

By Senator Joyner

18-03258-08

20081474__

1 A bill to be entitled

2 An act relating to marital assets; amending s. 61.075,
3 F.S.; revising provisions relating to the equitable
4 distribution of marital assets in dissolutions of
5 marriage; revising definitions; defining the term "good
6 cause"; revising the term "marital assets and
7 liabilities"; providing that the burden of proof for
8 overcoming the marital gift presumption is by clear and
9 convincing evidence; providing for an interim partial
10 distribution of marital assets; providing that claims for
11 special equity are abolished; providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 61.075, Florida Statutes, is amended to
16 read:

17 61.075 Equitable distribution of marital assets and
18 liabilities.--

19 (1) As used in this section, the term:

20 (a) "Good cause" means extraordinary circumstances that
21 require an interim partial distribution under subsection (9).

22 (b) "Marital assets and liabilities" includes:

23 1. Assets acquired and liabilities incurred during the
24 marriage, individually by either spouse or jointly by them.

25 2. The enhancement in value and appreciation of nonmarital
26 assets resulting from the efforts of either party during the
27 marriage or from the contribution to or expenditure of marital
28 funds or other forms of marital assets, or both.

18-03258-08

20081474__

29 3. Interspousal gifts during the marriage. The burden of
30 proof to overcome the marital gift presumption is by clear and
31 convincing evidence.

32 4. All vested and nonvested benefits, rights, and funds
33 accrued during the marriage in retirement, pension, profit-
34 sharing, annuity, deferred compensation, and insurance plans and
35 programs.

36 5. All real or personal property titled jointly by the
37 parties as tenants by the entireties, whether acquired before or
38 during the marriage. If a party makes a claim to the contrary,
39 the burden of proof is on the party asserting the claim.

40 (c) "Nonmarital assets and liabilities" includes:

41 1. Assets acquired and liabilities incurred by either party
42 before the marriage, and assets acquired and liabilities incurred
43 in exchange for such assets and liabilities.

44 2. Assets acquired separately by either party by
45 noninterspousal gift, bequest, devise, or descent, and assets
46 acquired in exchange for such assets.

47 3. All income derived from nonmarital assets during the
48 marriage unless the income was treated, used, or relied upon by
49 the parties as a marital asset.

50 4. Assets and liabilities excluded from marital assets and
51 liabilities by valid written agreement of the parties, and assets
52 acquired and liabilities incurred in exchange for such assets and
53 liabilities.

54 5. Any liability incurred by forgery or unauthorized
55 signature of one spouse signing the name of the other spouse.
56 Such liability is a nonmarital liability only of the party
57 committing the forgery or affixing the unauthorized signature. In

18-03258-08

20081474__

58 determining an award of attorney's fees and costs pursuant to s.
59 61.16, the court may consider the forgery or an unauthorized
60 signature by a party and may make a separate award for attorney's
61 fees and costs occasioned by the forgery or unauthorized
62 signature. This subparagraph does not apply to any forged or
63 unauthorized signature that was subsequently ratified by the
64 other spouse.

65 (2)~~(1)~~ In a proceeding for dissolution of marriage, in
66 addition to all other remedies available to a court to do equity
67 between the parties, or in a proceeding for disposition of assets
68 following a dissolution of marriage by a court that ~~which~~ lacked
69 jurisdiction over the absent spouse or lacked jurisdiction to
70 dispose of the assets, the court shall set apart to each spouse
71 that spouse's nonmarital assets and liabilities, and in
72 distributing the marital assets and liabilities between the
73 parties, the court shall ~~must~~ begin with the premise that the
74 distribution ~~should~~ be equal, unless there is a justification for
75 an unequal distribution based on all relevant factors, including:

76 (a) The contribution to the marriage by each spouse,
77 including contributions for ~~to~~ the care and education of the
78 children and services as homemaker.

79 (b) The economic circumstances of the parties.

80 (c) The duration of the marriage.

81 (d) An ~~Any~~ interruption of personal careers or educational
82 opportunities of either party.

83 (e) The contribution of one spouse to the personal career
84 or educational opportunity of the other spouse.

85 (f) The desirability of retaining any asset, including an
86 interest in a business, corporation, or professional practice,

18-03258-08

20081474__

87 intact and free from any claim or interference by the other
88 party.

89 (g) The contribution of each spouse to the acquisition,
90 enhancement, and production of income or the improvement of, or
91 the incurring of liabilities to, both the marital assets and the
92 nonmarital assets of the parties.

