

By: Harris

S.B. No. 866

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the rights and liabilities of the parties in a suit for
3 dissolution of a marriage and certain post-dissolution
4 proceedings.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 3.007(d), Family Code, is amended to
7 read as follows:

8 (d) A spouse who is a participant in an employer-provided
9 stock option plan or an employer-provided restricted stock plan has
10 a separate property interest in the options or restricted stock
11 granted to the spouse under the plan as follows:

12 (1) if the option or stock was granted to the spouse
13 before marriage but required continued employment during marriage
14 before the grant could be exercised or the restriction removed, the
15 spouse's separate property interest is equal to the fraction of the
16 option or restricted stock in which:

17 (A) the numerator is the period from the date the
18 option or stock was granted until the date of marriage and, if the
19 option or stock also required continued employment following the
20 date of dissolution of the marriage before the grant could be
21 exercised or the restriction removed, the period from the date of
22 dissolution of the marriage until the date the grant could be
23 exercised or the restriction removed; and

24 (B) the denominator is the period from the date

1 the option or stock was granted until the date the grant could be
2 exercised or the restriction removed; and

3 (2) if the option or stock was granted to the spouse
4 during the marriage but required continued employment following the
5 date of dissolution of the [after] marriage before the grant could
6 be exercised or the restriction removed, the spouse's separate
7 property interest is equal to the fraction of the option or
8 restricted stock in which:

9 (A) the numerator is the period from the date of
10 dissolution [~~or termination~~] of the marriage until the date the
11 grant could be exercised or the restriction removed; and

12 (B) the denominator is the period from the date
13 the option or stock was granted until the date the grant could be
14 exercised or the restriction removed.

15 SECTION 2. The heading to Subchapter E, Chapter 3, Family
16 Code, is amended to read as follows:

17 SUBCHAPTER E. CLAIMS FOR [~~ECONOMIC CONTRIBUTION AND~~] REIMBURSEMENT

18 SECTION 3. Section 3.402, Family Code, is amended to read as
19 follows:

20 Sec. 3.402. CLAIM FOR REIMBURSEMENT; OFFSETS [~~ECONOMIC~~
21 ~~CONTRIBUTION~~]. (a) For purposes of this subchapter, a claim for
22 reimbursement includes only:

23 (1) payment by one marital estate of the unsecured
24 liabilities of another marital estate;

25 (2) inadequate compensation for the time, toil,
26 talent, and effort of a spouse by a business entity under the
27 control and direction of that spouse;

1 (3) [~~"economic contribution" is the dollar amount of:~~
2 ~~(1)~~] the reduction of the principal amount of a debt
3 secured by a lien on property owned before marriage, to the extent
4 the debt existed at the time of marriage;

5 (4) [~~(2)~~] the reduction of the principal amount of a
6 debt secured by a lien on property received by a spouse by gift,
7 devise, or descent during a marriage, to the extent the debt existed
8 at the time the property was received;

9 (5) [~~(3)~~] the reduction of the principal amount of
10 that part of a debt, including a home equity loan:

- 11 (A) incurred during a marriage;
12 (B) secured by a lien on property; and
13 (C) incurred for the acquisition of, or for
14 capital improvements to, property;

15 (6) [~~(4)~~] the reduction of the principal amount of
16 that part of a debt:

- 17 (A) incurred during a marriage;
18 (B) secured by a lien on property owned by a
19 spouse;
20 (C) for which the creditor agreed to look for
21 repayment solely to the separate marital estate of the spouse on
22 whose property the lien attached; and

- 23 (D) incurred for the acquisition of, or for
24 capital improvements to, property;

25 (7) [~~(5)~~] the refinancing of the principal amount
26 described by Subdivisions (3)-(6) [~~(1)-(4)~~], to the extent the
27 refinancing reduces that principal amount in a manner described by

1 the applicable [~~appropriate~~] subdivision; and

2 (8) [~~(6)~~] capital improvements to property other than
3 by incurring debt.

4 (b) The court shall resolve a claim for reimbursement by
5 using equitable principles, including the principle that claims for
6 reimbursement may be offset against each other if the court
7 determines it to be appropriate.

8 (c) Benefits for the use and enjoyment of property may be
9 offset against a claim for reimbursement for expenditures to
10 benefit a marital estate.

11 (d) Reimbursement for funds expended by a marital estate for
12 improvements to another marital estate shall be measured by the
13 enhancement in value to the benefited marital estate.

14 (e) The party seeking an offset to a claim for reimbursement
15 has the burden of proof with respect to the offset. ["Economic
16 contribution" does not include the dollar amount of:

17 ~~[(1) expenditures for ordinary maintenance and repair~~
18 ~~or for taxes, interest, or insurance, or~~

19 ~~[(2) the contribution by a spouse of time, toil,~~
20 ~~talent, or effort during the marriage.]~~

21 SECTION 4. Section 3.404(b), Family Code, is amended to
22 read as follows:

23 (b) A [~~The~~] claim for reimbursement [~~economic contribution~~
24 ~~created~~] under this subchapter does not create an ownership
25 interest in property, but does create a claim against the property
26 of the benefited estate by the contributing estate. The claim
27 matures on dissolution of the marriage or the death of either

1 spouse.

2 SECTION 5. Sections 3.406(a) and (b), Family Code, are
3 amended to read as follows:

4 (a) On dissolution of a marriage, the court may [~~shall~~]
5 impose an equitable lien on the property of a benefited marital
6 estate to secure a claim for reimbursement against [~~economic~~
7 ~~contribution in~~] that property by a contributing [~~another~~] marital
8 estate.

