a standard which measures "the value of a business interest *to a particular individual or investor* without regard to a sale or exchange." Fair value is generally analogous to fair market value *without* the application of discounts for lack of marketability or lack of control associated with the subject interest. In other words, use of fair value for the subject interest refers to a pro-rata amount of the value of the Company as a whole and is the value to a particular investor without regard to a sale or exchange of the interest.

See, *Schickner v. Schickner*, 237 Ariz. 194, 198 (App. 2015).

c. There is no bright line rule as to whether to apply *Fair Market Value* (i.e., with discounts) or *Fair Value* (without discounts). The trial court must determine which standard is most equitable in relation to facts and circumstances of the particular business. See below for further analysis of *Schickner*.

i. Trial court abused its discretion in applying the minority share discount to value husband's and wife's 50% ownership interest in limited liability company (LLC) at which husband practiced as an ophthalmologist.

ii. Trial court acted within its discretion in applying the minority share discount to value husband's and wife's 20% ownership interest in limited liability company (LLC).

iii. Although *Schickner* did not expressly apply its reasoning to marketability discounts, the same logic applies… Mother cites to other types of cases to support her proposition that discounts are inappropriate as a matter of law when there is no evidence of a potential sale, but those cases only support the likelihood of a potential sale as an important factor, not the bright-line rule she proposes. (Cleaned up.) "[A]lthough the likelihood of a sale is an important factor, its absence is not determinative."

See, *Bowe v. Vogel*, No. 1 CA-CV 16-0578 FC, 2018 WL 71852, at *5 (App. 2018) (Memorandum Decision).

d. Absent any other appropriate valuation measure, book value of an entity (adjusted assets of the enterprise less its liabilities as reflected on the company balance sheet) is *prima facie* evidence of its value.

See, *Baum v. Baum*, 120 Ariz. 140 (App. 1978).

II. Approaches to Value.

In business valuation, there are three primary "approaches" to determining the value of any asset. These approaches are utilized regardless of which "standard of value" (*see* §I, *supra*) is being applied.

See SHANNON P. PRATT & ALINA V. NILCULITA, VALUING A BUSINESS: THE ANALYSIS AND APPRAISAL OF CLOSELY HELD COMPANIES, at 61-65.

a. Asset Approach. Considers cost to replace, cost to reproduce, and proceeds of any liquidation. Typically used for *holding company* entities (*e.g.,* LLCs which hold real estate).

b. Income Approach. Considers value of the business based upon the net income generated as a "*going concern*;" capitalization of earnings, capitalization of cash flow, discounted cash flow, and discounted future earnings are typically considered in an income approach analysis.

c. Market Approach. Considers the value of the business based upon factors such as prior transactions of interests in the business at issue and/or comparable market transactions/sales of similarly situated businesses.

III. Valuation Date.

See, *Sample v. Sample*, 152 Ariz. 239 (App. 1986).

a. "[T]he choice of a valuation date should be dictated by largely pragmatic considerations and …the equitableness of the result … must stand the test of fairness on review." 152 Ariz. @ 242 (Cleaned up.)

See, *Meister v. Meister*, No. 1 CA-CV 19-0618 FC, 2021 WL 5706977 at *4 (App.

b. The court may use the date of service, or a date near the date of service, as a starting point in choosing the valuation date.

2021) (Memorandum Decision).

See, *Toth v. Toth*, 190 Ariz. 218, 221 (1997).

c. However, the court must select a different date when necessary to ensure an equitable result. Equitable means "just that – it is a concept of fairness dependent upon the facts of particular cases."

See, *In re Marriage of Gross & Gross*, No. 2 CA-CV 2019-0081 FC, 2020 WL 414366, at *3 (App. 2020) (Memorandum Decision); *Sample*, 152 Ariz. at 242.

d. To prevent the dissipating spouse from receiving an unfair windfall, the court can value the dissipated assets as of some date before the dissipation occurred.

Id.

e. "Where stock appreciated solely from market forces, not through efforts of parties, later valuation date equitable."

IV. Valuation Methods.

See, IRS Revenue Ruling 59-60.

For a detailed discussion of various approaches and the *methods* underlying them, see, *Bryson v. Bryson*, No. 1 CA-CV 16-0531 FC, 2017 WL 2483722 (App. 2017) (Memorandum Decision).

a. Under each of the three approaches to valuation, there are a number of different methods an evaluator may apply. "In valuing the stock of closely held corporations, or the stock of corporations where market quotations are not available, all other available financial data, as well as all relevant factors affecting the fair market value must be considered…No general formula may be given that is applicable to the many different valuation situations arising in the valuation of such stock. However, the general approach, methods, and factors which must be considered in valuing such securities are outlined."

See, *Cason v. Cason*, No. 1 CA-CV 14-0351 FC, 2016 WL 739470, at *3 (App. 2016) (Memorandum Decision).

b. The family court has discretion to rely on various (or alternative) methods of valuation. *See*, *Kelsey*, 186 Ariz. @ 51 (holding that the failure to calculate the value of an asset according to standard methodology affects only the weight of the evidence, and not its admissibility).

V. Goodwill.

See, WILLIAM J. MORRISON & JAY E. FISHMAN, THE BUSINESS VALUATION BENCH BOOK, 116 (2017).

a. Goodwill Value is the value attributable to that intangible asset arising as a result of name, reputation, customer loyalty, location, products, and similar factors not separately identified.

b. Arizona courts have used various other definitions of goodwill, including:

See, *Walsh v. Walsh*, 230 Ariz. 486, 490 (App. 2012).

i. "…, goodwill is essentially reputation that will probably generate future business."

See, *Wisner v. Wisner*, 129 Ariz. 333, 337 (App. 1981).

ii. "…that asset, intangible in form, which is an element responsible for profits in a business."

See, *Molloy v. Molloy*, 158 Ariz. 64, 67 (App. 1988) ("*Molloy I*").

iii. "Future earning capacity *per se* is not goodwill. However, when the future earning capacity has been enhanced because reputation leads to probable future patronage from existing and potential clients, goodwill may exist and have value."

See, *Walsh*, 230 Ariz. at 493.

iv. Arizona does not distinguish between enterprise goodwill and personal goodwill. Any goodwill developed in a business during marriage constitutes divisible community property.

VI. Specific Issues/Cases.

a. Book of Business.

See, *Pangburn v. Pangburn*, 152 Ariz. 227 (App. 1986).

Insurance Agency: Book of Business value, i.e., renewal of recurring contracts, earned during marriage is community property.

b. Operating/Partnership Agreements.

See, *Mitchell v. Mitchell*, 152 Ariz. 317 (1987).

i. Provisions of a partnership agreement as to valuation of the partnership's business goodwill upon its dissolution were not dispositive as to the nature or valuation of that asset for the purpose of effecting property division upon dissolution of husband's marriage. Terms of partnership agreement are only one factor in the determination of the value of the marital community's interest in the goodwill.

See, *In re Marriage of Kells*, 182 Ariz. 480, 485 (App. 1995).

ii. Reliance upon Buy-Sell Agreement alone in determining value of business is reversible error.

c. Law Practice.

See, *Molloy v. Molloy*, 181 Ariz. 146 (App. 1994) ("*Molloy II*").

i. The goodwill of an attorney developed during marriage is community property; "valuation that is not based on real economic benefits would be inequitable;" opinion includes discussion of goodwill valuation methods and divisibility of realizable economic benefits.

Id. at 150.	ii. "A superior court may use a variety of methods to value a professional practice."
	d. Community Equitable Lien in Separate Business of a Spouse – Apportionment of Separate vs. Community Interest in a Business.
See, *Cockrill v. Cockrill*, 124 Ariz. 50 (1979).	i. When the value of separate property is increased during marriage, the burden is upon the spouse who contends that the increase is also separate property to prove that the increase is the result of the inherent value of the property itself and is not the product of the work effort of the community. All or none rule of apportionment abandoned; trial courts must specifically identify community and separate property contributions to growth or profits of separate property business and apportion accordingly.
See, *Rowe v. Rowe*, 154 Ariz. 616 (App. 1987).	ii. Includes a good discussion of *Cockrill* apportionment approaches, and trial court's broad discretion thereunder; incorporation of sole proprietorship during the marriage does not transmute separate property company to community property.
See, *Rueschenberg v. Rueschenberg*, 219 Ariz. 249 (App. 2008).	iii. In determining the community interest in a spouse's separate business, if the profits and/or increase result from the inherent qualities of the business, the profits and increase are separate property; if the profits and/or increase result from the individual toil and application of the efforts of a spouse, they are community property. The community was entitled to a share of the increased value and/or profits of husband's separate business, even if the business paid husband reasonable compensation, which went to the community, for his services.
	iv. Determining the marital community's lien/interest in a spouse's separate business which increased in value during marriage is complex and typically involves testimony from competing expert witnesses. Analysis under Rueschenberg calls upon the court to address complex legal and factual questions including: (1) consideration of the causes of the increased value of the business; (2) consideration of shifting burdens of proof; (3) determining the appropriate method of apportionment between the community and separate property estates; (4) consideration of whether to apportion the increased value of the business, the profits of the business, or both; and various other discrete matters.
See, *Hefner v. Hefner*, 248 Ariz. 54, 60 (App. 2019).	v. "Although Wife is correct that the spouse claiming property acquired during a marriage is separate must prove it so by clear and convincing evidence, what is at issue here is not the characterization of the asset as community or separate, but rather, whether its value increased at all. When a spouse argues she has

increased the value of the other spouse's separate property through community labor and funds, the burden is on the claimant to show the amount of the increase. Thus, to the extent Wife claimed the value of the business increased during the marriage, she had the burden of proving the increased value." (Cleaned up.) But compare, *Cockrill*, *supra*.

e. Evidence/Admissibility.

See, *Walsh*, 230 Ariz. at 490, ¶ 9 (quoting *Kelsey v. Kelsey,* 186 Ariz. 49, 51 (App. 1996)).

i. "The valuation of assets is a factual determination that must be based on the facts and circumstances of each case' ... and [we] 'will not disturb [the] trial court's factual findings unless clearly erroneous."

See, Larchick v. Pollock, 252 Ariz. 364 (App. 2021)

ii. An expert's failure to use the most appropriate method of valuation, and consider all appropriate data in valuing a business, for purposes of property-allocation ruling, does not preclude admissibility of expert's testimony in a dissolution action; such failures may indicate flaws in an expert's valuation but are ultimately matters of credibility that are within the family court's discretion.

Id., at 364, ¶ 18.

iii. "[E]ven though a calculation of value opinion may be short of the gold standard, it is not per se unacceptable or inadmissible. Here, the family court apparently precluded Bays' testimony because the expert's calculation of value opinion did not consider every single process and procedure that would be included in a full summary valuation report. Although a mere "calculation of value" perhaps presents substantial cross-examination fodder, an expert's failure to consider every single process, standing alone, does not render relevant evidence inadmissible." (Cleaned up.)

See, Board of Regents v. Cannon, 86 Ariz. 176, 178 (1959). *See also*, A.R.E. 602 and 702.

iv. The Arizona Supreme Court has held that an owner of property is always competent to testify as to the value of his/her property.

f. Taxes.

See, Biddulph v. Biddulph, 147 Ariz. 571, 573 (App. 1985).

i. "Costs which necessarily result from dividing the community estate in an otherwise equal manner should be borne equally by the parties. However, the spouse having ownership and control over an item of property should bear the risks associated with its future disposition. The tax consequences of the husband's future activity regarding the stock are completely speculative. He may never

	sell the stock; he may donate it to a charity; he may place it in trust for another."
See, In re Marriage of Goldstein,120 Ariz. 23, 25, (1978).	ii. "Regardless of the certainty that tax liability will be incurred if in the future an asset is sole, liquidated, or otherwise reduced to cash, the trial court is not required to speculate on or consider such tax consequences in the absence of proof that a taxable event has occurred during the marriage or will occur in connection with the division of the community property."
See, A.R.S. § 25-318(B).	iii. But note, the *Biddulph* and *Goldstein* cases predate the 2008 revisions to A.R.S. §25-318(B), which was amended by adding the following language: "B. In dividing property, the court may consider all debts and obligations that are related to the property, *including accrued or accruing taxes that would become due on the receipt, sale, or other disposition of the property*. The court may also consider the exempt status of particular property pursuant to title 33, chapter 8." (Emphasis added.)

Chapter 5 – Retirement Assets

I. Retirement Benefits.

a. Retirement and pension related contributions and property rights acquired during marriage, with the growth or loss on those contributions and rights, is community property.

See, A.R.S. § 25-211; § 25-213 and *Potthoff v. Potthoff*, 128 Ariz. 557 (App. 1981).

i. Property acquired during marriage is community property and property acquired prior to marriage is separate property. Property acquires its character as community or separate based upon the marital status of its owner at the time of acquisition.

See, *Stock v. Stock*, 250 Ariz. 352 (App. 2020).

ii. The acquisition of property rights in a pension for labor expended during the marriage is subject to division upon dissolution.

See, *Koelsch v. Koelsch*, 148 Ariz. 176 (1986).

iii. Pension plans are a form of deferred compensation to employees for services rendered, and any portion of the plan earned during marriage is community property subject to equitable division at divorce.

See, Sebestyen v. Sebestyen, 250 Ariz. 537 (App. 2021).

iv. Pension plan benefits under employer's retirement plan are a form of deferred compensation and therefore community property, even though eligibility for plan benefits was based on disability.

See, 42 U.S.C. § 407 (2000). *See also, Kohler v. Kohler*, 211 Ariz. 106 (App. 2005), *Kelly v. Kelly*, 198 Ariz. 307, (2000).

b. Federal law prohibits state courts from dividing Social Security benefits as community property.

See, Kohler and Kelly, supra.

c. Equal division of community retirement benefits may not be equitable where employee spouse contributed to Retirement Plan in lieu of Social Security and if non-employee spouse accrued Social Security benefits during marriage. Employee spouse may be entitled to have a portion of their contributions treated as Social Security contributions, and present value of the hypothetical Social Security benefit designated as their sole and separate property.

See, A.R.S. § 25-211; § 25-213.

d. Retirement and pension related contributions and property rights acquired prior to marriage (plus or minus the gains or losses thereon) and rights after service of a petition for dissolution or legal

	separation are the sole and separate property of the contributing spouse.
See, Potthoff, 128 Ariz. at 565.	i. Property acquired during the marriage is community property and property acquired prior to the marriage is separate property. Property acquires its character as community or separate depending upon the marriage status of its owner at the time of acquisition.
See, Cooper v. Cooper, 130 Ariz. 257 (1981).	ii. Pre-marital contributions must be established by clear and convincing evidence.
See, Stock, 250 Ariz. at 355-56.	iii. If community funds are used to purchase premarital service time rights in a pension, the community is entitled to reimbursement of the community funds expended, but does not acquire an interest in the purchased pension service time itself.
See, Johnson v. Johnson, 131 Ariz. 38 (1981).	e. Preferred method of dividing community pension benefits on dissolution is present cash value if rights can be valued accurately and if marital estate includes sufficient equivalent property to satisfy the claim of the nonemployee spouse without undue hardship to the employee spouse.
See generally, Koelsch, 148 Ariz. 176.	f. It is an improper method of community property division to award a nonemployee spouse a percentage interest in employee spouse's matured retirement benefit plan fixed at the date of dissolution, but not payable until employee spouse decides to retire, where employee spouse chooses to defer receiving benefits by continuing to work, and thereby increasing benefits.
Id.	i. Nonemployee spouse's community property interest in employee spouse's matured retirement benefit plan may be paid by determining nonemployee spouse's lump-sum present value interest in pension plan.
Id.	ii. If the lump sum method would be impossible or inequitable, the court can order that the non-employee spouse be paid by the employee spouse a monthly amount equal to his or her share of the benefit which would be received if the employee spouse were to retire. (Referred to as *Koelsch* payments.)
See, DeLintt v. DeLintt, 248 Ariz. 451, ¶ 21 (App. 2020); *See also,* A.R.S. § 25-318(B).	iii. Federal law does not preclude state courts from ordering direct payments ("*Koelsch* payments") when dividing Federal Retirement System (FERS) benefits. Trial court may consider the immediate and specific tax consequences on

Koelsch payments. (But note, *Koelsch* payments may not be ordered in relation to military retirement benefits. *See, Barron, infra.*)

See, Van Loan v. Van Loan, 116 Ariz. 272 (1977) and *Johnson v. Johnson*, 131 Ariz. 38 (1981).

g. Pension benefits to be paid to non-employee spouse upon retirement are calculated by providing the payee spouse one-half of a fraction, where the numerator is the years (or months) worked during the marriage over the total number of years (or months) worked to receive the benefit.

