

BILL ANALYSIS

Senate Research Center
82R16121 JSC-F

H.B. 908
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Jurisprudence
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law regarding the award of marital property on dissolution of marriage does not give courts guidance on what to do in situations in which a spouse has committed fraud on the community estate of the marriage.

H.B. 908 provides the courts with acts that constitute fraud on the community, a procedure for correcting fraud, and a procedure to divide the community estate in a just and right manner. This bill will ensure consistency across the state regarding how community estates are divided when fraud has been committed.

H.B. 908 amends current law relating to the division of community property on dissolution of marriage.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 7, Family Code, by adding Section 7.009, as follows:

Sec. 7.009. FRAUD ON THE COMMUNITY; DIVISION AND DISPOSITION OF RECONSTITUTED ESTATE. (a) Defines, in this section, "accounting" and "reconstituted estate."

(b) Provides that a spouse commits actual fraud on the community if the spouse, with dishonesty of purpose or intent to deceive, spends or transfers community property for the primary purpose of depriving the other spouse of the use and enjoyment of the assets involved in the transaction.

(c) Provides that a spouse commits constructive fraud on the community if the spouse, regardless of intent, breaches a legal or equitable duty owed to the other spouse or to the community estate by spending or transferring community property, and the conduct deceives the other spouse or violates a confidence that exists as a result of the marriage.

(d) Provides that acts by a spouse that constitute actual or constructive fraud on the community include:

(1) unfairly disposing of or encumbering the other spouse's interest in community property or unfairly incurring community debt without the other spouse's knowledge or consent;

(2) wrongfully conveying property from the community estate without the other spouse's knowledge or consent;

(3) negligently, or with dishonesty of purpose or intent to deceive, wasting community assets by depriving the community estate of assets to the detriment of the other spouse; and

(4) failing, without good cause, to provide to the other spouse an accounting of money or other assets that have been transferred from the community estate without the consent of the other spouse, if the other spouse contests the fairness of a transfer of the money or assets.

(e) Requires the court, if the trier of fact determines that a spouse has committed actual or constructive fraud on the community, to:

(1) calculate the value by which the community estate was depleted as a result of the fraud on the community and calculate the amount of the reconstituted estate; and

(2) divide the value of the reconstituted estate between the parties in a manner the court deems just and right.

(f) Authorizes the court, in making a just and right division of the reconstituted estate under Section 7.001 (General Rule of Property Division), to grant any legal or equitable relief necessary to accomplish a just and right division, including:

(1) awarding to the wronged spouse an appropriate share of the community estate remaining after the actual or constructive fraud on the community;

(2) awarding a money judgment in favor of the wronged spouse against the spouse who committed the actual or constructive fraud on the community; or

(3) awarding to the wronged spouse both a money judgment and an appropriate share of the community estate.

SECTION 2. Provides that the change in law made by this Act applies to a suit for dissolution of a marriage pending before a trial court on or filed on or after the effective date of this Act.

SECTION 3. Effective date: September 1, 2011.