

STORAGE NAME: h1601a.flc

DATE: April 18, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW AND CHILDREN
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1601

RELATING TO: Equitable distribution of marital assets and liabilities

SPONSOR(S): Representative Eggelletion

STATUTE(S) AFFECTED: Section 61.075.

COMPANION BILL(S): SB 2058 (Similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) FAMILY LAW AND CHILDREN YEAS 8 NAYS 0

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I. SUMMARY:

The bill provides that a party in a dissolution of marriage proceeding is not entitled to any credits or set-offs upon the sale of the marital home unless the credits or set-offs allowed or given at the time of sale are specifically provided for in the parties' settlement agreement, final judgment of dissolution of marriage, or final judgment equitably distributing assets or debts. In the absence of a settlement agreement involving the marital home, the court is to consider specified factors before making a determination on the issue of credits or set-offs in its final judgment.

The bill takes effect October 1, 1997, and applies to all settlement agreements entered into or actions filed on or after October 1, 1997.

The bill is predicted to have no fiscal impact on state or local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 61.075, F.S., provides for the equitable distribution of marital assets and liabilities in dissolution of marriage proceedings. In distributing the marital assets and liabilities between the parties, the court must begin with the premise that the distribution should be equal, unless there is a justification for an unequal distribution based on all relevant factors. One of the factors to be considered is the desirability of retaining the marital home as a residence for any dependent child of the marriage, or any other party, when it would be equitable to do so, when it is in the best interest of the child or that party, and when it is financially feasible for the parties to maintain the residence until the child is emancipated or until exclusive possession is otherwise terminated by a court of competent jurisdiction.

Under current law, the parties may agree or the court may order that a party in a dissolution of marriage proceeding shall have the right to have the exclusive use and possession of the former marital home for a period of time. This time period is usually until the youngest child reaches 18 years of age or becomes otherwise emancipated or the party remarries, whichever ever occurs first.

The agreement or court order generally provides that the spouse having possession of the former marital home shall make the mortgage payments during the period of the exclusive use and possession of the former marital home. In addition, the agreement or the court order usually provides that upon the termination of the exclusive use and possession, the former marital home will be sold and the net proceeds will be divided between the parties.

The custodial parent is usually given the exclusive use and possession of the former marital home. The custodial parent usually also receives child support and in some cases alimony and child support. This support or alimony is intended to help meet the needs of the minor child or former spouse. Those needs include housing expenses such as mortgage payments. The party having the exclusive use and possession of the former marital home and paying the mortgage payments usually takes the mortgage interest payment deductions and property tax deductions for federal income tax purposes. In addition, that party also has the benefit of the value of having exclusive use and possession and is not required to seek alternative housing.

The spouse not having the exclusive use and possession of the former marital home must seek and secure alternative housing, must pay the rent or mortgage payment required by that housing and is generally not entitled to take the property tax and mortgage interest payment deductions associated with the former marital home for federal income tax purposes. This spouse also loses the use of the former marital home and the benefits and value associated with the use of the home while continuing to contribute towards the mortgage payments on the former marital home with child support and/or alimony.

Notwithstanding the fact that the parties' marital settlement agreement or the court's final order may provide that upon the termination of the exclusive use and possession of the former marital home each party will receive 50% of the net sales proceeds, at the time of the termination of the exclusive use and possession and sale of the former marital

home, the former spouse having exclusive use and possession of the former marital home may ask the court for an award of a credit against the other spouse's proceeds in an amount equal to 50% of the mortgage payments made by him or her during the period of exclusive use and possession.

This credit does not take into consideration that the support paid was already a contribution towards the mortgage payments, that the party having possession reduced his or her federal income tax liability by taking advantage of the mortgage interest, or that the spouse out of possession lost the value and use of the house for a period of time. This credit may serve to decrease or eliminate entirely the net proceeds from the sale of the home owed to the spouse who has been out of possession.

B. EFFECT OF PROPOSED CHANGES:

The bill adds a new subsection (10) to section 61.075, F.S. giving factors to be considered by a court in a dissolution of marriage action before entering a final judgment making a determination of the credits or set-offs upon the sale of the marital home.

