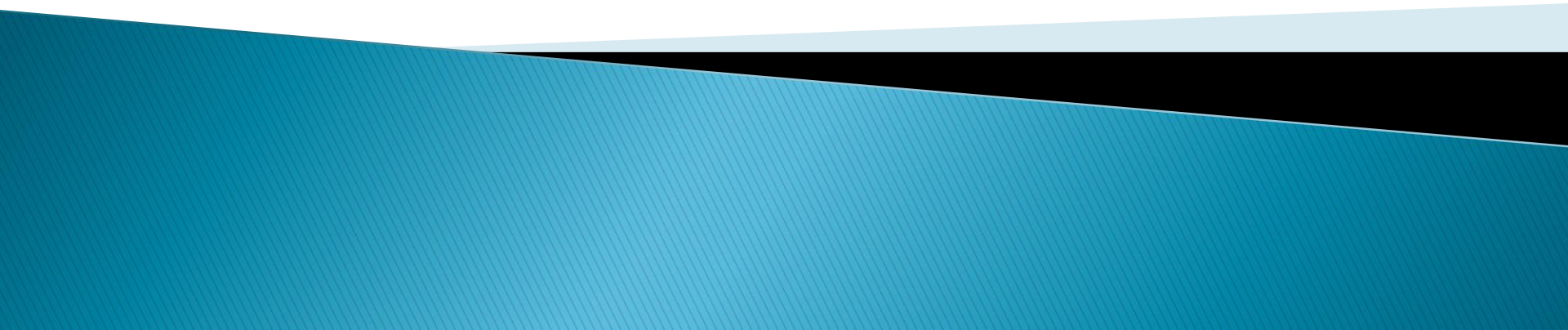


Equitable Distribution

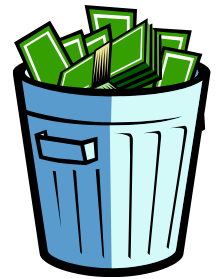
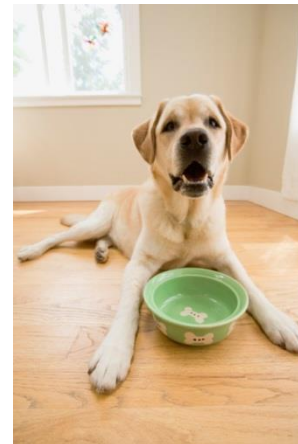
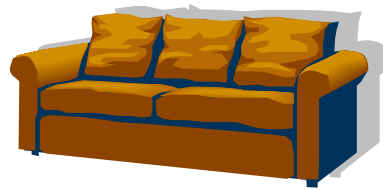
Cheryl Howell



Equitable Distribution



Legal process for dividing
property and debt between
divorcing spouses



Equitable Distribution

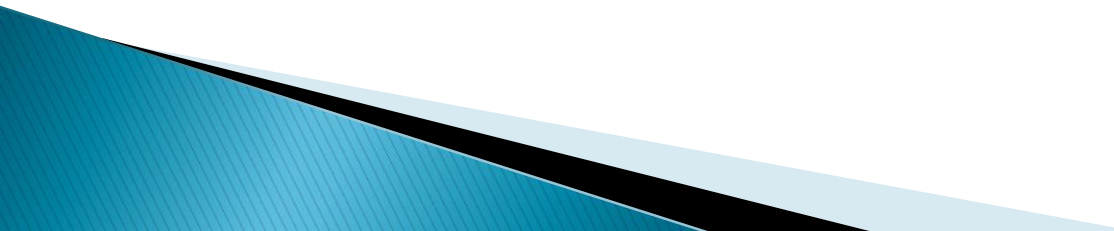
- ▶ Created by statute

- GS 50-20
- GS 50-20.1
- GS 50-21

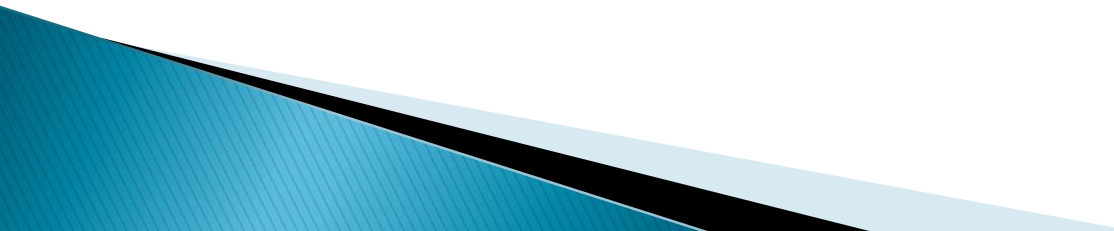
- ▶ *Extensively* supplemented by case law



