

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Porter offered the following:

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4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Paragraph (a) of subsection (6) and subsection
7 (10) of section 61.075, Florida Statutes, are amended to read:
8 61.075 Equitable distribution of marital assets and
9 liabilities.-

10 (6) As used in this section:

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

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

14 b. The enhancement in value and appreciation of nonmarital
15 assets resulting either from the efforts of either party during
16 the marriage or from the contribution to or expenditure thereon
17 of marital funds or other forms of marital assets, or both.

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18 c. The value of the marital portion of the passive
19 appreciation of nonmarital real property as provided in s. 36
20 61.0765(2).

21 ~~d.e.~~ Interspousal gifts during the marriage. 38

22 ~~e.d.~~ All vested and nonvested benefits, rights, and funds
23 accrued during the marriage in retirement, pension, profit-
24 sharing, annuity, deferred compensation, and insurance plans and
25 programs.

26 2. All real property held by the parties as tenants by the
27 entirety, whether acquired before ~~prior to~~ or during the
28 marriage, shall be presumed to be a marital asset. If, in any
29 case, a party makes a claim to the contrary, the burden of proof
30 shall be on the party asserting the claim that the subject
31 property, or some portion thereof, is nonmarital.

32 3. All personal property titled jointly by the parties as
33 tenants by the entirety, whether acquired before ~~prior to~~ or
34 during the marriage, shall be presumed to be a marital asset. In
35 the event a party makes a claim to the contrary, the burden of
36 proof shall be on the party asserting the claim that the subject
37 property, or some portion thereof, is nonmarital.

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

40 (10) (a) To do equity between the parties, the court may, in
41 lieu of or to supplement, facilitate, or effectuate the
42 equitable division of marital assets and liabilities, order a
43 monetary payment in a lump sum or in installments paid over a
44 fixed period of time.

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45 (b) If installment payments are ordered, the court may
46 require security and a reasonable rate of interest, or otherwise
47 recognize the time value of money in determining the amount of
48 the installments. If security or interest is required, the court
49 shall make written findings relating to any deferred payments,
50 the amount of any security required, and the interest. This
51 paragraph does not preclude the application of chapter 55,
52 relating to judgments, to any subsequent default.

53 Section 2. Section 61.0765, Florida Statutes, is created to
54 read:

55 61.0765 Valuation of marital portion of nonmarital real
56 property.-

57 (1) (a) The total value of the marital portion of nonmarital
58 real property consists of the sum of the following:

59 1. The value of the active appreciation of the property as
60 described in s. 61.075(6) (a)1.b.

61 2. The amount of the mortgage principal paid from marital
62 funds.

63 3. A portion of any passive appreciation of the property,
64 if the mortgage principal was paid from marital funds.

65 (b) The value of the marital portion of nonmarital real
66 property may not exceed the total net equity of the property on
67 the valuation date in the dissolution action.

68 (2) The marital portion of the passive appreciation as
69 provided in subparagraph (1) (a)3. is calculated by multiplying
70 the passive appreciation of the property by the marital
71 fraction.

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72 (a) The passive appreciation of the property is calculated
73 by subtracting all of the following from the value of the
74 property on the valuation date in the dissolution action:

75 1. The gross value of the property on the date of the
76 marriage or on date the property was acquired, whichever is
77 later.

78 2. The value of the active appreciation of the property
79 during the marriage as described in s. 61.075(6) (a)1.b.

80 3. The amount of any additional debts secured by the
81 property during the marriage.

82 (b) The numerator of the marital fraction consists of the
83 amount of the mortgage principal paid on any mortgage on the
84 property from marital funds. The denominator consists of the
85 value of the property on the date of the marriage, the date of
86 acquisition of the property, or the date the property was first
87 encumbered by a mortgage on which principal was paid from
88 marital funds, whichever is later.

89 (3) The court in a dissolution action must apply the
90 formulas provided in this section to determine the value of the
91 marital portion of nonmarital real property subject to equitable
92 dissolution unless a party presents sufficient evidence to
93 establish that the application of these formulas is not
94 equitable under the particular circumstances of the case.

95 Section 3. This act shall take effect July 1, 2012.

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99 **T I T L E A M E N D M E N T**

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100 Remove the entire title and insert:
101 An act relating to equitable distribution of marital assets and
102 liabilities; amending s. 61.075, F.S.; redefining the term
103 "marital assets and liabilities" to include the value of the
104 marital portion of the passive appreciation of nonmarital real
105 property; authorizing a court to require security and the
106 payment of a reasonable rate of interest if installment payments
107 are required for the distribution of marital assets and
108 liabilities; requiring the court to provide written findings
109 regarding any installment payments; creating s. 61.0765, F.S.;
110 providing formulas for the calculation of the value of the
111 marital portion of nonmarital real property subject to equitable
112 distribution; requiring the court in the dissolution action to
113 use the formulas unless sufficient evidence is presented showing
114 that the application of the formulas is not equitable; providing
115 an effective date.
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