House Engrossed Senate Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

CHAPTER 124

SENATE BILL 1112

AN ACT

AMENDING SECTIONS 25-211 AND 25-318, ARIZONA REVISED STATUTES; RELATING TO DISSOLUTION OF MARRIAGE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 25-211, Arizona Revised Statutes, is amended to read:

25-211. Property acquired during marriage as community property; exceptions; effect of service of a petition

All property acquired by either husband or wife during the marriage is the community property of the husband and wife except for property that is:

1. Acquired by gift, devise or descent.

2. Acquired after service of a petition for dissolution of marriage, legal separation or annulment if the petition results in a decree of dissolution of marriage, legal separation or annulment.

B. NOTWITHSTANDING SUBSECTION A, PARAGRAPH 2, SERVICE OF A PETITION FOR DISSOLUTION OF MARRIAGE, LEGAL SEPARATION OR ANNULMENT DOES NOT:

1. ALTER THE STATUS OF PREEXISTING COMMUNITY PROPERTY.

2. CHANGE THE STATUS OF COMMUNITY PROPERTY USED TO ACQUIRE NEW PROPERTY OR THE STATUS OF THAT NEW PROPERTY AS COMMUNITY PROPERTY.

3. ALTER THE DUTIES AND RIGHTS OF EITHER SPOUSE WITH RESPECT TO THE MANAGEMENT OF COMMUNITY PROPERTY EXCEPT AS PRESCRIBED PURSUANT TO SECTION 25-315, SUBSECTION A, PARAGRAPH 1, SUBDIVISION (a).

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

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

A. In a proceeding for dissolution of the marriage, or for legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court which previously lacked personal jurisdiction over the absent spouse or previously lacked jurisdiction to dispose of the property, the court shall assign each spouse's sole and separate property to such spouse. It shall also divide the community, joint tenancy and other property held in common equitably, though not necessarily in kind, without regard to marital misconduct. For the purposes of this section only, property acquired by either spouse outside this state shall be deemed to be community property if the property would have been community property if acquired in this state.

B. IN DIVIDING PROPERTY, THE COURT MAY CONSIDER ALL DEBTS AND OBLIGATIONS THAT ARE RELATED TO THE PROPERTY, INCLUDING ACCRUED OR ACCRUING TAXES THAT WOULD BECOME DUE ON THE RECEIPT, SALE OR OTHER DISPOSITION OF THE PROPERTY. THE COURT MAY ALSO CONSIDER THE EXEMPT STATUS OF PARTICULAR PROPERTY PURSUANT TITLE 33, CHAPTER 8.

C. This section does not prevent the court from considering all actual damages and judgments from conduct that ~~results~~ RESULTED in criminal conviction of either spouse in which the other spouse or A child was the victim~~,~~ OR excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

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

~~C.~~ E. The court may impress a lien on the separate property of either party or the marital property awarded to either party in order to secure the payment of:

1. Any interest or equity the other party has in or to the property.

2. Community debts that the court has ordered to be paid by the parties.

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

4. All actual damages and judgments from conduct that ~~results~~ RESULTED in criminal conviction of either spouse in which the other spouse or A child was the victim.

~~D.~~ F. The decree or judgment shall specifically describe by legal description any real property affected and shall specifically describe any other property affected.

~~E.~~ G. This section applies through both prospective and retrospective operation to property without regard to the date of acquisition.

~~F.~~ H. In all actions for the dissolution of marriage or legal separation, the court shall require the following statement in the materials provided to the petitioner and to be served on the respondent:

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 aware that a court order that does this is binding on the spouses only and does not necessarily relieve either of you from your responsibility for these community debts. These debts are matters of contract between both of you and your creditors (such as banks, credit unions, credit card issuers, finance companies, utility companies, medical providers and retailers).

Since your creditors are not parties to this court case, they are not bound by court orders or any agreements you and your spouse reach in this case. On request, the court may impose a lien against the separate property of a spouse to secure payment of debts that the court orders that spouse to pay.

You may want to contact your creditors to discuss your debts as well as the possible effects of your court case on your debts. To assist you in identifying your creditors, you may obtain a copy of your spouse's credit report by making a written request to the court for an order requiring a credit reporting agency to release the report to you. Within thirty days after receipt of a request from a spouse who is party to a dissolution of marriage or legal separation action, which includes the court

and case number of the action, creditors are required by law to provide information as to the balance and account status of any debts for which the requesting spouse may be liable to the creditor. You may wish to use the following form, or one that is similar, to contact your creditors:

Creditor notification

Date: _____

Creditor name and
Address: _____

_____

_____

Within thirty days after receipt of this notice, you are requested to provide the balance and account status of any debt identified by account number for which the requesting party may be liable to you.

Name: _____

Address: _____

_____

_____

_____

(signature)

_____

(printed name)

~~G.~~ I. 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.~~ J. 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.~~ K. 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:
_____
_____
_____

___ 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 _____, _____.

_____
Notary Public

~~J.~~ L. If the parties are not able to agree to a joint debt distribution plan pursuant to subsection ~~H~~ J, 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.~~ M. An agreement with a creditor pursuant to subsection ~~I~~ K 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.

~~L.~~ N. An agreement executed pursuant to subsection ~~K~~ M shall be recorded by either party in the county in which the real property is located.

~~M.~~ O. After an agreement is recorded pursuant to subsection ~~L~~ N, either party may request that on payment of the title company's fees for the document a title company authorized to do business in this state provide the requesting party with a lien search report or other documentary evidence of liens and other agreements of record in the title to the property.

~~N.~~ P. If a party fails to comply with an order to pay debts, the court may enter orders transferring property of that spouse to compensate the other party. If the court finds that a party is in contempt as to an order to pay community debts, the court may impose appropriate sanctions under the law. A party must bring an action to enforce an order to pay a debt pursuant to this subsection within two years after the date in which the debt should have been paid in full.

~~O.~~ Q. Within thirty days after receipt of a written request for information from a spouse who is a party to a dissolution of marriage or legal separation action, which includes the court and case number of the action, a creditor shall provide the balance and account status of any debts of either or both spouses identified by account number for which the requesting spouse may be liable to the creditor.

R. IF ANY PART OF THE COURT'S DIVISION OF JOINT, COMMON OR COMMUNITY PROPERTY IS IN THE NATURE OF CHILD SUPPORT OR SPOUSAL MAINTENANCE, THE COURT SHALL MAKE SPECIFIC FINDINGS OF FACT AND SUPPORTING CONCLUSIONS OF LAW IN ITS DECREE.

APPROVED BY THE GOVERNOR APRIL 29, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 29, 2008.

Passed the House April 7, 20 08,

by the following vote: 54 Ayes,

0 Nays, 6 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate March 6, 20 08,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1112

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 24, **20** 08

by the following vote: 26 **Ayes,**

0 **Nays,** 4 **Not Voting**

Timothy S Bee
President of the Senate

Charmin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

24th **day of** April, **20** 08

at 1:41 **o'clock** P. **M.**

Jennifer Ybarra
Secretary to the Governor

Approved this 29 **day of**

April 2008

at 1:50 **o'clock** P. **M.**

Jt Napolitano
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 29 **day of** April, **20** 08

S.B. 1112

at 4:00 **o'clock** P **M.**

Janice K. Brewer
Secretary of State