II. Military Retirement Benefits

a. In making a disposition of property pursuant to section 25-318 or 25-327, a court shall not do any of the following:

See, A.R.S. § 25-318.01.

1. Consider any federal disability benefits awarded to a veteran for service-connected disabilities pursuant to 10 United States Code section 1413a or 38 United States Code chapter 11.

2. Indemnify the veteran's spouse or former spouse for any prejudgment or postjudgment waiver or reduction in military retired or retainer pay related to receipt of the disability benefits.

3. Award any other income or property of the veteran to the veteran's spouse or former spouse for any prejudgment or postjudgment waiver or reduction in military retired or retainer pay related to receipt of the disability benefits.

See, Howell v. Howell, 137 S.Ct. 1400 (2017).

b. The Uniformed Services Former Spouses' Protection Act authorizes States to treat veterans' "disposable retired pay" as community property divisible upon divorce, 10 U.S.C. § 1408, but expressly excludes from its definition of "disposable retired pay" amounts deducted from that pay "as a result of a waiver ... required by law in order to receive" disability benefits, § 1408(a)(4)(B). A state court may not order a veteran to indemnify a divorced spouse for the loss in the divorced spouse's portion of the veteran's retirement pay caused by the veteran's waiver of retirement pay to receive service-related disability benefits. Federal law completely pre-empts the States from treating *waived military retirement pay* as divisible community property.

See, Id. at 1405-06.

c. However, *Howell* states: "We recognize … the hardship that congressional pre-emption can sometimes work on divorcing spouses. But we note that a family court, when it first determines the value of a family's assets, remains free to take account of the contingency that

some military retirement pay might be waived, or, as the petitioner himself recognizes, take account of reductions in value when it calculates or recalculates the need for spousal support." (Cleaned up.)

See, also, Barron v. Barron, 246 Ariz. 449 (2019).

d. Federal law prohibits a state court to order a military spouse to pay the equivalent of military retirement benefits to a former spouse if military spouse continues to work past eligible retirement date. Because federal law only permits state courts to divide "disposable" retirement pay and no entitlement exists until the member retires, state courts cannot order service members to make payments to former spouses before retirement.

III. Miscellaneous Issues.

a. Traditional IRAs and Roth IRAs must be treated differently as traditional IRA funds have not been taxed and Roth IRA funds have been taxed.

b. Survivor Benefits. Survivor Benefits, sometimes referred to as a beneficiary or survivor annuitant, are benefits available to a spouse, or former spouse (the payee), who survives the payor. There is often a cost associated with securing these benefits. The Court may need to address allocation of the cost.

See, A.R.S. § 38-773(D).

c. In the case of an Arizona State Retirement System employee's plan, unlike private pensions, the joint and survivor annuity may be revoked, and the divorce of an already retired member automatically revokes the designation of the former spouse as a joint and survivor annuitant unless the terms of the Domestic Relations Order expressly require the designation of the former spouse.

d. Rule 72.1, ARFLP provides for the appointment of a professional with special expertise in retirement and other employment related benefits to be divided. Typically, family law attorneys will agree upon a professional to retain to prepare and present the Court the necessary QDRO or DRO.

See, *Quijada v. Quijada*, 246 Ariz. 217 (App. 2019).

e. Jurisdiction. Rule 85(b)(6) precluded application of *Koelsch* in a post-decree modification proceeding where the Decree was entered by agreement, the Court did not retain jurisdiction, it was not appealed, and the division of benefits was not unfair.

See, generally, 29 U.S.C. § 18 (1974).	**IV. Qualified Domestic Relations Orders (QDRO).** a. Retirement plans that are qualified under *ERISA* (the *Employee Retirement Income Security Act of 1974*) require a Qualified Domestic Relations Order (QDRO) to be divided in divorce. ERISA is a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans. i. Note: Traditional IRAs and Roth IRAs are ***not*** ERISA qualified retirement plans and do not require a QDRO to divide them. A divorce decree is sufficient. b. A QDRO is a court order that requires a portion of a retirement plan be assigned from the employee/ participant spouse to the non-employee spouse, called the "alternate payee." If done properly by QDRO or court order, division of the retirement plans in connection with a divorce should not result in a taxable "withdrawal" or penalties to the spouses. c. For Qualified Plans, the Plan administrator will typically calculate the gains or losses and the community portion of the plans. Individual Retirement Account administrators generally will not perform such calculations. d. Offsets. To achieve equality in the division of retirement accounts/benefits, not every account need be divided equally. As long as pre-tax accounts are treated separately, each party may receive the entirety of certain accounts, with one or more accounts used to "equalize" or "offset" the overall allocation of accounts. Often, a privately retained pension/retirement expert will calculate offsets for approval by the parties or the court.

Chapter 6 – Liens

I. Liens to Secure Payments of Judgments.

a. Liens exist by virtue of statute – they are not provided for by the common law; a party may have both an A.R.S. § 25-318 lien and a general judgment lien under A.R.S. §§ 33-961, 33-962, 33-963, and 33-964.

See, *McClanahan v. Hawkins*, 90 Ariz. 139, 141 (1961).

b. Title 25 Liens

See, A.R.S. § 25-318(E).

i. A.R.S. § 25-318(E): "The divorce court may impress a lien on the separate property of either party, or the marital property awarded to either party in order to secure the payment of:

1. Any interest or equity the other party has in or to the property.

2. Community debts that the court has ordered to be paid by the parties.

3. An allowance for child support or spousal maintenance, or both.

4. All actual damages and judgments from conduct that resulted in criminal conviction of either spouse in which the other spouse or a child was the victim."

See, A.R.S. § 25-318(F).

ii. "The decree or judgment shall specifically describe any real property affected and shall specifically describe any other property affected."

See, *McClanahan*, 90 Ariz. at 142.

iii. A § 25-318 lien requires that the court specifically impose a lien in the judgment and describe the real property affected **including its legal description**.

See, *Marriage of Crawford*, 180 Ariz. 324, 328 (App. 1994).

iv. Failure to include legal description may be cured by entering *nunc pro tunc* order.

Id. at , 327-28.

v. A § 25-318 lien may be imposed on a party's share of the marital property and/or a party's separate property.

See, In re Marriage of Benge, 151 Ariz. 219, 225-26 (App. 1986).

vi. A.R.S. § 25-318 authorizes imposing a post-decree lien on a party's separate assets, including retirement assets via QDRO (see, Chp. 5, § IV); and also on any assets fraudulently conveyed by the judgment debtor, i.e., assets in the possession of the one to whom they were fraudulently conveyed.

c. General Judgment Liens: A.R.S. §§ 33-961, 962, 963, 964

See, *McClanahan*, 90 Ariz. at 142.

i. A general judgment lien will apply to all of the debtor's real property. To qualify under the general judgment lien statute, the judgment must be (1) final and conclusive and (2) reduced to a sum certain. A general judgment operates as a lien against any real property of the debtor in the county(ies) in which it is recorded.

See, *Bryan v. Nelson*, 180 Ariz. 366, 369 (App. 1994).

ii. A general judgment lien requires: (1) recordation; and (2) it must be final, valid, definite, and collectible by execution. The burden on parties receiving judgments for installment payments can be reduced by appropriate drafting – see notes in Forms.

See, Luna v. Luna, 125 Ariz. 120, 126 (App. 1979).

iii. Delinquent support payments or monthly payments do not become a lien until a determinative judgment has been entered and recorded.

See, *Eans-Snoderly v. Snoderly*, 249 Ariz. 552, 557-58, ¶ ¶ 16-17 (App. 2020).

iv. Judgments entered after August 3, 2013, must be renewed within ten (10) years of entry or they expire; prior to said date, judgments renewal was five (5) years. *See*, A.R.S. § 12-1551.

See, A.R.S. § 12-1551(E)(3); A.R.S. § 25-503(M); A.R.S. § 25-553.

a. However, written judgments and orders for child support, spousal maintenance, and/or associated costs and attorney fees are exempt from renewal. Such judgments are enforceable until paid in full.

See, *Id.* at 558, ¶ 18; *See also*, A.R.S. § 12-1551, § 12-1611, § 12-1612, § 12-1613, § 33-964; *Groves v. Source et al.*, 161 Ariz. 619, 621 (App. 1989).

v. However, a judgment has to be *suable* before the statute of limitations is triggered. Even though a Decree may specify the amount of the payment, to be *suable* it has to be *certain* as to *how* or *when* that debt is to be paid. "Until the terms of payment [are] fleshed out," the entire payment is not immediately due upon entry of the Decree and party has no right to execute on the judgment. The statute of limitations does not begin to run until such a right exists.

See, *Eans-Snoderly*, at 558, ¶ 20.

vi. Rule 69 Agreements do not trigger the statute of limitations even though it may specify a payment due date, because a Rule 69 agreement is not a judgment. A judgment is a decree and an order from which an appeal lies.

II. Judgment Lien Forms and Tips.

a. Note that judgments must:

1. Specify the judgment debtor (obligor) and judgment creditor (oblige);
2. Specify a date when payment is due;
3. Specify an interest rate;
4. Specify the date upon which interest begins to accrue if different than the date of entry of the judgment; and
5. Specify any property for attachment purposes, if appropriate. (See proposed model form judgment language below.)

III. Community Liens/Reimbursements on Separate Real Property.

See, Chapter 3, § IV, *supra*.

IV. Sample Judgment Language.

a. Judgment. Judgment is hereby entered against Respondent, HARRY APPLES, in favor of Petitioner, MARY PEACHES, in the principal sum of Twenty-Five Thousand Eight Hundred Fifty-Six Dollars and Thirty-Eight Cents ($25,856.38). Interest shall accrue on the principal sum from April 15, 2015 at the legal rate pursuant to A.R.S. § 44-1201(B) until fully paid.

OR

b. Judgment. Judgment is hereby entered against Respondent, HARRY APPLES, in favor of Petitioner, MARY PEACHES, in the principal sum of Twenty-Five Thousand Eight Hundred Fifty-Six Dollars and Thirty-Eight Cents ($25,856.38). Interest shall accrue on the principal sum from April 15, 2015 at the rate of _____% until fully paid.

ALTERNATIVELY, WHERE A DELAY IN PAYMENT IS PERMITTED:

a. Judgment. Judgment is hereby entered against Respondent, HARRY APPLES, in favor of Petitioner, MARY PEACHES, in the principal sum of Twenty-Five Thousand Eight Hundred Fifty-Six Dollars and Thirty-Eight Cents ($25,856.38). Interest shall accrue on the principal sum from April 15, 2020 at the legal rate pursuant to A.R.S. § 44-1201(B) until fully paid. Respondent shall pay the Judgment to Petitioner including all principal, interest, and default interest, if any, upon the earlier sale of the property referenced herein (legal description set forth in Exhibit "A") or 5/13/2023 ("Due Date"). Petitioner is hereby granted, and the Court hereby impresses a lien against the Property specifically described in Exhibit "A" to secure the payment of the Judgment

described herein. Petitioner shall refrain from executing on this Judgment prior to the Due Date as long as Respondent complies with the following conditions:

i. *Payment of Expenses*. At all times, Respondent shall be solely responsible to pay for all of the expenses related to the Marital Residence, including, without limitation, the mortgage due to ***, last four digits **** ("Mortgage"), the home equity line of credit due to Tiger Valley, last four digits **** ("HELOC"), taxes, insurance, utilities, assessments, maintenance, and the like ("Property Expenses").

ii. *Documentation*. Until Petitioner is removed from liability on the Mortgage and has been paid the Equalization Payment due, she shall be entitled to duplicate notices from the mortgage company or its related or successor entities with respect to the status of the mortgage payments (and Respondent is ordered to facilitate such duplicate notices). In addition, within ten (10) business days of his receipt of same, Respondent shall provide Petitioner with all notices that he receives that relate to the Mortgage.

iii. *Right to Cure*. Until the Property is sold, Petitioner has the right, but not the obligation, to cure any payment that may be due to the mortgage holder or otherwise required by the existing Deed of Trust in connection with the Property. Any amounts advanced by Petitioner pursuant to this paragraph shall bear interest at the rate of twenty-five percent (25%) simple interest per annum until paid and shall be paid to her on or before the Due Date.

iv. *Default and Acceleration*. Any one of the following events constitutes an Event of Default requiring the immediate sale of the Property and the entire Judgment due to Petitioner shall be accelerated:

1. Respondent's failure to maintain the Property in reasonable condition;

2. Respondent's failure to comply with the terms of the currently existing Deed of Trust on the Property;

3. Respondent's failure to timely pay the Property Expenses as defined herein; or,

4. Respondent's failure to comply with the other provisions of this Judgment paragraph.

b. Further Jurisdiction. The Dissolution Court shall retain jurisdiction over this paragraph to review, enforce, and interpret the terms and conditions of sale, and to resolve any disputes, including, without limitation, disputes regarding the choice of listing agent/broker, listing price, terms of sale, repairs, and access to potential buyers.

c. Tax Effect. The Judgment represents the Equalization Payment due by Respondent to Petitioner to equalize the division of assets. As such, it is deemed to be incident to divorce for tax purposes pursuant to § 1041 of the Internal Revenue Code of 1986, the amount of which shall not be deductible by Respondent nor includible in Petitioner's income for tax purposes.

d. Deed. Petitioner shall tender to the escrow company handling the sale of the property a Special

Warranty Deed to the Property in favor of Respondent – conditioned upon her receipt of the full judgment amount. The parties will sign such escrow instructions as may be necessary to effectuate the Judgment to Petitioner.

e. Sale. In the event of Default, Respondent shall immediately place the Property on the market on the following terms and conditions.

i. *Realtor and Listing Price*. Respondent shall list the Property through Multiple Listing Service with a reputable broker ("Realtor") with a listing price of not more than the appraised value. Thereafter, Respondent shall make adjustments in the listing price of the Realtor, if justified by comparable sales in the area or otherwise ordered by the Court. Neither party shall unreasonably withhold their consent to a reduction in listing price or an offer to purchase.

ii. *Showability*. At all times until the Property is sold, Respondent shall maintain the Property in showable condition and reasonably accessible to buyers and realtors.

iii. *Offers to Purchase*. The following provisions shall apply with respect to all offers or prospective offers:

1. The realtor shall convey each and every offer to purchase to both parties directly, via phone or e-mail.

2. Both parties must agree before an offer to purchase is accepted and consent shall not be unreasonably withheld.

3. Both parties must agree on the terms of a counteroffer before one is presented to a prospective buyer. Consent shall not be unreasonably withheld.

iv. *Proceeds of Sales*. After payment of all customary costs and real estate commissions, the Mortgage and other encumbrances on the Property, the Judgment shall be paid to Petitioner including any advances she has made toward Property Expenses. Respondent shall be entitled to the remainder of the net proceeds.

v. *Taxation*. Respondent shall claim all of the proceeds of sale on his state and federal income tax returns and shall be responsible for 100% of all tax consequences. Respondent shall be entitled to claim all available tax deductions related to the payments ordered herein, conditioned on Respondent's full and timely compliance with all orders herein.

Chapter 7 – Liabilities

I. Definition of Community Debt.

A.R.S. § 25-318(B).

a. "In dividing property, the court may consider all debts and obligations that are related to the property, including accrued or accruing taxes that would become due on the receipt, sale or other disposition of the property. The court may also consider the exempt status of particular property pursuant to title 33, chapter 8."

