

REFERENCE TITLE: **divorce; disposition of property**

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

# **SB 1112**

Introduced by  
Senator Gray L

**AN ACT**

**AMENDING SECTION 25-318, ARIZONA REVISED STATUTES; RELATING TO DISSOLUTION OF MARRIAGE.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 25-318, Arizona Revised Statutes, is amended to  
3 read:

4 25-318. Disposition of property; retroactivity; notice to  
5 creditors; assignment of debts; contempt of court

6 A. In a proceeding for dissolution of the marriage, or for legal  
7 separation, or in a proceeding for disposition of property following  
8 dissolution of the marriage by a court which previously lacked personal  
9 jurisdiction over the absent spouse or previously lacked jurisdiction to  
10 dispose of the property, the court shall assign each spouse's sole and  
11 separate property to such spouse. It shall also divide the community, joint  
12 tenancy and other property held in common equitably, though not necessarily  
13 in kind, without regard to marital misconduct. For the purposes of this  
14 section only, property acquired by either spouse outside this state shall be  
15 deemed to be community property if the property would have been community  
16 property if acquired in this state.

17 B. IN DIVIDING PROPERTY, THE COURT MAY CONSIDER ALL DEBTS AND  
18 OBLIGATIONS THAT ARE RELATED TO THE PROPERTY, INCLUDING ACCRUED OR ACCRUING  
19 TAXES THAT WOULD BECOME DUE ON THE RECEIPT, SALE OR OTHER DISPOSITION OF THE  
20 PROPERTY. THE COURT MAY ALSO CONSIDER THE EXEMPT STATUS OF PARTICULAR  
21 PROPERTY PURSUANT TITLE 33, CHAPTER 8.

22 C. This section does not prevent the court from considering all actual  
23 damages and judgments from conduct that ~~results~~ RESULTED in criminal  
24 conviction of either spouse in which the other spouse or A child was the  
25 victim, ~~OR~~ excessive or abnormal expenditures, destruction, concealment or  
26 fraudulent disposition of community, joint tenancy and other property held in  
27 common.

28 ~~B.~~ D. The community, joint tenancy and other property held in common  
29 for which no provision is made in the decree shall be from the date of the  
30 decree held by the parties as tenants in common, each possessed of an  
31 undivided one-half interest.

32 ~~C.~~ E. The court may impress a lien on the separate property of either  
33 party or the marital property awarded to either party in order to secure the  
34 payment of:

- 35 1. Any interest or equity the other party has in or to the property.
- 36 2. Community debts that the court has ordered to be paid by the
- 37 parties.
- 38 3. An allowance for child support or spousal maintenance, or both.
- 39 4. All actual damages and judgments from conduct that ~~results~~ RESULTED
- 40 in criminal conviction of either spouse in which the other spouse or A child
- 41 was the victim.

42 ~~D.~~ F. The decree or judgment shall specifically describe by legal  
43 description any real property affected and shall specifically describe any  
44 other property affected.

1 ~~E.~~ G. This section applies through both prospective and retrospective  
2 operation to property without regard to the date of acquisition.

3 ~~F.~~ H. In all actions for the dissolution of marriage or legal  
4 separation, the court shall require the following statement in the materials  
5 provided to the petitioner and to be served on the respondent:

6 Notice

7 In your property settlement agreement or decree of dissolution  
8 or legal separation, the court may assign responsibility for  
9 certain community debts to one spouse or the other. Please be  
10 aware that a court order that does this is binding on the  
11 spouses only and does not necessarily relieve either of you from  
12 your responsibility for these community debts. These debts are  
13 matters of contract between both of you and your creditors (such  
14 as banks, credit unions, credit card issuers, finance companies,  
15 utility companies, medical providers and retailers).

16 Since your creditors are not parties to this court case, they  
17 are not bound by court orders or any agreements you and your  
18 spouse reach in this case. On request, the court may impose a  
19 lien against the separate property of a spouse to secure payment  
20 of debts that the court orders that spouse to pay.

21 You may want to contact your creditors to discuss your debts as  
22 well as the possible effects of your court case on your debts.  
23 To assist you in identifying your creditors, you may obtain a  
24 copy of your spouse's credit report by making a written request  
25 to the court for an order requiring a credit reporting agency to  
26 release the report to you. Within thirty days after receipt of  
27 a request from a spouse who is party to a dissolution of  
28 marriage or legal separation action, which includes the court  
29 and case number of the action, creditors are required by law to  
30 provide information as to the balance and account status of any  
31 debts for which the requesting spouse may be liable to the  
32 creditor. You may wish to use the following form, or one that  
33 is similar, to contact your creditors:

34 Creditor notification

35 Date: \_\_\_\_\_

36 Creditor name and

37 Address: \_\_\_\_\_

38 \_\_\_\_\_

39 \_\_\_\_\_

40 Within thirty days after receipt of this notice, you are  
41 requested to provide the balance and account status of any debt  
42 identified by account number for which the requesting party may  
43 be liable to you.

