Bill as Introduced

SB 349- AS AMENDED BY THE SENATE

3/16/00 3836s

2000 SESSION

00-2651
04/09

SENATE BILL ***349***

AN ACT relative to the sale of the marital residence or other real property in a domestic proceeding.

SPONSORS: Sen. Roberge, Dist 9; Sen. Brown, Dist 17

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill sets forth circumstances allowing the court, in a divorce, separation, or annulment proceeding, to issue an order for temporary relief which would include the sale of the marital residence or other real property, with the prior written consent of both parties.

. . . . . .

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 349- AS AMENDED BY THE SENATE

3/16/00 3836s

00-2651
04/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT relative to the sale of the marital residence or other real property in a domestic proceeding.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Subparagraph; Annulment, Divorce, and Separation; Temporary Relief; Sale of Real Property Added. Amend RSA 458:16, I by inserting after subparagraph (g) the following new subparagraph:

(h) Ordering the sale of the marital residence or other real property held by the parties, provided that both parties have previously filed a written stipulation with the clerk of the court explicitly agreeing to the sale of the property prior to the final hearing on the merits. If the parties have not so stipulated, the sale of the marital residence may be ordered if the parties have insufficient financial resources to pay the debts or obligations generated by the property, including mortgage payments, taxes, insurance, and ordinary maintenance, as those debts and obligations come due. No temporary order shall be made for the sale of the marital residence or other real property as long as the party residing within the marital residence is determined to have adequate financial resources to pay any debts or obligations generated by the property, including mortgage payments, taxes, insurance, and ordinary maintenance, as those debts and obligations come due.

2 Effective Date. This act shall take effect January 1, 2001.

Amendments

Rep. Moran, Hills. 15
April 12, 2000
2000-4117h
04/10

Amendment to SB 349

Amend the title of the bill by replacing it with the following:

AN ACT relative to the sale of the marital residence or other real property in a domestic proceeding.

Amend RSA 458:16, I (h) as inserted by section 1 of the bill by replacing it with the following:

(h) Ordering the sale of the marital residence provided that both parties have previously filed a written stipulation with the clerk of the court explicitly agreeing to the sale of the property prior to the final hearing on the merits. If the parties have not so stipulated, and no extraordinary circumstances are demonstrated, the sale of the marital residence may be ordered only if the parties have insufficient financial resources to pay the debts or obligations generated by the property, including mortgage payments, taxes, insurance, and ordinary maintenance, as those debts and obligations come due.

Rep. Moran, Hills. 15
April 18, 2000
2000-4152h
04/09

Amendment to SB 349

Amend the title of the bill by replacing it with the following:

AN ACT relative to the sale of the marital residence in a domestic proceeding.

Amend RSA 458:16, I (h) as inserted by section 1 of the bill by replacing it with the following:

(h) Ordering the sale of the marital residence provided that both parties have previously filed a written stipulation with the clerk of the court explicitly agreeing to the sale of the property prior to the final hearing on the merits. If the parties have not so stipulated, and no extraordinary circumstances are demonstrated, the sale of the marital residence shall not be ordered as long as the court deems the party residing within the marital residence to have sufficient financial resources to pay the debts or obligations generated by the property, including mortgage payments, taxes, insurance, and ordinary maintenance, as those debts and obligations come due.

2000-4152h

AMENDED ANALYSIS

This bill sets forth circumstances allowing the court, in a divorce, separation, or annulment proceeding, to issue an order for temporary relief which may include the sale of the marital residence with the prior written consent of both parties. Absent this consent, the bill prohibits the sale of the marital residence provided the court deems the party residing within the marital residence to have sufficient financial resources to pay the debts or obligations generated by the property.

Rep. Moran, Hills. 15
April 18, 2000
2000-4160h
04/01

Amendment to SB 349

Amend the title of the bill by replacing it with the following:

AN ACT relative to the sale of the marital residence in a domestic proceeding.

Amend RSA 458:16, I (h) as inserted by section 1 of the bill by replacing it with the following:

(h) Ordering the sale of the marital residence provided that both parties have previously filed a written stipulation with the clerk of the court explicitly agreeing to the sale of the property prior to the final hearing on the merits. If the parties have not so stipulated, the sale of the marital residence shall not be ordered as long as the court deems the party residing within the marital residence to have sufficient financial resources to pay the debts or obligations generated by the property, including mortgage payments, taxes, insurance, and ordinary maintenance, as those debts and obligations come due.

