

By Senator Passidomo

28-00819-18

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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 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:

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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
29 the marriage or from the contribution to or expenditure thereon

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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 gross value of the property on the date of the marriage or
41 the date of acquisition of the property, whichever is later,
42 from 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
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.

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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 as described in sub-
63 paragraph b., not to exceed the total net equity in the
64 property at the date of valuation.

65 (V) The court shall apply the formula specified in this
66 paragraph 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 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 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.