

**ECONOMIC CONTRIBUTION
AND
REIMBURSEMENT 2001**

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ECONOMIC CONTRIBUTION AND REIMBURSEMENT 2001

By Reginald A. Hirsch

20. Introduction

In 1999, we examined “net enhancement” and equitable interest” and comparatively speaking it was child’s play. The need for definitions and basic issues surrounding net enhancement have disappeared in a complex statute which introduces new terms and quantifiers in a formula that would make mathematicians happy. You will have to do what I have done, which is read and reread the statute. There are no free rides as this statute is coupled with the requirement that trial courts make specific findings of fact and conclusions of law, so this is an appellate dream. Section 6.711 of the Texas Family Code provides that the court make finds of fact and conclusions of law as to characterization and value of the assets, liabilities, claims and offsets. These statutes are effective September 1, 2001 and applies to divorces or annulments pending, or filed after September 1, 2001. So let’s begin.

21. §3.006. Proportional Ownership of Property by Marital Estates

~~[(a)]~~ If the community estate of the spouses and the separate estate of a spouse have an ownership interest in property, the respective ownership interests of the marital estates are determined by the rule of inception of title.

~~[(b)]—An equitable interest created by Subchapter E:~~

~~[(1)—does not create an ownership interest in a spouse’s separate property; and~~

~~[(2)—creates a claim against the spouse who owns the property that matures on termination of the marriage.]~~

Commentary: “Equitable Interest” no longer exists as of September 1, 2001, or does it? What about all those pre- and post-nuptials, wills, codicils and other documents that were drafted from September 1, 1999 to the present? We will see later that if you dealt with reimbursement, you may be o.k. If you want to cheat, read §3.410 of the Texas Family Code below.

22. Subchapter E. Claims for Economic Contribution and Reimbursement

1. Basic Introduction to Subchapter E

The renewed emphasis of defining “economic contribution” is a recognition of the traditional complexities associated with mixed estates and separating out the value that each estate has contributed to the property relative to the whole value of the property at the time of divorce or death. There are many ways to look at this issue, but here is the formula as devised under Subchapter E.

2. Ingredients

Subchapter E is like cake ingredients. If you miss one or use the wrong portions, you

may get something that looks like a cake, but doesn't quite taste like the pastry you had in mind. The following principals are different from what you might think.

1. We begin measuring ingredients not necessarily at the time of marriage. Rather, we begin measuring ingredients at the time a "contributing estate" makes an "economic contribution" to or for the benefit of another marital estate. Remember that "Economic Contribution" applies to both separate and community estates.
2. Note the title of Subchapter E refers to Reimbursement. Reimbursement is created by having one estate pay the **unsecured** debt of another estate.
3. The list of ingredients is specific.
 1. mortgage reduction,
 2. home equity loan reduction,
 3. separate property loan reduction,
 4. refinancing payments, and
 5. capital improvements.
4. The list of ingredients you cannot use is specific.
 1. payments for ordinary maintenance and repair, taxes, interest and insurance,
 2. No offset for use and benefit of the property or time, toil or talent.
5. Two basic parts of the cake are the cake and the icing. So consider the acutal cake as the "benefitting estate" and the icing as the "contributing estate."

A shortcut is to think of the "benefitting estate" as the estate (cake) that has "equity" in the property and the "contributing estate" as the estate (icing) paying debt or making improvements.
6. Remember the rules of making cake apply to all kinds of property, real and personal.

4. **The Formula**

Fortunately, Warren Cole, has devised an Excel/Lotus spreadsheet formula for making this calculation. Mr. Cole will review and explain his speadsheet after we have finished our examination of the statute.

5. **§3.401. Definitions**

In this subchapter:

- (1) "Claim for economic contribution" means a claim made under this subchapter.
- (2) "Economic contribution" means the contribution to a marital estate described by §3.402.
- (3) "Equity" means, with respect to specific property owned by one or more marital estates, the amount computed by subtracting from the fair market value of the property as of a specific date the amount of a lawful lien specific to the property on that same date.
- (4) "Marital estate" means one of three estates:
 - (1) The community property owned by the spouses together and referred to as the community marital estate;
 - (2) the separate property owned individually by the husband referred to as a separate marital estate; or
 - (3) the separate property owned individually by the wife, also referred to as a separate marital estate.
- (5) "Spouse" means a husband, who is man, or a wife, who is a woman. A member of a civil union or similar relationship entered into in another state between persons of the same sex is not a spouse.

