

1 S.31

2 Introduced by Senators Sears and Hartwell

3 Referred to Committee on

4 Date:

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

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

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

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

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

14 § 751. PROPERTY SETTLEMENT

15 * * *

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

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

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

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

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

10 Sec. 2. EFFECTIVE DATE

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

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

§ 751. PROPERTY SETTLEMENT

** * **

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

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

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

(4) A person who is not party to the divorce may be subjected to discovery or compelled to testify on the subject of his or her own last will and testament, on any revocable trust of which he or she is settlor or, in

conjunction with any of these instruments, on his or her assets if the court finds that a party has fraudulently represented his or her opportunity to acquire capital assets and income in the future.

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

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.