Tasks for the Judge

- ▶ *Classify* Property and Debt Owned/Owed on the Date of Separation
 - ▶ *Value* Marital/Divisible Property and Debt
 - ▶ *Distribute* Marital/Divisible Property and Debt
- 

Fundamental Principles

- ▶ Marriage is an *Economic Partnership*
 - ▶ Marital property should be divided *equitably* upon divorce
 - ▶ *Title* is not controlling
 - ▶ *Separate property* should remain with the owner
- 

Classification

- ▶ Identification of property and debt subject to the court's authority
 - Process for creating the 'pie' to be divided between the parties
 - If property is not marital or divisible, court has **no authority** to do anything with it



Key Classification Terms


- ▶ Marital Property
 - ▶ Separate Property
 - ▶ Marital Debt
 - ▶ Divisible Property
 - ▶ Divisible Debt
- 

Marital Property G.S. 50–20(b)(1)


- All real and personal property
- Acquired by either or both spouses
- Between date of marriage and date of separation
- Owned by either or both spouses on date of separation
 - Legal or equitable ownership



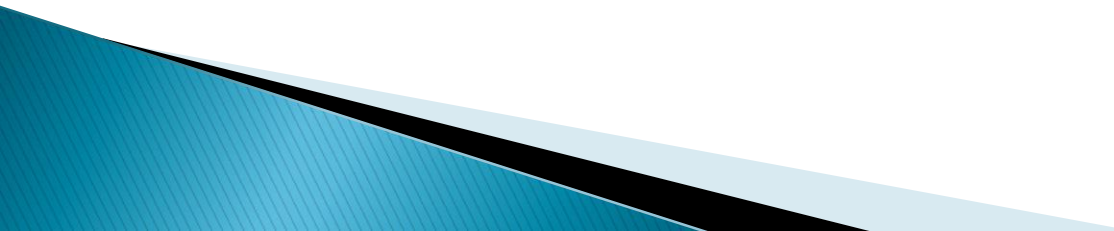
Separate Property GS 50–20(b)(2)

- ▶ Acquired before the date of marriage
 - ▶ Acquired by “a” spouse by gift or bequest during the marriage
 - ▶ Acquired in exchange for separate property during the marriage
 - ▶ Passive increase in value of or income from separate property during marriage
 - ▶ Nontransferable Licenses
- 

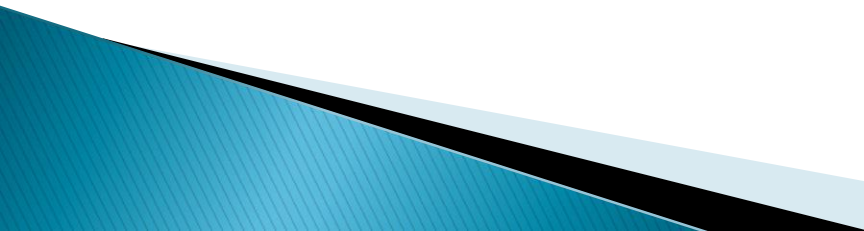
Classification

- ▶ A legal conclusion
 - Can parties stipulate?
 - ▶ Must be supported with findings of fact
 - ▶ Minimum findings:
 - Date property/debt acquired
 - Who acquired it and how
 - Date of marriage
 - Date of separation
 - (Value on date of separation)
- 

Test

- ▶ Wife earned money as a piano teacher during the marriage
 - ▶ She used the money to buy a grand piano
 - ▶ She gave the piano to her daughter for the daughter's 16th birthday
 - ▶ On the date of separation, the piano has a value of \$15,000
 - ▶ Is the piano marital or separate property?
- 

