

REFERENCE TITLE: domestic relations; disposition of property

State of Arizona  
House of Representatives  
Fiftieth Legislature  
Second Regular Session  
2012

## **HB 2625**

Introduced by  
Representatives Lesko: Barton, Kavanagh, Olson, Pierce, Pratt, Proud

AN ACT

AMENDING SECTIONS 25-318 AND 25-319, 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 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 the purposes of this  
14 section only, property acquired by either spouse outside this state ~~shall be~~  
15 IS deemed to be community property if the property would have been community  
16 property if acquired in this state.

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

22 C. This section does not prevent the court from considering all actual  
23 damages and judgments from conduct that resulted in A criminal conviction of  
24 either spouse in which the other spouse or a child was the victim or  
25 excessive or abnormal expenditures, destruction, concealment or fraudulent  
26 disposition of community, joint tenancy and other property held in common,  
27 ABANDONMENT OR A FINDING OF DOMESTIC VIOLENCE AS DESCRIBED IN SECTION  
28 25-403.03. FOR THE PURPOSES OF THIS SUBSECTION, "ABANDONMENT" MEANS THE  
29 VOLUNTARY SEPARATION OF ONE SPOUSE FROM THE OTHER SPOUSE FOR AT LEAST ONE  
30 YEAR WITH THE INTENT TO DESERT THE OTHER SPOUSE.

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

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

- 38 1. Any interest or equity the other party has in or to the property.
- 39 2. Community debts that the court has ordered to be paid by the  
40 parties.
- 41 3. An allowance for child support or spousal maintenance, or both.
- 42 4. All actual damages and judgments from conduct that resulted in  
43 criminal conviction of either spouse in which the other spouse or a child was  
44 the victim.

1 F. The decree or judgment shall specifically describe by legal  
2 description any real property affected and shall specifically describe any  
3 other property affected.

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

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

9 Notice

10 In your property settlement agreement or decree of dissolution  
11 or legal separation, the court may assign responsibility for  
12 certain community debts to one spouse or the other. Please be  
13 aware that a court order that does this is binding on the  
14 spouses only and does not necessarily relieve either of you from  
15 your responsibility for these community debts. These debts are  
16 matters of contract between both of you and your creditors (such  
17 as banks, credit unions, credit card issuers, finance companies,  
18 utility companies, medical providers and retailers).

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

24 You may want to contact your creditors to discuss your debts as  
25 well as the possible effects of your court case on your debts.  
26 To assist you in identifying your creditors, you may obtain a  
27 copy of your spouse's credit report by making a written request  
28 to the court for an order requiring a credit reporting agency to  
29 release the report to you. Within thirty days after receipt of  
30 a request from a spouse who is party to a dissolution of  
31 marriage or legal separation action, which includes the court  
32 and case number of the action, creditors are required by law to  
33 provide information as to the balance and account status of any  
34 debts for which the requesting spouse may be liable to the  
35 creditor. You may wish to use the following form, or one that  
36 is similar, to contact your creditors:

37 Creditor notification

38 Date: \_\_\_\_\_

39 Creditor name and

40 Address: \_\_\_\_\_

41 \_\_\_\_\_

42 \_\_\_\_\_



1           \_\_\_ The balance of the debt is the sole responsibility of  
 2           \_\_\_\_\_ and the creditor releases  
 3           \_\_\_\_\_ from any further liability for that debt,  
 4           with payment to be made on the following terms:  
 5           \_\_\_\_\_  
 6           \_\_\_\_\_  
 7           \_\_\_\_\_

8           \_\_\_ The debt has been paid in full as of this date.  
 9           We the undersigned acknowledge this agreement.  
 10          Dated: \_\_\_\_\_

11           \_\_\_\_\_  
 12                                   Debtor                                   Debtor  
 13           \_\_\_\_\_  
 14                                   Creditor's representative

15  
 16          Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_,  
 17          \_\_\_\_\_.

18  
 19          \_\_\_\_\_  
 20                                   Notary Public

21          L. If the parties are not able to agree to a joint debt distribution  
 22          plan pursuant to subsection J, the court may order each party to submit a  
 23          proposed debt distribution plan to the court. In its orders relating to the  
 24          division of property, the court shall reflect the debt distribution plan  
 25          approved by the court and shall confirm that any community debts that are  
 26          made the sole responsibility of one of the parties by agreement with a  
 27          creditor are the sole responsibility of that party.

