

January 31, 2011

To: Rep. John M. Mizuno, Chair  
Rep. Jo Jordan, Vice Chair  
Committee on Human Services

## **LATE Testimony**

From: Tom Marzec

Subj: Testimony in **strong support** of **HB909** divorce property division & dissipation

Hearing: Monday, January 31, 2010; 9:00 a.m.; Room 329, State Capitol

This bill is necessary to address divorce cases where property is dissipated (concealed or wasted) prior to trial, thereby causing needless additional litigation, unfair advantage and typically inequitable division.

Current statutes provide very little guidance for divorce property division, i.e. "the court may make any further orders as shall appear just and equitable" and shall take 5 general issues into consideration. Subsequently, the appellate courts have adopted the "marital partnership" model in determining what is just and equitable. Application of this marital partnership model includes the return of capital contributions and the sharing of profit/loss from the partnership. However, too many divorces involve dissipation of assets and stronger comprehensive statutory guidance is needed to prevent this tactic, reduce the associated harm to families and limit needless litigation.

**HB909** improves, streamlines and incentivizes fair and efficient divorce property division by:

1. adding definitions and codifying existing case law for clarity and consistency, in the creation of comprehensive dissipation statutory guidelines;
2. requiring each of the parties to provide full financial disclosure at the time of the divorce complaint filing and enjoining the parties from wasting property;
3. defining the winding up period (using existing divorce case law and Chapter 425 Partnership principles) of the marital partnership in order to establish efficiency and predictability, which encourages settlement;
4. applying business partnership model (Chapter 425) principles of duty of loyalty and care during the winding up of the marital partnership, to limit dissipation and fraud;
5. making both parties responsible to each other under the fraudulent transfer act (Chapter 651C) during this winding up period -- including the attendant remedies;
6. allowing the court to additionally consider the dissipation, if any, of marital property by either party, and each party's fiduciary duty of loyalty and the duty of care to the winding up of the marital partnership for final property division and award of attorney fees purposes; and
7. removing the loss of family court jurisdiction over property division 1 year after the granting of a divorce, encouraging the granting of the divorce itself (which psychologically helps people to move on with their lives and not fight over property or custody).

These comprehensive reforms need to be defined in statute. For example, the Hawaii State Bar Association Family Law Section requested a rule allowing for an automatic Initial Pretrial Order when a divorce was filed, to include a "no wasting" order, but was denied by the Supreme Court. By comprehensively codifying piecemeal existing case law and principles, this bill significantly improves procedural clarity and assists the courts, practitioners and numerous pro se litigants with family court divorce cases.

Your consideration of these issues is very appreciated.