

House Bill 908
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Chapter 7, Family Code, is amended by adding Section 7.009 to read as follows:

Sec. 7.009. FRAUD ON THE COMMUNITY; DIVISION AND DISPOSITION OF RECONSTITUTED ESTATE. (a)

In this section:

(1) "Accounting" means a written explanation and designation of all money or other assets spent or transferred, including:

(A) the amount of money or other assets spent or transferred;

(B) the date of each expenditure or transfer;

(C) the recipient of each expenditure or transfer; and

(D) the location of the money or assets spent or transferred.

(2) "Reconstituted estate" means the total value of the community estate that would exist if an actual or constructive fraud on the community had not occurred.

(b) A spouse commits actual fraud on the community if the spouse, with dishonesty of purpose or intent to deceive, spends or transfers community property for the primary purpose of depriving the other spouse of the use and enjoyment of the assets involved in the transaction.

(c) A spouse commits constructive fraud on the community if the spouse, regardless of intent, breaches a legal or equitable duty owed to the other spouse or to the community estate by spending or transferring community property, and the conduct deceives the other spouse or violates a confidence that exists as a result of the marriage.

(d) Acts by a spouse that constitute actual or constructive fraud on the community include:

(1) unfairly disposing of or encumbering the other spouse's interest in community property or unfairly incurring community debt without the other spouse's knowledge or consent;

(2) wrongfully conveying property from the community

SENATE VERSION (CS)

SECTION 1. Chapter 7, Family Code, is amended by adding Section 7.009 to read as follows:

Sec. 7.009. FRAUD ON THE COMMUNITY; DIVISION AND DISPOSITION OF RECONSTITUTED ESTATE.

(a) In this section, "reconstituted estate" means the total value of the community estate that would exist if an actual or constructive fraud on the community had not occurred.

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estate without the other spouse's knowledge or consent;

(3) negligently, or with dishonesty of purpose or intent to deceive, wasting community assets by depriving the community estate of assets to the detriment of the other spouse; and

(4) failing, without good cause, to provide to the other spouse an accounting of money or other assets that have been transferred from the community estate without the consent of the other spouse, if the other spouse contests the fairness of a transfer of the money or assets.

(e) If the trier of fact determines that a spouse has committed actual or constructive fraud on the community, the court shall:

(1) calculate the value by which the community estate was depleted as a result of the fraud on the community and calculate the amount of the reconstituted estate; and

(2) divide the value of the reconstituted estate between the parties in a manner the court deems just and right.

(f) In making a just and right division of the reconstituted estate under Section 7.001, the court may grant any legal or equitable relief necessary to accomplish a just and right division, including:

(1) awarding to the wronged spouse an appropriate share of the community estate remaining after the actual or constructive fraud on the community;

(2) awarding a money judgment in favor of the wronged spouse against the spouse who committed the actual or constructive fraud on the community; or

(3) awarding to the wronged spouse both a money judgment and an appropriate share of the community estate.

SECTION 2. The change in law made by this Act applies to a suit for dissolution of a marriage pending before a trial court

SENATE VERSION (CS)

(b) If the trier of fact determines that a spouse has committed actual or constructive fraud on the community, the court shall:

(1) calculate the value by which the community estate was depleted as a result of the fraud on the community and calculate the amount of the reconstituted estate; and

(2) divide the value of the reconstituted estate between the parties in a manner the court deems just and right.

(c) In making a just and right division of the reconstituted estate under Section 7.001, the court may grant any legal or equitable relief necessary to accomplish a just and right division, including:

(1) awarding to the wronged spouse an appropriate share of the community estate remaining after the actual or constructive fraud on the community;

(2) awarding a money judgment in favor of the wronged spouse against the spouse who committed the actual or constructive fraud on the community; or

(3) awarding to the wronged spouse both a money judgment and an appropriate share of the community estate.

SECTION 2. Same as House version.

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on or filed on or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 2011.

SECTION 3. Same as House version.