

Updates On Pending Family Law Legislation

Currently, there are numerous bills pending in the Ohio legislature that directly impact the area of Family Law. Some have passed in both houses and are awaiting Governor Strickland's signature.

House Bill 238 would require each spouse who is a party to a divorce or legal separation matter to disclose, in a full and complete manner, all of that spouse's marital property, separate property, and other assets. Any non-disclosure would be treated as a form of financial misconduct for which the court could compensate the offended spouse with a distributive award or a greater award of marital property.

As of May 28, 2010, House Bill 238 has passed in both houses. The effective date would be 90 days after the Governor signs the bill.

For those unfamiliar with Family Law, it might be surprising that there are not already Ohio statutes requiring disclosure of assets and penalizing parties in divorce and legal separation actions for non-disclosure.

However, in most counties there exist local requirements that mandate disclosure. For instance, the local rules for the Lucas County Court of Common Pleas, Domestic Relations Division require that all Complaints, Counter-claims, and Answers filed in divorce and legal separation actions include a Schedule IV, which details a party's assets, marital and otherwise. Failure to correctly fill out and complete Schedule IV can result in dismissal.

Lucas County Local Rule 8.02(C) deals with mandatory disclosures, and creates an affirmative duty that requires each party, within 60 days of the filing of an answer or counter-claim, to disclose specific information (e.g. all retirement accounts, deeds, vehicle titles/registration, appraisals, tax returns, etc.). Failure to comply with this affirmative duty can result in sanctions. Clearly, in most counties, there are existing safeguards that prevent against non-disclosure (see Wood County Court of Common Pleas Local Rule 6.01(B), which requires disclosure within 40 days of the filing of an answer).

Further, Ohio Revised Code § 3105.171(D)(4) already states that the Court may compensate an offended spouse with a distributive award or with a greater award of marital property when a spouse engages in financial misconduct by "dissipation, destruction, *concealment*, or fraudulent disposition of assets." House Bill 238 would add the word "nondisclosure" to this list of actions constituting financial misconduct, but is there really a difference between the nondisclosure and the concealment of assets?

Some of the other pending, and in some cases passed, Family Law legislation:

1. House Bill 10- This bill, which becomes effective on June 17, 2010, provides that the existing procedure for filing a petition for a protection order for the alleged commission of menacing by stalking or a sexually oriented offence applies to offenders who are 18 years of age or older, and further requires for a protection order against a respondent who is a minor to be

filed in the juvenile division of the court of common pleas. Look for many more upset adults filing for protection orders in Juvenile Court. Further, look for many more upset Juvenile magistrates who may have heavier dockets in the near future.

2. House Bill 244- This bill was passed by the House on December 2, 2009 and is currently pending in the Senate. If passed, it would authorize a Court in a divorce or legal separation proceeding to modify a division or disbursement of property or a distributive award upon the express written consent or agreement of both parties. Further, it would permit the spouses in a dissolution of marriage proceeding to include in the separation agreement authorization for the court to modify the division of property and require that any modification be made only with the express written consent or agreement of both spouses. Often, after a decree is issued by a domestic court, parties mutually agree that certain provisions relating to the division of property should be amended or modified. It seems counterproductive to prohibit parties, who are in total agreement, from modifying the terms of a prior decree.

If you have any questions about the new legislation or family law issues, call Patricia Hayden Kurt (419-252-6237), Tonya Robinson (419-252-6232), or Stephen M. Szuch (419-252-6242).