

Department of Legislative Services
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FISCAL AND POLICY NOTE
Revised

Senate Bill 353

(Senators Grosfeld and Miller)

Judicial Proceedings

Judiciary

Family Law - Property Disposition in Annulment or Divorce - Transfer of Real Property

This bill provides that in a divorce or annulment proceeding, a court may transfer, subject to the terms of any lien, ownership of an interest in real property jointly owned by the parties, and used as the principal residence of the parties when they lived together, by: (1) ordering the transfer of ownership of the real property or any interest of one of the parties in the real property to the other party if the party to whom the real property is transferred obtains the release of the other party from any lien against the real property; (2) authorizing one party to purchase the interest of the other party in the real property, in accordance with the terms and conditions ordered by the court; or (3) both.

The bill has prospective application.

Fiscal Summary

State Effect: The bill's requirements could be met with existing resources. No effect on revenues.

Local Effect: The bill's requirements could be met with existing resources. No effect on revenues.

Small Business Effect: Potential minimal. Litigants may have to pay attorneys and real estate professionals to facilitate real estate transactions that may be ordered by the court.

Analysis

Current Law: In an action for annulment or divorce, after the court determines which property is marital property and the value of that property, the court may transfer an ownership interest in specified types of marital property and/or grant a monetary award. The transfer or grant is an adjustment of the equity of the parties regarding the marital property, regardless of an alimony award.

Generally, the court may not transfer the ownership of personal or real property from one party to the other. However, the court is authorized to transfer ownership of an interest in a pension, retirement, profit sharing, or deferred compensation plan from one party to either or both parties. Subject to consent of any lienholders, the court is also authorized to transfer an ownership interest in family use personal property from one or both parties to either or both parties.

The court must determine the terms for a monetary award or transfer of a property interest, or both, after considering each of the following factors:

- the contributions of each party to the family's well-being;
- the value of all property interests of each party;
- each party's economic circumstances at the time of the award;
- the circumstances contributing to the parties' estrangement;
- the duration of the marriage;
- the age of each party;
- each party's mental and physical condition;
- how and when the specific marital property or property interest was acquired;
- the contribution by either party of nonmarital property to the acquisition of real property held as tenants by the entirety by the parties;
- any award of alimony or other provision regarding family use personal property or the family home; and

- any other factor the court considers necessary or appropriate to reach a fair and equitable monetary award or transfer of a property interest.

Background: Some jurisdictions in the region allow a court to transfer real property or the interest in real property from one party to another in a divorce or annulment action. The District of Columbia authorizes the court to distribute real property or the interest in real property as part of a final decree for separation, annulment, or divorce. Virginia authorizes the court to transfer or order the transfer of real property or an interest in real property in a manner similar to the provisions of this bill. However, Pennsylvania and Delaware do not appear to allow a court to transfer real property or an interest in real property in this manner.

The Administrative Office of the Courts (AOC) advises that the circuit courts filed or reopened 37,028 divorce/annulment cases in fiscal 2005. AOC does not maintain statistics on the number of cases that involve property disputes.

The Women's Law Center conducted a study of financial distribution in divorce cases by analyzing the divorce cases filed in Maryland courts during fiscal 1999. The study found that marital property awards were requested in 21.8% of cases filed and awards were made in 16% of cases filed. There is no information on whether awards included compensation for the family home. The study also found that parties to a divorce action are more likely to request a monetary award after longer marriages.

State and Local Fiscal Effect: Divorce or annulment cases involving property disputes are heard by the circuit courts. The courts already take testimony regarding the value of the family home. Because this bill would allow the court to dispose of an ownership interest in the family home based on testimony already taken, it is expected that the bill's requirements could be met with existing resources.

Additional Information

Prior Introductions: This bill is similar to SB 262/HB 329 of 2005, both of which received unfavorable reports from the Senate Judicial Proceedings and House Judiciary committees, respectively.

Cross File: HB 452 (Delegate Dumais, *et al.*) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), The Women's Law Center, Department of Legislative Services

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