See, *Birt v. Birt*, 208 Ariz. 546, 550, ¶ 17 (App. 2004).

b. Arizona law makes no conceptual distinction between the division of community assets and the division of community liabilities at dissolution.

See, A.R.S. § 25-211(A).

c. All property acquired by either party during the marriage is community property except for property that is (1) acquired by gift, devise, or descent, and (2) acquired after service of a petition for dissolution of marriage, legal separation, or annulment if the petition results in a decree of dissolution of marriage, legal separation, or annulment.

II. Generally, Each Spouse has the Right Individually to Bind the Community though the Joinder of Spouses is Required Under Limited Circumstances.

See, A.R.S. § 25-214(B).

a. "The spouses have equal management, control, and disposition rights over their community property and have equal power to bind the community."

See, A.R.S. § 25-214(C).

b. However, joinder of both spouses is required to bind the community in any of the following cases:

1. Any transaction for the acquisition, disposition, or encumbrance of an interest in real property other than an unpatented mining claim or a lease of less than one year.

2. Any transaction of guaranty, indemnity, or suretyship.

3. To bind the community, irrespective of any person's intent with respect to that binder, after service of a petition for dissolution of marriage, legal separation or annulment if the petition results in a decree of dissolution of marriage, legal separation or annulment.

See, *All-Way Leasing, Inc. v. Kelly*, 182 Ariz. 213, 216-17 (App. 1994).

c. Joinder of spouses may be accomplished through ratification.

III. It is Presumed that a Debt Incurred During a Marriage for the Benefit of the Community is a Community Obligation.

See, *Cardinal & Satchel, P.C. v. Curtiss*, 225 Ariz. 381, 383-84, ¶¶ 6-7 (App. 2010).

a. Where either spouse incurs an obligation during marriage for the benefit of the community, that debt is presumed to be a community obligation. The test of whether an obligation is a community obligation is whether it is intended to benefit the community.

See, *Johnson v. Johnson*, 131 Ariz. 38, 44-45 (1981).

b. When either spouse incurs a debt, it is presumed to benefit the community and is therefore a community debt, even where one spouse's separate property was the security for the debt.

See, *Kreiss v. Shipp*, 14 Ariz. App. 113, 114 (App. 1971).

c. Where an act which gives rise to the obligation was done with the bona fide intention of protecting the interest of the community it becomes a community debt even if no benefit actually resulted.

See, *Hrudka v. Hrudka*, 186 Ariz. 84, 91-92 (App. 1995).

d. The party contesting the community nature of the debt bears the burden of overcoming the presumption that all debts incurred during marriage are presumed to be community obligations by clear and convincing evidence.

See, *Ramsay v. Wheeler-Ramsay*, 224 Ariz. 467, 474, ¶ 25 (App. 2010). (Depublished.)

e. Community property is liable for a spouse's debts incurred outside of this state during the marriage which would have been community debts if incurred in this state.

IV. Definition of Separate Debt.

See, *Am. Exp. Travel Rel. Svcs. Co., Inc. v. Parmeter*, 186 Ariz. 652, 654-55 (App. 1996).

a. The community is not liable for a debt contracted by one spouse that is in no way connected with the community and from which the community receives no benefit.

A.R.S. § 25-215(A).

b. "The separate property of a spouse shall not be liable for the separate debts or obligations of the other spouse, absent agreement of the property owner to the contrary.

See, *Hines v. Hines*, 146 Ariz. 565, 567 (App. 1985);

c. A non-debtor spouse cannot be held liable for their partner's pre-marital debt absent an agreement to the contrary.

V. Court's Authority to Allocate Community Debts.

See, *Cmty. Guardian Bank v. Hamlin*, 182 Ariz. 627, 630 (App. 1995).

a. The family court has the inherent power to allocate both community property and debts upon dissolution.

See, *Hammett v. Hammett*, 247 Ariz. 556, 560 (App. 2019).

b. The court also has the authority to divide community property and debts in an annulment proceeding.

See, *Cadwell v. Cadwell*, 126 Ariz. 460, 462 (App. 1980).

c. Assets and obligations are reciprocally related and there can be no complete and equitable disposition of property without a corresponding consideration and disposition of obligations.

See, *Lee v. Lee*, 133 Ariz. 118, 123 (App. 1982).

d. The court may properly allocate community liabilities between the parties in effecting an equitable division of all community property.

See, *Jankowski v. Jankowski*, 114 Ariz. 406, 408 (App. 1977).

e. Where a trial court makes no specific allocation of debts, the community debts remain joint obligations of the parties and the spouses remain jointly and severally liable for each debt.

See, A.R.S. § 25-318(J).

f. "On the request of either party and except for good cause shown, the court shall require the parties to submit a debt distribution plan that states the following:

1. How community creditors will be paid.

2. Whether any agreements have been entered into between the parties as to responsibility for the payment of community debts, including what, if any, collateral will secure the payment of the debt.

3. Whether the parties have entered into agreements with creditors through which a community debt will be the sole responsibility of one party."

See, A.R.S. § 25-318(L).

g. "If the parties are not able to agree to a joint debt distribution plan pursuant to subsection J of this section, the court may order each party to submit a proposed debt distribution plan to the court. In its orders relating to the division of property, the court shall reflect the debt distribution plan approved by the court and shall confirm that any community debts that are made the sole responsibility of one of the parties by agreement with a creditor are the sole responsibility of that party."

VI. Division of Community Debts Must Be Equitable.

See, A.R.S. § 25-318(A).

a. The court's division of community property must be equitable, though not necessarily in kind.

See, *Toth v. Toth*, 190 Ariz. 218, 221 (1997).

b. Equitable is a concept of fairness dependent on the facts of the particular case. Generally, marital property should be divided substantially equally unless a sound reason exists to divide it otherwise.

See, *In re Marriage of Flower*, 223 Ariz. 531, 535 (App. 2010).

c. In determining an equitable division, the family court has broad discretion in the specific allocation of individual liabilities.

See, A.R.S. § 25-318(C).

d. The trial court may consider excessive or abnormal expenditures and the concealment or fraudulent disposition of community property when apportioning community property.

See, *Gutierrez v. Gutierrez*, 193 Ariz. 343, 346, ¶ 7 (App. 1998).

e. The spouse alleging the abnormal or excessive expenditures by the other spouse has the burden of making a prima facie showing of community waste.

VII. Specific Debts.

See, *Cadwell*, 126 Ariz. at 463.

a. Criminal Acts The perpetrator of a criminal offense should be required to hold the nonparticipating party harmless with respect to debts created by the perpetrator's criminal acts, in absence of knowledge, consent, or ratification by the nonparticipating spouse. However, to the extent the marital community benefitted from the criminal acts of a party which were intended to benefit the community, the non-criminal spouse's share of the community estate is liable for the criminal acts.

See, *Schlaefer v. Financial Management Service, Inc.*, 196 Ariz. 336, 339, ¶ 10 (App. 2000).

b. Medical Debts. Necessary medical care of a spouse is an expense that benefits the community and therefore any debts associated with the cost of necessary medical care is presumed to be community debt.

VIII. Creditors.

See, *Lee*, 133 Ariz. 118, 123-24.

a. The court has the authority to allocate responsibility for the payment of community debts to a spouse. The superior court does not have the power in a dissolution proceeding to issue a judgment for payment of a community debt allegedly owed to a third party. The Court is also without authority to order a party to pay a non-party creditor for disputed debts.

See, *Cmty. Guardian Bank*, 182 Ariz. 627, 631.	b. The allocation of community obligations does not affect the rights of third-party creditors, and both former spouses remain jointly liable to community obligations after divorce.
See, *Fleming v. Tanner*, 248 Ariz. 63, 70, ¶ 23 (App. 2019).	c. A creditor can seek payment of an entire community debt from either spouse, and if one spouse pays the entire obligation, they may seek contribution from the other spouse of the appropriate portion of the amount paid.
See, *Samaritan Health System v. Caldwell*, 191 Ariz. 479, 482, ¶ ¶ 8-10 (App. 1998).	d. The death of one of the spouses does not terminate the community's obligation to third-party creditors.

Chapter 8 – Post-Service Reimbursements (*Bobrow* Claims)

I. Scope of Section.

This section primarily focuses upon parties' reimbursement claims arising from the payment of community debts *after service* of a petition for dissolution, legal separation, or annulment. These are often referred to as *Bobrow* reimbursement claims. However, reimbursement or offset claims arising from pre-service activities may also be relevant to the overall equitable analysis.

II. 1998 Amendments – A.R.S. § 25-211 and § 25-213.

See, *Bobrow v. Bobrow*, 241 Ariz. 592 (App. 2017).

Reimbursement claims began to arise following the 1998 amendments to A.R.S. § 25-211 and § 25-213, which had the effect of terminating the marital community upon the date of service of process of a petition for dissolution, legal separation, or annulment if said petition in fact resulted in a Decree. Prior to the 1998 amendments, the marital community continued to accumulate assets and liabilities after service of a petition up until entry of a final Decree.

III. Presumptions/Burden of Proof.

See, *e.g.*, *Baum v. Baum*, 120 Ariz. 140 (App. 1978).

a. A gift presumption applies where during the marriage a spouse voluntarily uses separate property to pay community expenses.

See, *Bobrow*, 241 Ariz. at 596.

b. However, such "matrimonial presumption of a gift" does not apply after service of a petition for dissolution, legal separation, or annulment. "The presumptions were adopted, in part, to alleviate the need for married parties to document transactions, and the belief that married people should support each other. Neither justification for such a rule exists after the petition for dissolution is filed and the community has ended."

Id.

c. Thus, when addressing reimbursement claims for post-service payment of community obligations, a party claiming such payments constituted a gift to the community has the burden of proof to establish same by clear and convincing evidence.

IV. Potential Offsetting Claims/Equities/Issues and Costs.

See, *Barron v. Barron*, 246 Ariz. 580. ¶ ¶ 40-44 (App. 2018) vacated in part on other grounds; Rubens v. Rubens, No. 1 CA-CV 18-0361 (Dec. 19, 2019), (Memorandum Decision).

a. *Pendente lite* spousal maintenance may offset post-service reimbursement claims.

See, *Pownall v. Pownall*, 197 Ariz. 577, ¶ ¶ 24-25 (App. 2000).

b. Reimbursements/equitable claims arising pre-service may also be offset against post-service reimbursement claims. The Court has "broad equitable powers."

See, *Walsh v. Walsh*, 1 CA-CV 13-0453 (Oct. 14, 2014), Memorandum Decision; *Pownall*, *supra*; *Rubens*, *supra*.

c. The community may be entitled to reimbursement or offset associated with the post-service benefits stemming from one or both parties' post-service use of community assets. The Court has "broad discretion" in assessing such equities.

See, Ferrill v. Ferrill, 253 Ariz. 393 (App. 2022)

d. When a party occupying a community residence seeks reimbursement for community mortgage payments paid with separate funds after service of a dissolution petition, the court has the discretion to offset the reimbursement by up to on-half of the home's fair rental value under equitable principles, but only if the occupying spouse ousted the other. The court referenced joint tenancy law in holding ouster is dependent on whether one spouse has denied the other's right to occupy the marital home. The burden to show ouster and the reasonable, fair market rental value of the home is on the party claiming the offset to the reimbursement claim.

See, *Johnson v. Malone*, No. 1 CA-CV 18-0309 FC (Aug. 22, 2019), Memorandum Decision.

e. A party that pays the other party's health insurance premiums post-service may be entitled to reimbursement or offset. The fact that a party has an obligation to the Preliminary Injunction does not preclude such claim.

See, *Lovejoy v. Lovejoy*, No. 1 CA-CV 17-0411 FC (Apr. 19, 2018), Memorandum Decision.

f. A party's conduct may defeat or otherwise effect their reimbursement or other equitable claims and defenses.

See, *Rubens*, supra.	g. Where a party incurs post-service debt to benefit or protect the community, such debt may be considered a community obligation.
	V. Evidence/Admissibility.
See, *Andrews v. Andrews*, 252 Ariz. 415 (App. 2021).	a. The party making a reimbursement claim or offsetting reimbursement or equitable claim has the associated burden of proof. Such includes submitting evidence in support of the specific payments or use benefits at issue. A mere summary of such expenses without supporting documentation may not be sufficient where contested.

Chapter 9 – Spousal Maintenance

Introduction: The Spousal Maintenance Claim

Issues:

- Whether a spouse is entitled to periodic payments from the other spouse for financial support for a period of time after the divorce or legal separation? (A.R.S. § 25-319(A))

- If so, what is the appropriate amount of such payments and for how long should payments continue? (A.R.S. § 25-319(B))

Relevant Statutes:

- A.R.S. § 25-319.
- A.R.S. § 25-322.
- A.R.S. § 25-327.
- A.R.S. § 25-530.

Parties: Husband and Wife in a Dissolution of Marriage or Legal Separation action.

Service: No special service requirements. Service is accomplished by the initial Petition and Response.

Burden of Proof: Preponderance of the evidence.

Checklist:

- Spousal maintenance or spousal support describe what was formerly referred to as alimony.
- Two-part test: (1) Eligibility and (2) Amount and duration of award.
- If findings of fact requested, the Court must address all statutory factors with specificity.

2022 Legislative Amendments

In 2022, the Arizona Legislature adopted groundbreaking revisions to A.R.S. § 25-319, which require the Arizona Supreme Court to establish guidelines for determining and awarding spousal maintenance (hereinafter "Guidelines"). The new statutory provisions permit the court to award spousal maintenance only for a period of time and in an amount necessary to enable the receiving spouse to become self-sufficient. The amount of spousal maintenance resulting from the application of the Guidelines shall be the amount of spousal maintenance ordered by the court, unless the court finds in writing that applying the Guidelines would be inappropriate or unjust.

At the time of publishing this Guide, the Guidelines have not yet been promulgated. On July 20, 2022, the Supreme Court issued Administrative Order No. 2022-83 establishing the *Spousal Maintenance Guidelines Subcommittee*, which is a subcommittee of the *Family Court Improvement Committee*. The administrative order directs the *Family Court Improvement Committee* to submit its final report and recommendations to the Arizona Judicial Council at its June 2023 meeting. Thus, it is not anticipated that final, official Guidelines will take effect sooner than the latter half of 2023, at the earliest.

In the interim, the Arizona Supreme Court issued Administrative Order No. 2022-119 on September 22, 2022, to provide guidance to Arizona trial courts in determining spousal maintenance claims pending the adoption of the Guidelines. Effective September 24, 2022, and continuing until the Guidelines take effect, spousal maintenance claims must be determined consistent with said Administrative Order which states, in pertinent part:

> IT IS ORDERED that, effective September 24, 2022, and until this Court's adoption of spousal maintenance guidelines or further Order of this Court, judges determining a maintenance award for either spouse in a proceeding governed by A.R.S. § 25-319:
>
> 1. May grant a maintenance order only if the court finds that the spouse seeking maintenance satisfies one of the criteria set forth in A.R.S. § 25-319(A);
>
> 2. May award spousal maintenance only for a period of time necessary, and in an amount necessary, to enable the receiving spouse to become self-sufficient;
>
> 3. Must address the factors specified in A.R.S. § 25-319(B)(1)–(13), and consider them together and weigh them in conjunction with each other, to ensure that any award is not inappropriate or unjust;
>
> 4. Must make any maintenance award without regard to marital misconduct; and
>
> 5. Should apply the body of case law interpreting the pre-amendment factors set forth in A.R.S. § 25-319 but only to the extent that the case law is not affected by the 2022 amendments.

I. OVERVIEW

A.R.S. § 25-319.

See, *Gutierrez v. Gutierrez*, 193 Ariz. 343 (App. 1999).

Spousal maintenance claims are governed by A.R.S. § 25-319 which provides a two-part test. First, the court must determine whether the spouse seeking maintenance is eligible for an award. This is governed by Subsection A of the statute. If the eligibility test is met, the court then applies criteria under Subsection (B) of the statute to determine the amount and duration of the award. Since eligibility is separate and distinct from issues involving duration and amount of the award, parties are cautioned to separately and realistically assess both parts of the statute, starting with eligibility. It is important to note that A.R.S. §25-319 and the vast body of caselaw which interpret it neither set priorities among Subsection (B) factors nor specify the relative weight, if any, to be assigned to each factor.