Test

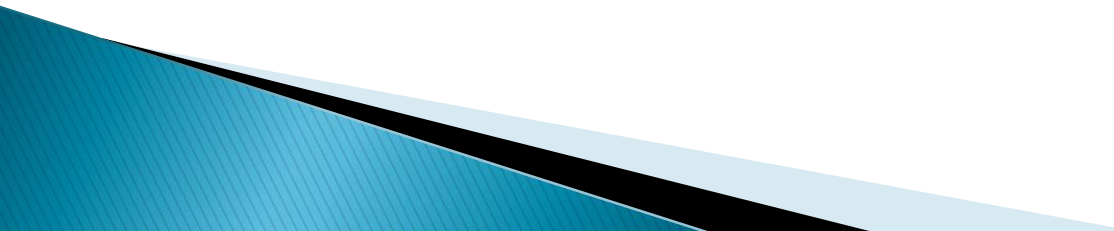
- ▶ On date of separation, parties owned a note – payable to both husband and wife – in the amount of \$35,000.
 - ▶ Note was received 3 months before separation – proceeds from sale of an airplane.
 - ▶ Airplane was purchased by husband before the marriage.
 - ▶ Is the note marital property?
- 

Marital Property Presumption

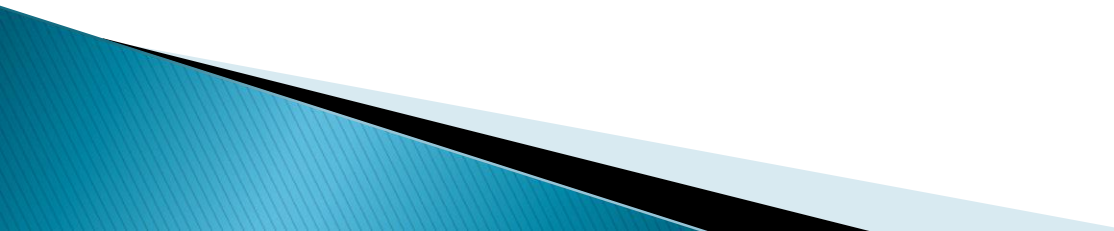
- ▶ GS 50–20(b)(1):

- “It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection.”

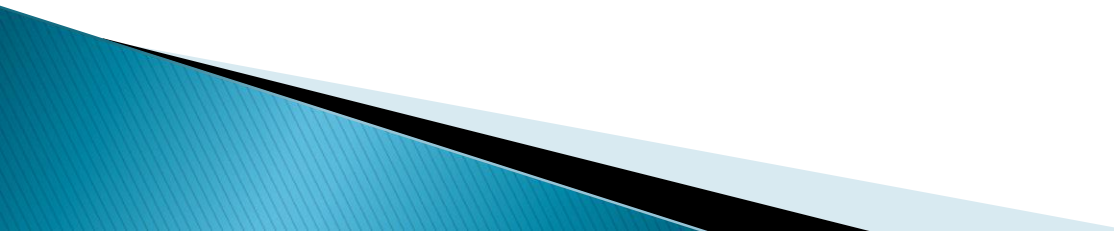
Burden of Proof in Classification

- ▶ Party seeking marital classification goes first
 - Property acquired during marriage before the date of separation
 - By either or both parties
 - Owned by either or both parties on date of separation
 - Value on date of separation
 - ▶ Entire date of separation value presumed marital
 - ▶ Burden shifts to party seeking separate classification
- 

Test

- ▶ On date of separation, parties owned a note – payable to both husband and wife – in the amount of \$35,000.
 - ▶ Note was received 3 months before separation – proceeds from sale of an airplane.
 - ▶ Airplane was purchased by husband before the marriage.
 - ▶ Is the note marital property?
- 

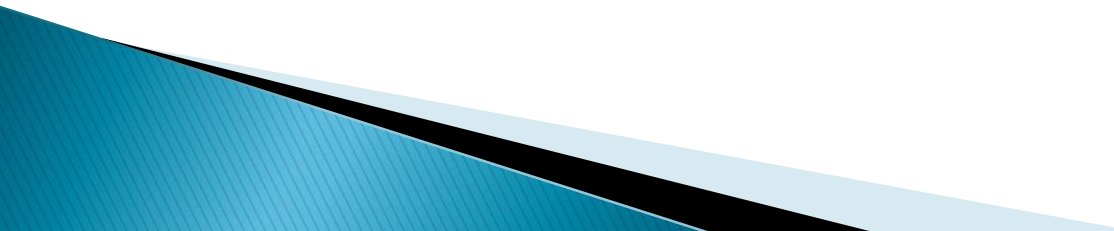
Test

- ▶ Same \$35,000 note on date of separation
 - ▶ Received as proceeds from sale of plane
 - ▶ Plane purchased by husband before marriage
 - ▶ He paid \$12,000 at time he purchased the plane and gave a note for remaining balance on price – \$20,000.
 - ▶ He paid off note during marriage with funds he earned giving flying lessons during the marriage.
- 

