

Senate Engrossed

FILED

State of Arizona
Senate
Forty-fourth Legislature
Second Regular Session
2000

**Betsey Bayless
Secretary of State**

CHAPTER 13

SENATE BILL 1191

AN ACT

AMENDING SECTION 25-318, ARIZONA REVISED STATUTES; RELATING TO DISSOLUTION
OF MARRIAGE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 25-318, Arizona Revised Statutes, is amended to
3 read:

4 25-318. Disposition of property; retroactivity; notice to
5 creditors; assignment of debts; contempt of court

6 A. In a proceeding for dissolution of the marriage, or for legal
7 separation, or in a proceeding for disposition of property following
8 dissolution of the marriage by a court which previously lacked personal
9 jurisdiction over the absent spouse or previously lacked jurisdiction to
10 dispose of the property, the court shall assign each spouse's sole and
11 separate property to such spouse. It shall also divide the community, joint
12 tenancy and other property held in common equitably, though not necessarily
13 in kind, without regard to marital misconduct. For purposes of this section
14 only, property acquired by either spouse outside this state shall be deemed
15 to be community property if the property would have been community property
16 if acquired in this state. ~~Nothing in~~ This section shall DOES NOT prevent
17 the court from considering excessive or abnormal expenditures, destruction,
18 concealment or fraudulent disposition of community, joint tenancy and other
19 property held in common.

20 B. The community, joint tenancy and other property held in common for
21 which no provision is made in the decree shall be from the date of the decree
22 held by the parties as tenants in common, each possessed of an undivided
23 one-half interest.

24 C. The court may impress a lien upon ON the separate property of
25 either party or the marital property awarded to either party in order to
26 secure the payment of:

27 1. Any interest or equity the other party has in or to such THE
28 property, ~~or in order to secure the payment of.~~

29 2. COMMUNITY DEBTS THAT THE COURT HAS ORDERED TO BE PAID BY THE
30 PARTIES.

31 3. An allowance for child support or spousal maintenance, or both.

32 D. The decree or judgment shall specifically describe by legal
33 description any real property affected and shall specifically describe any
34 other property affected.

35 ~~D. E. The provisions of This section, as added by Laws 1973, chapter~~
36 ~~139, section 2, apply APPLIES through both prospective and retrospective~~
37 ~~operation to property without regard to the date of acquisition.~~

38 F. IN ALL ACTIONS FOR THE DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION
39 THE COURT SHALL REQUIRE THE FOLLOWING STATEMENT IN THE MATERIALS PROVIDED TO
40 THE PETITIONER AND TO BE SERVED ON THE RESPONDENT:

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NOTICE

IN YOUR PROPERTY SETTLEMENT AGREEMENT OR DECREE OF DISSOLUTION
OR LEGAL SEPARATION, THE COURT MAY ASSIGN RESPONSIBILITY FOR
CERTAIN COMMUNITY DEBTS TO ONE SPOUSE OR THE OTHER. PLEASE BE

1 AWARE THAT A COURT ORDER THAT DOES THIS IS BINDING ON THE
2 SPOUSES ONLY AND DOES NOT NECESSARILY RELIEVE EITHER OF YOU FROM
3 YOUR RESPONSIBILITY FOR THESE COMMUNITY DEBTS. THESE DEBTS ARE
4 MATTERS OF CONTRACT BETWEEN BOTH OF YOU AND YOUR CREDITORS (SUCH
5 AS BANKS, CREDIT UNIONS, CREDIT CARD ISSUERS, FINANCE COMPANIES,
6 UTILITY COMPANIES, MEDICAL PROVIDERS AND RETAILERS).

7
8 SINCE YOUR CREDITORS ARE NOT PARTIES TO THIS COURT CASE, THEY
9 ARE NOT BOUND BY COURT ORDERS OR ANY AGREEMENTS YOU AND YOUR
10 SPOUSE REACH IN THIS CASE. ON REQUEST, THE COURT MAY IMPOSE A
11 LIEN AGAINST THE SEPARATE PROPERTY OF A SPOUSE TO SECURE PAYMENT
12 OF DEBTS THAT THE COURT ORDERS THAT SPOUSE TO PAY.