28          M. An agreement with a creditor pursuant to subsection K that assigns  
 29          or otherwise modifies repayment responsibility for community debts secured by  
 30          real property located in this state shall include all of the following:

- 31           1. A legal description of the real property.
- 32           2. A copy of the note and recorded security instrument, the repayment  
 33           of which is to be assigned or modified by the agreement with a creditor.
- 34           3. A written and notarized acknowledgment that is executed by all  
 35           parties to the debt, including the lender, and that states one of the  
 36           following:
  - 37           (a) The terms for the repayment of the debt remain unchanged.
  - 38           (b) The terms for the repayment of the debt have been modified and,  
 39           beginning on the date of the execution of the acknowledgment, the creditor  
 40           has agreed that one of the debtors assumes the sole responsibility for the  
 41           debt and that the other debtor is released from any further liability on the  
 42           debt.
  - 43           (c) The debt is paid in full and all parties to the debt are released  
 44           from any further liability.

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

3 O. After an agreement is recorded pursuant to subsection N, 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 P. 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. A  
12 party must bring an action to enforce an order to pay a debt pursuant to this  
13 subsection within two years after the date in which the debt should have been  
14 paid in full.

15 Q. 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 case 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.

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

25 Sec. 2. Section 25-319, Arizona Revised Statutes, is amended to read:

26 25-319. Maintenance; computation factors

27 A. In a proceeding for dissolution of marriage or legal separation, or  
28 a proceeding for maintenance following dissolution of the marriage by a court  
29 that lacked personal jurisdiction over the absent spouse, the court may grant  
30 a maintenance order for either spouse for any of the following reasons if it  
31 finds that the spouse seeking maintenance:

32 1. Lacks sufficient property, including property apportioned to the  
33 spouse, to provide for that spouse's reasonable needs.

34 2. Is unable to be self-sufficient through appropriate employment or  
35 is the custodian of a child whose age or condition is such that the custodian  
36 should not be required to seek employment outside the home or lacks earning  
37 ability in the labor market adequate to be self-sufficient.

38 3. Contributed to the educational opportunities of the other spouse.

39 4. Had a marriage of long duration and is of an age that may preclude  
40 the possibility of gaining employment adequate to be self-sufficient.

41 B. The maintenance order shall be in an amount and for a period of  
42 time as the court deems just, without regard to marital misconduct, and after  
43 considering all relevant factors, including:

44 1. The standard of living established during the marriage.

45 2. The duration of the marriage.

- 1           3. The age, employment history, earning ability and physical and  
2 emotional condition of the spouse seeking maintenance.
- 3           4. The ability of the spouse from whom maintenance is sought to meet  
4 that spouse's needs while meeting those of the spouse seeking maintenance.
- 5           5. The comparative financial resources of the spouses, including their  
6 comparative earning abilities in the labor market.
- 7           6. The contribution of the spouse seeking maintenance to the earning  
8 ability of the other spouse.
- 9           7. The extent to which the spouse seeking maintenance has reduced that  
10 spouse's income or career opportunities for the benefit of the other spouse.
- 11          8. The ability of both parties after the dissolution to contribute to  
12 the future educational costs of their mutual children.
- 13          9. The financial resources of the party seeking maintenance, including  
14 marital property apportioned to that spouse, and that spouse's ability to  
15 meet that spouse's own needs independently.
- 16          10. The time necessary to acquire sufficient education or training to  
17 enable the party seeking maintenance to find appropriate employment and  
18 whether such education or training is readily available.
- 19          11. Excessive or abnormal expenditures, destruction, concealment or  
20 fraudulent disposition of community, joint tenancy and other property held in  
21 common.
- 22          12. The cost for the spouse who is seeking maintenance to obtain health  
23 insurance and the reduction in the cost of health insurance for the spouse  
24 from whom maintenance is sought if the spouse from whom maintenance is sought  
25 is able to convert family health insurance to employee health insurance after  
26 the marriage is dissolved.
- 27          13. All actual damages and judgments from conduct that ~~results~~ RESULTED  
28 in criminal conviction of either spouse in which the other spouse or A child  
29 was the victim.
- 30          14. ABANDONMENT. FOR THE PURPOSES OF THIS PARAGRAPH, "ABANDONMENT"  
31 MEANS THE VOLUNTARY SEPARATION OF ONE SPOUSE FROM THE OTHER SPOUSE FOR AT  
32 LEAST ONE YEAR WITH THE INTENT TO DESERT THE OTHER SPOUSE.
- 33          15. A FINDING OF DOMESTIC VIOLENCE AS DESCRIBED IN SECTION 25-403.03.
- 34          C. If both parties agree, the maintenance order and a decree of  
35 dissolution of marriage or of legal separation may state that its maintenance  
36 terms shall not be modified.
- 37          D. Except as provided in subsection C of this section or section  
38 25-317, subsection G, the court shall maintain continuing jurisdiction over  
39 the issue of maintenance for the period of time maintenance is awarded.