S T A T E O F N E W Y O R K

6132

2009-2010 Regular Sessions

I N A S S E M B L Y

February 25, 2009

Introduced by M. of A. WEINSTEIN, GALEF, JACOBS, GREENE -- Multi-Sponsored by -- M. of A. BRENNAN, GLICK, GOTTFRIED, HIKIND, JOHN, McENENY, ORTIZ, PAULIN, RAMOS, SWEENEY -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to distribution of marital property; and to repeal paragraph c of subdivision 5 of part B of section 236 of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings and purpose. The legislature finds and declares that marriage is a partnership of equals and the contributions of each party, whether as spouse, parent, homemaker or wage earner, are of equal value.

The legislature further finds and declares that a spouse who performs the duties of a homemaker or primary caregiver, whether or not that spouse is also a wage-earner, frequently contributes to the other spouse's acquisition of assets and enhanced earning capacity while reducing that spouse's own earning potential and ability to acquire assets.

The legislature further finds and declares that appropriate awards of spousal support and property are the means by which to assure the fair apportionment of personal economic gains and losses resulting from the marriage.

The legislature intends that awards of spousal support and property shall be made in such amounts as necessary to assure that the economic benefits and burdens of the marital partnership are shared equally between both spouses, with the aim of eliminating, insofar as possible, disparities in the standards of living of the two spouses upon divorce.

S 2. Paragraph c of subdivision 5 of part B of section 236 of the domestic relations law is REPEALED and a new paragraph c is added to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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C. THERE SHALL BE A PRESUMPTION THAT THE MARITAL PROPERTY SHALL BE DISTRIBUTED EQUALLY UNLESS A PARTY PRESENTS SUFFICIENT EVIDENCE TO ESTABLISH THAT THE DISTRIBUTION SHALL BE OTHER THAN EQUAL, BASED UPON CONSIDERATION OF THE FACTORS SET FORTH IN PARAGRAPH D OF THIS SUBDIVISION AND REGARDLESS OF THE PERSON WHO HAS TITLE OR THE FORM IN WHICH TITLE IS HELD.

S 3. Paragraph d of subdivision 5 of part B of section 236 of the domestic relations law, as added by chapter 281 of the laws of 1980, subparagraphs 10, 11 and 12 as added and subparagraph 13 as renumbered by chapter 884 of the laws of 1986, is amended to read as follows:

d. In determining [an equitable] A disposition of property under paragraph c, the court shall consider:

(1) the income and property of each party at the time of marriage, and at the time of the commencement of the action;

(2) the duration of the marriage and the age and health of both parties AND THE POST-DIVORCE STANDARDS OF LIVING OF THE PARTIES;

(3) the need of a custodial parent to occupy or own the marital residence and to use or own its household effects;

(4) the loss of inheritance and pension rights upon dissolution of the marriage as of the date of dissolution;

(5) any award of maintenance under subdivision six of this part;

(6) any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party;

(7) the liquid or non-liquid character of all marital property;

(8) the probable future financial circumstances of each party;

(9) the impossibility or difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest intact and free from any claim or interference by the other party;

(10) the tax consequences to each party;

(11) the wasteful dissipation of assets by either spouse;

(12) any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration;

(13) any other factor which the court shall expressly find to be just and proper.

S 4. Paragraph e of subdivision 5 of part B of section 236 of the domestic relations law, as added by chapter 281 of the laws of 1980, is amended to read as follows:

e. In any action in which the court [shall determine] DETERMINES that [an equitable] distribution [is appropriate but would be] OF MARITAL PROPERTY IS impractical or burdensome or where the distribution of an interest in a business, corporation or profession [would be] IS contrary to law, the court in lieu of such [equitable] distribution shall make a distributive award [in order to achieve equity between the parties] IN ACCORDANCE WITH PARAGRAPH C OF THIS SUBDIVISION. The court, in its discretion, also may make a distributive award to supplement, facilitate or effectuate a distribution of marital property.

S 5. This act shall take effect immediately and shall apply to all actions and proceedings commenced on or after such effective date.