See, *Hughes v. Hughes*, 177 Ariz. 522, 525 (App. 1993).

The trial court is obligated to specifically address in its decision each factor under A.R.S. § 25-319(B) that the parties place at issue if either party requests findings or conclusions of law. "In the absence of such a request, such detailed findings are not required." However, the court is required to consider all applicable factors in any case.

II. Eligibility.

Generally, A.R.S. § 25-319(A):

See, *Elliott v. Elliott*, 165 Ariz. 128 (App. 1990); *Rainwater v. Rainwater*, 177 Ariz. 500, 502 (App. 1993).

a. The court may award spousal maintenance if it finds any one of the five statutory factors of A.R.S. § 25-319(A). To make any award for spousal maintenance, the evidence must first support a finding under one of the subsections to A.R.S. §25-319(A).

See, *Neal v. Neal*, 116 Ariz. 590 (Ariz. 1977).

b. Unless a spouse meets the requirements of A.R.S. § 25-319(A) upon dissolution, the granting of spousal maintenance is impermissible. Further, any denial of spousal maintenance by the trial court in a dissolution matter is a final order, and it may not be modified later. "Any attempt to avoid the total severance of the marital bonds through the device of unjustified nominal spousal maintenance, enabling a party to later return for a greater award in the event of some unforeseen circumstance, can only be viewed as an evasion of the clear legislative mandate of A.R.S. § 25-319(A)."

Specific Factors (A)1-5:

a. A.R.S. § 25-319(A)(1):

See, *Deatherage v. Deatherage*, 140 Ariz. 317 (App. 1984); *Baum v. Baum*, 120 Ariz. 140 (App. 1978).

i. "Lacks sufficient property, including property apportioned to the spouse to provide for his or her reasonable needs." Property refers to all property, community and separate, capable of providing for the reasonable needs of the spouse seeking support. Property includes that property capable of being converted to a form of property that yields income. It does not require, however, the spouse seeking support to consume or to use up his or her property to meet reasonable needs.

See, In re Cotter, 425 P.3d 258 (App. 2018).

ii. "To the extent there is any ambiguity in the meaning of "sufficient property," the history of § 25-319(A)(1) likewise supports the interpretation that sufficient property means property that, standing alone, can provide for a spouse's reasonable needs during his or her lifetime." (Cotter, ¶ 10.)

Id.

iii. "Based upon the trial court's determination that a return of ten percent was an appropriate, and in fact conservative estimates, it is clear that the wife's total properties are capable of yielding well in excess of her reasonable needs of $16,800 per year. Hence the wife is not entitled to spousal support pursuant to A.R.S. § 25-319(A)(1)." However, in *Deatherage*, the court acknowledged the wife may require "some time to make the non-income producing properties productive or income producing as she may choose" and, therefore, two years was held to be ample time within which to accomplish this.

See, *Kelsey v. Kelsey*, 186 Ariz. 49 (App. 1996).

iv. A.R.S. § 25-319(A)(1) requires the court consider the "income earning potential" of property apportion to a spouse.

b. A.R.S. § 25-319(A)(2):

See, *Thomas v. Thomas*, 142 Ariz. 386 (App. 1984).

i. "Is unable to be self-sufficient through appropriate employment…" "Appropriate employment" does not mean "any" employment; neither does it mean mere hopes of employment or speculative expectations of employment. Rather, "…the receiving spouse's ability to earn income must be considered in light of some reasonable approximation of the standard of living established during the marriage."

See, *In re the Marriage of Foster*, 125 Ariz. 208 (App. 1980).

ii. Where a spouse had not worked for several years and was not certified in her profession as a nurse at the time of dissolution, she was entitled to support.

See, *Lincoln v. Lincoln*, 155 Ariz. 272 (App. 1987).

iii. "Or is the custodian of a child whose age or custodian is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to support himself or herself." Child of age three falls within age contemplated by this section.

See, *Lindsay v. Lindsay*, 115 Ariz. 322 (1977).

iv. Efforts to obtain employment (or fail to try to do so) during the pendency of the proceedings may also be considered.

See, *Sommerfield v. Sommerfield*, 121 Ariz. 575 (1979).

v. "Hence we decline to read A.R.S. §25-319(A)(2) as foreclosing the possibility of any maintenance whatsoever unless a spouse is totally incapable of self-support."

c. A.R.S. § 25-319(A)(3):

i. "Contributed to the educational opportunities of the other spouse."

d. A.R.S. § 25-319(A)(4):

i. "Had a marriage of long duration and is of age which may preclude the possibility of gaining employment adequate to support himself or herself."

See generally, *Foster*, 125 Ariz. 208.

ii. Spouse in marriage of approximately 30 years who had not worked for "several years" and was formerly but not presently, certified as a registered nurse was entitled to an award of support.

See, *In re the Marriage of Hinkston*, 133 Ariz. 592 (App. 1982).

iii. Spouse of 27 years, who had not worked in the last eight, had only a tenth-grade education and had Huntington's disease, was entitled to indefinite maintenance.

e. A.R.S. § 25-319(A)(5):

See, *Rainwater*, 177 Ariz. at 502 (App. 1993).

i. "Trial court abused its discretion by failing to consider the receiving spouse's contribution to the earning ability of the paying spouse and the receiving spouse's reduction in income or career opportunities for the benefit of the paying spouse…"

Id. *See*, *also*, A.R.S. § 25-319(B)(2), (6), (7).

ii. "Such factors as length of the marriage, the receiving spouse's contributions to the education and earning capacity of the paying spouse, and the receiving spouse's reduction in income or career opportunities for the benefit of the family home and children bear heavily on the trial court's effort to establish an equitable award.

III. Amount and Duration of Award.

A. The amount and duration of an award of maintenance is governed by A.R.S. § 25-319(B):

1. If the Court finds one of the five factors set forth in subsection 319(A), it must then consider each of the factors set forth in subsection 319 (B) in order to determine amount and duration of the award. The court can consider actual damages and judgments for conduct that results in the criminal conviction of either spouse in which the other spouse or a child was the victim.

2. "The current aim is to achieve independence for both parties and to require an effort toward independence by the party requesting maintenance…The key issue for the parties and the court will be whether that independence will be achieved by a good faith effort."

See, *Schroeder v. Schroeder*, 161 Ariz. 316 (1989).

3. "To strike the proper balance, the trial court need not apply every factor listed in A.R.S. § 25-319(B). In what is necessarily a case-by-case inquiry, some factors will not apply but the trial court may abuse its discretion, however, by neglecting any applicable factors."

See, *Rainwater*, 177 Ariz. at 503.

4. Public policy favors "fixed term maintenance as a means to promote a diligent effort to become self-sustaining" but this goal must be balanced against a realistic appraisal of the possibility that the claimant spouse will later become self-sustaining in some reasonable approximation of the standard of living established during the marriage.

Id.

5. "But *Schroeder*, also reaffirms the trial court's discretion to award indefinite maintenance when it appears from the evidence that the independence is unlikely to be achieved."

Id. *See*, *also*, *Gutierrez*, 193 Ariz. at 343.

6. "Additionally, *Schroeder* shows that assessing the likelihood of a successful transition to independence requires a prediction that may vary not only from case to case, but from time to time within a case."

Id.

7. "We add that our decision is strongly affected by the presumptive modifiability of spousal maintenance."

Id. at 504 (citing *Schroeder*).

8. Decree provided that the husband "shall pay spousal maintenance to [wife] in the sum of $600.00 per month for the first 18 months following the signing of decree, $750.00 per month

See, *Zale v. Zale*, 193 Ariz. 246 (1999).

thereafter…This spousal maintenance obligation shall be reviewed 36 months after the signing of this decree." The Supreme Court held this language unambiguously provided for an indefinite spousal maintenance award even though the earlier minute entry contained some inconsistent language, the judgment controls.

See, Huey v. Huey, 2022 WL 2920970 (App. July 26, 2022).

9. Superior court is not authorized to award indefinite spousal maintenance when the receiving spouse's inability to be self-sufficient is based on a non-permanent mental health condition.

B. Specific Factors (B)1-13:

1. A.R.S. § 25-319(B)(1): "The standard of living established during the marriage."

See, *Thomas v. Thomas*, 142 Ariz. 386 (App. 1984).

a. The statute and case law clearly require a case-by-case analysis to determine the impact of the parties' standard of living on spousal maintenance.

See, *Hughes*, 177 Ariz. at 524-25.

b. The public policy goal of financial independence must be balanced against certain "… counterweights, including marital standard of living, marital duration, contribution of the receiving spouse to the earning ability of the other, and reduction of income or career opportunities by the receiving spouse for the benefit of the other."

See, *Rainwater*, 177 Ariz. at 502.

c. "We do not suggest that at the end of every marriage, the party of lesser earning capacity is entitled to enough support to maintain the standard of living achieved during the marriage." "[T]here will be case-to-case variance to the degree to which the marital standard of living may be seen as a product of marriage. For this reason, such factors as length of marriage, the receiving spouse's contributions to the education and earning capacity of the paying spouse, and the receiving spouse's reduction in income or career opportunities for the benefit of the family home and children bear heavily on the trial court's effort to establish an equitable award."

2. A.R.S. § 25-319(B)(2): "The duration of the marriage."

See, *Nelson v. Nelson*, 114 Ariz. 369 (1977); *Mori v. Mori*, 124 Ariz. 193 (1979); *Thomas*, *supra*.

a. The court has stated that a marriage of 4 ½ years (which include a 2 ½ separation) was a marriage of "short duration." Marriages of 25 years and 32 years respectively have been found to be marriages of "long duration."

See, *Schroeder* 161 Ariz. at 320 note 5.

b. Although the Court did not "adopt" the formula, the court noted that at least one commentator has divided spousal maintenance cases into three categories; long term marriage with traditional homemaker (over 20 years); medium length marriages (10-25 years); and short-term marriages (under 10 years).

See, *Oppenheimer v. Oppenheimer*, 22 Ariz. App. 238 (1974).

c. The length of marriage is merely one factor to be considered.

3. A.R.S. § 25-319(B)(3): "The age, employment history, earning ability and physical and emotional condition of the spouse seeking maintenance."

See, *Earley v. Earley*, 6 Ariz. App. 110 (1967).

a. A spouse may receive spousal maintenance beyond date of graduation in anticipation of a delay in finding satisfactory employment and become self-supporting.

See, *Deatherage*, 140 Ariz. at 317.

b. Ability to provide earnings is not limited to employment but would also include the ability to convert property into income producing property.

See, *Hughes*, 177 Ariz. at524 (citing *Rainwater* and quoting *Sommerfield*).

c. "Yet we also recognized, as in earlier decisions that this goal [to achieve independence for both parties and to require an effort toward independence by the party requesting maintenance] must be balanced with some realistic appraisal of the probabilities that the receiving spouse will in fact subsequently be able to support herself in some reasonable approximation of the standard of living established during the marriage."

4. A.R.S. § 25-319(B)(4): "The ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance."

See, *Sommerfield*, 121 Ariz. at 575.

a. There is little case law directly discussing this factor. The Court has held that an award of less than 25% of the obligor's income was within the obligor's ability.

See, *Williams v. Williams*, 166 Ariz. 260 (App. 1990).

b. "This court has determined that future earnings and/or earning capacity may be considered by the trial court [in determining a spousal maintenance award]."

5. A.R.S. § 25-319(B)(5): "The comparative financial resources of the spouses including their comparative earning abilities in the labor market."

See, *Pyeatte v. Pyeatte*, 21 Ariz. App. 448 (App. 1974).

a. An award of 24% ($125.00) of the disparity of earning between spouses was no error, nor is an award of 47% ($50.00) of the disparity.

See, *Warren v. Warren*, 2 Ariz. App. 206 (App. 1965).

b. Wife of 14 years, with no income, modest education, and no special training received 16.5% ($150.00) of husband's income.

See, Sommerfield, 121 Ariz. at 578.

c. An award of less than 25% of husband's income ($700.00) was justified.

6. A.R.S. § 25-319(B)(6): "The contribution of the spouse seeking maintenance to the earning ability of the other spouse."

See, *Wisner*, 129 Ariz. at 333.

a. "A spouse who provides financial support while the other spouse acquires an education is not without remedy. If maintenance is sought and a need is demonstrated, the trial court may make an award based on all relevant factors. Certainly, among the relevant factors to be considered is the contribution of the spouse seeking maintenance to the education of the other spouse from whom the maintenance is sought." 129 Ariz. at 340. (Cleaned up.)

7. A.R.S. § 25-319(B)(7): "The extent to which the spouse seeking maintenance has reduced his or her income or career opportunities for the benefit of the other spouse."

8. A.R.S. § 25-319(B)(8): "The ability of both parties after dissolution to contribute to the future education and costs of their mutual children."

See, *Rainwater*, 177 Ariz. at 502.

a. It is not improper to attribute certain expenses to a recipient of spousal maintenance regarding the recipient's ability to contribute to the college expenses of the parties' children. "In so doing the trial court [is] entitled to conclude that [the spousal maintenance recipient] would make some contribution if her incomes were supplemented by spousal maintenance and that husband's expenses for the education of his children would be correspondingly reduced."

9. A.R.S. § 25-319(B)(9): "The financial resources of the party seeking maintenance including marital property apportioned to such party and such party's ability to meet his or her needs independently."

See, *Martin v. Martin*, 156 Ariz. 440 (1986).

2. What are the needs of the spouse seeking maintenance and can those needs be met with an award of spousal maintenance?

See, *Thomas*, 142 Ariz. at 386.

3. The ability of the receiving spouse to meet his or her needs must be considered in light of reasonable approximation of the standard of living established during the marriage.

Id.

4. The ability of the receiving spouse to meet his or her needs cannot be based upon mere hopes and speculative expectations of employment.

See, *Kelsey*, 186 Ariz. at 49; *Rainwater*, 177 Ariz. at 502.

ii. The trial court should consider the interest income a spouse will receive once IRAs become available to such spouse without penalty in the future which is a financial resource to be considered pursuant to this section.

j. A.R.S. § 25-319(B)(10):

i. "The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available."

1. Is the employment sought or suggested appropriate for this spouse?

2. Is this spouse likely to be employed in this type of employment?

3. Is this spouse capable of completing the education or training necessary for this type of employment?

4. Is the necessary education or training readily available?

See, *Cooper v. Cooper*, 130 Ariz. 257 (1981).

5. Is there any history of training or schooling of this spouse toward this employment?

	k. A.R.S. § 25-319(B)(11): i. "Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common." ii. Husband's misrepresentation of income and attempt to conceal assets justified an award of spousal maintenance. In *Martin v. Martin*, 156 Ariz. 440 (1988), the court confirmed that under paragraph A.R.S. § 25-319(B)(11) the court may consider excessive or abnormal expenditures or destruction of community assets, as factors in awarding spousal maintenance but after the trial court has determined that spouse is entitled to spousal maintenance pursuant to subsection A.R.S. § 25-319(A); and A.R.S. § 25-319(A) does not authorize an award of spousal maintenance solely on the grounds that one spouse wrongfully disposed of common property.
See generally, *Thomas*, 142 Ariz. at 386.	
	iii. Fault has only limited relevance in awarding spousal maintenance, disposition of property, and child support. It should only be considered to the extent that there are: '(e)xcessive or abnormal expenditures, destruction, concealment, or fraudulent disposition of community, joint tenancy, and other property held in common.
See, *Oppenheimer*, 22 Ariz. App. at 238.	
	l. A.R.S. §25-319(B)(12): i. The cost for the spouse who is seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if the spouse from whom maintenance is sought is able to convert family health insurance to employee health insurance after the marriage is dissolved. m. A.R.S. §25-319(B)(13): i. The court must consider all actual damages and judgments from conduct that resulted in criminal conviction or either spouse in which the other spouse or a child was a victim.

