

SUBJECT: Spousal rights to separate and community property

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 6 ayes — Dutton, Goodman, Baxter, Castro, Hodge, Reyna

0 nays

3 absent — Dunnam, J. Moreno, Morrison

WITNESSES: None

BACKGROUND: In a marriage, property belongs to one of three estates: the separate property of the husband, the separate property of the wife, and the property of the marriage, called community property. Separate property generally is property that a spouse owned before the marriage or received as an individual after the marriage by gift or inheritance.

In 1999, the 76th Legislature enacted HB 734 by Goodman, which established that the enhancement in value of separate property, when due to a financial contribution made by community property, creates an equitable interest of the community estate in that separate property. It was intended to mitigate the effects of the “inception of title” rule, which determines property ownership according to the time at which the property was acquired. For example, under strict inception of title, real property purchased by a spouse immediately before marriage, but paid for entirely by community funds after the marriage, is considered the spouse’s separate property.

In 2001, the 77th Legislature enacted HB 1245 by Goodman, modifying provisions relating to the relationship between separate and community property during a marriage and redefining a claim for economic contribution. An economic contribution is the dollar amount of reduction of certain types of debt secured by a lien on property, the amount of refinancing of the principal amount of such debts, and the amount of capital improvements to property other than by incurring debt. This term excludes expenditures for ordinary maintenance and repairs, taxes, interest, or insurance, or a spouse’s contribution of time, toil, talent, or effort during the marriage.

A marital estate (community property or separate property owned by either the husband or the wife) that made an economic contribution to property owned by another marital estate has a claim against the benefitted estate. The amount of the claim is equal the product of (1) the equity in the benefitted property as of the dissolution of the marriage, the death of a spouse, or disposition of the property, multiplied by (2) a fraction of which the numerator is the economic contribution of the contributing estate and the denominator is the sum of the economic contribution by the contributing estate, the equity in the property as of date of the marriage (or if later, the date of the first economic contribution by the contributing estate), and the economic contribution by the benefitted estate during the marriage. The amount of the claim can be less than the total economic contributions by the contributing estate but can not cause the contributing estate to owe funds to the benefitted estate. The claim amount cannot exceed the equity in the property as of the dissolution of the marriage, the death of a spouse, or disposition of the property. The use and enjoyment of property during a marriage for which a claim for economic contribution exists does not create a claim of an offsetting benefit against that claim.

A claim for economic contribution does not affect the inception-of-title rule, create an ownership interest in property, alter existing fiduciary duties, or affect management rights with regard to marital property. It does, however, create a claim against the benefitted estate by the contributing estate that matures upon dissolution of the marriage or the death of either spouse.

On dissolution of a marriage, the court will impose an equitable lien on property of a marital estate to secure a claim for economic contribution by another marital estate. On the death of a spouse, if the surviving spouse, a representative of the deceased spouse's estate, or any other person interested in the estate brought a claim for economic contribution, the court will impose an equitable lien on property of a benefitted estate. Subject to homestead restrictions, the court may impose such a lien on all of a spouse's property in the marital estate. The court will offset a claim for economic contribution in a specific asset of a second marital estate against the second marital estate's claim for economic contribution in a specific asset of the first estate.

A couple may agree before or after marriage as to treat property as community or separate property. Married couples may convert community property into separate property by partition or exchange. For example, if a husband and

wife partition their community property bank account worth \$1,000, with \$500 going to each as separate property, the income on that money is community property, unless there is a specific agreement otherwise. However, if a husband gives his wife his community property interest in the bank account, the \$500 given and the income therefrom is her separate property, absent agreement.

In a divorce or annulment, the community property is divided between the couple. Some property is considered to be quasi community property; that is, it is property in another community property state but would be separate property if located in Texas. In determining property disposition for a divorce, the court will apply the other state's law. For example, if a couple owns oil and gas revenues in a community-property state, these revenues would be community property under that state's law, although they are separate property under Texas law. Under the principle of quasi community property, the court would treat these revenues as community property by applying the other state's law.

Income, from separate or community property, which is considered community property absent agreement otherwise, is divided among the divorcing spouses from the date of the divorce decree.

DIGEST:

CSHB 885 would revise the formula for determining the amount of economic contribution. It would reverse the default rule pertaining to partitions and exchanges, meaning that property that is partitioned or exchanged and its income would be separate property unless otherwise agreed to by the parties. It would reverse the rule for treatment of quasi community property, making Texas law determine the classification of the property. The bill would allow a divorcing couple, in the year the suit for dissolution is filed or in a later year during which the couple were married, to partition their income on January 1 of that year rather than on the date of the divorce.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 885 is a cleanup bill that would clarify the complex formula for economic contribution, which can be confusing to judges and attorneys. Also, the bill would correct a problem in the current formula that could cause double-counting in the separate property estate, resulting in understating the

economic contribution.

CSHB 885 would provide a default rule for partition and exchange that would protect the interests of spouses. Couples may forget to include income from the property when they partition it, although they intended to make the income separate property as well. The bill would change the default rule to reflect that intention. Also, it is confusing to have different default rules for partition than for gifts. Texas has this gift rule because the Internal Revenue Service stated that a gift was incomplete, and therefore subject to taxation, if the income was not given specifically to the spouse as well. Texas changed the gift default rule to make the gifted property and the income from that property the beneficiary's separate property. It makes sense for the default rule to be that partitioned property includes the income as separate property. If this is not the intent of the spouses, then they simply could agree otherwise.

CSHB 885 would simplify partitioning community income in divorces by allowing spouses to choose to partition income on January 1 of the year the suit for dissolution was filed, rather than on the date of divorce. Without this provision, if a couple is divorced on September 1, they must figure out the amount of community income earned from January 1 to September 1, including subtracting out taxes and other reductions, which can be a burdensome task. The bill would provide an easier solution.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The committee substitute would change the default rule concerning income in relation to partition and exchange. The substitute also would allow couples to choose to partition and exchange their property starting from January 1 of the year the suit for dissolution was filed or of a later year during which the parties were married for part of that year.