2000-4160h

AMENDED ANALYSIS

This bill sets forth circumstances allowing the court, in a divorce, separation, or annulment proceeding, to issue an order for temporary relief which may include the sale of the marital residence with the prior written consent of both parties. Absent this consent, the bill prohibits the sale of the marital residence provided the court deems the party residing within the marital residence to have sufficient financial resources to pay the debts or obligations generated by the property.

Children and Family Law
April 19, 2000
2000-4184h
04/01

Amendment to SB 349

Amend the title of the bill by replacing it with the following:

AN ACT relative to the sale of the marital residence in a domestic proceeding.

Amend RSA 458:16, I (h) as inserted by section 1 of the bill by replacing it with the following:

(h) Ordering the sale of the marital residence provided that both parties have previously filed a written stipulation with the clerk of the court explicitly agreeing to the sale of the property prior to the final hearing on the merits. If the parties have not so stipulated, the sale of the marital residence shall not be ordered prior to the final hearing as long as the court deems the party residing within the marital residence to have sufficient financial resources to pay the debts or obligations generated by the property, including mortgage payments, taxes, insurance, and ordinary maintenance, as those debts and obligations come due.

2000-4184h

AMENDED ANALYSIS

This bill sets forth circumstances allowing the court, in a divorce, separation, or annulment proceeding, to issue an order for temporary relief which may include the sale of the marital residence with the prior written consent of both parties. Absent this consent, the bill prohibits the sale of the marital residence prior to the final hearing provided the court deems the party residing within the marital residence to have sufficient financial resources to pay the debts or obligations generated by the property.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # SB 349 Date 3/28/2000

Committee Children & Family Law

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro	Con
Judith O'Brien Thayer	Manchester, N.H.	6222641		✓	

Hearing Minutes

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

PUBLIC HEARING ON SB 349

BILL TITLE: relative to the sale of the marital residence or other real property in a domestic proceeding.

DATE: March 28, 2000

LOB ROOM: 206 **Time Public Hearing Called to Order:** 11:15 a.m

Time Adjourned:

(please circle if present)

Committee Members: Reps. Dowling, Lyman, Arnold, J. Brown, G. Gagnon, Bickford, Tate, Hutchinson, Asplund, Coughlin, Jones, Moran, Young, Martel, I. Prats, Allison, Richardson, L. Johnson, Grassie, Pantelakos, Ginsburg, Gile and McIntyre.

Bill Sponsors: Sen. Roberge, Sen. Brown

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen. Roberge, sponsor, supporting
-It is unfair to sell a house when one of the parties wishes to continue to live there.

Sen. Ned Gordon
-He is reporting on an amendment acceptable to the Senate. He supports the bill. The bill includes that the house may be sold if sufficient funds are not available for maintaining it. The bill passed the Senate on a voice vote.

Judith O'Brien Thayer, supports this bill
-She said she had a personal experience with having her house sold. The judge ordered that no child support was required for her 14 year old son as he was in boarding school and that no provision be made for a living situation for her and her son. She was harassed about selling the house, and was misrepresented. Her attorney left the case. Her husband's lawyer, Atty. Brennan, was threatening to sell the house. She hired an independent appraiser to value her house, which they did at $275,000. The judge wanted her to sell the house at a much lower figure. She was moved out of the house. She received no child support, had to move in with her mother. She has now been given a final temporary order misrepresenting information. Her case is now on appeal. She was taken off health insurance. This kind of behavior should not happen – if it could happen to a Supreme Court Judge's wife it could happen to others. She and her son are left with no insurance, no support. Judge Carol Ann Conboy is the judge in this case. There was no move on her ex-husband's part to mediate. Her current legal representative is Theodore Kamasinski, as her previous attorney, David Nixon, Esq. Left. She feels that Judge Conboy has overstepped her bounds. Mrs. Thayer's lifestyle has been jeopardized, being told she must reduce her situation –losing her car, her insurance, her home, etc. There are no alimony guidelines in the law. She believes it was a

done deal before she even went to court. She was told it was career suicide for any lawyer to take her case after her original attorney left.

