

2022 Regular Session

HOUSE BILL NO. 403

BY REPRESENTATIVE JEFFERSON

(On Recommendation of the Louisiana State Law Institute)

PROPERTY/COMMUNITY: Provides for the possession and use of community property following a petition for divorce

1 AN ACT

2 To amend and reenact R.S. 9:374(B), (C), (D), and (E) and to enact R.S. 9:374(F) and (G),
3 relative to the award of use and occupancy of community property; to provide for an
4 award for rent; to prohibit a limitation on the allocation of the use of community
5 property; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:374(B), (C), (D), and (E) are hereby amended and reenacted and
8 R.S. 9:374(F) and (G) are hereby enacted to read as follows:

9 §374. Possession and use of family residence or community movables or
10 immovables

11 * * *

12 B. When the family residence is community property or is owned by the
13 spouses in indivision, or the spouses own community ~~movables or immovables~~ or
14 a community manufactured home as defined in R.S. 9:1149.2 and occupied as a
15 residence, regardless of whether it has been immobilized, after or in conjunction with
16 the filing of a petition for divorce ~~or for separation of property in accordance with~~
17 ~~Civil Code Article 2374~~, either spouse may petition for, and a court may award to
18 one of the spouses, after a contradictory hearing, the use and occupancy of the family
19 residence and use of community ~~movables or immovables~~ or the community
20 manufactured home pending partition of the property or further order of the court,

1 whichever occurs first. In these cases, the court shall inquire into the relative
2 economic status of the spouses, including both community and separate property,
3 and the needs of the children, if any, and shall award the use and occupancy of the
4 family residence and the use of any community ~~movables or immovables~~ or the
5 community manufactured home to the spouse in accordance with the best interest of
6 the family. If applicable, the court shall consider the granting of the occupancy of
7 the family residence and the use of community ~~movables or immovables~~ or the
8 community manufactured home in awarding espousal support.

9 C. A spouse who, in accordance with the provisions of Subsection A or B of
10 this Section, uses and occupies or is awarded by the court the use and occupancy of
11 the family residence, a community immovable occupied as a residence, or a
12 community manufactured home as defined in R.S. 9:1149.2 and occupied as a
13 residence, regardless of whether it has been immobilized, shall not be liable to the
14 other spouse for rental for the use and occupancy, except as hereafter provided. If
15 ~~the court awards use and occupancy to a spouse, it shall at that time determine~~
16 ~~whether to award rental for the use and occupancy and, if so, the amount of the rent.~~
17 ~~The parties may agree to defer the rental issue for decision in the partition~~
18 ~~proceedings. If the parties agreed at the time of the award of use and occupancy to~~
19 ~~defer the rental issue, the court may make an award of rental retroactive to the date~~
20 ~~of the award of use and occupancy.~~

21 D. In a proceeding for divorce or thereafter, a spouse may move for an award
22 of rent at any time. After a contradictory hearing, the court may award rent to be
23 paid by a spouse exercising exclusive use and occupancy of a residence whether by
24 judgment or in fact. The award shall be retroactive to the date of filing of the
25 motion, but rent shall be awarded only for the period of exclusive occupancy. The
26 adjudication of the issue of rent and the amount thereof may be deferred to a later
27 date by the court or by agreement of the parties. It shall not be a prerequisite to the
28 award of rent that the spouse against whom the award is made shall have requested
29 use and occupancy of the residence.

1 ~~D. E.~~ The court may determine whether a residence is separate or community
2 property, or owned in indivision, in the contradictory hearing authorized under the
3 provisions of this Section.

4 F. In a proceeding for divorce or thereafter, either spouse may petition for,
5 and a court may award to one of the spouses, after a contradictory hearing, the use
6 of community movables pending partition of the property or further order of the
7 court, whichever occurs first. The court shall inquire into the relative economic
8 status of the spouses, including both community and separate property, and the needs
9 of the children, if any, and shall award the use of any community movables in
10 accordance with the best interest of the family. If applicable, the court shall consider
11 the granting of the use of community movables in awarding espousal support.

12 E: G.(1) In a proceeding for divorce or thereafter, a summary proceeding
13 shall be undertaken by the court upon request of either party to allocate the use of
14 community property, including monetary assets, bank accounts, savings plans, and
15 other divisible movable property pending partition. The authority to make these
16 allocations shall not be limited to a specific dollar amount or percentage, and the
17 court shall have the right to allocate any monetary asset, in whole or in part.

18 (2) The court shall determine allocation of community property after
19 considering:

20 (a) The custody of the children and exclusive use and occupancy of the
21 family residence.

22 (b) The total community property.

23 (c) The need of a spouse for funds to maintain a household prior to partition.

24 (d) The need of a spouse to receive legal representation during the course of
25 the proceedings.

26 (3) Upon court order, each spouse shall provide the other a complete
27 accounting of all allocated community property to demonstrate compliance with
28 Civil Code Article 2369.3.

1 Revision Comments - 2022

2 (a) "Residence," as used in Subsection D and other provisions of this
3 Section, refers to the family residence, a community immovable occupied as a
4 residence, or a community manufactured home as defined in R.S. 9:1149.2 and
5 occupied as a residence, regardless of whether it has been immobilized.

6 (b) Subsection G of this Section permits judges to exercise discretion as to
7 how much community property is allocated and how many allocations are made
8 pending final partition. The judge is not limited to a particular portion or percentage
9 of the community.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 403 Original

2022 Regular Session

Jefferson

Abstract: Provides for use and occupancy of community property.

Present law (R.S. 9:374) authorizes the court to award the use and occupancy of community movables or immovables to either spouse, after a petition for divorce is filed, and prior to partition.

Proposed law retains present law but separates an award of the family residence or other community immovables or a community manufactured home from an award of community movables for clarity.

Present law allows the court to determine whether to award rent for the use and occupancy at the time use and occupancy is awarded to a spouse.

Proposed law provides that a spouse may, at any time, request an award of rent from a spouse exercising exclusive use and occupancy of a residence. Proposed law further provides that an award of rent may be retroactive to the date of filing the motion, but shall only be awarded for the actual period of time the other spouse was occupying the residence.

Proposed law provides that the court's authority to award the use of community property is not limited to a specific dollar amount or percentage.

(Amends R.S. 9:374(B), (C), (D), and (E); Adds R.S. 9:374(F) and (G))