

A bill to be entitled

An Act providing that a reservation of rights awarded to real property or the proceeds from its future sale or refinance be recorded in the official records to provide notice to subsequent purchasers and creditors; providing that tenancy by entireties protection extends a former spouse whom a judgement is not against when title is not transferred prior to the dissolution of marriage being finalized and tenancy is severed.

Be it Enacted by the Legislature of the State of Florida,
Section 61.075, Florida Statutes, is amended to read:

61.075 Equitable distribution of marital assets and liabilities.

(1) In a proceeding for dissolution of marriage, in addition to all other remedies available to a court to do equity between the parties, or in a proceeding for disposition of assets following a dissolution of marriage by a court which lacked jurisdiction over the absent spouse or lacked jurisdiction to dispose of the assets, the court shall set apart to each spouse that spouse's nonmarital assets and liabilities, and in distributing the marital assets and liabilities between the parties, the court must begin with the premise that the distribution should be equal, unless there is a justification for an unequal distribution based on all relevant factors, including:

(a) The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker.

(b) The economic circumstances of the parties.

(c) The duration of the marriage.

(d) Any interruption of personal careers or educational opportunities of either party.

(e) The contribution of one spouse to the personal career or educational opportunity of the other spouse.

(f) The desirability of retaining any asset, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.

(g) The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities to, both the marital assets and the nonmarital assets of the parties.

(h) The desirability of retaining the marital home as a residence for any dependent child of the marriage, or any other party, when it would be equitable to do so, it is in the best interest of the child or that party, and it is financially feasible for the parties to maintain the residence until the child is emancipated or until exclusive possession is otherwise terminated by a court of competent jurisdiction. In making this determination, the court shall first determine if it would be in the best interest of the dependent child to remain in the marital home; and, if not, whether other equities would be served by giving any other party exclusive use and possession of the marital home.

(i) The intentional dissipation, waste, depletion, or destruction of marital assets after the filing of the petition or within 2 years prior to the filing of the petition.

(j) Any other factors necessary to do equity and justice between the parties.

(2) If the court awards a cash payment for the purpose of equitable distribution of marital assets, to be paid in full or in installments, the full amount ordered shall vest when the judgment is awarded and the award shall not terminate upon remarriage or death of either party, unless otherwise agreed to

by the parties, but shall be treated as a debt owed from the obligor or the obligor's estate to the obligee or the obligee's estate, unless otherwise agreed to by the parties.

(3) In any contested dissolution action wherein a stipulation and agreement has not been entered and filed, any distribution of marital assets or marital liabilities shall be supported by factual findings in the judgment or order based on competent substantial evidence with reference to the factors enumerated in subsection (1). The distribution of all marital assets and marital liabilities, whether equal or unequal, shall include specific written findings of fact as to the following:

(a) Clear identification of nonmarital assets and ownership interests;

(b) Identification of marital assets, including the individual valuation of significant assets, and designation of which spouse shall be entitled to each asset;

(c) Identification of the marital liabilities and designation of which spouse shall be responsible for each liability;

(d) Any other findings necessary to advise the parties or the reviewing court of the trial court's rationale for the distribution of marital assets and allocation of liabilities.

(4)(a) The judgment distributing assets shall have the effect of a duly executed instrument of conveyance, transfer, release, or acquisition which is recorded in the county where the property is located when the judgment, or a certified copy of the judgment, is recorded in the official records of the county in which the property is located.

(b)(i) Interests in real property retained or acquired by a party who was not in title or who is no longer in title, and the right to proceeds from a subsequent sale or refinancing of the property, shall not constitute an interest, lien or encumbrance upon the property, nor shall be good or effectual in law or

equity against creditors or subsequent purchasers for a valuable consideration, unless a notice identifying the rights retained or acquired in such property or to proceeds from subsequent sale or refinancing is recorded in Official Records of the county in which the property is located. If the notice is not contained in a deed conveying title, the instrument must also contain the name of the party retaining the interest and the description or address of the affected property.