9 (b) On the death of a spouse, a court may [~~shall~~], on
10 application for a claim for reimbursement [~~of economic~~
11 ~~contribution~~] brought by the surviving spouse, the personal
12 representative of the estate of the deceased spouse, or any other
13 person interested in the estate, as defined by Section 3, Texas
14 Probate Code, impose an equitable lien on the property of a
15 benefited marital estate to secure a claim for reimbursement
16 against that property [~~economic contribution~~] by a contributing
17 marital estate.

18 SECTION 6. Section 7.007, Family Code, is amended to read as
19 follows:

20 Sec. 7.007. DISPOSITION OF CLAIM FOR [~~ECONOMIC CONTRIBUTION~~
21 ~~OR CLAIM FOR~~] REIMBURSEMENT. [~~(a) In a decree of divorce or~~
22 ~~annulment, the court shall determine the rights of both spouses in a~~
23 ~~claim for economic contribution as provided by Subchapter E,~~
24 ~~Chapter 3, and in a manner that the court considers just and right,~~
25 ~~having due regard for the rights of each party and any children of~~
26 ~~the marriage, shall:~~

27 [~~(1) order a division of a claim for economic~~

1 ~~contribution of the community marital estate to the separate~~
2 ~~marital estate of one of the spouses;~~

3 ~~[(2) order that a claim for an economic contribution~~
4 ~~by one separate marital estate of a spouse to the community marital~~
5 ~~estate of the spouses be awarded to the owner of the contributing~~
6 ~~separate marital estate; and~~

7 ~~[(3) order that a claim for economic contribution of~~
8 ~~one separate marital estate in the separate marital estate of the~~
9 ~~other spouse be awarded to the owner of the contributing marital~~
10 ~~estate.~~

11 ~~[(b)]~~ In a decree of divorce or annulment, the court shall
12 determine the rights of both spouses in a claim for reimbursement as
13 provided by Subchapter E, Chapter 3, and shall apply equitable
14 principles to:

15 (1) determine whether to recognize the claim after
16 taking into account all the relative circumstances of the spouses;
17 and

18 (2) order a division of the claim for reimbursement,
19 if appropriate, in a manner that the court considers just and right,
20 having due regard for the rights of each party and any children of
21 the marriage.

22 SECTION 7. Section 9.014, Family Code, is amended to read as
23 follows:

24 Sec. 9.014. ATTORNEY'S FEES. The court may award
25 reasonable attorney's fees ~~[as costs]~~ in a proceeding under this
26 subchapter. The court may order the attorney's fees to be paid
27 directly to the attorney, who may enforce the order for fees in the

1 attorney's own name by any means available for the enforcement of a
2 judgment for debt.

3 SECTION 8. Subchapter B, Chapter 9, Family Code, is amended
4 by adding Section 9.106 to read as follows:

5 Sec. 9.106. ATTORNEY'S FEES. In a proceeding under this
6 subchapter, the court may award reasonable attorney's fees incurred
7 by a party to a divorce or annulment against the other party to the
8 divorce or annulment. The court may order the attorney's fees to be
9 paid directly to the attorney, who may enforce the order for fees in
10 the attorney's own name by any means available for the enforcement
11 of a judgment for debt.

12 SECTION 9. Section 9.205, Family Code, is amended to read as
13 follows:

14 Sec. 9.205. ATTORNEY'S FEES. In a proceeding to divide
15 property previously undivided in a decree of divorce or annulment
16 as provided by this subchapter, the court may award reasonable
17 attorney's fees [~~as costs~~]. The court may order the attorney's fees
18 to be paid directly to the attorney, who may enforce the order in
19 the attorney's own name by any means available for the enforcement
20 of a judgment for debt.

21 SECTION 10. The following laws are repealed:

- 22 (1) Sections 3.007(a), (b), and (f), Family Code;
23 (2) Sections 3.401(1), (2), and (3), Family Code; and
24 (3) Sections 3.403, 3.406(c), 3.407, 3.408, and 3.410,
25 Family Code.

26 SECTION 11. The changes in law made by this Act to Section
27 3.007, Family Code, apply to:

1 (1) a suit for dissolution of a marriage pending
2 before a trial court on or filed on or after the effective date of
3 this Act; and

4 (2) the estate of a person who dies on or after the
5 effective date of this Act.

6 SECTION 12. (a) In regard to a claim under Subchapter E,
7 Chapter 3, Family Code, that arises from a suit for dissolution of a
8 marriage, the changes in law made by this Act to that subchapter
9 apply only to a claim made in a suit filed on or after the effective
10 date of this Act. A claim made in a suit filed before the effective
11 date of this Act is governed by the law in effect on the date the
12 suit was filed, and the former law is continued in effect for that
13 purpose.

14 (b) In regard to a claim under Subchapter E, Chapter 3,
15 Family Code, that arises from the death of a spouse, the changes in
16 law made by this Act to that subchapter apply only to a claim
17 arising from a death that occurs on or after the effective date of
18 this Act. A claim arising from a death that occurs before the
19 effective date of this Act is governed by the law in effect on the
20 date of death, and the former law is continued in effect for that
21 purpose.

22 SECTION 13. The changes in law made by this Act to Chapter
23 9, Family Code, apply only to a proceeding commenced under that
24 chapter on or after the effective date of this Act. A proceeding
25 commenced under Chapter 9, Family Code, before the effective date
26 of this Act is governed by the law in effect immediately before that
27 date, and the former law is continued in effect for that purpose.

1 SECTION 14. This Act takes effect September 1, 2009.