Mixed Property

- ▶ Separate property is protected
 - Mixing marital and separate does not result in separate property 'transmuting' to marital
- ▶ Source of Funds doctrine applies to classification
 - Value of an asset on date of separation is classified according to the source of the value
 - Both the marital and the separate estates are entitled to an interest in the property "in the ratio its' contribution bears to the total investment in the property."

Test

- ▶ Same \$35,000 note on date of separation
 - ▶ Received as proceeds from sale of plane
 - ▶ Plane purchased by husband before marriage
 - ▶ He paid \$12,000 at time he purchased the plane and gave a note for remaining balance on price – \$20,000.
 - ▶ He paid off note during marriage with funds he earned giving flying lessons during the marriage.
- 

Marital Property Presumption

- ▶ Wife proves note is marital:
 - Note 'acquired' during the marriage
 - Owned by both on the date of separation
 - Value on date of separation is \$35,000
- ▶ Husband must 'trace' his separate interest
 - Court has discretion to use the *Mishler* formula if husband can provide the values

Mishler 90 NCAPP 72 “formula”


$$\text{Marital Property} = \frac{\text{Total Marital Contribution}}{\text{Total Contribution}} \times \text{DOS Net Value}$$

Mishler 90 NCAPP 72 “formula”

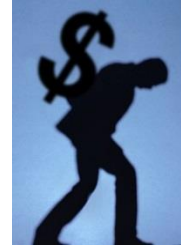
$$\text{Marital Property} = \frac{\$20,000}{\$32,000} \times \$35,000$$

Roughly 2/3rds
marital - \$21,875

Classification process

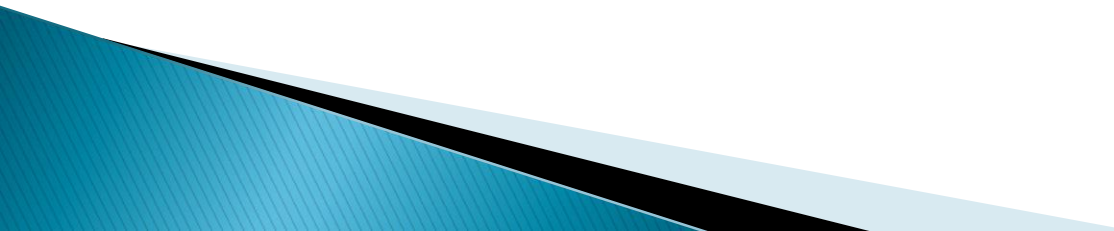
1. What is the property interest to be classified?
 2. Was it owned in whole or in part by either or both parties on the date of separation?
 3. What was the value of that property interest on the date of separation?
 4. Where did that value come from?
- 