Theodore Kamasinski, representing Mrs. Thayer, supporting

-The temporary order should have left everything intact until the divorce was settled. Originally it was 75% for Mrs Thayer and 25% for Mr. Thayer, but it turned out to be reversed. It was a contrived divorce – Mr. Thayer had gone to someone who recommended borrowing against the house, leaving it with little value. Mrs. Thayer brought $600,000 into the marriage from an inheritance. He believes the appeal will be won. Mrs. Thayer has no expensive tastes. The reason the house was sold was because Judge Thayer signed a false statement about a debt, and the pressure to pay off these loans caused him to sell the house. Atty. Brennan had stated he would provide a living situation for Mrs. Thayer and her son, but never followed through. No matter what Atty. Nixon did, there was no way he could get justice for Mrs. Thayer. That's why he left the case. No word about the best interests of the child came from the Judge. Mr. Thayer paid 20% interest on credit cards (at one time he had over 20 credit cards) for years. A temporary order to sell the house could never have been allowed before this case.

The case was originally assigned to Judge Barry. Judge Nadeau said he reassigned the case to Judge Conboy after judge Thayer got into trouble with the law. Asked where all the money spent by Judge Thayer went, Mr. Kamasinksi said it indicated a compulsive gambler.

Respectfully submitted,

Barbara Hull Richardson

Rep. Barbara Hull Richardson, Clerk

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

PUBLIC HEARING ON SB 349

BILL TITLE: relative to the sale of the marital residence or other real property in a domestic proceeding.

DATE: 3/28/00

LOB ROOM: 206 **Time Public Hearing Called to Order:** 11:15 a.m

Time Adjourned:

(please circle if present)

Committee Members: Reps. Dowling, Lyman, Arnold, J. Brown, G. Gagnon, Bickford, Tate, Hutchinson, Asplund, Coughlin, Jones, Moran, Young, Martel, I. Pratt, Allison, Richardson, L. Johnson, Grassie, Pantelakos, Ginsburg, Gile and McIntyre.

Bill Sponsors: Sen. Roberge, Sen. Brown

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen. Roberge - prime sponsor - It is unfair to sell a house when one of the parties wishes to continue living there

Sen. Ned Gordon - He is reporting on an amendment acceptable to the Senate. He supports the bill. The bill includes that the house may be sold if sufficient funds are not available for maintaining it. The bill passed the Senate on a voice vote.

Judith O'Brien Thayer - She supports this bill. She said she had personal experience with having her house sold. ~~It was~~ The judge ordered that no child support was required for her 14 year old son as he was in boarding school and that no provision be made for a living situation for her and her son. She was harrassed about selling the house, and was misrepresented. Her attorney atty. Brennan left the case. Her husband's lawyer, was threatening her to sell the house. She hired an independent appraiser to value her house, which they did at $275,000. The judge wanted her to sell the house at a much lower figure. She was moved out of the house. She received no child support, had to move in with her mother. She has now been given a final/temporary order misrepresenting information. Her case is now on appeal. She was taken off health insurance. This kind of behavior should not happen - if it could happen to a Supreme →

Court- Judge's wife, it could happen TO others. She & her son are left with no insurance, no support. Judge Carol Ann Conboy is The Judge in This case. There was no move on her ex-husband's part TO mediate. Her current legal representative is Theodore Kamasinski, as her previous atty. Nipori left. She feels That Judge Conboy has overstepped her bounds. Mrs. Thayer's lifestyle has been jeopardized, being told she must reduce her situation — losing her car, her insurance, her home, etc. There are no alimony guidelines in The law. ~~There must be objection~~ ~~A final temporary order~~ She believes it was a done deal before she even went TO court. She was told it was career suicide for any lawyer TO take her case after her original atty. left.

Theodore Kamasinski - atty. in fact for Mrs. Thayer. The temporary order should have left everything intact until the divorce was settled.

Originally it was 75% for Mrs. Thayer + 25% for Mr. Thayer; but it turned out to be reversed. It was a contested divorce - Mr. Thayer had gone TO someone who recommended borrowing against the house, leading it with little value.

Mrs. Thayer brought $600,000 into The marriage from an inheritance.

He believes the appeal will be won. Mrs. Thayer has no expensive tastes. ~~She~~ The reason The house was sold, was because Judge Thayer signed a false statement about a debt, and The pressure TO pay off These loans caused him TO sell The house. Atty. Brannon had stated he would provide a living situation for Mrs. Thayer + her son, but never followed Through.

No matter what Atty Nipori did, There was no way he could get justice for Mrs. Thayer. That's why he left The case.

No word about the best interests of The child, came from The Judge.

Mrs. Thayer paid 20% interest on credit cards (at one time she had over 20 credit cards) for years.

A temporary order to sell The house could never have been allowed before This case.

The case was originally assigned TO Judge Barry. Judge Nadeau said he reassigned The case TO Judge Conboy after Judge Thayer got in trouble with The law.

