

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 511

Introduced by Assembly Member Matthews

February 21, 2001

An act *to amend Sections 3800, 3801, and 3802 of, and to add Section 2601.5 to the Family Code, relating to, community property.*

LEGISLATIVE COUNSEL'S DIGEST

AB 511, as amended, Matthews. Community property: primary residence.

(1) Existing law authorizes the court to divide the community estate in a proceeding for dissolution of marriage or legal separation of the parties. Where economic circumstances warrant, the court may award an asset of community property to one party on those conditions the court deems proper to effect a substantially equal division of the community estate.

This bill would provide that there is a rebuttable presumption that the primary residence of the minor children of the marriage should be awarded to the party who is awarded, for the substantial majority of time, primary physical custody of the children. These provisions would only apply if the primary residence is characterized by the court as community property.

(2) *Existing law authorizes a court to grant an order temporarily delaying the sale of a home and awarding temporarily the exclusive use and possession of the family home, known as a deferred sale of home order, to a custodial parent in order to minimize the adverse impact on a child resulting from a dissolution of marriage or legal separation of*

the parties. Existing law authorizes the court to consider specified information in exercising its discretion to grant or deny the order.

This bill would additionally authorize the court to grant that order to the lower wage earner where the parties were in a long-term marriage and there is a substantial disparity in the parties' relative economic situation. The bill would also require the court, in exercising its discretion to grant or deny a deferred sale of home order, to additionally consider the economic disparity between the parties, whether the resident party is responsible for caring for aged or disabled parents who have been residing in the family home, and whether the resident party operates a business out of the home and demonstrates a substantial likelihood that the party will be unable to relocate the business. The bill would also make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2601.5 is added to the Family Code, to
2 read:

3 2601.5. (a) There shall be a rebuttable presumption that the
4 primary residence of the minor children of the marriage should be
5 awarded to the party who is awarded, for the substantial majority
6 of time, primary physical custody of the children. The court shall
7 exercise its authority to award the primary residence to one party
8 pursuant to this section for the purpose of minimizing the impact
9 of dissolution of marriage or legal separation of the parties on the
10 welfare of children of the marriage. This authority shall be in
11 addition to the authority of the court to make an order deferring the
12 sale of a marital home pursuant to Chapter 8 (commencing with
13 Section 3800) of Part 1 of Division 9.

14 (b) If necessary to effect an equal division of property pursuant
15 to Section 2550, or for other just cause, the court shall consider
16 ordering the use of a reverse mortgage or other financial
17 mechanisms to further the purposes of this section.

18 (c) This section shall only apply if the primary residence is
19 characterized by the court as community property.

20 SEC. 2. Section 3800 of the Family Code is amended to read:

21 3800. As used in this chapter:



1 (a) “Custodial parent” means a party awarded physical
2 custody of a child.

3 (b) “Deferred sale of home order” means an order that
4 temporarily delays the sale and awards the temporary exclusive
5 use and possession of the family home to ~~a custodial parent of a~~
6 ~~minor child or child for whom support is authorized under~~
7 ~~Sections 3900 and 3901 or under Section 3910, whether or not the~~
8 ~~custodial parent has sole or joint custody, in order to minimize the~~
9 ~~adverse impact of dissolution of marriage or legal separation of the~~
10 ~~parties on the welfare of the child~~ *one of parties, consistent with*
11 *Section 3802.*

12 (c) “Resident ~~parent~~ *party*” means a party who has requested
13 or who has already been awarded a deferred sale of home order.

14 *SEC. 3. Section 3801 of the Family Code is amended to read:*

15 3801. (a) If one of the parties has requested a deferred sale of
16 home order pursuant to this chapter, the court shall first determine
17 whether it is economically feasible to maintain the payments of
18 any note secured by a deed of trust, property taxes, insurance for
19 the home during the period the sale of the home is deferred, and
20 the condition of the home comparable to that at the time of trial.

21 (b) In making this determination, the court shall consider all of
22 the following:

23 (1) The resident ~~parent’s~~ *party’s* income.

24 (2) The availability of spousal support, child support, or both
25 spousal and child support.

26 (3) Any other sources of funds available to make those
27 payments.

28 (c) It is the intent of the Legislature, by requiring the
29 determination under this section, to do all of the following:

30 (1) Avoid the likelihood of possible defaults on the payments
31 of notes and resulting foreclosures.

32 (2) Avoid inadequate insurance coverage.

33 (3) Prevent deterioration of the condition of the family home.

34 (4) Prevent any other circumstance which would jeopardize
35 both ~~parents’~~ *parties’* equity in the home.

36 *SEC. 4. Section 3802 of the Family Code is amended to read:*

37 3802. (a) If the court determines pursuant to Section 3801
38 that it is economically feasible to consider ordering a deferred sale
39 of the family home, the court may grant a deferred sale of home
40 order to ~~a~~ *either of the following:*



- 1 (1) A custodial parent if the court determines that the order is
- 2 necessary in order to minimize the adverse impact of dissolution
- 3 of marriage or legal separation of the parties on the child.
- 4 (2) *The lower wage earner where the parties were in a*
- 5 *long-term marriage and there is a substantial disparity in the*
- 6 *parties' relative economic situation.*
- 7 (b) In exercising its discretion to grant or deny a deferred sale
- 8 of home order, the court shall consider all of the following, *as*
- 9 *applicable:*
- 10 (1) The length of time the child has resided in the home.
- 11 (2) The child's placement or grade in school.
- 12 (3) The accessibility and convenience of the home to the child's
- 13 school and other services or facilities used by and available to the
- 14 child, including child care.
- 15 (4) Whether the home has been adapted or modified to
- 16 accommodate any physical disabilities of a child or a resident
- 17 ~~parent~~ party in a manner that a change in residence may adversely
- 18 affect the ability of the resident ~~parent~~ party to meet the needs of
- 19 the child *or the party.*
- 20 (5) The emotional detriment to the child associated with a
- 21 change in residence.
- 22 (6) The extent to which the location of the home permits the
- 23 resident ~~parent~~ party to continue employment.
- 24 (7) The financial ability of each ~~parent~~ party to obtain suitable
- 25 housing.
- 26 (8) The tax consequences to the ~~parents~~ parties.
- 27 (9) The economic detriment to the nonresident ~~parent~~ party in
- 28 the event of a deferred sale of home order.
- 29 (10) *The economic disparity between the parties.*
- 30 (11) *Whether the resident party is responsible for caring for*
- 31 *aged or disabled parents who have been residing in the family*
- 32 *home.*
- 33 (12) *Whether the resident party operates a business out of the*
- 34 *home and demonstrates to the court a substantial likelihood that*
- 35 *the party will be unable to relocate the business.*
- 36 (13) Any other factors the court deems just and equitable.

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