

Introduced by Senator Ortiz

February 10, 1999

An act to amend Section 2040 of the Family Code, relating to dissolution of marriage.

LEGISLATIVE COUNSEL'S DIGEST

SB 357, as introduced, Ortiz. Dissolution of marriage: attorneys' fees.

Existing law requires, upon the commencement of proceedings for dissolution or nullity of marriage or legal separation of the parties, that the summons contain a temporary restraining order restraining both parties from, among other things, transferring, encumbering, hypothecating, concealing, or otherwise disposing of any property, except as specified. This restraining order, however, does not preclude the use of community property for the payment of attorneys' fees incurred in the proceeding.

This bill would provide that the restraining order also does not preclude the use of quasi-community property or a party's own separate property for the payment of attorneys' fees; but would require that any party who uses community or quasi-community property or the other party's separate property for that purpose shall account to the community or the other party for that use.

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 2040 of the Family Code is
2 amended to read:

3 2040. (a) In addition to the contents required by
4 Section 412.20 of the Code of Civil Procedure, the
5 summons shall contain a temporary restraining order:

6 (1) Restraining both parties from removing the minor
7 child or children of the parties, if any, from the state
8 without the prior written consent of the other party or an
9 order of the court.

10 (2) Restraining both parties from transferring,
11 encumbering, hypothecating, concealing, or in any way
12 disposing of any property, real or personal, whether
13 community, quasi-community, or separate, without the
14 written consent of the other party or an order of the court,
15 except in the usual course of business or for the necessities
16 of life and requiring each party to notify the other party
17 of any proposed extraordinary expenditures at least five
18 business days before incurring those expenditures and to
19 account to the court for all extraordinary expenditures
20 made after service of the summons on that party.

21 ~~However,~~

22 *Notwithstanding the foregoing, nothing in the*
23 *restraining order shall preclude ~~the parties~~ a party from*
24 *using community property, quasi-community property,*
25 *or the party's own separate property to pay reasonable*
26 *attorney's fees and costs in order to retain legal counsel*
27 *in the proceeding. If a party uses community or*
28 *quasi-community property or property that is*
29 *determined to be the other party's separate property to*
30 *pay his or her attorneys' fees and costs, the party using the*
31 *property shall account to the community or the other*
32 *party for the use of the property.*

33 (3) Restraining both parties from cashing, borrowing
34 against, canceling, transferring, disposing of, or changing
35 the beneficiaries of any insurance or other coverage,
36 including life, health, automobile, and disability held for
37 the benefit of the parties and their child or children for
38 whom support may be ordered.



1 (b) In all actions filed on and after January 1, 1995, the
2 summons shall contain the following notice:

3 “WARNING: California law provides that, for purposes
4 of division of property upon dissolution of marriage or
5 legal separation, property acquired by the parties during
6 marriage in joint form is presumed to be community
7 property. If either party to this action should die before
8 the jointly held community property is divided, the
9 language of how title is held in the deed (i.e., joint
10 tenancy, tenants in common, or community property)
11 will be controlling and not the community property
12 presumption. You should consult your attorney if you
13 want the community property presumption to be written
14 into the recorded title to the property.”