(ii) The failure to comply with the terms of this section does not impair the rights of parties to obtain a monetary award as substitute compensation for any loss in the rights in the affected property.

(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 justify 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.

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

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

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

209 e. All vested and nonvested benefits, rights, and funds accrued
210 during the marriage in retirement, pension, profit-sharing,
211 annuity, deferred compensation, and insurance plans and
212 programs.

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

216 (I) The standard of value of a closely held business is fair
217 market value. For purposes of this sub-subparagraph, the term
218 "fair market value" means the price at which property would
219 change hands between a willing and able buyer and a willing and
220 able seller, with neither party under compulsion to buy or sell,
221 and when both parties have reasonable knowledge of the relevant
222 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 entirety, whether acquired before or during the marriage, is presumed to be a marital asset. If, in any case, a party makes a claim to the contrary, the burden of proof is 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 entirety, whether acquired before or during the marriage, is presumed to be a marital asset. In the event a party makes a claim to the contrary, the burden of proof is 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 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.

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

256 4. Assets and liabilities excluded from marital assets and
257 liabilities by valid written agreement of the parties, and
258 assets acquired and liabilities incurred in exchange for such
259 assets and liabilities.

260 5. Any liability incurred by forgery or unauthorized signature
261 of one spouse signing the name of the other spouse. Any such
262 liability is a nonmarital liability only of the party having
263 committed the forgery or having affixed the unauthorized
264 signature. In determining an award of attorney fees and costs
265 pursuant to s. 61.16, the court may consider forgery or an
266 unauthorized signature by a party and may make a separate award
267 for attorney fees and costs occasioned by the forgery or
268 unauthorized signature. This subparagraph does not apply to any
269 forged or unauthorized signature that was subsequently ratified
270 by the other spouse.

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

275 (7) The cut-off date for determining assets and liabilities to
276 be identified or classified as marital assets and liabilities is
277 the earliest of the date the parties enter into a valid
278 separation agreement, such other date as may be expressly
279 established by such agreement, or the date of the filing of a
280 petition for dissolution of marriage. The date for determining
281 value of assets and the amount of liabilities identified or
282 classified as marital is the date or dates as the judge
283 determines is just and equitable under the circumstances.

Different assets may be valued as of different dates, as, in the judge's discretion, the circumstances require.

(8) All assets acquired and liabilities incurred by either spouse subsequent to the date of the marriage and not specifically established as nonmarital assets or liabilities are presumed to be marital assets and liabilities. Such presumption is overcome by a showing that the assets and liabilities are nonmarital assets and liabilities. The presumption is only for evidentiary purposes in the dissolution proceeding and does not vest title. Title to disputed assets shall vest only by the judgment of a court. This section does not require the joinder of spouses in the conveyance, transfer, or hypothecation of a spouse's individual property; affect the laws of descent and distribution; or establish community property in this state.

(9) The court may provide for equitable distribution of the marital assets and liabilities without regard to alimony for either party. After the determination of an equitable distribution of the marital assets and liabilities, the court shall consider whether a judgment for alimony shall be made.

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

(b) If installment payments are ordered, the court may require security and a reasonable rate of interest or may otherwise recognize the time value of the money to be paid in the judgment or order.

(c) This subsection does not preclude the application of chapter 55 to any subsequent default.

(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.

(12) Provided that a judgment lien had not previously attached to the real property by operation of law prior to it being acquired by the married couple as tenants by the entirety and the real property was held as tenants by the entirety without interruption through the entry of the judgment dissolving the marriage, a lien of a judgment in existence at the time of the judgment dissolving the marriage shall not attach to the real property received by the spouse whom the judgment is not against when the interest to be received by the spouse is contained or incorporated into the judgment dissolving the marriage, irrespective of whether title is transferred or conveyed before or after the entry of the judgment dissolving the marriage.