

Introduced by Senator MoorlachFebruary 18, 2016

An act to amend Sections 771, 910, 914, and 4438 of, and to add Section 70 to, the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

SB 1255, as introduced, Moorlach. Dissolution of marriage: date of separation.

Existing law regulates the characterization and division of property upon the dissolution of marriage or the legal separation of the parties. Under existing law, debt incurred by a spouse after the date of separation is generally confirmed to that spouse. Existing law similarly provides that the earnings of a spouse are separate property if the spouse is living separate and apart from the other spouse.

Under existing case law, a spouse is required to be living in a separate residence in order to be considered living separate and apart from the other spouse, for purposes of characterizing the earnings of the spouse.

This bill would define "date of separation" for purposes of the Family Code to mean the date that a complete and final break in the marital relationship has occurred, as evidenced by the spouse's expression of his or her intent to end the marriage and conduct that is consistent with that intent. The bill would direct a court to take into account all relevant evidence in determining the date of separation. The bill would specify that its provisions apply retroactively to cases pending on January 1, 2017. The bill would also make related, conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 70 is added to the Family Code, to read:

2 70. (a) “Date of separation” means the date that a complete
3 and final break in the marital relationship has occurred, as
4 evidenced by both of the following:

5 (1) The spouse has expressed his or her intent to end the
6 marriage to the other spouse.

7 (2) The conduct of the spouse is consistent with his or her intent
8 to end the marriage.

9 (b) In determining the date of separation, the court shall take
10 into consideration all relevant evidence.

11 (c) It is the intent of the Legislature in enacting this section to
12 abrogate the decisions in *In re Marriage of Davis* (2015) 61 Cal.4th
13 846 and *In re Marriage of Norviel* (2002) 102 Cal.App.4th 1152.

14 SEC. 2. Section 771 of the Family Code is amended to read:

15 771. (a) The earnings and accumulations of a spouse and the
16 minor children living with, or in the custody of, the spouse, ~~while~~
17 ~~living separate and apart from the other spouse, after the date of~~
18 *separation of the spouses*, are the separate property of the spouse.

19 (b) Notwithstanding subdivision (a), the earnings and
20 accumulations of an unemancipated minor child related to a
21 contract of a type described in Section 6750 shall remain the sole
22 legal property of the minor child.

23 SEC. 3. Section 910 of the Family Code is amended to read:

24 910. (a) Except as otherwise expressly provided by statute,
25 the community estate is liable for a debt incurred by either spouse
26 before or during marriage, regardless of which spouse has the
27 management and control of the property and regardless of whether
28 one or both spouses are parties to the debt or to a judgment for the
29 debt.

30 (b) “During marriage” for purposes of this section does not
31 include the period ~~during which the spouses are living separate~~
32 ~~and apart after the date of separation, as defined in Section 70,~~
33 *and before a judgment of dissolution of marriage or legal separation*
34 *of the parties.*

35 SEC. 4. Section 914 of the Family Code is amended to read:

36 914. (a) Notwithstanding Section 913, a married person is
37 personally liable for the following debts incurred by the person’s
38 spouse during marriage:

1 (1) A debt incurred for necessities of life of the person’s spouse
2 ~~while the spouses are living together.~~ *before the date of separation*
3 *of the spouses.*

4 (2) Except as provided in Section 4302, a debt incurred for
5 common necessities of life of the person’s spouse ~~while the~~
6 ~~spouses are living separately.~~ *after the date of separation of the*
7 *spouses.*

8 (b) The separate property of a married person may be applied
9 to the satisfaction of a debt for which the person is personally liable
10 pursuant to this section. If separate property is so applied at a time
11 when nonexempt property in the community estate or separate
12 property of the person’s spouse is available but is not applied to
13 the satisfaction of the debt, the married person is entitled to
14 reimbursement to the extent such property was available.

15 (c) (1) Except as provided in paragraph (2), the statute of
16 limitations set forth in Section 366.2 of the Code of Civil Procedure
17 shall apply if the spouse for whom the married person is personally
18 liable dies.

19 (2) If the surviving spouse had actual knowledge of the debt
20 prior to expiration of the period set forth in Section 366.2 of the
21 Code of Civil Procedure and the personal representative of the
22 deceased spouse’s estate failed to provide the creditor asserting
23 the claim under this section with a timely written notice of the
24 probate administration of the estate in the manner provided for
25 pursuant to Section 9050 of the Probate Code, the statute of
26 limitations set forth in Section 337 or 339 of the Code of Civil
27 Procedure, as applicable, shall apply.

28 (d) *For purposes of this section, “date of separation” has the*
29 *same meaning as set forth in Section 70.*

30 SEC. 5. Section 4338 of the Family Code is amended to read:

31 4338. In the enforcement of an order for spousal support, the
32 court shall resort to the property described below in the order
33 indicated:

34 (a) The earnings, income, or accumulations of either ~~spouse,~~
35 ~~while living separate and apart from the other spouse,~~ *spouse after*
36 *the date of separation, as defined in Section 70,* which would have
37 been community property if the spouse had not been ~~living separate~~
38 ~~and apart separated~~ from the other spouse.

39 (b) The community property.

40 (c) The quasi-community property.

1 (d) The other separate property of the party required to make
2 the support payments.
3 SEC. 6. This act shall apply retroactively to cases pending on
4 January 1, 2017.

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