IV. Modifiability.

a. A.R.S. § 25-319(C):

i. "If both parties agree, the maintenance order and a decree of dissolution of marriage or of legal separation may state that its maintenance terms shall not be modified." However, if an award of spousal maintenance is not granted upon the initial decree of dissolution, it is forever waived.

See, *Palmer v. Palmer*, 170 P.3d 676, 217 Ariz. 67 (App. 2007); *Diefenbach v. Holmberg*, 26 P.3d 1186, 200 Ariz. 415 (App. 2001); *Waldren v. Waldren*, 217 Ariz. 173 (2007).

ii. Arizona courts have specifically held that, in order to make a "non-modifiable" spousal maintenance order survive either party's death or the remarriage of the party receiving maintenance, the order must specifically state that, for example, "spousal maintenance shall not terminate even in the event of either party's death or wife's remarriage." ("non-modifiable" spousal maintenance terminates upon the remarriage of the recipient spouse unless the decree expressly provides otherwise); (non-modifiable" spousal maintenance terminates on the death of the recipient spouse unless the decree expressly provides otherwise). A.R.S. § 25-317(G) removes jurisdiction from our courts to modify or terminate a statutorily non-modifiable spousal maintenance provision in a decree of dissolution."

See, *Rainwater*, 177 Ariz. at 504; *Schroeder*, 161 Ariz. at 323; *Lindsay*, 155 Ariz. at 328 (quoting, in part, *Oppenheimer*).

iii. Spousal maintenance awards are presumptively modifiable. "Spousal maintenance awards are presumed to be modifiable in amount and duration upon a showing of a substantial and continuing change of circumstances affecting the purposes of the original decree." An award of "lifetime" spousal maintenance places the burden upon the "paying spouse to prove a … later change of circumstances sufficiently substantial to warrant shortening the award." Encouraging the receiving spouse to seek employment and become self-sufficient (through a fixed term, "rehabilitative" award) while a "worthy purpose," cannot form the basis for a spousal maintenance judgment "based upon" mere hopes and speculative expectations.'" Under rehabilitative type awards, the court should reserve jurisdiction to extent the award should "hopes and expectations prove to be unfounded. Should such reasonable expectations that the recipient spouse be able to find appropriate employment be unrealized "notwithstanding a maximum good faith effort," such circumstances would satisfy a showing of "changed circumstances" under A.R.S. § 25-327(A).

See, *Rainwater*, 177 Ariz. at 504.

iv. "An award until death or remarriage is a prediction by the trial court that one spouse will never be able to independently approximate the standard of living established during the marriage, and that the other spouse will remain financially able to contribute to the first spouse's support."

V. Title 38 Benefits: A.R.S. § 25-530:

a. "In determining whether to award spousal maintenance or the amount of any award of spousal maintenance, the court shall not consider any federal disability benefits awarded to the other spouse for service-connected disabilities pursuant to 38 U.S.C. § Ch. 11 (no case law).

VI. Uniform Interstate Family Support Act (UIFSA) - A.R.S. § 25-1201, et seq.

See, A.R.S. § 25-1202 (29).

a. Definition of "support order" includes support to a spouse or former spouse:

i. "Support order" means a judgment, decree, order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse or a former spouse, that provides for monetary support, health care, arrearages, retroactive support or reimbursement for financial assistance provided to an individual obligee in place of child support. Support order may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney fees, and other relief.

See, A.R.S. § 25-1205.

b. UIFSA applies to support orders entered by foreign countries.

c. See, Child Support Section IV(b) and (c) regarding A.R.S. § 25-1221 and § 25-1222.

d. Enforcement without Registration. A.R.S. §§ 25-1281; 1282; 1283; 1284; 1285; 1286; and 1287.

e. Registration of Order for Enforcement. A.R.S. § 25-1301.

f. Procedure for Registration of Order for Enforcement. A.R.S. § 25-1302.

g. Effect of Registration for Enforcement. A.R.S. § 25-1303.

	h. Choice of Law.
See, A.R.S. § 25-1304.	i. Except as otherwise provided in subsection (iv) of this section, the law of the issuing state or foreign country governs: 1. The nature, extent, amount, and duration of current payments under a registered support order. 2. The computation and payment of arrearages and accrual of interest on the arrearages under the support order. 3. The existence and satisfaction of other obligations under the support order. ii. In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state or foreign country, whichever is longer, applies. iii. A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in this state. iv. After a tribunal of this or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support and on consolidated arrears.
	i. Notice of Registration. A.R.S. § 25-1305.
	j. Procedure to Contest Registration. A.R.S. § 25-1306.
See, A.R.S. § 25-1037.	k. Bases, Burden, and Results of Contest. i. A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of providing one or more of the following defenses: 1. The issuing tribunal lacked personal jurisdiction over the contesting party. 2. The order was obtained by fraud. 3. The order has been vacated, suspended, or modified by a later order. 4. The issuing tribunal has stayed the order pending appeal.

5. There is a defense under the law of this state to the remedy sought.

6. Full or partial payment has been made.

7. The statute of limitation applicable under section 25-1304 precludes enforcement of some or all of the alleged arrearages.

8. The alleged controlling order is not the controlling order.

ii. If a party presents evidence establishing a full or partial defense under subsection (i) of this section, a tribunal may stay enforcement of a registered support order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the laws of this state.

iii. If the contesting party does not establish a defense under subsection (i) of this section to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order.

l. Confirmed Order after Registration. A.R.S. § 25-1308.

VII. Non-UIFSA Provisions.

a. Jurisdiction.

See, A.R.S. § 25-502.

i. Jurisdiction, venue, and procedure to enforce support orders; additional enforcement remedies.

See, A.R.S. § 25-552.

ii. The superior court has original jurisdiction in proceedings brought by this state or a person who is owed spousal maintenance to establish, enforce, or modify a spousal maintenance obligation.

b. Priority.

Id.

i. Notwithstanding any other statute, actions pursuant to this article have priority over all other civil actions except for child support actions pursuant to section 25-514 or judicial authorization pursuant to section 36-2152.

c. Support is a Judgment as a Matter of Law.

See, *Jarvis v. Jarvis*, 27 Ariz. App. 266 (App. 1976).

i. "[A] petitioning spouse is entitled, as a matter of law, to a written judgment for the full amount of child support or alimony arrearages when such amount has been determined by the court." In reaching this conclusion, the court pointed out that "(e)ach installment as it becomes due is in the nature of a final judgment conclusively establishing the rights of the duties of the parties to that installment."

See, *Sanchez v. Carruth*, 116 Ariz. 180, 181 (App. 1977).

ii. There is no need to file an enforcement action to execute by garnishment on support arrears.

d. Request for Judgment of Arrearages.

See. A.R.S. § 25-503 (N).

i. If a party entitled to receive child support or spousal maintenance or the department or its agent enforcing an order of support has not received court-ordered payments, the party entitled to receive support or spousal maintenance or he department or its agent may file with the clerk of the superior court a request for judgment of arrearages and an affidavit indicating the name of the party obligated to pay support and the amount of the arrearages. The request must include notice of the requirements of this section and the right to request a hearing within twenty days after service in this state or within thirty days after service outside this state. The request, affidavit, and notice must be served pursuant to the Arizona rules of family law procedure on all parties, including the department or its agents in title IV-D cases. In a title IV-D case, the department or its agent may serve all parties by certified mail, return receipt requested. Within twenty days after service in this state or within thirty days after service outside this state, a party may file a request for a hearing if the arrearage amount or the identity of the person is in dispute. If a hearing is not requested within the time provided, or if the court finds that the objection is unfounded, the court must review the affidavit and grant an appropriate judgment against the party obligated to pay support.

e. Procedure.

i. *Note*: Though Rule 91 does not define a spousal maintenance order as a "judgment," Rule 91.2, which expressly deals with enforcement of spousal support orders, refers back to Rule 91's

procedures. An enforcement petition must comply with Rule 91, ARFLP.

See, *In re Marriage of Priessman*, 228 Ariz. 336 (App. 2011).

ii. Spousal Maintenance payments become vested and non-modifiable when they become due; retroactive modification is not permissible.

See, Rule 91.2, ARFLP.

iii. The petition also must include a current summary calculation of arrears derived from support payment clearinghouse records, if available, or if not available, a statement of all sums due.

f. Statute of Limitations.

See. A.R.S. § 25-553.

i. The person to whom the spousal maintenance obligation is owed may file a request for judgment for spousal maintenance arrearages not later than three (3) years after the date the spousal maintenance order terminates. In that proceeding there is no bar to establishing a money judgment for all of the unpaid spousal maintenance arrearages.

ii. If termination of the spousal maintenance order is disputed, this section shall be liberally construed to effect its intention of diminishing the limitation on the collection of spousal maintenance arrearages.

g. Renewal.

See. A.R.S. § 25-553 (B).

i. Notwithstanding any other law, formal written judgments for spousal maintenance and for associated costs and attorney fees are exempt from renewal and are enforceable until paid in full.

h. Order of Assignment.

See, A.R.S. § 25-504.

i. A person receiving support, paying support, or an agency can seek an *ex parte* Order of Assignment for a support order.

See, A.R.S. § 25-504 (D).

ii. *Ex parte* Orders of Assignment can only be issued for support, spousal maintenance, spousal maintenance arrearages, interest on spousal maintenance arrearages, and handling fees.

See, A.R.S. § 25-504 (D), (F).

iii. The Order of Assignment must be served on the employer or other payor.

iv. Compliance Requirements. *See,* A.R.S. § 25-504 (H).

See, A.R.S. § 25-504 (P).

v. An assignment ordered pursuant to this section has priority over all other executions, attachments, or garnishments. An obligation for current child support shall be fully met before any payment pursuant to an order of assignment may be applied to any other support obligation.

vi. An assignment ordered under this section does not apply to amounts made exempt under section 33-1131 or any other applicable exemption law.

i. Fees.

See, A.R.S. § 25-504 ®.

i. In any proceeding under this section, the court, after considering the financial resources of the parties and the reasonableness of the positions each party has taken, may order a party to pay a reasonable amount to another party for the costs and expenses, including attorney fees, of maintaining or defending the proceeding.

j. Limited Income Withholding Orders.

See, A.R.S. § 25-505.

i. The department or its agent may issue a limited income withholding order to any employer, payor, or other holder of a nonperiodic or lump sum payment that is owed or held for the benefit of an obligor. Examples of applicable payments are:

1. Severance Pay.
2. Sick Pay.
3. Vacation Pay.
4. Bonuses.
5. Insurance Settlements.
6. Commissions.
7. Stock Options.
8. Excess Proceeds.
9. Retroactive Disability Proceeds.
10. Personal Injury Awards

k. Order of Assignment – Foreign Support Order.

See, A.R.S. § 25-506.

i. Procedure for seeking Order of Assignment for foreign support order.

l. Enforcement Remedies Allowed as a Matter of Right.

See, A.R.S. § 25-508.

i. Any judgment, order or decree, whether arising from a dissolution, divorce, separation, annulment, custody determination, paternity or maternity determination or dependency proceeding or from a uniform interstate enforcement of support act proceeding and any interlocutory support award in any such proceeding or in any other proceeding regarding support that provides for alimony, spousal maintenance, or child support may be enforced as a matter of right by lien, execution, attachment, garnishment, levy, appointment of a receiver, provisional remedies, or any other form of relief provided by law as an enforcement remedy for civil judgments.

See, *DiPasquale v. DiPasquale*, 243 Ariz. 156, 158, ¶ 11 (App. 2017).

ii. Family court has jurisdiction to join third party (new spouse) to case for purposes of collection; obligee does not have to wait to raise that issue in collection actions. There is only one Superior Court.

m. Interest.

See, A.R.S. § 25-510 (E).

i. Interest on arrearages not reduced to judgment accrue interest at 10% per annum.

See, A.R.S. § 25-510 (F).

ii. *Reduced to Judgment*. Past support reduced to a final written money judgment before September 26, 2008, and pursuant to section 25-320, subsection C, or section 25-809, subsection B accrues interest at the rate of ten percent per annum beginning on entry of the judgment by the court and accrues interest only on the principal and not on interest. Past support reduced to a final written money judgment beginning on September 26, 2008, and pursuant to section 25-320, subsection C, or section 25-809, subsection B does not accrue interest for any time period.

n. Spousal maintenance payments can be enforced by contempt. *See*, *Danielson v. Evans*, 201 Ariz. 401 (App. 2001).

i. Definitions.

See, Rule 94, ARFLP.

1. Civil Arrest Warrant. A "civil arrest warrant" is an order issued in a non-criminal matter that directs any peace officer

in Arizona to arrest the person named in the warrant and to bring that person before the court.

2. Child Support Arrest Warrant. A "child support arrest warrant" is an order issued in a non-criminal child support matter that directs any peace officer in Arizona to arrest the person named in the warrant and to bring that person before the court.

ii. When Issued.

1. Civil Arrest Warrant. On a party's motion or on its own, the court may issue a civil arrest warrant if it finds that the person named in the warrant: (a) was required to appear personally at a specific time and location by an order to appear or a subpoena; (b) received actual notice of that order or subpoena, including a warning that failure to appear may result in the issuance of a civil arrest warrant; and (c) failed to appear.

2. Child Support Arrest Warrant. In any action under A.R.S. § 25-502, the court may issue a child support arrest warrant as provided in A.R.S. § 25-681 (A) on a party's motion or on its own.

iii. Warrant's Issuance, Content, and Effectiveness.

1. Issuance. Only a court may issue a civil arrest or child support arrest warrant.

2. Content. The warrant must: (a) contain the name of the person to be arrested, a description by which the person can be identified with reasonable certainty, and any information required to enter the warrant into the Arizona criminal justice information system; and (b) command the arrest of the named person and that the person be either remanded to the custody of the sheriff or brought before the issuing judicial officer or the nearest or most accessible judicial officer of the superior court in the same county if the issuing judicial officer is absent or unable to act.

3. Effectiveness. A warrant that is issued pursuant to this rule remains in effect until it is executed, or a court extinguishes it.

4. Bond and Release Amount.

(A) Civil Arrest Warrant. A civil arrest warrant must include reasonable bond amount or other non-monetary terms and conditions that assure the person will appear in court.

(B) Child Support Arrest Warrant. A court must issue a child support arrest warrant in conformity with A.R.S. § 25-681 and A.R.S. § 25-683. The court must determine, and the warrant must state the amount the person must pay to be released from custody.

5. Time and Manner of Execution.

(A) Civil Arrest Warrant.

(a) Execution. A civil arrest warrant is executed by the arrest of the person named in the warrant. Unless the court orders otherwise for good cause, a civil arrest warrant may not be executed between the hours of 10:00 p.m. and 6:30 a.m.

(b) Procedure After Arrest. The arrested person must be brought before the issuing judicial officer – of if that judicial officer is absent or unable to act, the nearest or most accessible judicial officer of the superior court of the same county – within 24 hours of the warrant's execution.

(c) Notice to Sheriff of the Issuing County. If the person is arrested in a county other than the issuing county, the arresting officer must notify the sheriff in the issuing county, who must take custody of the arrested person as soon as possible and bring the person before the issuing judicial officer.

(B) Child Support Arrest Warrant. A child support arrest warrant must be executed in a time and manner that complies with A.R.S. § 25-682.

6. Duty of Court After a Warrant's Execution.

(A) Civil Arrest Warrant. After a civil arrest warrant is executed, the judicial officer must:

(a) Advise the arrested person of the nature of the proceeding;

(b) Set the least onerous terms and conditions of release that reasonably guarantee the person's required appearance; and

	(c) Set the date of the next court appearance. (B) Child Support Arrest Warrant. After a child support arrest warrant is executed, the judicial officer must proceed as provided in A.R.S. § 25-683. 7. Forfeiture of Bond on a Civil Arrest Warrant. The procedure for forfeiture of bonds in criminal cases under Rule 7.6 of the Arizona Rules of Criminal Procedure applies to the forfeiture of bonds on civil arrest warrants.

