

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SENATE BILL 1094

AN ACT

AMENDING SECTIONS 25-318, 25-351 AND 25-381.18, 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~~ THAT 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~~ THAT spouse. It shall also divide the community,
12 joint tenancy and other property held in common equitably, though not
13 necessarily in kind, without regard to marital misconduct. For the purposes
14 of this section only, property acquired by either spouse outside this state
15 shall be deemed to be community property if the property would have been
16 community property if acquired in this state. ~~THE COURT MAY CONSIDER~~
17 ~~EXCESSIVE OR ABNORMAL EXPENDITURES, DESTRUCTION, CONCEALMENT OR FRAUDULENT~~
18 ~~DISPOSITION OF COMMUNITY, JOINT TENANCY AND OTHER PROPERTY HELD IN COMMON.~~
19 ~~THE COURT MAY ALSO CONSIDER ALL ACTUAL DAMAGES AND JUDGMENTS FROM CONDUCT~~
20 ~~THAT RESULTED IN A CRIMINAL CONVICTION OF EITHER SPOUSE IN WHICH THE OTHER~~
21 ~~SPOUSE OR A CHILD WAS THE VICTIM.~~

22 B. In dividing property, the court may consider all debts and
23 obligations that are related to the property, including accrued or accruing
24 taxes that would become due on the receipt, sale or other disposition of the
25 property. The court may also consider the exempt status of particular
26 property pursuant TO title 33, chapter 8.

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

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

36 C. THE COMMUNITY, JOINT TENANCY AND OTHER PROPERTY HELD IN COMMON FOR
37 WHICH NO PROVISION IS MADE IN THE DECREE IS HELD BY THE PARTIES, FROM THE
38 DATE OF THE DECREE, AS TENANTS IN COMMON, WITH EACH PARTY POSSESSING AN
39 UNDIVIDED ONE-HALF INTEREST. ANY COMMUNITY, JOINT OR OTHER COMMON DEBT OR
40 OBLIGATION FOR WHICH A PROVISION IS NOT MADE IN THE DECREE ALLOCATING THE
41 DEBT OR OBLIGATION IS DEEMED TO BE A JOINT DEBT OR OBLIGATION OF THE PARTIES
42 AS OF THE DATE OF THE DECREE, AND EACH PARTY SHALL PAY AND INDEMNIFY AND HOLD
43 THE OTHER PARTY HARMLESS FROM ONE-HALF OF THE DEBT OR OBLIGATION. THE
44 COURT'S ALLOCATION OF TAX LIABILITY DOES NOT DEPRIVE EITHER PARTY OF ANY
45 FEDERALLY RECOGNIZED DEFENSES TO THE LIABILITY.

1 D. IF THE COURT FINDS THAT A PARTY HAS KNOWINGLY CONCEALED ASSETS OR
2 DEBTS, IT SHALL SANCTION THE CONCEALING PARTY IN A POST-DECREE PROCEEDING
3 FILED BY EITHER PARTY WITHIN ONE HUNDRED EIGHTY DAYS AFTER DISCOVERY OF THE
4 PROPERTY OR DEBT OR OBLIGATION FOR WHICH NO PROVISION IS MADE IN THE DECREE.
5 THE COURT SHALL SANCTION THE CONCEALING PARTY BY MEANS OF, BUT NOT LIMITED
6 TO, AN UNEQUAL DIVISION OF THE ASSET, AN UNEQUAL ALLOCATION OF THE DEBT AND
7 AWARD OF ATTORNEY FEES, EXPERT FEES AND COURT COSTS, JUDGMENT IN NATURE OF
8 FRAUD OR OTHER MONETARY DAMAGES.

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

- 12 1. Any interest or equity the other party has in or to the property.
- 13 2. Community debts that the court has ordered to be paid by the
14 parties.
- 15 3. An allowance for child support or spousal maintenance, or both.
- 16 4. All actual damages and judgments from conduct that resulted in
17 criminal conviction of either spouse in which the other spouse or a child was
18 the victim.

