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LEGISLATIVE REPORT:

PROPERTY DIVISION STATUTES AMENDED

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Effective September 8, 2010, Ohio's property division statute, § 3105.171, will allow postdecree modification of division of property or a distributive award. Current § 3105.171(I) provides as follows: "A division or disbursement of property or a distributive award made under this section is not subject to future modification by the court." However, House Bill 238 adds to the end of that sentence "... except upon the express written consent or agreement to the modification by both spouses."

The dissolution statutes are likewise amended. § 3105.63(C) is amended by adding subsection (C)(2) which provides: "If a petition for dissolution of marriage contains an authorization for the court to modify the division of property provided in the separation agreement, the modification shall be made with the express written consent of both spouses." § 3105.65(B) is also amended to provide that "[t]he court may modify the division of property provided in the separation agreement only upon the express written consent or agreement of both spouses."

While the language of the statutory changes is simple some interesting questions arise from these amendments. Do the statutes give the court general jurisdiction to consider postdecree motions for modification assuming that both parties consent to the jurisdiction? Or was the intent of the changes to simply allow the court to approve agreed-upon postdecree modifications of property division? Unfortunately, the Legislative Service Commission analysis of House Bill 238 offers no guidance. Given the broad language of the bill, it certainly could be asserted that general postdecree property division modification jurisdiction may be conferred upon the court by the agreement of the parties.

Additionally, House Bill 238 makes a further change to § 3105.171, addressing and strengthening the requirement of financial disclosure. New subsection (E)(3) is added which provides: "The court shall require each spouse to disclose in a full and complete manner all marital property, separate property, and other assets, debts, income, and expenses of the spouse." New subsection (E)(5) provides the penalty when a spouse has "substantially and willfully" failed to made the required disclosure: "... the court may compensate the offended spouse with a distributive award or with a greater award of marital property not to exceed three times the value of the marital property, separate property, or other assets, debts, income, or expenses that are not disclosed by the other spouse."

One requirement which appears new in this amendment is the required disclosure in all cases of "expenses of the spouse." Many financial disclosure forms do not include expenses unless contested spousal support is an issue. Nonetheless, expenses now are a statutory requirement. Additionally, the damages provision would appear to add an alternative to a Civil Rule 60(B) motion as a means of remedy to nondisclosure.

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