

By the Committee on Judiciary; and Senator Flores

590-01851-12

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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 to include the value of the marital portion of the
6 passive appreciation of nonmarital real property;
7 authorizing a court to require security and the
8 payment of a reasonable rate of interest if
9 installment payments are required for the distribution
10 of marital assets and liabilities; requiring the court
11 to provide written findings regarding any installment
12 payments; creating s. 61.0765, F.S.; providing
13 formulas for the calculation of the value of the
14 marital portion of nonmarital real property subject to
15 equitable distribution; requiring the court in the
16 dissolution action to use the formulas unless
17 sufficient evidence is presented showing that the
18 application of the formulas is not equitable;
19 providing an effective date.

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

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

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

27 (6) As used in this section:

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

29 a. Assets acquired and liabilities incurred during the

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30 marriage, individually by either spouse or jointly by them.

31 b. The enhancement in value and appreciation of nonmarital
32 assets resulting either from the efforts of either party during
33 the marriage or from the contribution to or expenditure thereon
34 of marital funds or other forms of marital assets, or both.

35 c. The value of the marital portion of the passive
36 appreciation of nonmarital real property as provided in s.
37 61.0765(2).

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

39 ~~e.d.~~ All vested and nonvested benefits, rights, and funds
40 accrued during the marriage in retirement, pension, profit-
41 sharing, annuity, deferred compensation, and insurance plans and
42 programs.

43 2. All real property held by the parties as tenants by the
44 entireties, whether acquired before ~~prior to~~ or during the
45 marriage, shall be presumed to be a marital asset. If, in any
46 case, a party makes a claim to the contrary, the burden of proof
47 shall be on the party asserting the claim that the subject
48 property, or some portion thereof, is nonmarital.

49 3. All personal property titled jointly by the parties as
50 tenants by the entireties, whether acquired before ~~prior to~~ or
51 during the marriage, shall be presumed to be a marital asset. In
52 the event a party makes a claim to the contrary, the burden of
53 proof shall be on the party asserting the claim that the subject
54 property, or some portion thereof, is nonmarital.

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

57 (10) (a) To do equity between the parties, the court may, in
58 lieu of or to supplement, facilitate, or effectuate the

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59 equitable division of marital assets and liabilities, order a
60 monetary payment in a lump sum or in installments paid over a
61 fixed period of time.

62 (b) If installment payments are ordered, the court may
63 require security and a reasonable rate of interest, or otherwise
64 recognize the time value of money in determining the amount of
65 the installments. If security or interest is required, the court
66 shall make written findings relating to any deferred payments,
67 the amount of any security required, and the interest. This
68 paragraph does not preclude the application of chapter 55,
69 relating to judgments, to any subsequent default.

70 Section 2. Section 61.0765, Florida Statutes, is created to
71 read:

72 61.0765 Valuation of marital portion of nonmarital real
73 property.—

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

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

78 2. The amount of the mortgage principal paid from marital
79 funds.

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

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

85 (2) The marital portion of the passive appreciation as
86 provided in subparagraph (1) (a)3. is calculated by multiplying
87 the passive appreciation of the property by the marital

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88 fraction.

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

92 1. The gross value of the property on the date of the
93 marriage or on date the property was acquired, whichever is
94 later.

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

97 3. The amount of any additional debts secured by the
98 property during the marriage.

99 (b) The numerator of the marital fraction consists of the
100 amount of the mortgage principal paid on any mortgage on the
101 property from marital funds. The denominator consists of the
102 value of the property on the date of the marriage, the date of
103 acquisition of the property, or the date the property was first
104 encumbered by a mortgage on which principal was paid from
105 marital funds, whichever is later.

106 (3) The court in a dissolution action must apply the
107 formulas provided in this section to determine the value of the
108 marital portion of nonmarital real property subject to equitable
109 dissolution unless a party presents sufficient evidence to
110 establish that the application of these formulas is not
111 equitable under the particular circumstances of the case.

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