

HB 1297

2008

1                   A bill to be entitled  
2           An act relating to dissolution of marriage; amending s.  
3           61.075, F.S.; providing for interim partial distributions  
4           during dissolution actions; providing for motions;  
5           providing for effect on final distributions; providing  
6           factors to be considered; revising the definition of the  
7           term "marital assets and liabilities"; conforming  
8           provisions to the abolition of special equity; providing a  
9           presumption concerning certain personal property acquired  
10          during the marriage; specifying the burden of proof  
11          necessary to overcome the gift presumption; abolishing  
12          special equity; providing for claims formerly identified  
13          as special equity; amending s. 741.0306, F.S.; conforming  
14          provisions to the abolition of special equity; providing  
15          an effective date.

16  
17   Be It Enacted by the Legislature of the State of Florida:

18  
19           Section 1. Subsections (5) through (9) of section 61.075,  
20   Florida Statutes, are redesignated as subsections (6) through  
21   (10), respectively, a new subsection (5) is added to that  
22   section, paragraph (a) of present subsection (5) of that section  
23   is amended, and subsection (11) is added to that section, to  
24   read:

25           61.075   Equitable distribution of marital assets and  
26   liabilities.--

27           (5) If the court finds good cause that that there should  
28   be an interim partial distribution during the pendency of a

HB 1297

2008

29 dissolution action, the court may enter an interim order that  
30 shall identify and value the marital and nonmarital assets and  
31 liabilities made the subject of the sworn motion, set apart  
32 those nonmarital assets and liabilities, and provide for a  
33 partial distribution of those marital assets and liabilities. An  
34 interim order may be entered at any time after the date the  
35 dissolution of marriage is filed and served and before the final  
36 distribution of marital and nonmarital assets and marital and  
37 nonmarital liabilities.

38 (a) Such an interim order shall be entered only upon good  
39 cause shown and upon sworn motion establishing a specific  
40 factual basis for the motion. The motion may be filed by either  
41 party and shall demonstrate good cause why the matter should not  
42 be deferred until the final hearing.

43 (b) The court shall specifically take into account and  
44 give appropriate credit for any partial distribution of marital  
45 assets or liabilities in its final allocation of marital assets  
46 or liabilities. Further, the court shall make specific findings  
47 in any interim order under this section that any partial  
48 distribution will not cause inequity or prejudice to either  
49 party as to either party's claims for support or attorney's  
50 fees.

51 (c) Any interim order partially distributing marital  
52 assets or liabilities as provided in this subsection shall be  
53 pursuant to and comport with the factors in subsections (1) and  
54 (3) as such factors pertain to the assets or liabilities made  
55 the subject of the sworn motion.

56            (d) As used in this subsection, the term "good cause"  
 57 means extraordinary circumstances that require an interim  
 58 partial distribution.

59            (6)~~(5)~~ As used in this section:

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

61            a.1.~~Assets acquired and liabilities incurred during the~~  
 62 ~~marriage, individually by either spouse or jointly by them.~~

63            b.2.~~The enhancement in value and appreciation of~~  
 64 ~~nonmarital assets resulting either from the efforts of either~~  
 65 ~~party during the marriage or from the contribution to or~~  
 66 ~~expenditure thereon of marital funds or other forms of marital~~  
 67 ~~assets, or both.~~

68            c.3.~~Interspousal gifts during the marriage.~~

69            d.4.~~All vested and nonvested benefits, rights, and funds~~  
 70 ~~accrued during the marriage in retirement, pension, profit-~~  
 71 ~~sharing, annuity, deferred compensation, and insurance plans and~~  
 72 ~~programs.~~~~and~~

73            2.5.~~All real property held by the parties as tenants by~~  
 74 ~~the entireties, whether acquired prior to or during the~~  
 75 ~~marriage, shall be presumed to be a marital asset. If, in any~~  
 76 ~~case, a party makes a claim to the contrary, the burden of proof~~  
 77 ~~shall be on the party asserting the claim that the subject~~  
 78 ~~property, or some portion thereof, is nonmarital for a special~~  
 79 ~~equity.~~

80            3. All personal property titled jointly by the parties as  
 81 tenants by the entireties, 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.

88 (11) Special equity is abolished. All claims formerly  
 89 identified as special equity, and all special equity  
 90 calculations, are abolished and shall be asserted either as a  
 91 claim for unequal distribution of marital property and resolved  
 92 by the statutory factors set forth in subsection (1) or as a  
 93 claim of enhancement in value or appreciation of nonmarital  
 94 property.

95 Section 2. Paragraph (e) of subsection (3) of section  
 96 741.0306, Florida Statutes, is amended to read:

97 741.0306 Creation of a family law handbook.--

98 (3) The information contained in the handbook or other  
 99 electronic media presentation may be reviewed and updated  
 100 annually, and may include, but need not be limited to:

101 (e) Property rights, including equitable distribution,  
 102 ~~special equity~~, premarital property, and nonmarital property.

103 Section 3. This act shall take effect July 1, 2008.