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HB 639, Engrossed 1

2018 Legislature

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 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 authorizing the court to require security and interest
 13 when installment payments are ordered in the division
 14 of assets; providing applicability; providing an
 15 effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 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

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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
 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 is determined by multiplying a coverture fraction by the passive
 38 appreciation in the property during the marriage.

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

48 (II) The coverture fraction must consist of a numerator,
 49 defined as the total payment of principal from marital funds of
 50 all notes and mortgages secured by the property during the

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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 must be multiplied by the
 57 coverture fraction to determine the marital portion of the
 58 passive appreciation of the property.

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

65 (V) The court shall apply the formula specified in this
 66 subparagraph unless a party shows circumstances sufficient to
 67 establish that application of the formula would be inequitable
 68 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 entireties, whether acquired prior to or during the marriage,

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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 entireties, 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.

88 | (10) (a) To do equity between the parties, the court may,
89 | in 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 may
95 | otherwise recognize the time value of the money to be paid in
96 | the judgment or order.

97 | (c) This subsection does not preclude the application of
98 | chapter 55 to any subsequent default.

99 | Section 2. This act shall take effect July 1, 2018.