

CLASSIFICATION

- **Classification is a legal conclusion**
- **Must be supported by findings of fact (or a stipulation)**
- **COA says classification needs:**
 - Date property was acquired
 - Who acquired the property and how
 - Date of marriage
 - Date of separation
 - (also value on DOS)

BURDEN OF PROOF

- **Party seeking marital classification must go first**
 - Property interest acquired during the marriage
 - By either or both spouses
 - Owned on DOS
 - Value on DOS
- **Burden shifts to party seeking to show separate property interest**

CATEGORIES OF SEPARATE PROPERTY

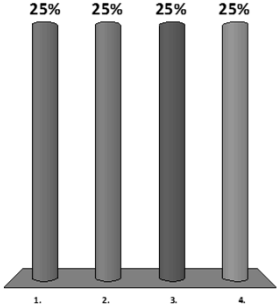
- Property acquired before marriage
- Property acquired by a spouse by gift or bequest
- Property acquired in exchange of separate property
- Passive appreciation of separate property during marriage
- Passive income earned from separate property during marriage
- Nontransferable professional licenses

BURDENS OF PROOF

- Appreciation of separate property during the marriage is presumed active and therefore marital
- Burden of tracing value acquired during the marriage always on person seeking separate classification
- No presumptions re: debt or value/property/debt acquired after DOS
 - **Except** appreciation/depreciation of marital property after DOS and before DOD is presumed passive and therefore divisible

INVESTMENT ACCOUNT CLASSIFICATION?

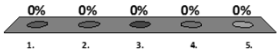
1. Entirely marital
2. Entirely separate
3. \$25,000 separate/\$30,000 marital
4. Other



Category	Percentage
1. Entirely marital	25%
2. Entirely separate	25%
3. \$25,000 separate/\$30,000 marital	25%
4. Other	25%

401K CLASSIFICATION?

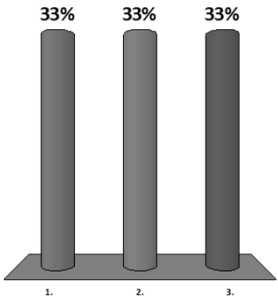
1. \$20,000 plus a reasonable rate of return is separate
2. 4/5 marital; 1/5 separate
3. All separate
4. All marital
5. None of the above



Option	Percentage
1.	0%
2.	0%
3.	0%
4.	0%
5.	0%

JOINT SAVINGS ACCOUNT

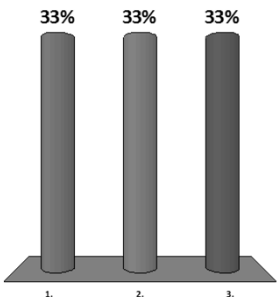
1. Most likely all marital
2. \$45,000 marital
3. Other



Option	Percentage
1.	33%
2.	33%
3.	33%

HORSE FARM CLASSIFICATION?

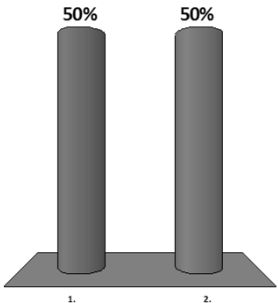
1. All separate
2. \$500,00 separate, \$150,000 marital
3. \$500,000 separate for sure but some marital for sure



Option	Percentage
1.	33%
2.	33%
3.	33%

FARM AFTER TENANCY BY THE ENTIRETY

1. Same classification as last problem
2. All marital



A bar chart with two bars, labeled '1.' and '2.', both reaching the 50% mark on the vertical axis. The bars are dark gray and sit on a light gray base.

DIVISIBLE DEBT

- For payments made before October 1, 2013, any increase or decrease in marital debt is divisible debt
 - No need to identify 'passive or active'
 - No presumptions apply regarding classification
- Divisible debt must be classified and distributed between the parties
 - Subject to general presumption that an equal distribution is equitable, divisible debt is distributed in discretion of trial court
 - Trial court should consider the source of payment for any decrease in marital debt. See *Bodle v. Bodle*, 727 SE2d (NC App 2012)

POSTSEPARATION DEBT PAYMENTS

Payments of marital debt made by one or both spouses on or after October 1, 2013 will not be divisible debt

- After that date, only passive increases and decreases in marital debt are divisible property

Trial court has discretion to determine appropriate way to account for postseparation payments

- Distribution factor
- "Credit"

