

Senate Bill No. 357

CHAPTER 118

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

[Approved by Governor July 13, 1999. Filed with
Secretary of State July 13, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 357, 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 fees to retain an attorney 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 fees and costs to retain an attorney in the proceeding ; 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.

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

SECTION 1. Section 2040 of the Family Code is amended to read:

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

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

(2) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all



extraordinary expenditures made after service of the summons on that party.

Notwithstanding the foregoing, nothing in the restraining order shall preclude a party from using community property, quasi-community property, or the party's own separate property to pay reasonable attorney's fees and costs in order to retain legal counsel in the proceeding. A party who uses community property or quasi-community property to pay his or her attorney's retainer for fees and costs under this provision shall account to the community for the use of the property. A party who uses other property that is subsequently determined to be the separate property of the other party to pay his or her attorney's retainer for fees and costs under this provision shall account to the other party for the use of the property.

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

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

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