19 F. The decree or judgment shall specifically describe by legal
20 description any real property affected and shall specifically describe any
21 other property affected.

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

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

27 Notice

28 In your property settlement agreement or decree of dissolution
29 or legal separation, the court may assign responsibility for
30 certain community debts to one spouse or the other. Please be
31 aware that a court order that does this is binding on the
32 spouses only and does not necessarily relieve either of you from
33 your responsibility for these community debts. These debts are
34 matters of contract between both of you and your creditors (such
35 as banks, credit unions, credit card issuers, finance companies,
36 utility companies, medical providers and retailers).

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

42 You may want to contact your creditors to discuss your debts as
43 well as the possible effects of your court case on your debts.
44 To assist you in identifying your creditors, you may obtain a
45 copy of your spouse's credit report by making a written request

1 to the court for an order requiring a credit reporting agency to
2 release the report to you. Within thirty days after receipt of
3 a request from a spouse who is party to a dissolution of
4 marriage or legal separation action, which includes the court
5 and case number of the action, creditors are required by law to
6 provide information as to the balance and account status of any
7 debts for which the requesting spouse may be liable to the
8 creditor. You may wish to use the following form, or one that
9 is similar, to contact your creditors:

10 Creditor notification

11 Date: _____

12 Creditor name and

13 Address: _____

14 _____

15 _____

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

20 Name: _____

21 Address: _____

22 _____

23 _____

24 _____

25 (signature)

26 _____

27 (printed name)

28 I. On the written request of any party to a pending dissolution of
29 marriage or legal separation action, the court, except for good cause shown,
30 shall issue an order requiring any credit reporting agency to release the
31 credit report as to the spouse of the requesting party on payment by the
32 requesting party of any customary fee for providing the credit report.

33 J. On the request of either party and except for good cause shown, the
34 court shall require the parties to submit a debt distribution plan that
35 states the following:

36 1. How community creditors will be paid.

37 2. Whether any agreements have been entered into between the parties
38 as to responsibility for the payment of community debts, including what, if
39 any, collateral will secure the payment of the debt.

40 3. Whether the parties have entered into agreements with creditors
41 through which a community debt will be the sole responsibility of one party.

42 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

L. If the parties are not able to agree to a joint debt distribution plan pursuant to subsection 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.

M. An agreement with a creditor pursuant to subsection 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.

1 3. A written and notarized acknowledgment that is executed by all
2 parties to the debt, including the lender, and that states one of the
3 following:

4 (a) The terms for the repayment of the debt remain unchanged.

5 (b) The terms for the repayment of the debt have been modified and,
6 beginning on the date of the execution of the acknowledgment, the creditor
7 has agreed that one of the debtors assumes the sole responsibility for the
8 debt and that the other debtor is released from any further liability on the
9 debt.

10 (c) The debt is paid in full and all parties to the debt are released
11 from any further liability.

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

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

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

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

32 R. If any part of the court's division of joint, common or community
33 property is in the nature of child support or spousal maintenance, the court
34 shall make specific findings of fact and supporting conclusions of law in its
35 decree.

36 Sec. 2. Section 25-351, Arizona Revised Statutes, is amended to read:

37 25-351. Domestic relations education; plan; administration

38 A. ~~On or before January 1, 1997,~~ The superior court in each county
39 shall adopt and implement an educational program for the purpose of educating
40 persons about the ~~impacts that~~ IMPACT OF divorce, ~~the restructuring of~~
41 ~~families and judicial involvement have~~ on ADULTS AND children.

