

By Senator Flores

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1 A bill to be entitled
2 An act relating to equitable distribution of marital
3 assets and liabilities; amending s. 61.075, F.S.;
4 redefining the term "marital assets and liabilities"
5 for purposes of equitable distribution in dissolution
6 of marriage actions; providing that the term includes
7 the paydown of principal of notes and mortgages
8 secured by nonmarital real property and certain
9 passive appreciation in such property under certain
10 circumstances; providing formulas and guidelines for
11 determining the amount of such passive appreciation;
12 requiring security and interest relating to the
13 installment payment of such assets; providing
14 exceptions; permitting the court to provide written
15 findings regarding any installment payments; providing
16 an effective date.

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18 Be It Enacted by the Legislature of the State of Florida:

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20 Section 1. Paragraph (a) of subsection (6) and subsection
21 (10) of section 61.075, Florida Statutes, are amended to read:
22 61.075 Equitable distribution of marital assets and
23 liabilities.—

24 (6) As used in this section:

25 (a)1. "Marital assets and liabilities" include:

26 a. Assets acquired and liabilities incurred during the
27 marriage, individually by either spouse or jointly by them.

28 b. The enhancement in value and appreciation of nonmarital
29 assets resulting ~~either~~ from the efforts of either party during

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30 the marriage or from the contribution to or expenditure thereon
31 of marital funds or other forms of marital assets, or both.

32 c. The paydown of principal of a note and mortgage secured
33 by nonmarital real property and a portion of any passive
34 appreciation in the property, if the note and mortgage secured
35 by the property are paid down from marital funds during the
36 marriage. The portion of passive appreciation in the property
37 characterized as marital and subject to equitable distribution
38 shall be determined by multiplying a coverture fraction by the
39 passive appreciation in the property during the marriage.

40 (I) The passive appreciation shall be determined by
41 subtracting the gross value of the property on the date of the
42 marriage or the date of acquisition of the property, whichever
43 is later, from the value of the property on the valuation date
44 in the dissolution action, less any active appreciation of the
45 property during the marriage, as defined in sub-subparagraph b.,
46 and less any additional encumbrances secured by the property
47 during the marriage in excess of the first note and mortgage on
48 which principal is paid from marital funds.

49 (II) The coverture fraction shall consist of a numerator,
50 defined as the total paydown of principal from marital funds of
51 all notes and mortgages secured by the property during the
52 marriage, and a denominator, defined as the value of the subject
53 real property on the date of the marriage, the date of
54 acquisition of the property, or the date the property was
55 encumbered by the first note and mortgage on which principal was
56 paid from marital funds, whichever is later.

57 (III) The passive appreciation shall be multiplied by the
58 coverture fraction to determine the marital portion of the

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59 passive appreciation in the property.

60 (IV) The total marital portion of the property shall
61 consist of the marital portion of the passive appreciation, as
62 defined in subparagraph 3., the mortgage principal paid during
63 the marriage from marital funds, and any active appreciation of
64 the property, as defined in sub-subparagraph b., not to exceed
65 the total net equity in the property at the date of valuation.

66 (V) The court shall apply this formula unless a party shows
67 circumstances sufficient to establish that application of the
68 formula would be inequitable under the facts presented.

69 d.e. Interspousal gifts during the marriage.

70 e.d. All vested and nonvested benefits, rights, and funds
71 accrued during the marriage in retirement, pension, profit-
72 sharing, annuity, deferred compensation, and insurance plans and
73 programs.

74 2. All real property held by the parties as tenants by the
75 entirety, whether acquired prior to or during the marriage,
76 shall be presumed to be a marital asset. If, in any case, a
77 party makes a claim to the contrary, the burden of proof shall
78 be on the party asserting the claim that the subject property,
79 or some portion thereof, is nonmarital.

80 3. All personal property titled jointly by the parties as
81 tenants by the entirety, whether acquired prior to or during
82 the marriage, shall be presumed to be a marital asset. In the
83 event a party makes a claim to the contrary, the burden of proof
84 shall be on the party asserting the claim that the subject
85 property, or some portion thereof, is nonmarital.

86 4. The burden of proof to overcome the gift presumption
87 shall be by clear and convincing evidence.

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88 (10) (a) To do equity between the parties, the court may, in
89 lieu of or to supplement, facilitate, or effectuate the
90 equitable division of marital assets and liabilities, order a
91 monetary payment in a lump sum or in installments paid over a
92 fixed period of time.

93 (b) If installment payments are ordered, the court may
94 require security and a reasonable rate of interest, or otherwise
95 recognize the time value of money in determining the amount of
96 the installments. If security or interest is required, the court
97 shall make written findings relating to any deferred payments,
98 the amount of any security required, and the interest. This
99 subsection does not preclude the application of chapter 55 to
100 any subsequent default.

101 Section 2. This act shall take effect July 1, 2012.