Asked where all The money spent by Judge Thayer went, Ms. Kamasinski said it indicated a compulsive gambler.

Sub-Committee Actions

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

SUBCOMMITTEE WORK SESSION ON SB 349

BILL TITLE: relative to the sale of the marital residence or other real property in a domestic proceeding.

DATE: 19 April 2000

Subcommittee Members: Reps. Moran, Pratt, Brown, Martel

Comments and Recommendations:

Amendments: Braun motion

Sponsor: Rep. Moran — OLS Document #: 2000-4152h

Sponsor: Rep. Moran — OLS Document #: 2000-4160h

Sponsor: Rep. — OLS Document #:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Braun motion OTP 4152h ~ no second

Seconded by Rep. None

Vote:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Pratt, Mp 2000-4160h OTP

Seconded by Rep. Martel

Vote: 2 - 1 Brown against

Martel, Pratt for

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

Edward R. Moran

Sub-Committee Minutes

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

SUBCOMMITTEE WORK SESSION ON SB 349

BILL TITLE: relative to the sale of the marital residence or other real property in a domestic proceeding.

DATE: 4 ~~March~~ April 2000

Subcommittee Members: Reps. Brown, Morgan, Pratt, Martel

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

SUBCOMMITTEE WORK SESSION ON SB 349

BILL TITLE: relative to the sale of the marital residence or other real property in a domestic proceeding.

DATE: 4/12/2000

Subcommittee Members: Reps. Moran, Brown, Pratt, Martel

Comments and Recommendations: limit to only sale of marital residence & allow sale if no agreement, only upon showing demonstration of extraordinary circumstance

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

Testimony

SENATE CHAMBER FLOOR DEBATE

MARCH 16, 2000

SB 349

NOT PROOFED YET!

FILE COPY

Brenda Mento

Senate Journal Clerk

271-3420

SENATOR GORDON: I rise to offer a floor amendment. You may recall the issue at the last session on this particular bill. The testimony that we had in the committee was that in the process of obtaining a divorce, the parties went to court and the court ordered that the marital residence be sold and that it be ordered to be sold prior to a final disposition in the divorce. The issue there was that it pretty much eliminates any opportunity anyone would have for appeals over issues involving the house, if in fact it is ordered during that period of time. The testimony that we received in the committee was that if a party has the ability to continue to pay the ongoing expenses of maintaining the house, the mortgage, the insurance, the taxes and the other costs of maintenance, they ought to be able to maintain the house at least until the divorce proceeding becomes final and at that point in time a determination would be made. This particular legislation applies to temporary orders of the court. The amendment that has been handed out basically says three things. That the court can order the sale of the marital residence prior to the end of the divorce if the parties agree to sell the house. The second thing that it says is that if they don't agree and they don't have the sufficient assets, financial resources to pay the debts or obligations generated by the property, including the mortgage and taxes and insurance, it may order the sale of the house. So the court has the discretion to do that. But the final sentence in here, which I think is the most important one is, that no temporary order shall be made for the sale of the residence or other property as long as the party residing in the residence is determined to have adequate financial resources to pay the debts or obligations generated by the property including the mortgage, taxes and insurance and ordinary maintenance as they become due. I think that would clarify the law. I think that it is probably unnecessary, but unfortunately a case has been brought to us again where common sense may have applied otherwise. I would ask that you support the amendment.

FILE COPY

§ 458:16. Temporary Relief and Permanent Restraining Orders.

I. After the filing of a libel for divorce, annulment, separation or a decree of nullity, the superior court may issue orders with such conditions and limitations as the court deems just which may, at the discretion of the court, be made on a temporary or permanent basis. Temporary orders may be issued ex parte. Said orders may be to the following effect:

(a) Directing any party to refrain from abusing or interfering in any way with the person or liberty of the other party.

(b) Enjoining any party from entering the premises wherein the other party resides upon a showing that physical or emotional harm would otherwise result.

(c) Enjoining any party from contacting the other party at, or entering, the other party's place of employment or school.

(d) Enjoining any party from harassing, intimidating or threatening the other party, other party's relatives regardless of their place of residences, or the other party's household members in any way.

(e) Determining the temporary custody and maintenance of any minor children as shall be deemed expedient for the benefit of the children; provided, however, that no preference shall be given to either parent in awarding such custody because of the parent's sex.

(f) Ordering a temporary allowance to be paid for the support of the other.