Chapter 10 – Child Support

I. Child Support Guidelines.

See, *Milinovich v. Womack*, 236 Ariz. 612 (App. 2015).

a. Arizona follows child support guidelines to provide procedural guidance in applying substantive law for establishing and modifying child support obligations.

b. Arizona Child Support Guidelines ("Guidelines") are based on an Income Shares Model, utilized in approximately 60% of states. Arizona's Guidelines also incorporate other theories of child support calculations in order to have a more robust and complete child support analysis. The Guidelines establish consistent child support standards that adapt to economic data, children's needs, and parent's ability to pay.

c. The 2022 revised Guidelines have been reorganized to create a schematic that follows along with the child support worksheet/ electronic excel calculator.

d. Both the Guidelines and the calculator give instructions regarding contested issues and necessary findings.

See, *Nash v. Nash*, 232 Ariz. 473 (App. 2013).

e. The Guidelines are presumed to calculate the correct amount of child support. Deviations are appropriate if the following findings are made: (1) that strict application of the Guidelines would be inappropriate or unjust in a particular case; (2) that a deviation would be in the child(ren)'s best interests; and (3) the court states what the child support order would have been if the Guidelines were strictly applied.

Id. at 480.

f. If the combined incomes of the parties exceed $30,000 per month, the Court may consider whether a higher amount than listed on the Schedule of Basic Support Obligations is appropriate. *See*, Section II(c). In these cases, if appropriate evidence is provided, the court should consider the reasonable needs of the children in light of the parents' resources as children may be entitled to share reasonably in their parent's good economic fortune. However, this must be balanced with an appropriate lifestyle. A child's best interest is paramount, as well as the purpose of the Guidelines to establish a standard of support for children consistent with their reasonable needs and the parents' ability to pay.

G. Federal Title IV-D law requires that deviations occur no more than ten (10) percent of the time.

See, *Sherman v. Sherman*, 241 Ariz. 110 (App. 2016); *Cummings v. Cummings*, 182 Ariz. 383 (App. 1994); *Taliaferro v. Taliaferro*, 188 Ariz. 333 (App. 1996); *Little v. Little*, 193 Ariz. 518 (1999); and *Lundy v. Lundy*, 242 Ariz. 198 (App. 2017).

See, *Woyton v. Ward*, 247 Ariz. 529 (App. 2019).

See, *Milinovich*, 236 Ariz. at 615.

II. The Child Support Worksheet consists of three major sections.

a. Calculation of Basic Child Support: Uses economic data coupled with income information for both parents to calculate how much parents with these resources would be expected to spend on basic needs such as food, clothing, and shelter. The Basic Child Support number comes directly from the schedule in the Guidelines and are automatically populated in the child support calculator. The Guidelines incorporate case law regarding when it is appropriate to impute income and what kind of income should be considered as child support income, including overtime pay, second jobs, disability, under-employment, and the like.

b. Calculation of the Total Child Support Obligation: Adds to basic child support the costs of health insurance, older child adjustments (over 12), childcare expenses, extra education expenses, and extraordinary child expenses. These additions must be supported by competent evidence. The Guidelines contain sample calculations for each of these categories and also indicate whether their inclusion is discretionary or mandatory.

c. Division of the Total Child Support Obligation between the two parents: The total child support obligation is allocated between the two parents based upon their relative incomes (by percentage) for child support purposes coupled with a credit for parenting time and credit for the children's expenses which are paid by each parent in section 2 immediately above.

III. Additional Information regarding Child Support Guidelines.

a. There may be times when parents have multiple children with different parenting plans. The Guidelines indicate when the Court should use one or two worksheets.

b. When appropriate, a self-support reserve test is automatically applied to low-income parents to make sure they can support themselves while paying child support.

c. The calculator will also automatically populate a child support order with all of the findings and with the allocation of uninsured medical, dental, and vision expenses.

d. A compromise (or a judicial ruling) between two disputed figures in any particular category or for child support as a whole is not considered a deviation from the Guidelines.

See, *McNutt v. McNutt*, 203 Ariz. 28 (App. 2002) and *Lincoln v. Lincoln,* 155 Ariz. 272 (App. 1987).

e. The Guidelines also provide the Court with guidance on how to allocate the tax benefits between the parties. The trial court can abuse its discretion by refusing to allocate tax benefits.

See, *Little*, 193 Ariz. 518 and *Nia v. Nia*, 242 Ariz. 419 (App. 2017).

f. A modification of child support can only be made on a showing of substantial and continuing changed circumstances. During a modification proceeding from a deviated award, there is no presumption that a deviation is appropriate in the new proceeding; the Court must review the parties' situation anew.

IV. Uniform Interstate Family Support Act (UIFSA) - A.R.S. § 25-1201, et seq.

See, A.R.S. § 25-1205.

a. UIFSA applies to support orders entered by foreign countries.

See, A.R.S. § 25-1221.

b. Bases for jurisdiction over non-resident are as follows:

i. Personal service in Arizona;

ii. The individual submits to jurisdiction by entering a general appearance or consenting on the record;

iii. The individual lives in Arizona with the child;

iv. The child lives in Arizona due to the acts of the individual;

v. The individual engage in sex in Arizona that resulted in the conception of the child;

vi. The individual asserted parentage of the child on a birth certificate filed in Arizona;

vii. Any other basis for exerting personal jurisdiction consistent with the constitutions of Arizona and the U.S.

viii. BUT, jurisdiction for purposes of UIFSA cannot be relied on to convey jurisdiction for other matters.

See, A.R.S. § 25-1222.

c. Personal jurisdiction continues as long as Arizona has continuing, exclusive jurisdiction to modify or enforce its order pursuant to sections 25-1225, 25-1226, and 25-1231.

See, A.R.S. § 25-1226(A).	d. Arizona has continuing jurisdiction to enforce its support order so long as (1) its order is the controlling order and has not been modified; and (2) a money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.
See, A.R.S. § 25-1226(B).	e. A tribunal of Arizona having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.
See, A.R.S. § 25-1227.	f. Determination of Controlling Child Support Order.
See, A.R.S. § 25-1230.	g. Arizona may receive evidence from outside Arizona, communicate with another court outside Arizona, and obtain discovery through another court outside Arizona. h. Enforcement without Registration. A.R.S. §§ 25-1281; 1282; 1283; 1284; 1285; 1286; and 1287. i. Registration, Enforcement, and Modification of Support Order. A.R.S. §§ 25-1301 – 1316. j. Notice of Registration. A.R.S. § 25-1305. k. Procedure to Contest Registration. A.R.S. § 25-1306.
See, A.R.S. § 25-1307.	l. A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of providing one or more of the following defenses: i. The issuing tribunal lacked personal jurisdiction over the contesting party; ii. The order was obtained by fraud; iii. The order has been vacated, suspended, or modified by a later order; iv. The issuing tribunal has stayed the order pending appeal; v. There is a defense under the law of this state to the remedy sought vi. Full or partial payment has been made; vii. The statute of limitation applicable under section 25-1304 precludes the enforcement of some or all of the alleged

arrearages; or

viii. The alleged controlling order is not the controlling order.

m. If a party presents evidence establishing a full or partial defense under subsection (k) of this section, a tribunal may stay enforcement of a registered support order, continue the proceeding to permit production of additional relevant evidence and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the laws of this state.

n. If the contesting party does not establish a defense under subsection (k) of this section to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order.

o. Confirmed Order after Registration. A.R.S. § 25-1308.

V. Non-UIFSA Provisions.

a. Jurisdiction.

See, A.R.S. § 25-502.

i. Jurisdiction, venue, and procedure to enforce support orders; additional enforcement remedies.

b. Support is a Judgment as a Matter of Law.

See, *Jarvis v. Jarvis*, 27 Ariz. App. 266 (App. 1976).

i. "[A] petitioning spouse is entitled, as a matter of law, to a written judgment for the full amount of child support or alimony arrearages when such amount has been determined by the court." In reaching this conclusion, the court pointed out that "(e)ach installment as it becomes due is in the nature of a final judgment conclusively establishing the rights of the duties of the parties to that installment."

See, *Sanchez v. Carruth*, 116 Ariz. 180, 181 (App. 1977).

ii. There is no need to file an enforcement action to execute by garnishment on support arrears.

c. Request for Judgment of Arrearages.

See, A.R.S. § 25-503(N).

i. A party who has not received child support or spousal maintenance may request a judgment of arrears. The request must include notice of the requirements of this section and the right to request a hearing within twenty days after service in this state or within thirty days after service outside this state. The request,

affidavit, and notice must be served. If a hearing is not requested within the time provided, or if the court finds that the objection is unfounded, the court must review the affidavit and grant an appropriate judgment against the party obligated to pay support.

d. Procedure.

i. A petition to enforce a support order must comply with Rule 91, ARFLP.

See, Rule 91.2, ARFLP.

ii. The petition to enforce an order to pay spousal maintenance, child support, or other sums that are due under a support order must include a current summary calculation of arrears derived from support payment clearinghouse records, if available, or if not available, a statement of all sums due.

iii. If the petition seeks reimbursement of medical, dental, or vision costs, the petition must include a statement of all sums due. In addition, within 30 days after filing the petition, the applicant must disclose to the other party any documentation supporting the claim, including proof of payment.

e. Defenses.

See, A.R.S. § 25-503(J).

i. Voluntary relinquishment is affirmative defense.

See, A.R.S. § 25-503(K), for period of relinquishment requirement.

ii. Voluntary relinquishment of physical custody of a child to the obligor from the obligee is an affirmative defense in whole or in part to a petition for enforcement of child support arrears. In determining whether the relinquishment was voluntary, the court shall consider whether there is any evidence or history of any of the following:

1. Domestic Violence.
2. Parental Kidnapping.
3. Custodial Interference.

See, *Id.*

iii. The relinquishment pursuant to subsection (J) of this section must have been for a time period in excess of any court-ordered period of parenting time and the obligor must have supplied actual support for the child.

f. Statute of Limitations.

See, A.R.S. § 25-503(L).

i. If the obligee, the department of their agents make efforts to collect a child support debt more than ten years after the emancipation of the youngest child subject to the order, the obligor may assert as a defense, and has the burden to prove, that the obligee

	or the department unreasonably delayed in attempting to collect the child support debt. On a finding of unreasonable delay, a tribunal, as defined in section 25-1202, may determine that some or all of the child support debt is no longer collectible after the date of the finding.
	g. Renewal.
See, A.R.S. § 25-503(M).	i. Notwithstanding any other law, any judgment for support and for associated costs and attorney fees is exempt from renewal and is enforceable until paid in full.
	h. Self-Employed Parent – Security.
See, A.R.S. § 25-503.01.	i. On a showing of good cause, and if the self-employed parent is in arrears for three months or more, the court may order that a self-employed parent who is required to make child support payments forward an amount equal to not more than six months of child support to the department to hold as security.
	i. Order of Assignment.
See, A.R.S. § 25-504.	i. A person receiving support, paying support, or an agency can seek an ex parte Order of Assignment for a support order.
See, A.R.S. § 25-504(D).	ii. Ex parte Orders of Assignment can only be issued for support, spousal maintenance, spousal maintenance arrearages, interest on spousal maintenance arrearages, and handling fees.
See, A.R.S. §§ 25-504(E), (F).	iii. The Order of Assignment must be served on the employer or other payor.
See, A.R.S. § 25-504(H).	iv. Compliance Requirements.
See, A.R.S. § 25-504(P).	v. An assignment ordered pursuant to this section has priority over all other executions, attachments, or garnishments.
	vi. An obligation for current child support shall be fully met before any payment pursuant to an order of assignment may be applied to any other support obligation.
	vii. An assignment ordered under this section does not apply to amounts made exempt under section 33-1131 or any other applicable exemption law.
	j. Fees.
See, A.R.S. § 25-504(R).	i. In any proceeding under this section, the court, after considering the financial resources of the parties and the reasonableness of the positions each party has taken, may order a party to pay a reasonable amount to another party for the costs and

	expenses, including attorney fees, of maintaining or defending the proceeding.
	k. Limited Income Withholding Orders.
See, A.R.S. § 25-505.	i. The department or its agent may issue a limited income withholding order to any employer, payor, or other holder of a nonperiodic or lump sum payment that is owed or held for the benefit of an obligor. Examples of applicable payments are: 1. Severance Pay. 2. Sick Pay. 3. Vacation Pay. 4. Bonuses. 5. Insurance Settlements. 6. Commissions. 7. Stock Options. 8. Excess Proceeds. 9. Retroactive Disability Proceeds. 10. Personal Injury Awards
	l. Insurance Payments Notice.
See, A.R.S. § 25-505.02.	i. Before making a payment under an insurance contract, the insurer may notify the Department of Economic Security of the impending payment.
	m. Order of Assignment – Foreign Support Order.
See, A.R.S. § 25-506.	i. Procedure for seeking Order of Assignment for foreign support order.
	n. Enforcement Remedies Allowed as a Matter of Right.
See, A.R.S. § 25-508(A).	i. Any judgment, order or decree, whether arising from a dissolution, divorce, separation, annulment, custody determination, paternity or maternity determination or dependency proceeding or from a uniform interstate enforcement of support act proceeding and any interlocutory support award in any such proceeding or in any other proceeding regarding support that provides for alimony, spousal maintenance, or child support may be enforced as a matter of right by

	lien, execution, attachment, garnishment, levy, appointment of a receiver, provisional remedies, or any other form of relief provided by law as an enforcement remedy for civil judgments.
See, *DiPasquale v. DiPasquale*, 243 Ariz. 156, 158, ¶ 11 (App. 2017).	ii. Family court has jurisdiction to join third party (new spouse) to case for purposes of collection; obligee does not have to wait to raise that issue in collection actions. There is only one Superior Court.
	o. Interest.
See, A.R.S. § 25-510(E).	i. Interest on arrearages not reduced to judgment accrue interest at 10% per annum.
See, A.R.S. § 25-510(F).	ii. *Reduced to Judgment*. Past support reduced to a final written money judgment before September 26, 2008, and pursuant to section 25-320, subsection C, or section 25-809, subsection B accrues interest at the rate of ten percent per annum beginning on entry of the judgment by the court and accrues interest only on the principal and not on interest. Past support reduced to a final written money judgment beginning on September 26, 2008, and pursuant to section 25-320, subsection C, or section 25-809, subsection B does not accrue interest for any time period.
	p. Application of Payments.
See, A.R.S. § 25-503(D).	i. Obligation for current child support must be met before application of payment to arrearage.
See, A.R.S. § 25-514.	q. Priority.
	i. Of Action. Except as otherwise provided by statute, actions pursuant to this article shall be given priority over all other civil action.
	ii. Over other Liens. Except for judgments foreclosing or enforcing prior recorded mortgages, deeds of trust, contracts or conveyance of real property, security agreements, or other liens or encumbrances upon real or personal property created by the property owner a judgment resulting from an action brought for enforcement of child support has priority over all other judgments. Such priority shall not arise until a certified copy of the child support judgment is recorded with the county recorder.
	r. Contempt.
See, Rule 94, ARFLP.	i. Child Support Arrest Warrants. A.R.S. §§ 25-681; 682; 683; 684; and 685.

ii. Definitions.

1. Civil Arrest Warrant. A "civil arrest warrant" is an order issued in a non-criminal matter that directs any peace officer in Arizona to arrest the person named in the warrant and to bring that person before the court.

2. Child Support Arrest Warrant. A "child support arrest warrant" is an order issued in a non-criminal child support matter that directs any peace officer in Arizona to arrest the person named in the warrant and to bring that person before the court.

iii. When Issued.

1. Civil Arrest Warrant. On a party's motion or on its own, the court may issue a civil arrest warrant if it finds that the person named in the warrant: (a) was required to appear personally at a specific time and location by an order to appear or a subpoena; (b) received actual notice of that order or subpoena, including a warning that failure to appear may result in the issuance of a civil arrest warrant; and (c) failed to appear.

2. Child Support Arrest Warrant. In any action under A.R.S. § 25-502, the court may issue a child support arrest warrant as provided in A.R.S. § 25-681 (A) on a party's motion or on its own.

iv. Warrant's Issuance, Content, and Effectiveness.