13
14 YOU MAY WANT TO CONTACT YOUR CREDITORS TO DISCUSS YOUR DEBTS AS
15 WELL AS THE POSSIBLE EFFECTS OF YOUR COURT CASE ON YOUR DEBTS.
16 TO ASSIST YOU IN IDENTIFYING YOUR CREDITORS, YOU MAY OBTAIN A
17 COPY OF YOUR SPOUSE'S CREDIT REPORT BY MAKING A WRITTEN REQUEST
18 TO THE COURT FOR AN ORDER REQUIRING A CREDIT REPORTING AGENCY TO
19 RELEASE THE REPORT TO YOU. WITHIN THIRTY DAYS AFTER RECEIPT OF
20 A REQUEST FROM A SPOUSE WHO IS PARTY TO A DISSOLUTION OF
21 MARRIAGE OR LEGAL SEPARATION ACTION, WHICH INCLUDES THE COURT
22 AND CAUSE NUMBER OF THE ACTION, CREDITORS ARE REQUIRED BY LAW TO
23 PROVIDE INFORMATION AS TO THE BALANCE AND ACCOUNT STATUS OF ANY
24 DEBTS FOR WHICH THE REQUESTING SPOUSE MAY BE LIABLE TO THE
25 CREDITOR. YOU MAY WISH TO USE THE FOLLOWING FORM, OR ONE THAT
26 IS SIMILAR, TO CONTACT YOUR CREDITORS:

27
28 CREDITOR NOTIFICATION

29
30 DATE: _____

31
32 CREDITOR NAME AND
33 ADDRESS: _____

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35 _____
36 _____

37 WITHIN THIRTY DAYS AFTER RECEIPT OF THIS NOTICE, YOU ARE
38 REQUESTED TO PROVIDE THE BALANCE AND ACCOUNT STATUS OF ANY DEBT
39 IDENTIFIED BY ACCOUNT NUMBER FOR WHICH THE REQUESTING PARTY MAY
40 BE LIABLE TO YOU.

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42 NAME: _____

43 ADDRESS: _____

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(SIGNATURE)

(PRINTED NAME)

G. ON THE WRITTEN REQUEST OF ANY PARTY TO A PENDING DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION ACTION, THE COURT, EXCEPT FOR GOOD CAUSE SHOWN, SHALL ISSUE AN ORDER REQUIRING ANY CREDIT REPORTING AGENCY TO RELEASE THE CREDIT REPORT AS TO THE SPOUSE OF THE REQUESTING PARTY ON PAYMENT BY THE REQUESTING PARTY OF ANY CUSTOMARY FEE FOR PROVIDING THE CREDIT REPORT.

H. ON THE REQUEST OF EITHER PARTY AND EXCEPT FOR GOOD CAUSE SHOWN, THE COURT SHALL REQUIRE THE PARTIES TO SUBMIT A DEBT DISTRIBUTION PLAN THAT STATES THE FOLLOWING:

- 1. HOW COMMUNITY CREDITORS WILL BE PAID.
 - 2. WHETHER ANY AGREEMENTS HAVE BEEN ENTERED INTO BETWEEN THE PARTIES AS TO RESPONSIBILITY FOR THE PAYMENT OF COMMUNITY DEBTS, INCLUDING WHAT, IF ANY, COLLATERAL WILL SECURE THE PAYMENT OF THE DEBT.
 - 3. WHETHER THE PARTIES HAVE ENTERED INTO AGREEMENTS WITH CREDITORS THROUGH WHICH A COMMUNITY DEBT WILL BE THE SOLE RESPONSIBILITY OF ONE PARTY.
- I. THE FOLLOWING FORM MAY BE USED TO VERIFY AGREEMENTS WITH CREDITORS:

AGREEMENT WITH CREDITOR

THE PARTIES TO THIS AGREEMENT INCLUDE _____
AND _____ WHO ARE PARTIES TO A DISSOLUTION OF
MARRIAGE ACTION FILED IN _____ COUNTY SUPERIOR
COURT, ARIZONA, CASE NUMBER _____ AND _____
WHO IS A DULY AUTHORIZED REPRESENTATIVE OF
_____ (CREDITOR).

THE UNDERSIGNED PARTIES AGREE THAT THE DEBT OWED BY THE PARTIES TO _____ (CREDITOR) IS TO BE DISPOSED OF AS FOLLOWS (CHECK ONE):

___ THE DEBT IS THE JOINT RESPONSIBILITY OF THE PARTIES, WITH PAYMENT TO BE MADE ON THE FOLLOWING TERMS: _____

___ THE BALANCE OF THE DEBT IS THE SOLE RESPONSIBILITY OF _____ AND THE CREDITOR RELEASES _____ FROM ANY FURTHER LIABILITY FOR THAT DEBT, WITH PAYMENT TO BE MADE ON THE FOLLOWING TERMS: _____

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_____ THE DEBT HAS BEEN PAID IN FULL AS OF THIS DATE.

WE THE UNDERSIGNED ACKNOWLEDGE THIS AGREEMENT.

DATED: _____

_____ DEBTOR

_____ DEBTOR

_____ CREDITOR'S REPRESENTATIVE

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 200_____.

