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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1229

Session of  
1981

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INTRODUCED BY HAGARTY AND REBER, APRIL 21, 1981

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SENATOR GEKAS, JUDICIARY, IN SENATE, AS AMENDED,  
NOVEMBER 15, 1982

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AN ACT

1 Amending the act of May 10, 1927 (P.L.884, No.451), entitled, as  
2 amended, "An act modifying the common-law rule relating to  
3 property hereafter acquired by husband and wife as tenants by  
4 entireties, where such husband and wife are subsequently  
5 divorced; creating a tenancy in common in such cases;  
6 providing for the sale of property held by husband and wife  
7 as tenants by entireties where they have been divorced; and  
8 directing the distribution of the proceeds of such sale,"  
9 further providing for division of proceeds and preventing  
10 unjust enrichment and providing for constriction of the act.

11 The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

13 Section 1. Section 3, act of May 10, 1927 (P.L.884, No.451),  
14 entitled, as amended, "An act modifying the common-law rule  
15 relating to property hereafter acquired by husband and wife as  
16 tenants by entireties, where such husband and wife are  
17 subsequently divorced; creating a tenancy in common in such  
18 cases; providing for the sale of property held by husband and  
19 wife as tenants by entireties where they have been divorced; and  
20 directing the distribution of the proceeds of such sale,"

1 amended May 17, 1949 (P.L.1394, No.412) and repealed in part  
2 April 28, 1978 (P.L.202, No.53), is amended and sections are  
3 added to read:

4 Section 3. The proceeds of any sale had under the provisions  
5 of this act, after the payment of the expenses thereof, shall be  
6 equally divided between the parties, subject, however, to the  
7 [deduction therefrom of the amount of any lien entered of record  
8 jointly against both of the respective parties, together with  
9 any interest due thereon and docket costs;] provisions of  
10 section 3.1 and to the following deductions: (i) the amount of  
11 any lien entered of record jointly against both of the  
12 respective parties, together with any interest due thereon and  
13 docket costs shall be deducted from the proceeds of the sale and  
14 shall be paid by the court to the person or persons to whom the  
15 same is due and payable; (ii) and the amount of any liens  
16 entered of record against either of such parties, together with  
17 interest due and costs taxed thereon, shall be deducted from the  
18 share of the party against whom such lien is filed, and paid to  
19 the person or persons to whom the same is due and payable:  
20 Provided, however, That no decree of divorce as aforesaid shall  
21 be effective to change the existing law relating to liens upon  
22 property held by tenants by the entirety, except a decree of  
23 divorce that is valid in this Commonwealth, and not until the  
24 said decree of divorce, or a certified copy thereof, shall be  
25 recorded in the office of the recorder of deeds of the county  
26 where the property is situate, which decree shall be indexed in  
27 the grantor's index against each of the said tenants by the  
28 entirety.

29 Section 3.1. (a) If the court finds that an equal division  
30 of the proceeds would cause one of the parties to be either

1 unjustly enriched or injured, it shall divide the proceeds so as  
2 to eliminate any unjust enrichment or injury that may have  
3 resulted from an equal division.

4 (b) For the purpose of this section, an "unjust enrichment <—  
5 or injury" may arise out of, but is not limited to, repair  
6 payments, mortgage payments, tax payments, insurance payments,  
7 or other items which are necessary for the proper enjoyment of  
8 the property. IN DETERMINING WHETHER A PARTY HAS BEEN UNJUSTLY <—  
9 ENRICHED OR INJURED, THE COURT SHALL CONSIDER ALL RELEVANT  
10 FACTORS AS SET FORTH IN SECTION 401(D) OF THE ACT OF APRIL 2,  
11 1980 (P.L.63, NO.26), KNOWN AS THE "DIVORCE CODE."

12 Section 3.2. This act shall not apply to any division or  
13 distribution of marital property or to any distribution of the  
14 proceeds from the sale of marital property, which is subject to  
15 the provisions of the act of April 2, 1980 (P.L.63, No.26),  
16 known as the "Divorce Code." THIS ACT SHALL APPLY ONLY TO CASES <—  
17 WHERE DIVORCES OCCUR SUBSEQUENT TO ENACTMENT OF THIS ACT.

18 Section 2. This act shall take effect in 60 days.