(g) Enjoining any party from transferring, encumbering, hypothecating, concealing or in any way disposing of any property, real or personal, except in the usual course of business or for the necessities of life, and if such order is directed against a party, it may require such party to notify the other party of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures.

II. If temporary orders are made ex parte, the party against whom the orders are issued may file a written request with the clerk of the superior court and request a hearing thereon. Such a hearing shall be held no later than 5 days after the request is received by the clerk for the county in which the libel for divorce, annulment, separation or decree of nullity is filed.

III. When a party violates a restraining order issued under this section by committing assault, criminal trespass, criminal mischief, stalking, or another criminal act, that party shall be guilty of a misdemeanor, and peace officers shall arrest the party, detain the party pursuant to RSA 594:19-a and refer the party for prosecution. Such arrests may be made within 6 hours after a violation without a warrant upon probable cause whether or not the violation is committed in the presence of a peace officer.

History

Source. RS 148:10. CS 157:10. GS 163:9. GL 182:9. 1887, 100:1; 103:1. PS 175:12. 1919, 39:1. PL 287:14. RL 339:14. 1949, 240:1. RSA 458:16. 1955, 262:3. 1967, 132:18; 259:1. 1971, 445:3. 1975, 426:1. 1992, 208:1. 1994, 259:12, eff. June 2, 1994. 1996, 32:3, eff. Jan. 1, 1997.

Amendments--1996. Paragraph I(g): Substituted "such party" for "him" following "it may require".

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--1994. Paragraph III: Inserted "stalking" following "mischief" and "that party shall be guilty of a misdemeanor" following "act" in the first sentence.

--1992. Amended section generally.

--1975. Paragraph IV: Added "provided, however, that no preference shall be given to either parent in awarding such custody because of the parent's sex" following "the children".

--1971. Amended section generally.

--1967. Chapter 132:18 deleted "or any justice thereof" following "the superior court".

Chapter 259 added the second, third and fourth sentences relating to ex parte procedure.

--1955. Inserted "annulment or a decree of nullity" following "libel for divorce".

CROSS REFERENCES

Classification of crimes, see RSA 625:9.

Penalties for stalking, see RSA 633:3-a.

Place and time of detention, see RSA 594:20-a.

Restraining orders regarding disposition of property pending disposition of action for divorce, see RSA 458:16-b.

Sentences, see RSA 651.

Warrantless arrest, see RSA 594:10.

Annotations

Analysis

1. Construction with other law.
2. Generally.
3. Application.
4. Appointment of nonresident custodian for children.

1. Construction with other law.

Expanding common law necessaries doctrine by imposing reciprocal obligation on both parties to marital contract is consistent with policy underlying New Hampshire's gender-neutral support laws. Cheshire Medical Ctr. v. Holbrook, 140 N.H. 187, 663 A.2d 1344 (1995).

Children deemed legitimate under RSA 457:42 are "children of the marriage" for purposes of support under this section. Hansen v. Hansen, 119 N.H. 473, 402 A.2d 1333 (1979).

RSA 458:17 requires the court to base its custody award solely on the best interests of the child; it accords no presumptive validity to a temporary custody award authorized by paragraph IV of this section. Greenglass v. Greenglass, 118 N.H. 570, 391 A.2d 890 (1978).

This section protects only offspring of a marriage regardless of need; however, stepchildren have a somewhat limited right to support from their stepparent, which is entirely dependent on a showing of need, under RSA 546-A. Archibald v. Whaland, 418 F. Supp. 991 (D.N.H. 1976), reversed on other grounds, 555

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F.2d 1061 (1st Cir. 1977).

2. Generally.

The power of a superior court to award custody and decree support in divorce and legal separation proceedings is wholly statutory. Trow v. Trow, 95 N.H. 529, 68 A.2d 538 (1949).

3. Application.

In the absence of pending or possible divorce proceedings, the superior court has no jurisdiction to appoint a custodian of minors since the right of custody is a legal incident of guardianship, and the appointment of guardians is a matter within the exclusive jurisdiction of the probate court. Leclerc v. Leclerc, 85 N.H. 121, 155 A. 249 (1931); 74 ALR 1348. See also Trow v. Trow, 95 N.H. 529, 68 A.2d 538 (1949).

The power conferred by this section to make an order respecting the custody and maintenance of the minor children of the parties relates to proceedings pendente lite. Salta v. Salta, 80 N.H. 218, 116 A. 438 (1921).