Commentary: Keep in mind that you are making a claim for economic contribution (actually you want a recovery for economic contribution). Equity is defined, but remember that this calculation can be made after marriage. There are only 3 estates - community, and the separate estates of the spouses. I guess children don't count. As for the definition of "spouse," does this sound like a boom to DNA testing?

6. §3.402. Economic Contribution

- (1) For purposes of this subchapter, "economic contribution" is the dollar amount [emphasis added] **of:**
 - (1) the reduction of the principal amount of a debt secured by a lien on property owned before marriage, to the extent the debt existed at the time of marriage;
 - (2) the reduction of the principal amount of a debt secured by a lien on property received by a spouse by gift, devise, or descent during a marriage, to the extent the debt existed at the time the property was received;
 - (3) the reduction of the principal amount of that part of a debt, including a home equity loan:
 - (1) incurred during a marriage;
 - (2) secured by a lien on property; and
 - (3) incurred for the acquisition of, or for capital improvements to, property;
 - (4) the reduction of the principal amount of that part of a debt:
 - (1) incurred during a marriage;
 - (2) secured by a lien on property owned by a spouse;

- (3) for which the creditor agreed to look for repayment solely to the separate marital estate of the spouse on whose property the lien attached; and
- (4) incurred for the acquisition of, or for capital improvements to, property;
- (5) the refinancing of the principal amount described by Subdivisions (1)-(4), to the extent the refinancing reduces that principal amount in a manner described by the appropriate subdivision; and
- (6) capital improvements to property other than by incurring debt.
- (2) "Economic contribution" does not include the dollar amount of:
 - (1) expenditures for ordinary maintenance and repair or for taxes, interest, or insurance; or
 - (2) the contribution by a spouse of time, toil, talent, or effort during the marriage.

Commentary: As we can see, the reduction of a secured principal amount can apply to any of the estates. "Principal" excludes items like taxes and interest. Think of "capital improvements" as icing. Remember to exclude from the cake, payments for ordinary maintenance and repair, taxes, interest and insurance. Also, there is no offset for use and benefit of the property or time, toil, or talent.

7. §3.403. Claim Based on Economic Contribution

- (1) A marital estate that makes an economic contribution to property owned by another marital estate has a claim for economic contribution with respect to the benefitted estate.
- (2) The amount of the claim under this section is equal to the product of:
 - (1) the equity in the benefitted property on the date of dissolution of the marriage, the death of a spouse, or disposition of the property; multiplied by
 - (2) a fraction of which:
 - (1) the numerator is the economic contribution to the property by the contributing estate; and
 - (2) the denominator is an amount equal to the sum of:
 - (1) the economic contribution to the property by the contributing estate;
 - (2) the equity in the property as of the date of the marriage or, if later, the date of the first economic contribution by the contributing estate; and
 - (3) the economic contribution to the property by the benefitted estate during the marriage.
- (3) The amount of a claim under this section may be less than the total of the economic contributions made by the contributing estate, but may not cause the contributing estate to owe funds to the benefitting estate.
- (4) The amount of a claim under this section may not exceed the equity in the property on the date of dissolution of the marriage, the death of a spouse, or disposition of the

- property.
- (5) The use and enjoyment of property during a marriage for which a claim for economic contribution to the property exists does not create a claim of an offsetting benefit against the claim.

Commentary: The Recipe: If you have the ingredients, here is the recipe. If you do nothing else, read and reread Section 3.403. Let's assume this is a divorce. It could have been a death or disposition of property, so remember in pre- and post-nuptials, to address the issue of "economic contribution."

Rule 1: In order to have a claim of "economic contribution" a marital estate must make a contribution to property owned by another marital estate.

Rule 2: The contributing estate is called the "contributing estate."

