

## CHAPTER 2024-237

### House Bill No. 521

An act relating to equitable distribution of marital assets and liabilities; amending s. 61.075, F.S.; revising the definition of the term “good cause”; requiring a court to consider certain factors when determining if extraordinary circumstances exist; prohibiting certain interspousal gifts unless certain requirements are met; providing that certain actions do not change whether certain real property is marital property; providing that business interests in a closely held business is a marital asset; requiring a court to consider certain factors when determining the value of such interest; providing that certain real property is a nonmarital asset; providing an effective date.

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

Section 1. Paragraph (d) of subsection (5) and subsection (6) of section 61.075, Florida Statutes, are amended 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.

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

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

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

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

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

(6) As used in this section:

(a)1. “Marital assets and liabilities” include all of the following:

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

b. The enhancement in value and appreciation of nonmarital assets resulting 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. The paydown of principal of a note and mortgage secured by nonmarital real property and a portion of any passive appreciation in the property, if the note and mortgage secured by the property are paid down from marital funds during the marriage. The portion of passive appreciation in the property characterized as marital and subject to equitable distribution is determined by multiplying a coverture fraction by the passive appreciation in the property during the marriage.

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

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

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

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

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

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

e. 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.

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

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

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

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

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

3. All personal property titled jointly by the parties as tenants by the entireties, whether acquired ~~before~~ ~~prior to~~ or during the marriage, ~~is shall be~~ presumed to be a marital asset. In the event a party makes a claim to the contrary, the burden of proof ~~is 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 ~~is shall be~~ by clear and convincing evidence.

(b) “Nonmarital assets and liabilities” include all of the following:

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

2. Assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent, and assets acquired in exchange for such assets,;

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

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

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

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

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

Approved by the Governor June 13, 2024.

Filed in Office Secretary of State June 13, 2024.