1. Issuance. Only a court may issue a civil arrest or child support arrest warrant.

2. Content. The warrant must: (a) contain the name of the person to be arrested, a description by which the person can be identified with reasonable certainty, and any information required to enter the warrant into the Arizona criminal justice information system; and (b) command the arrest of the named person and that the person be either remanded to the custody of the sheriff or brought before the issuing judicial officer or the nearest or most accessible judicial officer of the superior court in the same county if the issuing judicial officer is absent or unable to act.

3. Effectiveness. A warrant that is issued pursuant to this rule remains in effect until it is executed, or a court extinguishes it.

4. Bond and Release Amount.

(A) Civil Arrest Warrant. A civil arrest warrant must include

reasonable bond amount or other non-monetary terms and conditions that assure the person will appear in court.

(B) Child Support Arrest Warrant. A court must issue a child support arrest warrant in conformity with A.R.S. § 25-681 and A.R.S.§ 25-683 . The court must determine, and the warrant must state the amount the person must pay to be released from custody.

5. Time and Manner of Execution.

(A) Civil Arrest Warrant.

(a) Execution. A civil arrest warrant is executed by the arrest of the person named in the warrant. Unless the court orders otherwise for good cause, a civil arrest warrant may not be executed between the hours of 10:00 p.m. and 6:30 a.m.

(b) Procedure After Arrest. The arrested person must be brought before the issuing judicial officer – of if that judicial officer is absent or unable to act, the nearest or most accessible judicial officer of the superior court of the same county – within 24 hours of the warrant's execution.

(c) Notice to Sheriff of the Issuing County. If the person is arrested in a county other than the issuing county, the arresting officer must notify the sheriff in the issuing county, who must take custody of he arrested person as soon as possible and bring the person before the issuing judicial officer.

(B) Child Support Arrest Warrant. A child support arrest warrant must be executed in a time and manner that complies with A.R.S. § 25-682.

6. Duty of Court After a Warrant's Execution.

(A) Civil Arrest Warrant. After a civil arrest warrant is executed, the judicial officer must:

(a) Advise the arrested person of the nature of the proceeding;

(b) Set the least onerous terms and conditions of release that reasonably guarantee the person's required appearance; and

(c) Set the date of the next court appearance.

	(B) Child Support Arrest Warrant. After a child support arrest warrant is executed, the judicial officer must proceed as provided in A.R.S. § 25-683. 7. Forfeiture of Bond on a Civil Arrest Warrant. The procedure for forfeiture of bonds in criminal cases under Rule 7.6 of the Arizona Rules of Criminal Procedure applies to the forfeiture of bonds on civil arrest warrants.

Chapter 11 – Attorneys' Fees

See, A.R.S. § 25-324.

I. Introduction – A.R.S. § 25-324.

a. Claims for attorney fees in matters arising under Title 25, chapter 3 (Dissolution of Marriage) and chapter 4, article 1 (Legal Decision Making and Parenting Time) are governed by A.R.S. § 25-324, which states:

> A. The court from time to time, after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this chapter or chapter 4, article 1 of this title. On request of a party or another court of competent jurisdiction, the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions. The court may make these findings before, during or after the issuance of a fee award.
>
> B. If the court determines that a party filed a petition under one of the following circumstances, the court shall award reasonable costs and attorney fees to the other party:
>
> 1. The petition was not filed in good faith.
>
> 2. The petition was not grounded in fact or based on law.
>
> 3. The petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay, or to increase the cost of litigation to the other party.
>
> C. For the purpose of this section, costs and expenses may include attorney fees, deposition costs and other reasonable expenses as the court finds necessary to the full and proper presentation of the action, including any appeal.
>
> D. The court may order all amounts paid directly to the attorney, who may enforce the order in the attorney's name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

II. Attorney Fees.

a. Purpose.

See, Quijada v. Quijada, 246 Ariz. 217 (App. 2019), (Review Denied).

i. The fee-shifting provisions of the ARS 25-324 governing an award of attorney fees in a domestic relations matters are intended to ensure that the poorer party has the proper means to litigate the action, not to punish litigants.

b. Granting of Fees and Costs – In General.

See, In re Marriage of Cotter and Podhorez, 245 Ariz. 82 (App. 2018).

i. Wife was not entitled to attorney fees under marital-dissolution statute governing attorney fees; there was no substantial disparity of financial resources between parties, neither party acted unreasonably in litigation, and although both parties argued that the other party was capable of earning more, the possibility of additional income was speculative at best.

See, In re Marriage of Williams, 219 Ariz. 546 (App. 2008).

ii. Statute allowing a trial court, in a marriage dissolution action, to order one party to pay the other party's attorney fees and costs after the trial court considers the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, requires the propriety of a party's legal position to be evaluated by an objective standard of reasonableness

See, Breitbart-Napp v. Napp, 216 Ariz. 74, (App. 2007) (Reconsideration Denied).

iii. Statute allowing award of fees and costs in a dissolution of marriage proceeding does not establish a prevailing party standard.

See, In re Marriage of Robinson and Thiel, 201 Ariz. 328, (App. 2001).

iv. Trial court may order a party to pay a reasonable amount to the other party for attorney fees and costs after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the dissolution proceedings.

c. Discretion – Granting of Fees and Costs.

See, e.g., Drees v. Drees, 16 Ariz. App. 22 (App. 1971).

i. Allowance of attorney's fees and costs is left to the discretion of the trial court.

See, Rinegar v. Rinegar, 231 Ariz. 85 (App. 2012).

ii. Trial court did not abuse its discretion by awarding attorney fees to ex-husband, who prevailed on his motion to reopen divorce decree to allocate non-qualified pension plan and stock options; ex-wife refused to tell ex-husband the value of the disputed assets, and ex-wife's annual salary had consistently been more than double ex-husband's annual income.

See, Roden v. Roden, 190 Ariz. 407 (App. 1997).

iii. Whether to award attorney fees in dissolution action, and amount thereof, is left to sound discretion of trial court.

See, Medlin v. Medlin, 194 Ariz. 306 (App. 1999).

iv. The Court of Appeals reviews a trial judge's award of attorney fees under an abuse of discretion standard.

d. Ability to Pay – Granting of Fees and Costs.

See, Lehn v. Al-Thanayyan, 246 Ariz. 277 (App. 2019).

i. Statute governing award of attorney fees in marriage dissolution cases does not require a showing of actual inability to pay as a predicate for an award; all a party need show is that a relative financial disparity in income and/or assets exists between the parties.

See, In re Marriage of Williams, 219 Ariz. 546, (App. 2008).

ii. Trial court was required to consider not only wife's financial resources but also husband's financial resources when determining whether husband should be awarded attorney fees and costs under statute allowing a trial court, in a marriage dissolution action, to order one party to pay the other party's attorney fees and costs, after an evaluation of the reasonableness of the legal positions each party has taken throughout the proceedings.

See, Bell-Kilbourn v. Bell-Kilbourn, 216 Ariz. 521 (App. 2007).

iii. In deciding whether award of attorney fees in a dissolution of marriage action is appropriate, the court must consider the financial resources of both parties and the reasonableness of the positions taken throughout the case.

See, Robinson and Thiel, *supra*.

iv. In considering the parties' financial resources for the purpose of determining whether the court will award attorney's fees and costs in dissolution proceedings, the court must consider both the claimant's need and the other spouse's capacity to bear the burden.

See, In re Marriage of Pownall, 197 Ariz. 577 (App. 2000).

v. Award to wife of $27,383.29 in attorney fees was not abuse of trial court's discretion, even assuming reasonableness of husband's position, where at time of divorce husband and wife had annual incomes of $42,000 and $18,000, respectively, and evidence suggested that parties would continue to earn those amounts in future.

See, Paul E. v. Courtney F., 244 Ariz. 46 (App. 2018), Review Granted in part and Vacated in part, 246 Ariz. 388 (2019).

vi. Disparity in income may support an attorney-fee award in a child-custody case even when the party against whom fees are sought took a reasonable position.

e. Bad Faith, Granting of Fees and Costs.

See, Tanner v. Marwil in and for County of Maricopa, 250 Ariz. 43 (App. 2020).

i. Family court was required to award mother attorneys' fees and costs for defending the dissolution-of-marriage petition filed by father, where father had falsely claimed in the dissolution petition that he and mother were domiciled in Arizona for at least 90 days when he petitioned for dissolution, such that the petition wrongly asserted the family court had jurisdiction over the dissolution.

See, Mangan v. Mangan, 227 Ariz. 346 (App. 2011).

ii. An applicant need not show both a financial disparity and an unreasonable opponent in order to qualify for consideration for an award of attorney fees in a child custody dispute.

f. Granting of Fees and Costs – Premarital Agreements.

See, Bobrow v. Bobrow, 241 Ariz. 592 (App. 2017).

i. Premarital agreement that stipulated to prevailing-party standard for attorney fees violated public policy per se, and trial court should have applied the statutory standard governing the issue of attorney fees in a marriage dissolution proceeding. (*See, also, Edsall v. Superior Court*, 143 Ariz. 240, 693 P.2d 895 (1984)).

g. Findings, Granting of Fees and Costs.

See, Myrick v. Maloney, 235 Ariz. 491 (App. 2014).

i. There is no obligation for the trial court to make findings of fact under statute that allows for an award of attorney fees in a dissolution action based on the financial condition of the parties in the absence of a request; furthermore, a party cannot challenge the lack of findings when none have been requested.

h. Amount of Fees – In General.

See, Thompson v. Corry, 231 Ariz. 161 (App. 2012).

i. The applicable hourly rate, when calculating attorney fees awards in domestic relations and contempt proceedings when the recipient party is represented by counsel on a pro bono basis, should be calculated by using the prevailing market rate in the community for similar services.

i. Amount of Fees – Reasonableness of Amount Sought.

See, Gutierrez v. Gutierrez, 193 Ariz. 343 (App. 1998), (Review Denied).

i. Trial court may consider spouse's settlement position in determining reasonableness of spouses' positions during divorce proceeding, for purposes of awarding attorney fees.

j. Review.

See, Hefner v. Hefner, 248 Ariz. 54 (App. 2019).

i. The Court of Appeals reviews the division of property and debts, factual determinations, and award of attorney's fees in dissolution of marriage proceedings for an abuse of discretion and reverses only when clearly erroneous.

See, Murray v. Murray, 239 Ariz. 174 (App. 2016).

ii. The Court of Appeals reviews an award of attorney's fees in connection with proceedings for the dissolution of marriage for an abuse of discretion.

III. Violation of Visitation or Parenting Time Rights; Penalties.

See, A.R.S. § 25-414.

a. Attorney fee claims in relation to enforcement actions for violation of parenting time or visitation orders are governed by A.R.S. § 25-414 which states:

> A. If the court, based on a verified petition and after it gives reasonable notice to an alleged violating parent and an opportunity for that person to be heard, finds that a parent has refused without good cause to comply with a visitation or parenting time order, the court shall do at least one of the following:
>
> 1. Find the violating parenting in contempt of court.
>
> 2. Order visitation or parenting time to make up for the missed sessions.
>
> 3. Order parent education at the violating parent's expense.

4. Order family counseling at the violating parent's expense.

5. Order civil penalties not to exceed one hundred dollars for each violation. The court shall transmit monies collected pursuant to this paragraph each month to the county treasurer. The county treasurer shall transmit these monies monthly to the state treasurer for deposit into the alternative dispute resolution fund established by §12-135.

6. Order both parents to participate in mediation or some other appropriate form of alternative dispute resolution at the violating parent's expense.

7. Make any other order that may promote the best interests of the child or children involved.

B. Within twenty-five days of service of the petition the court shall hold a hearing or conference before a judge, commissioner or person appointed by the court to review noncompliance with a visitation or parenting time order.

C. Court costs and attorney fees incurred by the non-violating parent associated with the review of noncompliance with a visitation or parenting time order shall be paid by the violating parent. In the event the custodial parent prevails, the court in its discretion may award court costs and attorney fees to the custodial parent.

b. Costs.

See, Graville v. Dodge, 197 Ariz. 591, Review Denied, as amended, Vacated on other grounds , 533 U.S. 945, 150 L.Ed.2d 745 (App. 2000).

Grandparents, who prevailed on father's appeal from order holding him in contempt for violating grandparent visitation order, were not entitled to award of attorney fees and costs under statute governing penalties for violation of visitation order; subject of appeal was modification of terms of visitation, not violation of visitation order.

A.R.S. § 25-415.

IV. Sanctions for Litigation Misconduct

A.R.S. § 25-415 governs awards of attorney fees and costs stemming from litigation misconduct. It states:

> A. The court shall sanction a litigant for costs and reasonable attorney fees incurred by an adverse party if the court finds that the litigant has done any one or more of the following:
>
> 1. Knowingly presented a false claim under §§ 25-403, 25-403.03 or 25-403.04 with knowledge that the claim was false.
>
> 2. Knowingly accused an adverse party of making a false claim under § 25-403, 25-403.03, or 25-403.04 with knowledge that the claim was actually true.
>
> 3. Violated a court order compelling disclosure or discovery under Rule 65 of the Arizona rules of family law procedure, unless the court finds that the failure to obey the order was substantially justified or that other circumstances make an award of expenses unjust.
>
> B. If the court makes a finding against any litigant under subsection A of this section, it may also:
>
> 1. Impose additional financial sanctions on behalf of an aggrieved party who can demonstrate economic loss directly attributable to the litigant's misconduct.
>
> 2. Institute civil contempt proceedings on its own initiative or on request of an aggrieved party, with proper notice and an opportunity to be heard.
>
> 3. Modify legal decision-making or parenting time if that modification would also serve the best interests of the child.
>
> C. For the purposes of this section, a false claim does not mean a claim that is merely unsubstantiated.
>
> D. This section does not prevent the court from awarding costs and attorney fees or imposing other sanctions if authorized elsewhere by state or federal law.

V. Costs, Fees, and Expenses (Pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act).

A.R.S. § 25-1062.

a. Fees and costs related to claims arising under the Uniform Child Custody Jurisdiction and Enforcement Act are governed by A.R.S. § 25-1062 which states:

> "A. The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expense, and childcare during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award is clearly inappropriate.
>
> B. The court shall not assess fees, costs or expenses against a state unless authorized by law other than this chapter."

b. Reversal of Award on Appeal

See, In re Marriage of Margain and Ruiz-Bous, 239 Ariz. 369 (App. 2016).

Reversal of order awarding attorney fees to mother as prevailing party in child custody dispute was warranted, where the Court of Appeals reversed the trial court's judgment in mother's favor. Who is the prevailing party is never certain until the appeal process is concluded. Policies that support awarding attorney fees to prevailing parties at trial must also apply to the party that ultimately prevails on appeal.

VI. Discovery Issues.

a. The court may award attorneys' fees for failure to comply with Rule 57(G), A.R.F.L.P.

b. The court may award attorneys' fees in relation to discovery disputes under Rule 65, A.R.F.L.P.

Chapter 12 - Enforcement

I. Orders/Judgments – Property.

a. Retention of Jurisdiction.

See, *Jensen v. Beirne*, 241 Ariz. 225, 229, ¶ 14 (App. 2016).

Family Court "retains jurisdiction to enforce a dissolution decree until such justice is achieved." Moreover, "in this pursuit…the court…may either grant relief in accordance with the original decree, or if such relief will no longer achieve full and complete justice between the parties, it may alternatively make new orders, consistent with the parties' property interest, to accomplish this end."

b. Stay of Proceeding to Enforce a Judgment.

i. Rule outlines that:

See, Rule 87, ARFLP and Rule 7, ARCAP.

1. Interlocutory judgments, including actions for injunction or receivership are not stayed, even if an appeal is filed;
2. When stays apply to Rule 83 and Rule 85 motions;
3. Appeals from orders pertaining to injunctive relief;
4. Orders directing the execution of instruments or directing the sale of perishable property;
5. Judgments against the state or its agencies or political subparts;
6. Rule 78(b) judgments;
7. In rem judgments.

ii. Supersedeas bonds.

