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HB 521

2024 Legislature

1  
 2 An act relating to equitable distribution of marital  
 3 assets and liabilities; amending s. 61.075, F.S.;  
 4 revising the definition of the term "good cause";  
 5 requiring a court to consider certain factors when  
 6 determining if extraordinary circumstances exist;  
 7 prohibiting certain interspousal gifts unless certain  
 8 requirements are met; providing that certain actions  
 9 do not change whether certain real property is marital  
 10 property; providing that business interests in a  
 11 closely held business is a marital asset; requiring a  
 12 court to consider certain factors when determining the  
 13 value of such interest; providing that certain real  
 14 property is a nonmarital asset; providing an effective  
 15 date.

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

18  
 19 Section 1. Paragraph (d) of subsection (5) and subsection  
 20 (6) of section 61.075, Florida Statutes, are amended to read:

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

23 (5) If the court finds good cause that there should be an  
 24 interim partial distribution during the pendency of a  
 25 dissolution action, the court may enter an interim order that

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26 | shall identify and value the marital and nonmarital assets and  
 27 | liabilities made the subject of the sworn motion, set apart  
 28 | those nonmarital assets and liabilities, and provide for a  
 29 | partial distribution of those marital assets and liabilities. An  
 30 | interim order may be entered at any time after the date the  
 31 | dissolution of marriage is filed and served and before the final  
 32 | distribution of marital and nonmarital assets and marital and  
 33 | nonmarital liabilities.

34 | (d) As used in this subsection, the term "good cause"  
 35 | means extraordinary circumstances that justify ~~require~~ an  
 36 | interim partial distribution. In determining if extraordinary  
 37 | circumstances exist for purposes of this subsection, the court  
 38 | must consider the following:

39 | 1. Whether there is a need for funds in order to avoid or  
 40 | prevent the loss of an asset through repossession or  
 41 | foreclosure, the loss of housing, the default by either party of  
 42 | a marital debt, or the levy of a tax lien.

43 | 2. Whether there is a need for funds to pay an expense for  
 44 | a dependent child if nonpayment of the expense would be  
 45 | detrimental to the child.

46 | 3. Whether one or both parties have a need to access funds  
 47 | in order to pay a reasonable amount of the attorney fees, court  
 48 | costs, or other suit money for maintaining or defending a  
 49 | proceeding under this chapter.

50 | 4. Any other circumstances that justify the entry of an

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51 order granting an interim partial equitable distribution.

52 (6) As used in this section:

53 (a)1. "Marital assets and liabilities" include all of the  
54 following:

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

57 b. The enhancement in value and appreciation of nonmarital  
58 assets resulting from the efforts of either party during the  
59 marriage or from the contribution to or expenditure thereon of  
60 marital funds or other forms of marital assets, or both.

61 c. The paydown of principal of a note and mortgage secured  
62 by nonmarital real property and a portion of any passive  
63 appreciation in the property, if the note and mortgage secured  
64 by the property are paid down from marital funds during the  
65 marriage. The portion of passive appreciation in the property  
66 characterized as marital and subject to equitable distribution  
67 is determined by multiplying a coverture fraction by the passive  
68 appreciation in the property during the marriage.

69 (I) The passive appreciation is determined by subtracting  
70 the value of the property on the date of the marriage or the  
71 date of acquisition of the property, whichever is later, from  
72 the value of the property on the valuation date in the  
73 dissolution action, less any active appreciation of the property  
74 during the marriage as described in sub-subparagraph b., and  
75 less any additional encumbrances secured by the property during

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76 | the marriage in excess of the first note and mortgage on which  
77 | principal is paid from marital funds.

78 |       (II) The coverture fraction must consist of a numerator,  
79 | defined as the total payment of principal from marital funds of  
80 | all notes and mortgages secured by the property during the  
81 | marriage, and a denominator, defined as the value of the subject  
82 | real property on the date of the marriage, the date of  
83 | acquisition of the property, or the date the property was  
84 | encumbered by the first note and mortgage on which principal was  
85 | paid from marital funds, whichever is later.

86 |       (III) The passive appreciation must be multiplied by the  
87 | coverture fraction to determine the marital portion of the  
88 | passive appreciation of the property.

89 |       (IV) The total marital portion of the property consists of  
90 | the marital portion of the passive appreciation, the mortgage  
91 | principal paid during the marriage from marital funds, and any  
92 | active appreciation of the property during the marriage as  
93 | described in sub-subparagraph b., not to exceed the total net  
94 | equity in the property at the date of valuation.