Marital Debt

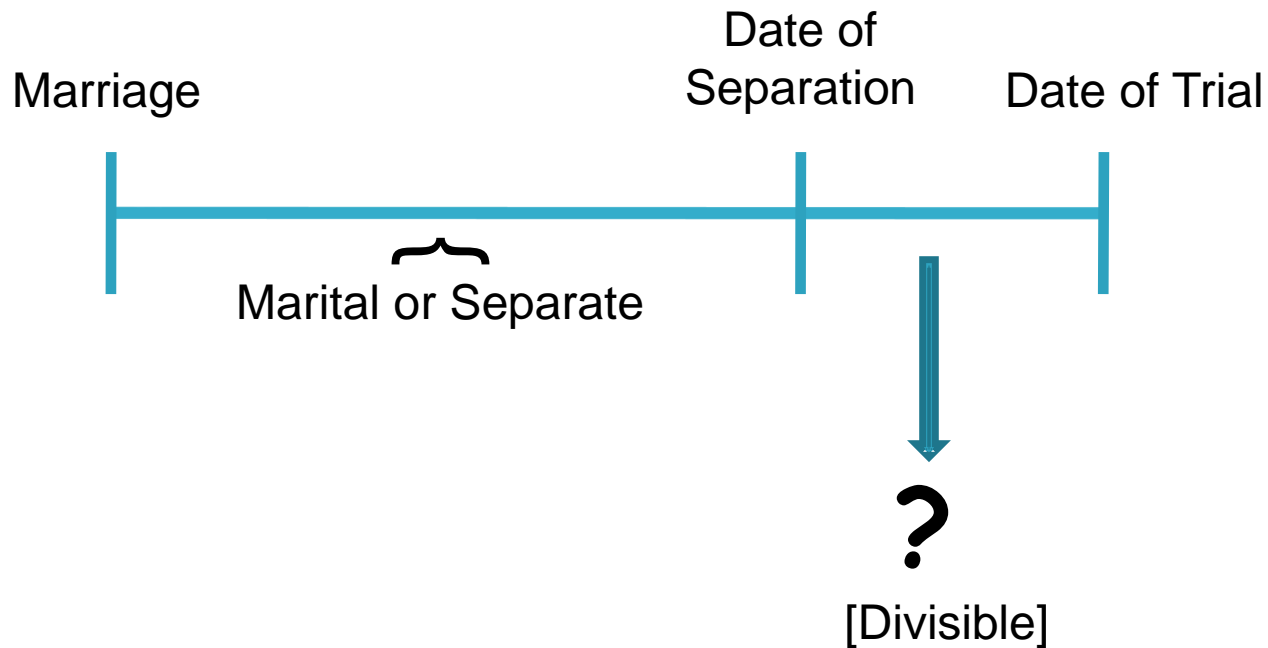


- ▶ Incurred during the marriage by either or both spouses
- ▶ Owed on the date of separation
- ▶ Incurred for the *joint benefit of the parties*

Marital Debt

- ▶ No marital debt presumption
 - ▶ Party seeking marital classification must prove joint benefit
 - ▶ What is joint benefit?????
- 

Divisible Property: G.S. 50-20(b)(4)

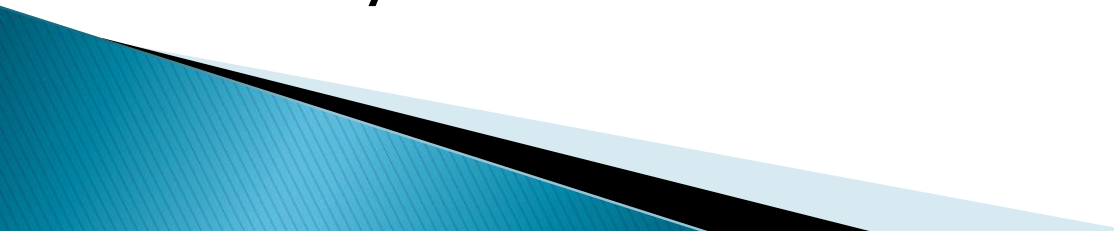


Divisible Property: Post Separation

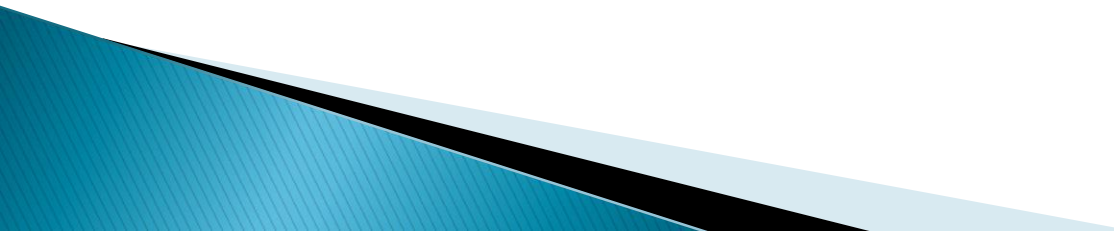


- *Passive* changes in value of marital property
- *Passive* income from marital property
- Property/cash earned as result of marital effort
- Increases/decreases in marital debt
 - After October 1, 2013: only *passive* increases and decreases