42 B. The supreme court shall adopt minimum standards for educational
43 programs. The presiding judge of the superior court in each county shall
44 submit an educational program plan to the supreme court for approval. The
45 plan shall be consistent with the minimum standards that are adopted by the

1 supreme court, including the length and nature of the program, the
2 qualifications of program providers and the means by which the program will
3 be evaluated and maintained. BEGINNING JANUARY 1, 2012, THESE STANDARDS
4 SHALL REQUIRE THAT EDUCATIONAL PROGRAMS AT A MINIMUM INCLUDE INSTRUCTION
5 RELATED TO ALL OF THE FOLLOWING:

- 6 1. THE EMOTIONAL, PSYCHOLOGICAL, FINANCIAL, PHYSICAL AND OTHER
7 SHORT-TERM AND LONG-TERM EFFECTS OF DIVORCE ON ADULTS AND CHILDREN.
- 8 2. OPTIONS AVAILABLE AS ALTERNATIVES TO DIVORCE.
- 9 3. RESOURCES AVAILABLE TO IMPROVE OR STRENGTHEN MARRIAGE.
- 10 4. THE LEGAL PROCESS OF DIVORCE AND OPTIONS AVAILABLE FOR MEDIATION.
- 11 5. RESOURCES AVAILABLE AFTER DIVORCE.

12 C. The presiding judge of the superior court or a judge who is
13 designated by the presiding judge shall administer the program in each county
14 and may provide or contract with political subdivisions in this state or
15 private entities to provide the program to participants who are required to
16 attend.

17 Sec. 3. Section 25-381.18, Arizona Revised Statutes, is amended to
18 read:

19 25-381.18. Dissolution of marriage; legal separation;
20 annulment; stay of right to file; jurisdiction for
21 pending actions

22 A. During a period beginning on the filing of a petition for
23 conciliation and continuing until sixty days after the filing of the petition
24 for conciliation, neither spouse shall file any action for annulment,
25 dissolution of marriage or legal separation, and, on the filing of a petition
26 for conciliation, proceedings then pending in the superior court are stayed
27 and the case shall be transferred to the conciliation court for hearing and
28 further disposition as provided in this article. All restraining, support,
29 maintenance or custody orders issued by the superior court remain in full
30 force and effect until vacated or modified by the conciliation court or until
31 they expire by their own terms.

32 B. IF EITHER PARTY WANTS TO EXTEND THE STAY UNDER SUBSECTION A, THAT
33 PARTY SHALL FILE A PETITION WITH THE COURT STATING THE BASIS FOR AN
34 EXTENSION, WHICH SHALL INCLUDE A PLAN FOR RECONCILIATION OR COUNSELING
35 SCHEDULE. THE COURT MAY GRANT THE EXTENSION OF UP TO ONE HUNDRED TWENTY DAYS
36 IF THE MOVING PARTY ESTABLISHES GOOD CAUSE FOR THE EXTENSION.

37 ~~B.~~ C. If, however, after the expiration of the period prescribed in
38 subsection A AND ANY EXTENSION GRANTED UNDER SUBSECTION B, the controversy
39 between the spouses has not been terminated, either spouse may institute
40 proceedings for annulment of marriage, dissolution of marriage or legal
41 separation by filing in the clerk's office additional pleadings complying
42 with the requirements relating to annulment of marriage, dissolution of
43 marriage or legal separation, respectively, or either spouse may proceed with
44 the action previously stayed, and the conciliation court has full
45 jurisdiction to hear, try and determine the action for annulment of marriage,

1 dissolution of marriage or legal separation and to retain jurisdiction of the
2 case for further hearings on decrees or orders to be made. The conciliation
3 provisions of this article may be used in regard to postdissolution problems
4 concerning maintenance support, parenting time or contempt or for
5 modification based on changed conditions in the discretion of the
6 conciliation court.

7 ~~C.~~ D. On the filing of an action for annulment, dissolution of
8 marriage or legal separation and after the expiration of sixty days from the
9 service or the acceptance of service of process on or by the defendant,
10 neither spouse without the consent of the other may file a petition invoking
11 the jurisdiction of the conciliation court, as long as the domestic relations
12 case remains pending, unless it appears to the court that the filing will not
13 delay the orderly processes of the pending action, in which event the court
14 may accept the petition and the filing of the petition has the same effect as
15 the filing of any such petition within such sixty days after the service or
16 acceptance of process.

17 Sec. 4. Effective date

18 This act is effective from and after December 31, 2010.