

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

House Bill 836

(Delegate Dumais)

Judiciary

Judicial Proceedings

Family Law - Property Disposition - Transfer of Family Use Personal Property

This bill expands the type of property that may be transferred by a court in an annulment or absolute divorce proceeding to include family use personal property.

The bill has prospective application.

Fiscal Summary

State Effect: Potential significant increase in expenditures to handle additional workload. No effect on revenues.

Local Effect: Potential significant increase in expenditures to handle additional workload. No effect on revenues.

Small Business Effect: Potential minimal. Litigants may have to pay attorneys for additional trial preparation and trial time under this bill.

Analysis

Bill Summary: This bill provides that after the court determines which property is marital property, and the value of the marital property, the court may transfer ownership of an interest in family use personal property from one or both parties to either or both parties, subject to the consent of any lienholders. "Family use personal property" means tangible personal property acquired during the marriage, owned by one or both of the parties, and used primarily for family purposes. Family use personal property includes motor vehicles, furniture, furnishings, and household appliances. It does not include property acquired by inheritance or gift, or excluded by valid agreement.

The court must determine the terms of the transfer of the interest in family use personal property after considering the following factors:

- the monetary and nonmonetary contributions of each party to the family's well-being;
- the value of all property interests of each party;
- the economic circumstances of each party at the time the award is to be made;
- the circumstances of estrangement;
- the duration of the marriage;
- the age of each party;
- the physical and mental condition of each party;
- how and when the specific marital property or interest in the family use personal property was acquired, including the effort expended to acquire the property or interest;
- the contribution by either party of property described as marital property; the award of any alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and
- any other factor the court considers necessary or appropriate to arrive at a fair and equitable monetary award or transfer of interest or property.

Current Law: When the court grants an annulment, or a limited or an absolute divorce, the court may resolve any dispute between the parties with respect to ownership of personal property or real property. However, except as specified, the court may not transfer ownership of personal or real property from one party to the other. When the court determines the ownership of personal or real property, the court may grant a decree that states what the ownership interest of each party is and, for property owned by both parties, order a partition, or a sale and division of the proceeds.

In a proceeding for annulment or absolute divorce, if there is a dispute as to what property is marital property, the court must resolve the dispute within specified time frames. Except as otherwise provided, the court is required to determine the value of all marital property.

After the court determines which property is marital property and its value, the court may transfer ownership interest in a pension, retirement, profit sharing, or deferred compensation plan from one party to either or both parties, or grant a monetary award, or both, as an adjustment of the rights and equities of the parties concerning marital property, whether or not alimony is awarded.

The court shall determine the amount and method of payment of a monetary award, or the terms of the transfer of interest in the pension, retirement, profit sharing, or deferred compensation plan after considering factors as specified in statute. The court may reduce to a judgment any monetary award made, to the extent that any part of the award is due and owing.

State and Local Fiscal Effect: Divorce or annulment cases involving property disputes are heard by the circuit courts. This bill could significantly impact how the courts handle marital property determinations and awards in divorce and annulment cases. The bill authorizes judges to transfer ownership of an interest in family use personal property from one or both parties to either or both parties. To decide whether or not to effect a transfer, judges would be required to take additional testimony regarding how individual items of family use personal property are used, determine the individual needs of the parties and their children, and decide how best to distribute the individual property items. Such a determination could include findings regarding dishes, silverware, furniture, and other items. As a result, in contested cases, longer, more complex trials could occur.

The Administrative Office of the Courts (AOC) advises that the Judiciary heard 36,545 divorce and annulment cases in fiscal 2003. AOC does not maintain statistics on the number of divorce cases that involve property disputes. However, the Women's Law Center is in the process of completing a study of divorce and custody cases in the State. Preliminary results of their study indicate that monetary awards are made in about 35% of divorce cases. Ostensibly, a larger number of cases involve requests for monetary awards which are denied. However, if, for illustrative purposes, the 35% threshold is applied to the cases heard by the Judiciary in fiscal 2003, then 12,790 cases could involve additional testimony, longer trials, and more issues for judges to resolve.

Additional Information

Prior Introductions: None.

Cross File: SB 418 (Senator Grosfeld) – Judicial Proceedings.

Information Source(s): Department of Legislative Services

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Analysis by: Karen D. Morgan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510