Rule 3: The benefitting or receiving estate is called the "benefiting estate" or the estate that had the equity.

Rule 4: The amount of the claim is the product of:

1. Equity in benefited property at the time of divorce, death or disposition; times (X)
2. a fraction of numerator = the economic contribution by contributing estate/ (over)
3. The denominator = sum of (i) economic contribution of the contributing estate; and (ii) the equity at the time of the first contribution by contributing estate; and (iii) any economic contribution by benefiting estate.

If VoC = Value of claim
 And if ED = equity at time of divorce, death or disposition
 And ECCE = economic contribution by contributing estate
 And EFCE = equity at time of first contribution of contributing estate
 And ECBE = economic contribution by benefiting estate

Then VoC = $ED \times ECCE / (ECCE + EFCE + ECBE)$

VoC may be < ECCE but shall not cause the CE to owe \$ to BE

No VoC can be > than ED

Use and benefit during marriage does not give rise to offsetting benefit.

8. **§3.404. Application of Inception of Title Rule; Ownership Interest No Created**

- (1) This subchapter does not affect the rule of inception of title under which the character

- of property is determined at the time the right to own or claim the property arises.
- (2) The claim for economic contribution [equitable interest] created under this subchapter does not create an ownership interest in property, but does create a claim against the property of the benefited estate by the contributing estate. The claim matures on dissolution of the marriage or the death of either spouse.

Commentary: Reassuring that we maintain integrity of character of estate via rule of inception of title and the economic contribution like the equitable interest in Subchapter E before does create an ownership interest, but merely a claim against the BE by the Contributing Estate and the claim matures on divorce or death but not disposition of property. Please note that disposition of property is not mentioned for maturity purposes.

9. §3.405. Management Rights

This subchapter does not affect the right to manage, control, or dispose of marital property as provided by this chapter.

Commentary: No management rights affected by this chapter.

10. §3.406. Equitable Lien

- (1) On dissolution of a marriage, the court shall impose an equitable lien on property of a marital estate to secure the claim for economic contribution in that property by another marital estate.
- (2) On the death of a spouse, a court shall, on application for a claim of economic contribution brought by the surviving spouse, the personal representative of the estate of the deceased spouse, or any other person interested in the estate, as defined by Section 3, Texas Probate Code, impose an equitable lien on the property of a benefited marital estate to secure a claim for economic contribution by a contributing marital estate.
- (3) Subject to homestead restrictions, an equitable lien under this section may be imposed on the entirety of a spouse's property in the marital estate and is not limited to the item of property that benefited from an economic contribution.

Commentary: If we bake the cake correctly and account for the right amount of icing, we end up with a requirement that the court **shall** impose an equitable lien on the property of the BE to secure the VoC. Subject to homestead exemption, the equitable lien may be imposed on any of the BE's marital property, not just the specific property that benefited.

11. §3.407. Offsetting Claims

The court shall offset a claim for one marital estate's economic contribution in a specific asset of a second marital estate against the second marital estate's claim for economic contribution in a specific asset of the first marital estate.

Commentary: The court shall offset the claims of one marital estate for EC in a specific asset against a second marital estate in the first estate specific asset. Is this constitutional?

12. §3.408. Claim for Reimbursement

- (1) A claim for economic contribution does not abrogate another claim for reimbursement in a factual circumstance not covered by this subchapter. In the case of a conflict between a claim for economic contribution under this subchapter and a claim for reimbursement, the claim for economic contribution, if proven, prevails.
- (2) A claim for reimbursement includes:
 - (1) payment by one marital estate of the unsecured liabilities of another marital estate; and
 - (2) inadequate compensation for the time, toil, talent, and effort of a spouse by a business entity under the control and direction of that spouse.
- (3) The Court shall resolve a claim for reimbursement by using equitable principals, including the principal that claims for reimbursement may be offset against each other if the court determines it to be appropriate.
- (4) Benefits for the use and enjoyment of property may be offset against a claim for reimbursement for expenditures to benefit a marital estate on property that does not involve a claim for economic contribution to the property.

Commentary:

Rule 1: You can have both a claim for economic contribution and a claim for reimbursement if facts exist that are not covered by this subchapter. If the claims conflict, the claim for economic contribution prevails.

