

Classification

Marital Property Presumption

All property acquired during the marriage by either or both parties and owned by either or both parties on the date of separation is presumed to be marital property.

Burden of Proof for Classification of Marital Property

Party seeking marital classification of any property interest must establish by preponderance of the evidence:

- That the property was owned by either or both parties on the date of separation, and
- That the property was acquired by either or both parties after the date of marriage and before the date of separation, and
- The value of the property on the date of separation.

If party meets that burden, the entire date of separation value of the property is presumed to be marital property.

Burden then shifts to party seeking separate classification to show by preponderance of the evidence:

- That property owned on the date of separation is all or partially separate property.

If both parties meet the burden of proof, property is all or partially separate.

If neither party meets the burden of proof, property falls out of ED (court cannot distribute the property).

Application of Marital Property Presumption to “Mixed” Assets

The party claiming a separate interest in mixed property always has the burden of tracing out his/her separate interest in the date of separation value of the property.

- Must show portion of date of separation value that is separate property.

Appreciation in value of separate property that occurs during the marriage is presumed to be entirely marital. Party seeking separate classification can rebut presumption by showing appreciation was NOT caused by the actions of either spouse during the marriage.

Burden of Proof for Classification of Marital Debt

Party seeking marital classification must show by preponderance of the evidence:

- That debt was owed by either or both parties on the date of separation, and
- That debt was incurred by either or both parties after the date of marriage and before the date of separation, and
- That debt was incurred for the joint benefit of the parties, and
- The amount owed on the debt on the date of separation.

If that burden of proof is not met, debt falls out of ED (court cannot distribute the debt).

Other Classification Presumptions

- Tenancy by the entirety property is presumed marital.

Rebutted by preponderance of the evidence.

- Property acquired by one spouse during the marriage by gift from the other spouse is presumed to be marital property, unless a contrary intention was expressly stated in the conveyance.

Rebutted by showing no gift was made or by an express statement in the conveyance.

- Separate property exchanged for real property held as tenants by the entirety is presumed to be a gift to the marriage.

Rebutted by showing separate property was not gifted to the marriage or by an express statement in the conveyance.

- Property conveyed to one spouse from the parents of that spouse during the marriage is presumed to be a gift to the child of those parents.

Rebutted by showing no gift was made or that gift was to other spouse or to both spouses.

- All increase/decrease in value of marital property occurring after the date of separation and before the date of distribution is presumed to be divisible property.

Rebutted by showing increase or decrease was caused by the actions of one spouse after the date of separation.

Checklist

Required Findings/Conclusions in ED Judgment

General

1. Personal jurisdiction over defendant.
2. Date of marriage.
3. Date of separation.
4. Date ED claim was filed.
5. Date of Divorce, if judgment has been entered.
6. Make sure all persons who hold legal title to property to be distributed are joined as parties.
7. Include total net value of marital and divisible property.

Property

1. Identify all property that evidence or stipulations establish was owned by either or both parties on the date of separation.
2. Classify all marital property. Required findings:
 - a. Date property was acquired.
 - b. Who acquired the property and how it was acquired.
 - c. Actually owned by one or both parties on the date of separation.
 - d. Value on the date of separation.
 - i. If property is a business, must identify valuation methodology used to determine value.
 - e. Value on date of distribution, if shown by the evidence.

3. Classify all separate property. Required findings:
 - a. Sufficient to show property fits one of categories of separate property listed in GS 50-20(b)(2).
4. Classify all divisible property.
 - a. Sufficient to show fits one of the categories of divisible property listed in GS 50-20(b)(4).

Debt

1. Identify all debt that evidence showed was owed by either or both parties on the date of separation.
2. Classify the marital debt. Required findings:
 - a. Date debt was incurred.
 - b. Who incurred the debt and how it was incurred.
 - i. Conclusion, based on these findings, that the debt was incurred for the joint benefit of the parties.
 - c. Actually owed by one or both parties on the date of separation.
 - d. Value on the date of separation.
 - e. Value on date of distribution, if shown by the evidence.
3. Classify the divisible debt
 - a. Increase or decrease in amount of debt between date of separation and date of distribution.
 - b. Cause of the increase or decrease.
 - i. Effective October 1, 2013, only passive changes in value of debt will be divisible debt.

- ii. Before October 1, 2013, any change in value of debt was divisible debt.

Distribution

1. All marital and divisible property and debt identified in the judgment must be distributed in the judgment to one or both parties, even if no longer owned/owed when judgment entered.
2. Finding required for every distribution factor established by the evidence.
 - a. Factors listed in GS 50-20(c).
3. Conclusion that an equal division of marital and divisible property and debt is equitable or a conclusion that equal is not equitable.
 - a. Specific division percentage is not required
4. For distributive award:
 - a. Conclusion that in-kind distribution is not equitable.
 - i. Findings to support that conclusion:
 1. Marital corporation or otherwise not practical;
 2. Distributive award necessary to achieve equity.
 - b. If liquid assets sufficient to pay the award are not obvious, identify how distributive award will be paid.
 - c. For award not payable in full until more than 6 years after the date of divorce, need additional findings:
 - i. Legal or business impediment, or some overriding social policy, prevents completion of payment within 6 years from date of divorce.