4. Appointment of nonresident custodian for children.

The language of this section manifestly suggests no qualification or restraint except such as may be imposed by the sound discretion of the presiding justice, and is broad enough to include the appointment of a nonresident custodian for the minor children of the parties if that is found to be for the children's benefit. Butler v. Butler, 83 N.H. 413, 143 A. 471 (1928).

Cited. White v. White, 77 N.H. 26, 86 A. 353 (1913); Hartnett v. Hartnett, 93 N.H. 406, 43 A.2d 153 (1945); Webster v. Webster, 95 N.H. 416, 64 A.2d 326 (1949); Veino v. Veino, 96 N.H. 439, 78 A.2d 522 (1951); Powell v. Powell, 97 N.H. 301, 86 A.2d 331 (1952); Mauzy v. Mauzy, 97 N.H. 514, 92 A.2d 908 (1952); Fowler v. Fowler, 116 N.H. 446, 362 A.2d 204 (1976); Buckner v. Buckner, 120 N.H. 402, 415 A.2d 871 (1980); Wonser v. Wonser, 120 N.H. 436, 415 A.2d 881 (1980); Baker v. Baker, 120 N.H. 645, 421 A.2d 998 (1980).

Library References

NH Practice 3 N.H.P. Family Law §§ 12.11, 13.45, 13.59, 14.09.

Bar Journal For article, "Guardian Ad Litem: A Proposal to Better Protect the Interests of Children of Divorce," see 20 N.H.B.J. 35 (Dec. 1978).

For article, "Child Custody In New Hampshire," see 23 N.H.B.J. 33 (Jan. 1982).

For article, "The Rights and Obligations of Stepparents Under New Hampshire Law," see 27 N.H.B.J. 59 (1986).

For article, "Understanding and Representing Adult Clients Who Are Victims of Domestic Abuse," see 35 N.H.B.J. 8 (1994).

CJS Divorce § 222 et seq.

ALR Child custody provisions of divorce or separation decree as subject to modification on habeas corpus. 4 ALR3d 1277.

Court's authority to award temporary alimony or suit money in action for divorce, separate maintenance, or alimony where the existence of a valid marriage is contested. 34 ALR4th 814.

Excessiveness or adequacy of money awarded as temporary alimony. 26 ALR4th 1218.

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Necessity of notice of application for temporary custody of child. 31 ALR3d 1398.

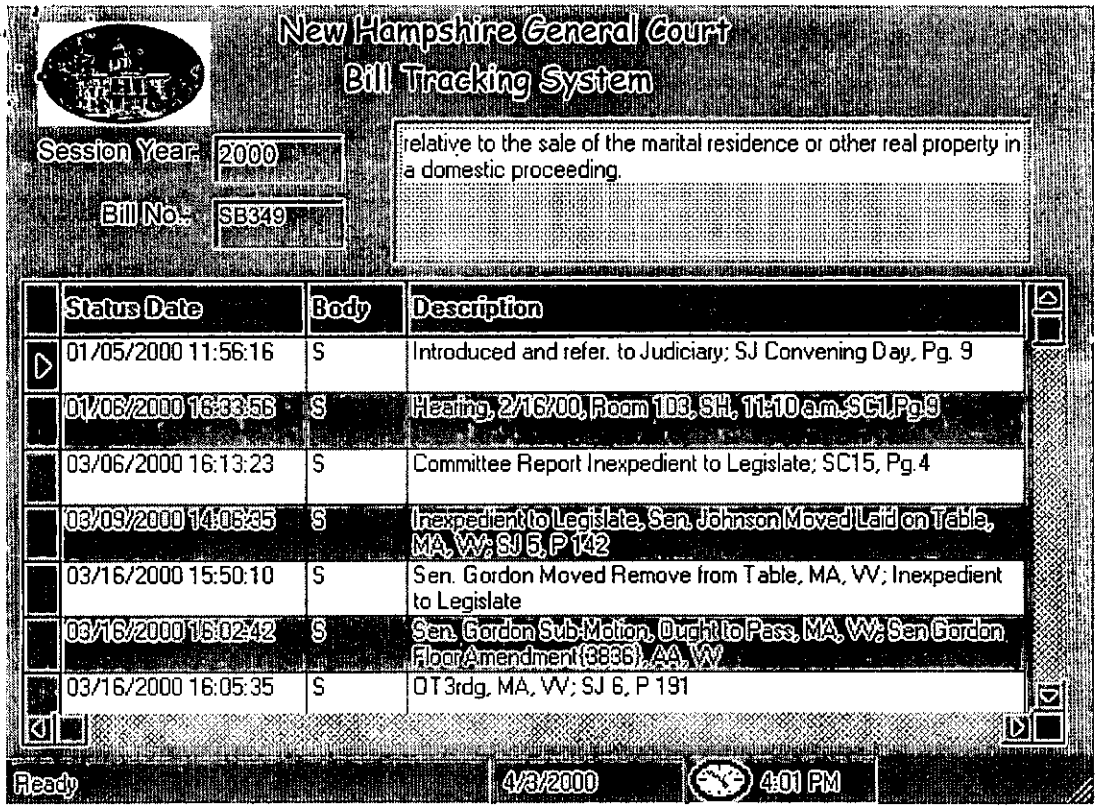
Power to modify spousal support award for a limited term, issued in conjunction with divorce, so as to extend the term or make the award permanent. 62 ALR4th 180.