Rule 2: Statutory Reimbursement is now defined as payment by one marital estate of unsecured debt of another estate and inadequate compensation for time, toil, talent and effect.

Rule 3: Equitable principles apply to reimbursement claims.

Rule 4: Use and benefits may be offset for reimbursement claims.

WARNING: Before trial, you really must evaluate which remedy to seek. Remember, a claim of economic contribution trumps a claim for reimbursement, if proved. Can you imagine a reimbursement claim being asserted by one party and being defended by the other party with a claim of economic contribution?

13. §3.409. Nonreimbursable Claims.

The court may not recognize a marital estate's claim for reimbursement for:

- (1) the payment of child support, alimony, or spousal maintenance;
- (2) the living expenses of a spouse or child of a spouse;
- (3) the contributions of property of a nominal value;
- (4) the payment of a liability of a nominal amount; or
- (5) a student loan owed by a spouse.

Commentary: We eliminate from claims of reimbursement payments for child support, alimony or spousal maintenance; living expenses of a spouse or child of a spouse; minimal contributions and payments to minimal liabilities or student loans (remember to use this as an affirmative defense).

14. §3.410. Effect of Marital Property Agreements.

A premarital or marital property agreement, whether executed before, on, or after September 1, 1999, that satisfies the requirement of Chapter 4 is effective to waive, release, assign or partition a claim for economic contribution under this subchapter to the same extent the agreement would have been effective to waive, release, assign, or partition a claim for reimbursement under the law as it existed immediately before September 1, 1999, unless the agreement provides otherwise.

Commentary: If you waived reimbursement in a pre- or post-nuptial prior to September 1, 1999, it is effective today for an "economic contribution" claim, as well as for a "net enhancement" claim.

15. §7.002. Division of Property Under Special Circumstances

In addition to the division of the estate of the parties required by Section 7.001, in a decree of divorce or annulment the court shall order a division of the following real and personal property, wherever situated, in a manner that the court deems just and right having due regard for the rights of each party and any children of the marriage:

- (1) property that was acquired by either spouse while domiciled in another state and that would have been community property if the spouse who acquired the property had been domiciled in this state at the time of the acquisition; or
- (2) property that was acquired by either spouse in exchange for real or personal property and that would have been community property if the spouse who acquired the property so exchanged had been domiciled in this state at the time of its acquisition[;øf]
- [(3) the equitable interest, as provided by Subchapter E, Chapter 3 [*Marital Property Rights and Liabilities*], of the:]
[(A) —community estate in the separate estate of a spouse;]

~~[(B) — separate property of a spouse in the separate property of the other spouse;
and]
[(C) — separate estate of a spouse in the community estate.]~~

Commentary: The exclusion is that those terms are not used in Subchapter E of Chapter 3.

16. **Retroactive Effect of New Statute**

SECTION 6. EFFECTIVE DATE; TRANSITION

- (1) This Act takes effect September 1, 2001.
- (2) The change in law made by this Act applies to a suit for dissolution of a marriage or annulment pending on the effective date of this Act or filed on or after that date.
- (3) Section 3.410, Family Code, as added by this Act, applies to a premarital property agreement or marital property agreement executed before, on, or after September 1, 1999.

Commentary: It is effective now!

17. **§7.007. Disposition of Claim for Economic Contribution or Claim for Reimbursement.**

- (1) In a decree of divorce or annulment, the court shall determine the rights of both spouses in a claim for economic contribution as provided by Subchapter E, Chapter 3, and in a manner that the court considers just and right, having due regard for the rights of each party and any children of the marriage, [emphasis added] **shall:**
 - (1) order a division of a claim for economic contribution of the community marital estate to the separate marital estate of one of the spouses;
 - (2) order that a claim for an economic contribution by one separate marital estate of a spouse to the community marital estate of the spouses be awarded to the owner of the contributing separate marital estate; and
 - (3) order that a claim for economic contribution of one separate marital estate in the separate marital estate of the other spouse be awarded to the owner of the contributing marital estate.
- (2) In a decree of divorce or annulment, the court shall determine the rights of both spouses in a claim for reimbursement as provided by Subchapter E, Chapter 3, and shall apply equitable principles to:
 - (1) determine whether to recognize the claim after taking into account all the relative circumstances of the spouses; and
 - (2) order a division of the claim for reimbursement, if appropriate, in a manner

that the court considers just and right, having due regard for the rights of each party and any children of the marriage.

