

Committee Substitute for Senate Bill No. 1474

An act relating to dissolution of marriage; amending s. 61.075, F.S.; providing for interim partial distributions during dissolution actions; providing for motions; providing for effect on final distributions; providing factors to be considered; revising the definition of the term “marital assets and liabilities”; conforming provisions to the abolition of special equity; providing a presumption concerning certain personal property acquired during the marriage; specifying the burden of proof necessary to overcome the gift presumption; abolishing special equity; providing for claims formerly identified as special equity; amending s. 741.0306, F.S.; conforming provisions to the abolition of special equity; providing an effective date.

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

Section 1. Subsections (5) through (9) of section 61.075, Florida Statutes, are redesignated as subsections (6) through (10), respectively, a new subsection (5) is added to that section, paragraph (a) of present subsection (5) of that section is amended, and subsection (11) is added to that section, to read:

61.075 Equitable distribution of marital assets and liabilities.—

(5) If the court finds good cause that there should be an interim partial distribution during the pendency of a dissolution action, the court may enter an interim order that shall identify and value the marital and nonmarital assets and liabilities made the subject of the sworn motion, set apart those nonmarital assets and liabilities, and provide for a partial distribution of those marital assets and liabilities. An interim order may be entered at any time after the date the dissolution of marriage is filed and served and before the final distribution of marital and nonmarital assets and marital and nonmarital liabilities.

(a) Such an interim order shall be entered only upon good cause shown and upon sworn motion establishing specific factual basis for the motion. The motion may be filed by either party and shall demonstrate good cause why the matter should not be deferred until the final hearing.

(b) The court shall specifically take into account and give appropriate credit for any partial distribution of marital assets or liabilities in its final allocation of marital assets or liabilities. Further, the court shall make specific findings in any interim order under this section that any partial distribution will not cause inequity or prejudice to either party as to either party’s claims for support or attorney’s fees.

(c) Any interim order partially distributing marital assets or liabilities as provided in this subsection shall be pursuant to and comport with the factors in subsections (1) and (3) as such factors pertain to the assets or liabilities made the subject of the sworn motion.

(d) As used in this subsection, the term “good cause” means extraordinary circumstances that require an interim partial distribution.

(6)(5) As used in this section:

(a)1. “Marital assets and liabilities” include:

a.1. Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them.;

b.2. The enhancement in value and appreciation of nonmarital assets resulting either from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both.;

c.3. Interspousal gifts during the marriage.;

d.4. All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs.; ~~and~~

2.5. All real property held by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. If, in any case, a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim that the subject property, or some portion thereof, is nonmarital for a special equity.

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

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

(11) Special equity is abolished. All claims formerly identified as special equity, and all special equity calculations, are abolished and shall be asserted either as a claim for unequal distribution of marital property and resolved by the factors set forth in subsection (1) or as a claim of enhancement in value or appreciation of nonmarital property.

Section 2. Paragraph (e) of subsection (3) of section 741.0306, Florida Statutes, is amended to read:

741.0306 Creation of a family law handbook.—

(3) The information contained in the handbook or other electronic media presentation may be reviewed and updated annually, and may include, but need not be limited to:

(e) Property rights, including equitable distribution, ~~special equity~~, premarital property, and nonmarital property.

Section 3. This act shall take effect July 1, 2008.

Approved by the Governor May 28, 2008.

Filed in Office Secretary of State May 28, 2008.