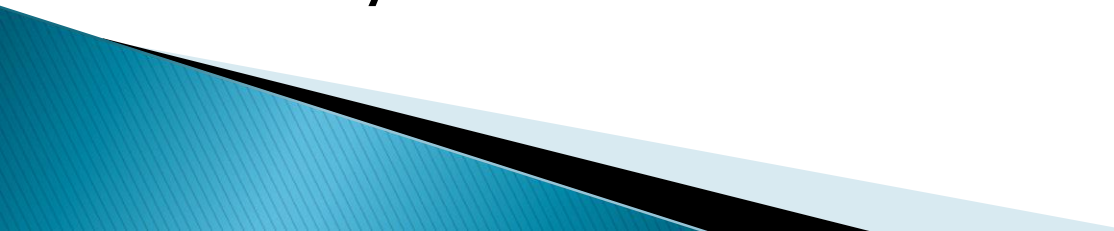
Test

- ▶ Marital home valued at \$200,000 on date of separation
 - ▶ Wife lived in home during separation, painted the house, added some landscaping, and upgraded the kitchen and bathroom
 - ▶ On date of trial, house valued at \$260,000
 - ▶ Classify the house
- 

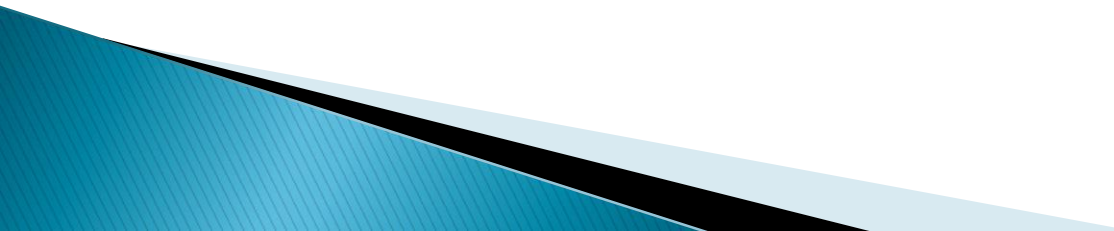
Divisible property: 50–20(b)(4)(a)

- ▶ Any *increase or decrease in the value of marital property* after the date of separation and before the date of distribution is **presumed to be divisible property**
 - ▶ Party objecting to classification as divisible has burden to show extent to which change in value was the result of *postseparation efforts* of one spouse
- 

Test

- ▶ Marital home valued at \$200,000 on date of separation
 - ▶ Wife lived in home during separation, painted the house, added some landscaping, and upgraded the kitchen and bathroom
 - ▶ On date of trial, house valued at \$260,000
 - ▶ Classify the house
- 

Test

- ▶ Parties own rental property on date of separation that is marital property
 - ▶ Husband collects rent from the properties during separation in the amount of \$50,000
 - ▶ Is the \$50,000 divisible property?
- 

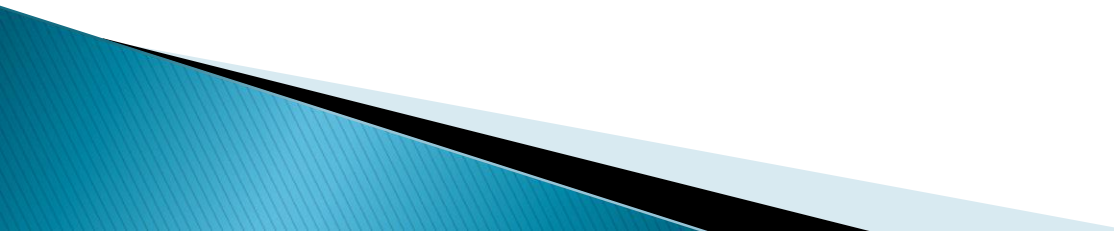
Divisible property

- ▶ No presumptions yet except the presumption for GS 50–20(b)(4)(a)
- ▶ Party seeking divisible classification must show property falls within one of the remaining categories
 - Here – wife needs to show rental income was *passive* income if she wants any of it

Valuation

- ▶ Every asset or debt identified as marital must have a date of separation value
 - No value = No distribution
 - Exception for defined benefit retirement accounts divided equally by QDRO
 - See GS 50–20.1(d)

Distribution

- ▶ The place to do “equity”
 - Consider distribution factors
 - ▶ Equal presumed equitable
 - Only need one factor to award unequal
 - ▶ In-kind division presumed equitable
 - Distributive award allowed when in-kind is not practical
- 

Mishler 90 NCAPP 72 “formula”

$$\text{Marital Property} = \frac{\text{Total Marital Contribution}}{\text{Total Contribution}} \times \text{DOS Net Value}$$

$$\text{Separate Property} = \frac{\text{Total Separate Contribution}}{\text{Total Contribution}} \times \text{DOS Net Value}$$