_____ NOTARY PUBLIC

J. IF THE PARTIES ARE NOT ABLE TO AGREE TO A JOINT DEBT DISTRIBUTION PLAN PURSUANT TO SUBSECTION H THE COURT MAY ORDER EACH PARTY TO SUBMIT A PROPOSED DEBT DISTRIBUTION PLAN TO THE COURT. IN ITS ORDERS RELATING TO THE DIVISION OF PROPERTY THE COURT SHALL REFLECT THE DEBT DISTRIBUTION PLAN APPROVED BY THE COURT AND SHALL CONFIRM THAT ANY COMMUNITY DEBTS THAT ARE MADE THE SOLE RESPONSIBILITY OF ONE OF THE PARTIES BY AGREEMENT WITH A CREDITOR ARE THE SOLE RESPONSIBILITY OF THAT PARTY.

K. AN AGREEMENT WITH A CREDITOR PURSUANT TO SUBSECTION I THAT ASSIGNS OR OTHERWISE MODIFIES REPAYMENT RESPONSIBILITY FOR COMMUNITY DEBTS SECURED BY REAL PROPERTY LOCATED IN THIS STATE SHALL INCLUDE ALL OF THE FOLLOWING:

- 1. A LEGAL DESCRIPTION OF THE REAL PROPERTY.
- 2. A COPY OF THE NOTE AND RECORDED SECURITY INSTRUMENT, THE REPAYMENT OF WHICH IS TO BE ASSIGNED OR MODIFIED BY THE AGREEMENT WITH A CREDITOR.
- 3. A WRITTEN AND NOTARIZED ACKNOWLEDGMENT THAT IS EXECUTED BY ALL PARTIES TO THE DEBT, INCLUDING THE LENDER, AND THAT STATES ONE OF THE FOLLOWING:
 - (a) THE TERMS FOR THE REPAYMENT OF THE DEBT REMAIN UNCHANGED.
 - (b) THE TERMS FOR THE REPAYMENT OF THE DEBT HAVE BEEN MODIFIED AND, BEGINNING ON THE DATE OF THE EXECUTION OF THE ACKNOWLEDGMENT, THE CREDITOR HAS AGREED THAT ONE OF THE DEBTORS ASSUMES THE SOLE RESPONSIBILITY FOR THE DEBT AND THAT THE OTHER DEBTOR IS RELEASED FROM ANY FURTHER LIABILITY ON THE DEBT.
 - (c) THE DEBT IS PAID IN FULL AND ALL PARTIES TO THE DEBT ARE RELEASED FROM ANY FURTHER LIABILITY.

1 L. AN AGREEMENT EXECUTED PURSUANT TO SUBSECTION K SHALL BE RECORDED
2 BY EITHER PARTY IN THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED.

3 M. AFTER AN AGREEMENT IS RECORDED PURSUANT TO SUBSECTION L, EITHER
4 PARTY MAY REQUEST THAT ON PAYMENT OF THE TITLE COMPANY'S FEES FOR THE
5 DOCUMENT A TITLE COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE PROVIDE THE
6 REQUESTING PARTY WITH A LIEN SEARCH REPORT OR OTHER DOCUMENTARY EVIDENCE OF
7 LIENS AND OTHER AGREEMENTS OF RECORD IN THE TITLE TO THE PROPERTY.

8 N. IF A PARTY FAILS TO COMPLY WITH AN ORDER TO PAY DEBTS, THE COURT
9 MAY ENTER ORDERS TRANSFERRING PROPERTY OF THAT SPOUSE TO COMPENSATE THE OTHER
10 PARTY. IF THE COURT FINDS THAT A PARTY IS IN CONTEMPT AS TO AN ORDER TO PAY
11 COMMUNITY DEBTS, THE COURT MAY IMPOSE APPROPRIATE SANCTIONS UNDER THE LAW.
12 A PARTY MUST BRING AN ACTION TO ENFORCE AN ORDER TO PAY A DEBT PURSUANT TO
13 THIS SUBSECTION WITHIN TWO YEARS AFTER THE DATE IN WHICH THE DEBT SHOULD HAVE
14 BEEN PAID IN FULL.

15 O. WITHIN THIRTY DAYS AFTER RECEIPT OF A WRITTEN REQUEST FOR
16 INFORMATION FROM A SPOUSE WHO IS A PARTY TO A DISSOLUTION OF MARRIAGE OR
17 LEGAL SEPARATION ACTION, WHICH INCLUDES THE COURT AND CAUSE NUMBER OF THE
18 ACTION, A CREDITOR SHALL PROVIDE THE BALANCE AND ACCOUNT STATUS OF ANY DEBTS
19 OF EITHER OR BOTH SPOUSES IDENTIFIED BY ACCOUNT NUMBER FOR WHICH THE
20 REQUESTING SPOUSE MAY BE LIABLE TO THE CREDITOR.

APPROVED BY THE GOVERNOR MARCH 13, 2000

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 14, 2000