

By the Committee on Judiciary; and Senator Flores

590-01851-12

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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           redefining the term "marital assets and liabilities"  
5           to include the value of the marital portion of the  
6           passive appreciation of nonmarital real property;  
7           authorizing a court to require security and the  
8           payment of a reasonable rate of interest if  
9           installment payments are required for the distribution  
10          of marital assets and liabilities; requiring the court  
11          to provide written findings regarding any installment  
12          payments; creating s. 61.0765, F.S.; providing  
13          formulas for the calculation of the value of the  
14          marital portion of nonmarital real property subject to  
15          equitable distribution; requiring the court in the  
16          dissolution action to use the formulas unless  
17          sufficient evidence is presented showing that the  
18          application of the formulas is not equitable;  
19          providing an effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23           Section 1. Paragraph (a) of subsection (6) and subsection  
24           (10) of section 61.075, Florida Statutes, are amended to read:

25           61.075 Equitable distribution of marital assets and  
26           liabilities.—

27           (6) As used in this section:

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

29           a. Assets acquired and liabilities incurred during the

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30 marriage, individually by either spouse or jointly by them.

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

35 c. The value of the marital portion of the passive  
36 appreciation of nonmarital real property as provided in s.  
37 61.0765(2).

38 d.e. Interspousal gifts during the marriage.

39 e.d. All vested and nonvested benefits, rights, and funds  
40 accrued during the marriage in retirement, pension, profit-  
41 sharing, annuity, deferred compensation, and insurance plans and  
42 programs.

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

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

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

57 (10) (a) To do equity between the parties, the court may, in  
58 lieu of or to supplement, facilitate, or effectuate the

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59 equitable division of marital assets and liabilities, order a  
60 monetary payment in a lump sum or in installments paid over a  
61 fixed period of time.

62 (b) If installment payments are ordered, the court may  
63 require security and a reasonable rate of interest, or otherwise  
64 recognize the time value of money in determining the amount of  
65 the installments. If security or interest is required, the court  
66 shall make written findings relating to any deferred payments,  
67 the amount of any security required, and the interest. This  
68 paragraph does not preclude the application of chapter 55,  
69 relating to judgments, to any subsequent default.

70 Section 2. Section 61.0765, Florida Statutes, is created to  
71 read:

72 61.0765 Valuation of marital portion of nonmarital real  
73 property.—

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

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

78 2. The amount of the mortgage principal paid from marital  
79 funds.

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

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

85 (2) The marital portion of the passive appreciation as  
86 provided in subparagraph (1) (a)3. is calculated by multiplying  
87 the passive appreciation of the property by the marital

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88 fraction.

89 (a) The passive appreciation of the property is calculated  
90 by subtracting all of the following from the value of the  
91 property on the valuation date in the dissolution action:

92 1. The gross value of the property on the date of the  
93 marriage or on date the property was acquired, whichever is  
94 later.

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

97 3. The amount of any additional debts secured by the  
98 property during the marriage.

99 (b) The numerator of the marital fraction consists of the  
100 amount of the mortgage principal paid on any mortgage on the  
101 property from marital funds. The denominator consists of the  
102 value of the property on the date of the marriage, the date of  
103 acquisition of the property, or the date the property was first  
104 encumbered by a mortgage on which principal was paid from  
105 marital funds, whichever is later.

106 (3) The court in a dissolution action must apply the  
107 formulas provided in this section to determine the value of the  
108 marital portion of nonmarital real property subject to equitable  
109 dissolution unless a party presents sufficient evidence to  
110 establish that the application of these formulas is not  
111 equitable under the particular circumstances of the case.

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