93 (h) The desirability of retaining the marital home as a
94 residence for a ~~any~~ dependent child of the marriage, or any other
95 party, if ~~when~~ it is ~~would be~~ equitable to do so, it is in the
96 best interest of the child or that party, and it is financially
97 feasible for the parties to maintain the residence until the
98 child is emancipated or until exclusive possession is otherwise
99 terminated by a court of competent jurisdiction. In making this
100 determination, the court shall first determine if it is ~~would be~~
101 in the best interest of the dependent child to remain in the
102 marital home, + and, if not, whether other equities are ~~would be~~
103 served by giving any other party exclusive use and possession of
104 the marital home.

105 (i) The intentional dissipation, waste, depletion, or
106 destruction of marital assets after the filing of the petition or
107 within 2 years prior to the filing of the petition.

108 (j) Any other factors necessary to do equity and justice
109 between the parties.

110 ~~(2) If the court awards a cash payment for the purpose of~~
111 ~~equitable distribution of marital assets, to be paid in full or~~
112 ~~in installments, the full amount ordered shall vest when the~~
113 ~~judgment is awarded and the award shall not terminate upon~~
114 ~~remarriage or death of either party, unless otherwise agreed to~~
115 ~~by the parties, but shall be treated as a debt owed from the~~

18-03258-08

20081474__

116 ~~obligor or the obligor's estate to the obligee or the obligee's~~
117 ~~estate, unless otherwise agreed to by the parties.~~

118 (3) In a ~~any~~ contested dissolution action where ~~wherein~~ a
119 stipulation and agreement has not been entered and filed, any
120 distribution of marital assets or marital liabilities must ~~shall~~
121 be supported by factual findings in the judgment or order based
122 on competent substantial evidence with reference to the factors
123 enumerated in subsection (2) ~~(1)~~. The distribution of all marital
124 assets and marital liabilities, whether equal or unequal, must
125 ~~shall~~ include specific written findings of fact as to the
126 following:

127 (a) Clear identification of nonmarital assets and ownership
128 interests.†

129 (b) Identification of marital assets, including the
130 individual valuation of significant assets, and the designation
131 of which spouse is ~~shall be~~ entitled to each asset.†

132 (c) Identification of the marital liabilities and the
133 designation of which spouse is ~~shall be~~ responsible for each
134 liability.†

135 (d) Any other findings necessary to advise the parties or
136 the reviewing court of the trial court's rationale for the
137 distribution of marital assets and allocation of liabilities.

138 (4) The judgment distributing assets is ~~shall have the~~
139 ~~effect of~~ a duly executed instrument of conveyance, transfer,
140 release, or acquisition which is recorded in the county where the
141 property is located when the judgment, or a certified copy of the
142 judgment, is recorded in the official records of the county in
143 which the property is located.

144 ~~(5) As used in this section:~~

18-03258-08

20081474__

145 ~~(a) "Marital assets and liabilities" include:~~

146 ~~1. Assets acquired and liabilities incurred during the~~
147 ~~marriage, individually by either spouse or jointly by them;~~

148 ~~2. The enhancement in value and appreciation of nonmarital~~
149 ~~assets resulting either from the efforts of either party during~~
150 ~~the marriage or from the contribution to or expenditure thereon~~
151 ~~of marital funds or other forms of marital assets, or both;~~

152 ~~3. Interspousal gifts during the marriage;~~

153 ~~4. All vested and nonvested benefits, rights, and funds~~
154 ~~accrued during the marriage in retirement, pension, profit-~~
155 ~~sharing, annuity, deferred compensation, and insurance plans and~~
156 ~~programs; and~~

157 ~~5. All real property held by the parties as tenants by the~~
158 ~~entireties, whether acquired prior to or during the marriage,~~
159 ~~shall be presumed to be a marital asset. If, in any case, a party~~
160 ~~makes a claim to the contrary, the burden of proof shall be on~~
161 ~~the party asserting the claim for a special equity.~~

162 ~~(b) "Nonmarital assets and liabilities" include:~~

163 ~~1. Assets acquired and liabilities incurred by either party~~
164 ~~prior to the marriage, and assets acquired and liabilities~~
165 ~~incurred in exchange for such assets and liabilities;~~

166 ~~2. Assets acquired separately by either party by~~
167 ~~noninterspousal gift, bequest, devise, or descent, and assets~~
168 ~~acquired in exchange for such assets;~~

169 ~~3. All income derived from nonmarital assets during the~~
170 ~~marriage unless the income was treated, used, or relied upon by~~
171 ~~the parties as a marital asset;~~

172 ~~4. Assets and liabilities excluded from marital assets and~~
173 ~~liabilities by valid written agreement of the parties, and assets~~

18-03258-08

20081474__

174 ~~acquired and liabilities incurred in exchange for such assets and~~
175 ~~liabilities; and~~

