

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SENATE BILL 1307

AN ACT

AMENDING SECTION 25-318, ARIZONA REVISED STATUTES; AMENDING TITLE 25, CHAPTER 3, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 25-318.02; RELATING TO COMMUNITY PROPERTY.

(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. EXCEPT AS PROVIDED IN SECTION 25-318.02,
12 it shall also divide the community, joint tenancy and other property held in
13 common equitably, though not necessarily in kind, without regard to marital
14 misconduct. For the purposes of this section only, property acquired by
15 either spouse outside this state shall be deemed to be community property if
16 the property would have been community 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 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 D. The community, joint tenancy and other property held in common for
28 which no provision is made in the decree shall be from the date of the decree
29 held by the parties as tenants in common, each possessed of an undivided
30 one-half interest.

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

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

41 F. The decree or judgment shall specifically describe by legal
42 description any real property affected and shall specifically describe any
43 other property affected.

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

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

4 Notice

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

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

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

34 Creditor notification

35 Date: _____

36 Creditor name and

37 Address: _____

38 _____

39 _____

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

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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 OF THIS SECTION, 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 OF THIS SECTION 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.

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

O. After an agreement is recorded pursuant to subsection N OF THIS SECTION, 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.

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

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

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

18 Sec. 2. Title 25, chapter 3, article 2, Arizona Revised Statutes, is
19 amended by adding section 25-318.02, to read:

20 25-318.02. Sentence of spouse; award of community property;
21 definition

22 A. IN AN ACTION DESCRIBED IN SECTION 25-318, SUBSECTION A, THE COURT
23 SHALL NOT AWARD ANY COMMUNITY PROPERTY TO A CONVICTED SPOUSE.

24 B. IF ONE SPOUSE IS REQUIRED TO MAKE ONGOING INSTALLMENT PAYMENTS TO A
25 CONVICTED SPOUSE PURSUANT TO A DIVISION OF PROPERTY AS DESCRIBED IN SECTION
26 25-318 AND THE CONVICTED SPOUSE'S CONVICTION OCCURS AFTER THE ORDER TO MAKE
27 THE INSTALLMENT PAYMENTS, THE SPOUSE MAKING THE INSTALLMENT PAYMENTS MAY
28 PETITION THE COURT FOR A MODIFICATION OF THAT ONGOING PAYMENT.

29 C. FOR THE PURPOSES OF THIS SECTION, "CONVICTED SPOUSE" MEANS A PERSON
30 WHO IS CONVICTED OF AN OFFENSE AND WHO IS SENTENCED TO AT LEAST EIGHTY YEARS
31 IN PRISON OR TO LIFE IN PRISON, WITH OR WITHOUT THE POSSIBILITY OF PAROLE.