See, Rule 7, ARCAP.

c. Post-Decree Petition for Enforcement.

i. All petitions require at a minimum:

See, Rule 91, ARFLP.

1. The date the judgment was entered;
2. The name and location of the court that entered the judgment;
3. As an attachment, a copy of the judgment the applicant seeks to modify or enforce, but if the judgment is in the official court file, the applicant may incorporate the judgment by reference;
4. The page numbers and sections, if applicable, of the judgment that contains the provisions the applicant wishes to modify or enforce; and

	5. The relief requested. ii. The petition must include a verification or declaration. iii. Mediation is not required before filing, but if the petition involves legal decision-making or parenting time, the parties must mediate before a final hearing. iv. Contempt petitions must comply with Rule 92. v. Temporary orders motions must meet the requirements of Rules 47, 47.2, or, if applicable, Rule 48. vi. The petition must submit a form of Order to Appear. vii. The Court must perform an initial review of the petition and either: reject if for failure to state grounds upon which relief can be granted or issue the Order to Appear. viii. If the Court rejects the petition, the Court must provide the applicant with an explanation of the deficiency and provide an opportunity to correct the deficiency within 30 days after the date of the rejection notice. ix. In deciding whether to reject a petition, the Court cannot assess credibility or weigh evidence. x. If the Court issues the Order to Appear, it must set a resolution management conference or evidentiary hearing, as appropriate. xi. No evidence may be taken at a resolution management conference except under emergency circumstances. xii. Counsel must confer before a resolution management conference, if one is set. xiii. The Court may dismiss a petition for lack of prosecution: 1. If a petition to enforce or modify a judgment is filed but not presented to the assigned division with a proposed Order to Appear within 30 days after filing; 2. If the applicant fails to accomplish service before the conference or hearing as provided in this rule and the date to accomplish service is not extended; or 3. If the applicant fails to appear at the conference or hearing. xiv. Unless a statute or rule requires otherwise, a party served with a petition may, but is not required to, file a response to the

	petition. If a party chooses to respond or when a response is required, the response must be filed at least 3 days before the scheduled conference or hearing. xv. The parties must comply with Rule 49. xvi. If fees are requested, the parties must submit AFIs not later than when they comply with Rule 76.1(b) submittals. xvii. Before an evidentiary hearing, the parties must comply with Rule 76.1 and any local rules, including the filing of a scheduling conference or pretrial statement, as ordered by the Court. xix. Stipulations to modify or enforce post-judgment orders that substantially change the terms of a legal decision-making or parenting time order must meet the requirements of Rule 14. xx. A party seeking any other post-judgment relief not specifically addressed in Rule 91 or Rules 91.1 through 91.6 must file a petition in compliance with Rule 91 that states detailed facts supporting the requested relief; and the specific legal authority that permits the court to grant the relief requested. d. Declaratory Judgments.
See, Rule 80, ARFLP.	i. These rules govern the procedure for obtaining a declaratory judgment. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory judgment action. e. Ordering Acts.
See, Rule 89, ARFLP.	i. The court can enter orders for the performance of a specific act relating to failure to deliver a deed or other document or to take some act related to the conveyance of land. ii. If the real or personal property is within Arizona, the court – instead of ordering a conveyance – may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance. iii. On application by a party entitled to performance of any act, the clerk must issue a writ of attachment or sequestration against the disobedient party's property to compel obedience. iv. On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance.

v. The court may also hold the disobedient party in contempt.

f. Enforcing Against Non-Party.

See, Rule 90, ARFLP.

i. When an order grants for a non-party or may be enforced against a non-party, the procedure for enforcing the order is the same as for a party.

g. Judgment Renewal (10 Years).

See, A.R.S. § 12-1612.

i. A judgment for the payment of money that has been entered and docketed by the U.S. district court or the superior court may be renewed by filing a judgment renewal affidavit.

ii. If the original judgment was recorded, the renewal affidavit must also be recorded.

iii. The judgment must be renewed within 90 days proceeding the expiration from the date of entry or prior renewal, except an affidavit for renewal may not be filed to renew a judgment entered on or before August 2, 2013, unless that judgment was renewed on or before August 2, 2018.

See, *Eans Snoderly v. Snoderly*, 249 Ariz. 552 (App. 2020).

iv. The judgment renewal statute applies to a dissolution of marriage decree ordering payment of a specific amount of money due at certain time and not a decree mandating equitable real property distributions, because equitable real property distributions are not judgments for payments of sums certain or judgments enforcing property liens.

v. Settlement agreement that established payment terms of equalization debt from former husband to former wife and required former husband to list former wife as beneficiary on life insurance policy with value equal to amount of remaining debt was not a judgment in marital dissolution proceeding, and thus judgment renewal statute did not apply to bar former wife's petition for contempt and motion to enforce settlement agreement; consent decree did not specify with certainty how or when equalization debt was to be paid upon dissolution of marriage, and former wife had no right to execute on equalization debt until payment terms were determined.

h. Statute of Limitations.

i. General Provisions. A.R.S. § 12-501-516.

ii. Real Actions. A.R.S. § 12-521-530.

iii. Personal Actions. A.R.S. § 12-541-559.03.

Id.	iv. Statute of limitations period could not begin to run on installment payments due on equalization payment from former husband to former wife in marital dissolution proceeding, and thus former wife was not barred from collecting payments more than five years past due; consent decree did not specify amount of installment payments due from former husband to former wife or when payments were to begin.
See, *Johnson v. Johnson*, 195 Ariz. 389 (App. 1999).	v. With respect to judgments payable in installments, the five-year limitation period begins to run from the period fixed for the payment of each installment as it becomes due.
	i. Criminal Contempt.
	i. A.R.S. § 12-861, et seq.
	j. Civil Contempt.
See, Rule 92, ARFLP.	i. *Applicability*. This rule governs civil contempt proceedings in family law cases. Its procedures and sanctions are in addition to the procedures and sanctions for a child support arrest warrant under A.R.S. § 25-681, et seq.
	1. Civil Contempt. The court may use civil contempt sanctions under this rule only for compelling compliance with a court order or for compensating a party for losses because of a contemnor's failure to comply with a court order.
	2. Criminal Contempt. Contempt sanctions that punish an offended, or which vindicate the authority of the court, are criminal in nature and are not governed by this rule.
	ii. *Petition, Service, and Notice*.
	1. Petition. A party begins a civil contempt proceeding by filing a petition that recites the essential facts alleged to be contemptuous. The petition must comply with this rule and Rule 91(b), (c), (e), and (h).
	2. Service. The civil contempt petition and order to appear must be personally served on the alleged contemnor as provided in Rule 41.
	3. Notice. The court may not make a finding of civil contempt without affording notice to the alleged contemnor and without providing the alleged contemnor an opportunity to be heard.

iii. *Order to Appear*. The order to appear must specify the date, time, and place of the hearing, and must contain the following notice using substantially the following language: Failure to appear at the hearing may result in the court issuing a child support or civil warrant for your arrest. If you are arrested, you may be held in jail for up to 24 hours before you see a judge.

iv. *Hearing*. At the hearing on the petition, the court must make an express finding whether the alleged contemnor had notice of the petition and order to appear. The court also must determine whether the party who filed the petition has established that:

1. The court entered a prior order;

2. The alleged contemnor had notice of the prior order; and

3. The alleged contemnor failed to comply with the order.

v. *Order and Sanctions*. The contemnor may show that the failure to comply with the court order was not willful. After hearing the testimony and evidence, the court must enter a written order granting or denying the petition for contempt. An order finding the alleged contemnor in contempt must include the following:

1. A recital of facts on which the contempt finding is based; and

2. If the court finds it appropriate, a statement of appropriate sanctions for obtaining the contemnor's compliance with the order, including incarceration, seizure of property, attorney fees, costs, compensatory or coercive fines, parenting time to makeup for time missed due to the contemnor, parent education classes, employment services, and any other coercive sanction or relief permitted by law, provided the order includes a purge provision under section (vi).

vi. *Purge*.

1. <u>Generally</u>. If the court orders incarceration, a fine or any other sanction for failure to comply with a court order, the order must set conditions for the contemnor to purge the contempt based on the contemnor's present ability to comply.

2. <u>Ability to Comply</u>. The court must include in its order a separate affirmative finding that the contemnor has the present ability to comply with the purge and that finding's factual basis. The court may grant the contemnor a reasonable time to comply with the purge conditions.

	3. Noncompliance. If the court orders incarceration but defers incarceration for more than 24 hours to allow a contemnor a reasonable time to comply with the purge conditions, and if the contemnor fails to comply within the time provided, the other party may file an affidavit of noncompliance. Upon receipt of the affidavit or on its own, the court may issue a child support or civil arrest warrant. The contemnor must be brought before the court within 24 hours of arrest for a determination of whether the contemnor continues to have the present ability to comply with the purge.
	vii. *Review Hearings for an Incarcerated Contemnor*. If the court incarcerates a civil contemnor after a hearing, the court must hold a review hearing at least every 35 days while the contemnor is incarcerated. At that hearing, the court must determine if the contemnor has been able to comply with the purge condition or the amount of release payment, and if not, it must review the contemnor's present ability to comply. The court must continue or modify its orders accordingly.
See, *Eans Snoderly*, 249 Ariz. at 552.	viii. Superior Court had jurisdiction to enter order on former wife's petition for contempt relating to nonpayment of obligation incurred by former husband under parties' settlement agreement in dissolution of marriage proceeding, except that court could not order incarceration for nonpayment; language of statute unambiguously provided that terms of a written separation agreement are enforceable by all remedies available to enforce judgments, including contempt.
	k. Remedies.
See, A.R.S. § 25-318(E).	i. Courts may impress a lien on separate property or marital property to secure payment of: any interest or equity other party has in or to property or community debts court has ordered paid by the parties.
	ii. Failure to Comply with Debt Payment – Transfer of Property. A.R.S. § 25-318(P).
	iii. *Lis Pendens*. A.R.S. § 12-1191.
	iv. Receivership. A.R.S. § 12-1241-1242.
	v. Replevin. A.R.S. § 12-1301.
	vi. Attachment. A.R.S. § 12-1521, et seq.
	vii. Execution. A.R.S. § 12-1551, et seq.

	viii. Garnishment of Property. A.R.S. § 12-1570, et seq. ix. Garnishment of Earnings. A.R.S. § 12-1578, et seq. l. Domestication.
See, A.R.S. § 12-1611, et seq.	i. Revised Uniform Enforcement of Foreign Judgments Act.
	m. Omitted Assets.
See, A.R.S. § 25-318(D).	i. Community property not divided in the decree is presumed to be held as tenants-in-common.
See, *Thomas v. Thomas,* 220 Ariz. 290 (App. 2009).	ii. Intentionally omitted property will not be remedied.
	n. Attorney Fees Judgments.
See, A.R.S. § 25-315.	i. Enforceable against community assets.
See, A.R.S. § 25-324(D).	ii. Can be entered jointly with attorney.

Chapter 13 – Post-Judgment Relief

See, A.R.S. § 25-327(A).

I. Motions.

a. The provisions of a divorce decree as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state. Modifications and terminations of spousal maintenance or child support are effective on the first day of the month following notice of the petition for modification or termination unless the court, for good cause shown, orders the change to become effective at a different date but not earlier than the date of filing the petition for modification or termination.

b. Motion to Alter or Amend Judgment – Rule 83.

See, Rule 83, ARFLP.

i. *Generally*. Grounds for Altering or Amending Judgment. The court may on its own or on motion alter or amend all or some of its rulings on any of the following grounds materially affecting a party's rights:

1. The court did not properly consider or weigh all of the admitted evidence;
2. Any irregularity in the proceedings or abuse of discretion depriving the party of a fair trial;
3. Misconduct of the other party;
4. Accident or surprise that could not reasonably have been prevented;
5. Newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence;
6. Error in the admission or rejection of evidence, or other errors of law at the trial or during the action;
7. Mistakenly overlooked or misapplied uncontested facts, including mathematical errors, which were necessary to the ruling; or
8. The decision, findings of fact, or judgment is not supported by the evidence or is contrary to law.

ii. *Court Action*. The court may vacate a judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment. The relief, if granted, must be limited to the question or questions found to be error, if separable.

See, Rule 84, ARFLP.	iii. *Time to File a Motion; Scope; Response and Reply*. 1. Motion. A motion under this rule must be filed not later than 25 days after the entry of judgment under Rule 78(b) or (c). This deadline may not be extended by stipulation or court order, except as allowed by Rule 4(b)(2). 2. Response. Within 15 days of the filing of a motion under this rule, the court must either summarily deny the motion or set a deadline for a response. The court may limit the scope of a response to specified issues. The court may not grant a motion without providing the non-moving party an opportunity to file a response. The response deadline will be 30 days after the entry of an order requiring a response. 3. Contents of Response. The response must address any issues raised in the motion, unless limited by the court. The response must also address any issues that might arise if the motion is granted. 4. Reply. The reply must be filed not later than 15 days after the filing of a response. iv. *Successive Motions*. No party may file a motion to alter or amend an order granting or denying a motion under this rule. v. *Motion after Service by Publication*. When judgment has been rendered after service by publication, and the defaulted party has not appeared, the court may grant a motion made pursuant to this rule if the defaulted party – within one year after entry of judgment – files an application establishing good cause for granting the motion. vi. *Order Must Specify Grounds*. Any order granting a motion made pursuant to this rule must specify with particularity the ground or grounds for the courts order. c. Motion for Clarification – Rule 84. i. *Grounds*. A party may file a motion that requests the court to clarify a ruling if the ruling is confusing or is susceptible to more than one reasonable interpretation. ii. *Timing*. A party may file a motion for clarification at any time, but the motion does not extend the time for filing a notice of appeal.

See, Rule 85, ARFLP.	iii. *Procedure*. Unless the court orders otherwise, a party may not file a response to a motion for clarification, and the court may summarily deny the motion. However, the court may not grant a motion for clarification without providing the nonmoving party an opportunity to file a written response. iv. *Rule 83 Motion*. A party may not combine a motion filed under this rule with a motion under Rule 83. On a motion for clarification, the court may not open the judgment or accept additional evidence as it can under Rule 83. d. Motion to Relief from Judgment or Order – Rule 85. i. *Corrections Based on Clerical Mistakes; Oversights and Omissions*. A court must correct a clerical mistake or a mistake arising from oversight or omission if one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with notice. But after an appeal has been filed and while it is pending in the appellate court, such a mistake may be corrected only with the appellate court's leave. After a mistake in the judgment is correct, execution must conform to the corrected judgment. ii. *Grounds for Relief from a Final Judgment, Order, or Proceeding*. On motion and on such terms as are just, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: 1. Mistake, inadvertence, surprise, or excusable neglect; 2. Newly discovered evidence that, with reasonable diligence, could not have been discovered in time to file a motion under Rule 83(1)(A); 3. Fraud (whether previously intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party; 4. The judgement is void; 5. The judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longest equitable; or 6. Any other reason justifying relief. iii. *Timing and Effect of Motion.* 1. Timing. A motion under section (ii) must be made within a reasonable time – and for the reasons set forth in subparts (ii)(1), (2), and (3), no more than 6 months after the entry of

See, Rule 91.4, ARFLP.	the judgment or order or date of the proceeding, whichever is later. This deadline may not be extended by stipulation or court order, except as allowed by Rule 4(b)(2). 2. Effect on Finality. The motion does not affect the judgment's finality or suspend its operation. iv. *Other Powers to Grant Relief.* This rule does not limit the court's power to: 1. Entertain an independent action to relieve a party from a judgment, order, or proceeding; 2. Grant relief to a party served by publication as provided in Rule 83(e); or 3. Set aside a judgment for fraud on the court. v. *Reversed Judgment of Foreign State.* If a judgment was rendered on a foreign judgment from another state or country and the court of such state or country reverses or sets aside the foreign judgment, the Arizona court that rendered judgment must set aside, vacate, and annul its judgment. e. Relocation. A petition to relocate a minor child or prevent relocation of a minor child must comply with A.R.S. § 25-408 and Rule 91.4.