

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

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

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 19 Section 1. Paragraph (a) of subsection (6) and subsection
 20 (10) of section 61.075, Florida Statutes, are amended to read:

21 61.075 Equitable distribution of marital assets and
 22 liabilities.—

23 (6) As used in this section:

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

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

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

HB 565

2012

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

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

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

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

56 | (III) The passive appreciation shall be multiplied by the

57 coverture fraction to determine the marital portion of the
58 passive appreciation in the property.

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

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

68 d.e. Interspousal gifts during the marriage.

69 e.d. 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.

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

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

HB 565

2012

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

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

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

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