44 Name: \_\_\_\_\_

45 Address: \_\_\_\_\_

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(signature)  
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(printed name)

~~G.~~ I. On the written request of any party to a pending dissolution of marriage or legal separation action, the court, except for good cause shown, shall issue an order requiring any credit reporting agency to release the credit report as to the spouse of the requesting party on payment by the requesting party of any customary fee for providing the credit report.

~~H.~~ J. On the request of either party and except for good cause shown, the court shall require the parties to submit a debt distribution plan that states the following:

1. How community creditors will be paid.
2. Whether any agreements have been entered into between the parties as to responsibility for the payment of community debts, including what, if any, collateral will secure the payment of the debt.
3. Whether the parties have entered into agreements with creditors through which a community debt will be the sole responsibility of one party.

~~I.~~ K. The following form may be used to verify agreements with creditors:

Agreement with creditor

The parties to this agreement include \_\_\_\_\_  
and \_\_\_\_\_ who are parties to a dissolution of marriage action filed in \_\_\_\_\_ county superior court, Arizona, case number \_\_\_\_\_ and \_\_\_\_\_ who is a duly authorized representative of \_\_\_\_\_ (creditor).

The undersigned parties agree that the debt owed by the parties to \_\_\_\_\_ (creditor) is to be disposed of as follows (check one):

\_\_\_ The debt is the joint responsibility of the parties, with payment to be made on the following terms: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ The balance of the debt is the sole responsibility of \_\_\_\_\_ and the creditor releases \_\_\_\_\_ from any further liability for that debt, with payment to be made on the following terms: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ The debt has been paid in full as of this date.  
We the undersigned acknowledge this agreement.

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Dated: \_\_\_\_\_

\_\_\_\_\_  
Debtor Debtor

\_\_\_\_\_  
Creditor's representative

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

~~J~~ L. If the parties are not able to agree to a joint debt distribution plan pursuant to subsection ~~H~~ J, the court may order each party to submit a proposed debt distribution plan to the court. In its orders relating to the division of property, the court shall reflect the debt distribution plan approved by the court and shall confirm that any community debts that are made the sole responsibility of one of the parties by agreement with a creditor are the sole responsibility of that party.

~~K~~ M. An agreement with a creditor pursuant to subsection ~~I~~ K that assigns or otherwise modifies repayment responsibility for community debts secured by real property located in this state shall include all of the following:

- 1. A legal description of the real property.
- 2. A copy of the note and recorded security instrument, the repayment of which is to be assigned or modified by the agreement with a creditor.
- 3. A written and notarized acknowledgment that is executed by all parties to the debt, including the lender, and that states one of the following:
  - (a) The terms for the repayment of the debt remain unchanged.
  - (b) The terms for the repayment of the debt have been modified and, beginning on the date of the execution of the acknowledgment, the creditor has agreed that one of the debtors assumes the sole responsibility for the debt and that the other debtor is released from any further liability on the debt.
  - (c) The debt is paid in full and all parties to the debt are released from any further liability.

~~L~~ N. An agreement executed pursuant to subsection ~~K~~ M shall be recorded by either party in the county in which the real property is located.

~~M~~ O. After an agreement is recorded pursuant to subsection ~~L~~ N, either party may request that on payment of the title company's fees for the document a title company authorized to do business in this state provide the requesting party with a lien search report or other documentary evidence of liens and other agreements of record in the title to the property.

1           ~~N.~~ P. If a party fails to comply with an order to pay debts, the  
2 court may enter orders transferring property of that spouse to compensate the  
3 other party. If the court finds that a party is in contempt as to an order  
4 to pay community debts, the court may impose appropriate sanctions under the  
5 law. A party must bring an action to enforce an order to pay a debt pursuant  
6 to this subsection within two years after the date in which the debt should  
7 have been paid in full.

8           ~~Q.~~ Q. Within thirty days after receipt of a written request for  
9 information from a spouse who is a party to a dissolution of marriage or  
10 legal separation action, which includes the court and case number of the  
11 action, a creditor shall provide the balance and account status of any debts  
12 of either or both spouses identified by account number for which the  
13 requesting spouse may be liable to the creditor.

14           R. IF ANY PART OF THE COURT'S DIVISION OF JOINT, COMMON OR COMMUNITY  
15 PROPERTY IS IN THE NATURE OF CHILD SUPPORT OR SPOUSAL MAINTENANCE, THE COURT  
16 SHALL MAKE SPECIFIC FINDINGS OF FACT AND SUPPORTING CONCLUSIONS OF LAW IN ITS  
17 DECREE.