The bill provides that a party is not entitled to any credits or set-offs upon the sale of the marital home unless the parties' settlement agreement, final judgment of dissolution of marriage, or final judgment equitably distributing assets or debts specifically provides that certain credits or set-offs are allowed or given at the time of the sale. In the absence of a settlement agreement involving the marital home, the following factors are to be considered by the court before determining the issue of credits or set-offs in its final judgment:

- (1) whether exclusive use and possession of the marital home is being awarded and the basis for the award
- (2) whether alimony is being awarded to the party in possession and whether the alimony is being awarded to cover, in part or otherwise, the mortgage and taxes and other expenses of and in connection with the marital home
- (3) whether child support is being awarded to the party in possession and whether the child support is being awarded to cover, in part or otherwise, the mortgage and taxes and other expenses of and in connection with the marital home
- (4) the value to the party in possession of the use and occupancy of the marital home
- (5) the value of the loss of use and occupancy of the marital home to the party out of possession
- (6) which party will be entitled to claim the mortgage interest payments in connection with the marital home as tax deductions for federal income tax purposes
- (7) whether one or both parties will experience a capital gains taxable event as a result of the sale of the marital home
- (8) any other factor necessary to bring about equity and justice between the parties

The bill takes effect October 1, 1997, and applies to all settlement agreements entered into or actions filed on or after October 1, 1997.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

This section is not applicable to this bill.

(1) any authority to make rules or adjudicate disputes?

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

(3) any entitlement to a government service or benefit?

- b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

This section is not applicable to this bill.

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

It provides specific criteria relating to credits and set-offs upon the sale of the marital home as the result of a dissolution of marriage.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

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D. a. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 61.075, F.S., 1996 Supplement, to provide that a party is not entitled to any credits or set-offs upon the sale of the marital home unless the parties' settlement agreement, final judgment of dissolution of marriage, or final judgment equitably distributing assets or debts specifically provides that certain credits or set-offs are allowed or given at the time of the sale. In the absence of a settlement agreement involving the marital home, the following factors are to be considered by the court before determining the issue of credits or set-offs in its final judgment:

- (1) whether exclusive use and possession of the marital home is being awarded and the basis for the award
- (2) whether alimony is being awarded to the party in possession and whether the alimony is being awarded to cover, in part or otherwise, the mortgage and taxes and other expenses of and in connection with the marital home
- (3) whether child support is being awarded to the party in possession and whether the child support is being awarded to cover, in part or otherwise, the mortgage and taxes and other expenses of and in connection with the marital home
- (4) the value to the party in possession of the use and occupancy of the marital home
- (5) the value of the loss of use and occupancy of the marital home to the party out of possession
- (6) which party will be entitled to claim the mortgage interest payments in connection with the marital home as tax deductions for federal income tax purposes
- (7) whether one or both parties will experience a capital gains taxable event as a result of the sale of the marital home
- (8) any other factor necessary to bring about equity and justice between the parties

Section 2. Provides that the provisions of this act shall apply to all settlement agreements entered into or actions filed on or after October 1, 1997.

Section 3. Provides for an effective date of October 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

See fiscal comment.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

The Office of the State Courts Administrator has estimated that this bill will result in an increase in the length of time required for hearings in dissolution of marriage cases which will result in an indeterminate cost to the court system. The Family Law Section of the Florida Bar has predicted that this bill will substantially reduce post divorce litigation.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

An amendment has been offered to the Senate companion (SB 2058) which moves this change from a subsection of the equitable distribution statute (s. 61.075, F.S.) to a newly created section (s. 61.077, F.S.).

On page 1, line 24 of the bill, it is unclear whether "final judgment" refers to the final judgment of dissolution of marriage or the final judgment equitably distributing assets or debts.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

One amendment was adopted by the Committee on Family Law and Children on April 17, 1997.

Amendment #1: Creates a new section s. 61.077, F.S. rather than amending s. 61.075, F.S.

VII. SIGNATURES:

COMMITTEE ON Family Law and Children:
Prepared by:

Legislative Research Director:

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