

By Senator Grall

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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 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 interest 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; revising and providing
14 definitions; providing an effective date.

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

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

20 61.075 Equitable distribution of marital assets and
21 liabilities.—

22 (5) If the court finds good cause that there should be an
23 interim partial distribution during the pendency of a
24 dissolution action, the court may enter an interim order that
25 shall identify and value the marital and nonmarital assets and
26 liabilities made the subject of the sworn motion, set apart
27 those nonmarital assets and liabilities, and provide for a
28 partial distribution of those marital assets and liabilities. An
29 interim order may be entered at any time after the date the

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30 dissolution of marriage is filed and served and before the final
31 distribution of marital and nonmarital assets and marital and
32 nonmarital liabilities.

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

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

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

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

49 4. Any other circumstances that justify the entry of an
50 order granting an interim partial equitable distribution.

51 (6) As used in this section:

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

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

56 b. The enhancement in value and appreciation of nonmarital
57 assets resulting from the efforts of either party during the
58 marriage or from the contribution to or expenditure thereon of

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59 marital funds or other forms of marital assets, or both.

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

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

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

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

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

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

98 d. Interspousal gifts during the marriage. An interspousal
99 gift of real property may not be made in the absence of a
100 writing that complies with the requirements of s. 689.01. The
101 joinder of a spouse in the execution of a deed with the sole
102 purpose of the conveyance of homestead real property to any
103 person or entity other than the other spouse or both spouses
104 jointly does not change the character of the real property being
105 conveyed, or any proceeds from the sale thereof, to marital
106 property.

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

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

114 (I) The standard of value of a closely held business is
115 fair market value. The term "fair market value" means the price
116 at which property would change hands between a willing and able

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117 buyer and a willing and able seller, with neither party under
118 compulsion to buy or sell, and when both parties have reasonable
119 knowledge of the relevant facts.

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

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

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

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

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

143 (b) "Nonmarital assets and liabilities" include all of the
144 following:

145 1. Assets acquired and liabilities incurred by either party

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146 prior to the marriage, and assets acquired and liabilities
147 incurred in exchange for such assets and liabilities.~~†~~

148 2. Assets acquired separately by either party by
149 noninterspousal gift, bequest, devise, or descent, and assets
150 acquired in exchange for such assets.~~†~~

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

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

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

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

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