176 ~~5. Any liability incurred by forgery or unauthorized~~
177 ~~signature of one spouse signing the name of the other spouse. Any~~
178 ~~Such liability shall be a nonmarital liability only of the party~~
179 ~~having committed the forgery or having affixed the unauthorized~~
180 ~~signature. In determining an award of attorney's fees and costs~~
181 ~~pursuant to s. 61.16, the court may consider forgery or an~~
182 ~~unauthorized signature by a party and may make a separate award~~
183 ~~for attorney's fees and costs occasioned by the forgery or~~
184 ~~unauthorized signature. This subparagraph does not apply to any~~
185 ~~forged or unauthorized signature that was subsequently ratified~~
186 ~~by the other spouse.~~

187 ~~(5)(6)~~ The cut-off date for identifying or classifying
188 ~~determining assets and liabilities to be identified or classified~~
189 ~~as~~ marital assets and liabilities is ~~the earliest of~~ the date the
190 parties enter into a valid separation agreement, a date such
191 ~~other date as may be~~ expressly established by such agreement, or
192 the date of the filing of a petition for dissolution of marriage,
193 whichever occurs first. The date for determining the value of
194 assets and the amount of liabilities identified or classified as
195 marital is the date or dates ~~as~~ the judge determines is just and
196 equitable under the circumstances. Different assets may be valued
197 on as of different dates, as, in the judge's discretion, the
198 circumstances require.

199 ~~(6)(7)~~ All assets acquired and liabilities incurred by
200 either spouse subsequent to the date of the marriage and not
201 specifically established as nonmarital assets or liabilities are
202 presumed to be marital assets and liabilities. The Such

18-03258-08

20081474__

203 | presumption is overcome by a showing that the assets and
204 | liabilities are nonmarital assets and liabilities. The
205 | presumption is only for evidentiary purposes in the dissolution
206 | proceeding and does not vest title. Title to disputed assets
207 | shall vest only by the judgment of a court. This section does not
208 | require the joinder of spouses in the conveyance, transfer, or
209 | hypothecation of a spouse's individual property; affect the laws
210 | of descent and distribution; or establish community property in
211 | this state.

212 | ~~(7)(8)~~ The court may provide for equitable distribution of
213 | the marital assets and liabilities without regard to alimony for
214 | either party. After the determination of an equitable
215 | distribution of the marital assets and liabilities, the court
216 | shall consider whether a judgment for alimony shall be made.

217 | ~~(8)(9)~~ To do equity between the parties, the court may, in
218 | lieu of or to supplement, facilitate, or effectuate the equitable
219 | division of marital assets and liabilities, order a monetary
220 | payment in a lump sum or in installments to be paid over a fixed
221 | period of time. If the court awards a monetary payment, the full
222 | amount shall vest when the judgment is awarded and does not
223 | terminate upon the remarriage or death of either party, unless
224 | otherwise agreed to by the parties, and is treated as a debt owed
225 | from the obligor or the obligor's estate to the obligee or the
226 | obligee's estate, unless otherwise agreed to by the parties.

227 | (9) If the court finds good cause for an interim partial
228 | distribution during the pendency of a dissolution action, the
229 | court may enter an interim order that identifies and values the
230 | marital assets and liabilities made the subject of the sworn
231 | motion, that sets apart the nonmarital assets and liabilities, and

18-03258-08

20081474__

232 that provides for a partial distribution of the marital assets
233 and liabilities. An interim order may be entered at any time
234 after the date the dissolution of marriage is filed and served
235 and before the final distribution of the marital assets and
236 liabilities.

237 (a) An interim order shall be entered only upon good cause
238 shown and upon sworn motion establishing a specific factual basis
239 for the motion. The motion may be filed by either party and shall
240 demonstrate good cause why the matter should not be deferred
241 until the final hearing.

242 (b) An interim order partially distributing marital assets
243 and liabilities made the subject of the sworn motion must comply
244 with the provisions of this section.

245 (c) The court shall specifically take into account and give
246 appropriate credit for, the partial distribution of marital
247 assets and liabilities in the court's final allocation of marital
248 assets and liabilities. Further, the court shall make specific
249 findings in the interim order that any partial distribution will
250 not cause inequity or prejudice to either party as to either
251 party's claims for support or attorney's fees.

252 (10) All claims formerly identified as special equity and
253 all special equity calculations are abolished. The claim may
254 instead be asserted as a claim for unequal distribution of
255 marital assets and resolved in accordance with subsection (2), or
256 as a claim of enhancement in value and appreciation of nonmarital
257 assets pursuant to subparagraph (1)(a)2.

258 Section 2. This act shall take effect upon becoming a law.