Propriety of provision of custody or visitation order designed to insulate child from parent's extramarital sexual relationships. 40 ALR4th 812.

Right of putative father to visitation with child born out of wedlock. 58 ALR5th 669.

Wife's possession of independent means as affecting her right to alimony pendente lite. 60 ALR3d 728.

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New Hampshire General Court
Bill Tracking System

Session Year: 2000

Bill No.: SB349

relative to the sale of the marital residence or other real property in a domestic proceeding.

Status Date	Body	Description
01/05/2000 11:56:16	S	Introduced and refer. to Judiciary; SJ Convening Day, Pg. 9
01/06/2000 16:33:56	S	Hearing, 2/16/00, Room 103, SH, 11:10 a.m.;SC1,Pg.9
03/06/2000 16:13:23	S	Committee Report Inexpedient to Legislate; SC15, Pg.4
03/09/2000 14:06:35	S	Inexpedient to Legislate, Sen. Johnson Moved Laid on Table, MA, VV; SJ 5, P 142
03/16/2000 15:50:10	S	Sen. Gordon Moved Remove from Table, MA, VV; Inexpedient to Legislate
03/16/2000 16:02:42	S	Sen. Gordon Sub-Motion, Ought to Pass, MA, VV; Sen Gordon Floor Amendment (3836), AA, VV
03/16/2000 16:05:35	S	OT3rdg, MA, VV; SJ 6, P 191

Ready 4/3/2000 4:01 PM

FILE COPY

Ed

Senator Ned Gordon will try to come to your sub-committee meeting tomorrow to explain why his ammendment was passed by the Senate

Sheila

Judiciary Committee

SB 349 Hearing Report

FILE COPY

TO: Members of the Senate

FROM: Susan Duncan
Legislative Assistant

RE: Hearing report on **SB 349** – ***An Act relative to the sale of the marital residence or other real property in a domestic proceeding.***

HEARING DATE: February 16, 2000

Sponsor: Senator Roberge, District 9
Senator Brown, District 17

What the bill does: This bill would allow the court in a divorce, separation, or annulment proceeding, to issue an order for temporary relief which would include the sale of the marital residence or other real property with the prior written consent of both parties.

Who supports the bill:
Senator Roberge
Senator Brown
Attorney Caroline Douglas
Judith O'Brien Thayer
Theodore Camasinski, Pittsfield
William Cushman

Who opposes the bill: Jim Demers (did not testify)

Summary of testimony received:

- This legislation was introduced as a result of the situation which occurred with the Thayer divorce; subsequently the legislation also applied in the Douglas divorce.

- When there are high profile divorces involving members of the Judiciary, it can be difficult for the spouses to either obtain legal counsel (because of the danger to the attorney's career) or for the spouse to obtain impartial rulings from the courts.
- The powerful judges are part of a clique; cases are decided on who you are, not the facts of the case.
- In one case, even though five pieces of real estate were acquired during the course of the marriage, they were valued at zero and all awarded to the husband.
- Members of the Bench have numerous mechanisms in order to deny people of their rights – i.e., in one case in a final divorce decree, there was a provision which could not be appealed.
- In one case, the marital home was ordered to be sold as a convenience to the husband because he didn't want to have to pay the mortgage for a few months. This was ordered even though there was a minor child and the spouse indicated that she was able to maintain the costs of the property.
- The house is generally the largest, most valuable piece procured during the course of a marriage.
- A house is more than equity which can be determined on a single dollar amount – it involves the security for children who still live at home.
- This legislation would make it clear that all equity, including the home, is to be held until the final divorce hearing.
- In one case, the spouse was promised that she would be provided with a home, but she wasn't.
- This legislation is needed in order to clarify the statutes.
- Prior to their marriages, each woman had equity which they brought into the marriage, and each woman had invested substantially in the marital home. Neither investment was recognized in the final divorce decree.
- Women and children are the highest growing number of impoverished people in the country right now.

