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LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: RCS | . | |
| 01/13/2012 | . | |
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The Committee on Judiciary (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (6) and subsection
(10) of section 61.075, Florida Statutes, are amended to read:
61.075 Equitable distribution of marital assets and
liabilities.-

(6) As used in this section:

(a)1. "Marital assets and liabilities" include:

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



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14 assets resulting either from the efforts of either party during
15 the marriage or from the contribution to or expenditure thereon
16 of marital funds or other forms of marital assets, or both.

17 c. The value of the marital portion of the passive
18 appreciation of nonmarital real property as provided in s.
19 61.0765(2).

20 d.e. Interspousal gifts during the marriage.

21 e.d. All vested and nonvested benefits, rights, and funds
22 accrued during the marriage in retirement, pension, profit-
23 sharing, annuity, deferred compensation, and insurance plans and
24 programs.

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

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

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

39 (10) (a) To do equity between the parties, the court may, in
40 lieu of or to supplement, facilitate, or effectuate the
41 equitable division of marital assets and liabilities, order a
42 monetary payment in a lump sum or in installments paid over a



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43 fixed period of time.

44 (b) If installment payments are ordered, the court may
45 require security and a reasonable rate of interest, or otherwise
46 recognize the time value of money in determining the amount of
47 the installments. If security or interest is required, the court
48 shall make written findings relating to any deferred payments,
49 the amount of any security required, and the interest. This
50 paragraph does not preclude the application of chapter 55,
51 relating to judgments, to any subsequent default.

52 Section 2. Section 61.0765, Florida Statutes, is created to
53 read:

54 61.0765 Valuation of marital portion of nonmarital real
55 property.—

56 (1) (a) The total value of the marital portion of nonmarital
57 real property consists of the sum of the following:

58 1. The value of the active appreciation of the property as
59 described in s. 61.075(6)(a)1.b.

60 2. The amount of the mortgage principal paid from marital
61 funds.

62 3. A portion of any passive appreciation of the property,
63 if the mortgage principal was paid from marital funds.

64 (b) The value of the marital portion of nonmarital real
65 property may not exceed the total net equity of the property on
66 the valuation date in the dissolution action.

67 (2) The marital portion of the passive appreciation as
68 provided in subparagraph (1)(a)3. is calculated by multiplying
69 the passive appreciation of the property by the marital
70 fraction.

71 (a) The passive appreciation of the property is calculated



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72 by subtracting all of the following from the value of the
73 property on the valuation date in the dissolution action:

74 1. The gross value of the property on the date of the
75 marriage or on date the property was acquired, whichever is
76 later.

77 2. The value of the active appreciation of the property
78 during the marriage as described in s. 61.075(6) (a)1.b.

79 3. The amount of any additional debts secured by the
80 property during the marriage.

81 (b) The numerator of the marital fraction consists of the
82 amount of the mortgage principal paid on any mortgage on the
83 property from marital funds. The denominator consists of the
84 value of the property on the date of the marriage, the date of
85 acquisition of the property, or the date the property was first
86 encumbered by a mortgage on which principal was paid from
87 marital funds, whichever is later.

88 (3) The court in a dissolution action must apply the
89 formulas provided in this section to determine the value of the
90 marital portion of nonmarital real property subject to equitable
91 dissolution unless a party presents sufficient evidence to
92 establish that the application of these formulas is not
93 equitable under the particular circumstances of the case.

94 Section 3. This act shall take effect July 1, 2012.

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96 ===== T I T L E A M E N D M E N T =====

97 And the title is amended as follows:

98 Delete everything before the enacting clause
99 and insert:

100 A bill to be entitled



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101 An act relating to equitable distribution of marital
102 assets and liabilities; amending s. 61.075, F.S.;
103 redefining the term "marital assets and liabilities"
104 to include the value of the marital portion of the
105 passive appreciation of nonmarital real property;
106 authorizing a court to require security and the
107 payment of a reasonable rate of interest if
108 installment payments are required for the distribution
109 of marital assets and liabilities; requiring the court
110 to provide written findings regarding any installment
111 payments; creating s. 61.0765, F.S.; providing
112 formulas for the calculation of the value of the
113 marital portion of nonmarital real property subject to
114 equitable distribution; requiring the court in the
115 dissolution action to use the formulas unless
116 sufficient evidence is presented showing that the
117 application of the formulas is not equitable;
118 providing an effective date.