Commentary: We finally made it assuming maturity (remember that term) you now have your pleading for your claims of economic contribution and reimbursement. Put this section in the word processor.

18. Findings of Fact and Conclusions of Law

So you will have it all in one article, I am including §6.711 below;

§6.711. Findings of Fact and Conclusions of Law

- (1) In a suit for dissolution of marriage in which the court has rendered a judgment dividing the estate of the parties, on request by a party, the court shall state in writing its findings of fact and conclusions of law concerning;
 - (1) the characterization of each party's assets, liabilities, claims, and offsets on which disputed evidence has been presented; and
 - (2) the value or amount of the community estate's assets, liabilities, claims and offsets on which disputed evidence has been presented.
- (2) A request for findings of fact and conclusions of law under this section must conform to the Texas Rules of Civil Procedure.

History: Enacted by 77th Legis., Reg.Sess.(2001), H.B. 594, eff.Sept. 1, 2001; "applies to a suit for dissolution of a marriage pending on that date or filed on or after that date."

Commentary: Prepare your findings of fact and conclusions of law before trial. Try your case from them.

XIX. Conclusion

I really and sincerely hope this helps, as you will hear a lot in the coming months and perhaps years regarding economic contribution. As with any new statute, an author's conclusions are only validated after appellate review. So stay tuned and enjoy those cakes and icings.

CLAIM FOR ECONOMIC CONTRIBUTION CALCULATOR PER SEC. 3.401 et seq.:

{Assumes all criterion per statute exits (i.e. "secured by lien on property", etc.)}

A EQUITY IN BENEFITTED PROPERTY ON DATE OF DIVORCE/DISPOSITION		
	\$ AMOUNT	TOTALS
1	FMV of the property on date of divorce/disposition:	
2	Principal amount of debt on date of divorce/disposition:	0.00
3	Total Equity - date of div./disp (calculates automatically)	0.00

B ECONOMIC CONTRIBUTION BY CONTRIBUTING ESTATE (debt reduction)		
	\$ AMOUNT	TOTALS
1	Principal amount of debt on Date of Marriage/Date of receipt as SP:	
2	Principal amount of debt on Date of Divorce/Disposition (same as A):	0.00
3	Total Amt. of Contribution by CE (calculates automatically)	0.00

C ECONOMIC CONTRIBUTION BY CONTRIBUTING ESTATE (debt refinancing)		
	\$ AMOUNT	TOTALS
1	Principal amount of former debt on date of refinancing:	
2	Principal amount of former debt after refinancing (usually zero):	0.00
3	Total Amt. - Debt Ref. by CE (calculates automatically)	0.00

D ECONOMIC CONTRIBUTION - CAP. IMPROVEMENTS (Other than Incurring Debt)		
	\$ AMOUNT	TOTALS
1	Dollar Amount Contributed	
3	Total Val. Cap. Improvments (calculates automatically)	0.00

E EQUITY IN PROPERTY - DATE OF MARRIAGE/1ST ECONOMIC CONTRIBUTION		
	\$ AMOUNT	TOTALS
1	FMV on date of marriage or of first economic contribution:	
2	Principal amt. of debt at date of marriage/1st first econ. contribution:	
3	Total Equity - Date of Marr./1st Econ. Cont.(calculates automatically)	0.00

F ECONOMIC CONTRIBUTION BY BENFITTED ESTATE (During Marriage)		
	\$ AMOUNT	TOTALS
1	Dollar Amount Contributed	
3	Total Econ. Contrib. by BE (calculates automatically):	0.00

\$\$ Amt. of the Claim [A x (B+C+D)/(B+C+D+E+F)] (calculates automatically):	#DIV/0!
Percentage of Claim to Contributing Estate from Benefited Estate	#DIV/0!