Funding: Not applicable

Future Action: The Committee took the legislation under advisement. Senator Gordon suggested an amendment regarding whether the spouse is able to maintain the home. An amendment will be drafted and presented to the Committee. (Amendment # 2000-3536s)

sfd
[file: SB 349]

Voting Sheets

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

EXECUTIVE SESSION on SB 349

BILL TITLE: **relative to the sale of the marital residence or other real property in a domestic proceeding.**

DATE: 4/19/00

LOB ROOM: 201

Amendments:

Sponsor: Rep. Moran — OLS Document #: 4160h (revised) 11-1

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

Motions: ~~OTP~~, (OTP/A), ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Moran

Seconded by Rep. ~~Rt Gale~~ Martel

Vote: 11-1 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: ~~11-1~~ (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Barbara Hull Richardson

Rep. ~~Stephen G. Avery,~~ Clerk

OFFICE OF THE HOUSE CLERK

2000 SESSION

CHILDREN AND FAMILY LAW

Bill #: SB 349 **Title:** _____

PH Date: 3/28/00 **Exec Session Date:** 4/19/00

Motion: _____ **Amendment #:** _____

MEMBER	YEAS	NAYS
Dowling, Patricia A, Chairman	✓	
Lyman, L Randy, V Chairman	✓	
Arnold, Thomas I	✓	
Brown, Julie M		✓
Gagnon, Eugene L		
Bickford, David A		
Hutchinson, Karen K		
Asplund, Bronwyn L		
Coughlin, Pamela D		
Jones, Constance A	✓	
Moran, Edward P	✓	
Young, David A		
Martel, Andre A	✓	
Pratt, Irene A	✓	
Allison, David C	✓	
Richardson, Barbara Hull, Clerk	✓	
Johnson, Lionel W	✓	
Grassie, Anne C		
Pantelakos, Laura C		
Ginsburg, Ruth		
Gile, Mary Stuart	✓	
McIntyre, Sara B		
	11	1

TOTAL VOTE: 12

Printed: 2/9/2000

Committee Report

COMMITTEE REPORT

COMMITTEE: **Children and Family Law**

BILL NUMBER: **SB 349**

TITLE: relative to the sale of the marital residence or other real property in a domestic proceeding.

DATE: April 19, 2000 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill sets parameters for the court in issuing temporary orders regarding the marital residence in a divorce separation, or annulment proceeding. This may include the sale of the marital residence with prior written consent of both parties. Absent this mutual consent, however, the bill would allow the sale of the marital residence prior to the final hearing, only if the court is satisfied that the party residing in the marital residence has the financial capability to pay the property obligations as they come due.

Vote 11-1.

Rep. Edward P. Moran, Jr.
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Children and Family Law

SB 349, relative to the sale of the marital residence or other real property in a domestic proceeding. OUGHT TO PASS WITH AMENDMENT

Rep. Edward P. Moran, Jr. for **Children and Family Law:** This bill sets parameters for the court in issuing temporary orders regarding the marital residence in a divorce separation, or annulment proceeding. This may include the sale of the marital residence with prior written consent of both parties. Absent this mutual consent, however, the bill would allow the sale of the marital residence prior to the final hearing, only if the court is satisfied that the party residing in the marital residence has the financial capability to pay the property obligations as they come due. Vote 11-1.

not

COMMITTEE REPORT

COMMITTEE: **Children and Family Law**

BILL NUMBER: **SB 349**

TITLE: relative to the sale of the marital residence or other real property in a domestic proceeding.

DATE: CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

Vote 11-1

Rep. Barbara Hull Richardson
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

SB349 - Is this titled Amendment to SB 349?

Pat - don't know if something about perception of fairness should be added, or would it just inflame those who are judicially oriented (more so than we appear to be.)

Blevet — Ed Meyer for the Committee

This bill sets parameters (guidelines?) for the court in issuing temporary orders regarding the marital residence in a divorce, separation, or annulment proceeding. This may include the sale of the the marital residence with prior written consent of both parties. Absent this mutual consent, however, the bill would allow the sale of the marital residence prior to the final hearing, only if the court is not satisfied (convinced?) that the party residing in the marital residence has the financial capability to pay the property obligations as they come due.