

AMENDED IN ASSEMBLY APRIL 25, 2001

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 3802, and 3808~~ of 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.~~



1 ~~SEC. 2.~~

2 SECTION 1. Section 3800 of the Family Code is amended to
3 read:

4 3800. As used in this chapter:

5 (a) “Custodial parent” means a party awarded physical
6 custody of a child.

7 (b) “Deferred sale of home order” means an order that
8 temporarily delays the sale and awards the temporary exclusive
9 use and possession of the family home to one of parties, consistent
10 with Section 3802.

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

13 ~~SEC. 3.~~

14 SEC. 2. 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 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 parties’ equity in the home.

36 ~~SEC. 4.~~

37 SEC. 3. Section 3802 of the Family Code is amended to read:

38 3802. (a) If the court determines pursuant to Section 3801
39 that it is economically feasible to consider ordering a deferred sale



1 of the family home, the court may grant a deferred sale of home
2 order to either of the following:

3 (1) A custodial parent if the court determines that the order is
4 necessary in order to minimize the adverse impact of dissolution
5 of marriage or legal separation of the parties on the child.

6 (2) The lower wage earner where the parties were in a
7 long-term marriage and there is a substantial disparity in the
8 parties' relative economic situation.

9 (b) In exercising its discretion to grant or deny a deferred sale
10 of home order, the court shall consider all of the following, as
11 applicable:

12 (1) The length of time the child has resided in the home.

13 (2) The child's placement or grade in school.

14 (3) The accessibility and convenience of the home to the child's
15 school and other services or facilities used by and available to the
16 child, including child care.

17 (4) Whether the home has been adapted or modified to
18 accommodate any physical disabilities of a child or a resident party
19 in a manner that a change in residence may adversely affect the
20 ability of the resident party to meet the needs of the child or the
21 party.

22 (5) The emotional detriment to the child associated with a
23 change in residence.

24 (6) The extent to which the location of the home permits the
25 resident party to continue employment.

26 (7) The financial ability of each party to obtain suitable
27 housing.

28 (8) The tax consequences to the parties.

29 (9) The economic detriment to the nonresident party in the
30 event of a deferred sale of home order.

31 (10) The economic disparity between the parties.

32 (11) Whether the resident party is responsible for caring for
33 aged or disabled parents who have been residing in the family
34 home.

35 (12) Whether the resident party operates a business out of the
36 home and demonstrates to the court a substantial likelihood that
37 the party will be unable to relocate the business.

38 (13) Any other factors the court deems just and equitable.

39 *SEC. 4. Section 3808 of the Family Code is amended to read:*



1 3808. Except as otherwise agreed to by the parties in writing,
2 if the party awarded the deferred sale of home order remarries, or
3 if there is otherwise a change in circumstances affecting the
4 determinations made pursuant to Section 3801 or 3802 or affecting
5 the economic status of the parties or the children on which the
6 award is based, a rebuttable presumption, affecting the burden of
7 proof, is created that further deferral of the sale is no longer an
8 equitable method of minimizing the adverse impact of the
9 dissolution of marriage or legal separation of the parties ~~on the~~
10 ~~children.~~