95 |       (V) The court shall apply the formula specified in this  
96 | subparagraph unless a party shows circumstances sufficient to  
97 | establish that application of the formula would be inequitable  
98 | under the facts presented.

99 |       d. Interspousal gifts during the marriage. An interspousal  
100 | gift of real property may not be made in the absence of a

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101 writing that complies with the requirements of s. 689.01. The  
102 joinder of a spouse in the execution of a deed with the sole  
103 purpose of the conveyance of homestead real property to any  
104 person or entity other than the other spouse or both spouses  
105 jointly does not change the character of the real property being  
106 conveyed, or any proceeds from the sale thereof, to marital  
107 property.

108 e. All vested and nonvested benefits, rights, and funds  
109 accrued during the marriage in retirement, pension, profit-  
110 sharing, annuity, deferred compensation, and insurance plans and  
111 programs.

112 f. The marital interests in a closely held business. The  
113 court shall determine the value of the marital interests in a  
114 closely held business as follows:

115 (I) The standard of value of a closely held business is  
116 fair market value. For purposes of this sub-subparagraph, the  
117 term "fair market value" means the price at which property would  
118 change hands between a willing and able buyer and a willing and  
119 able seller, with neither party under compulsion to buy or sell,  
120 and when both parties have reasonable knowledge of the relevant  
121 facts.

122 (II) If there is goodwill separate and distinct from the  
123 continued presence and reputation of the owner spouse, it is  
124 considered enterprise goodwill, which is a marital asset that  
125 must be valued by the court.

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126        (III) The court must consider evidence that a covenant not  
 127 to compete or a similar restrictive covenant may be required  
 128 upon the sale of the closely held business, but such evidence  
 129 alone does not preclude the court from finding enterprise  
 130 goodwill.

131        2. All real property held by the parties as tenants by the  
 132 entirety, whether acquired before ~~prior to~~ or during the  
 133 marriage, is ~~shall be~~ presumed to be a marital asset. If, in any  
 134 case, a party makes a claim to the contrary, the burden of proof  
 135 is ~~shall be~~ on the party asserting the claim that the subject  
 136 property, or some portion thereof, is nonmarital.

137        3. All personal property titled jointly by the parties as  
 138 tenants by the entirety, whether acquired before ~~prior to~~ or  
 139 during the marriage, is ~~shall be~~ presumed to be a marital asset.  
 140 In the event a party makes a claim to the contrary, the burden  
 141 of proof is ~~shall be~~ on the party asserting the claim that the  
 142 subject property, or some portion thereof, is nonmarital.

143        4. The burden of proof to overcome the gift presumption is  
 144 ~~shall be~~ by clear and convincing evidence.

145        (b) "Nonmarital assets and liabilities" include all of the  
 146 following:

147        1. Assets acquired and liabilities incurred by either  
 148 party prior to the marriage, and assets acquired and liabilities  
 149 incurred in exchange for such assets and liabilities. ↗

150        2. Assets acquired separately by either party by

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151 noninterspousal gift, bequest, devise, or descent, and assets  
 152 acquired in exchange for such assets.~~†~~

153 3. All income derived from nonmarital assets during the  
 154 marriage unless the income was treated, used, or relied upon by  
 155 the parties as a marital asset.~~†~~

156 4. Assets and liabilities excluded from marital assets and  
 157 liabilities by valid written agreement of the parties, and  
 158 assets acquired and liabilities incurred in exchange for such  
 159 assets and liabilities.~~†~~ and

160 5. Any liability incurred by forgery or unauthorized  
 161 signature of one spouse signing the name of the other spouse.  
 162 Any such liability is ~~shall be~~ a nonmarital liability only of  
 163 the party having committed the forgery or having affixed the  
 164 unauthorized signature. In determining an award of attorney  
 165 ~~attorney's~~ fees and costs pursuant to s. 61.16, the court may  
 166 consider forgery or an unauthorized signature by a party and may  
 167 make a separate award for attorney ~~attorney's~~ fees and costs  
 168 occasioned by the forgery or unauthorized signature. This  
 169 subparagraph does not apply to any forged or unauthorized  
 170 signature that was subsequently ratified by the other spouse.

171 6. Real property acquired separately by either party by  
 172 noninterspousal gift, bequest, devise, or descent for which  
 173 legal title has not been transferred to the parties as tenants  
 174 by the entirety in accordance with this section.

175 Section 2. This act shall take effect July 1, 2024.