

By Senator Flores

38-00578-12

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

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

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20           Section 1. Paragraph (a) of subsection (6) and subsection  
21           (10) of section 61.075, Florida Statutes, are amended to read:  
22           61.075 Equitable distribution of marital assets and  
23           liabilities.—

24           (6) As used in this section:

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

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

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

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

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

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

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

57 (III) The passive appreciation shall be multiplied by the  
58 coverture fraction to determine the marital portion of the

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59 passive appreciation in the property.

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

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

69 d.e. Interspousal gifts during the marriage.

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

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

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

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

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

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