

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

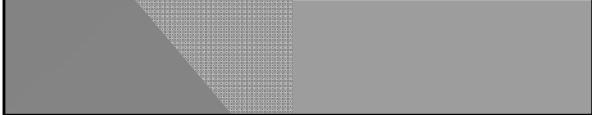
401K CLASSIFICATION?

1. \$20,000 plus 3% earned while married is separate
2. 4/5 marital; 1/5 separate
3. All separate
4. All marital



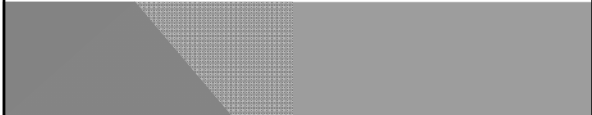
JOINT SAVINGS ACCOUNT

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



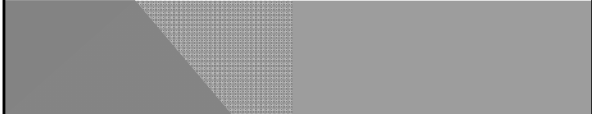
HORSE FARM CLASSIFICATION?

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



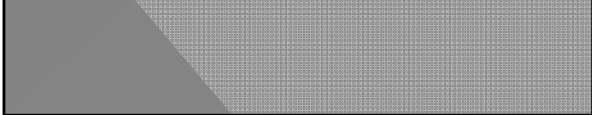
FARM AFTER TENANCY BY THE ENTIRETY

1. Same classification as last problem
2. All marital



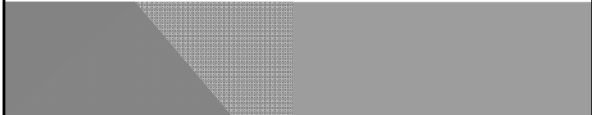
DIVISIBLE DEBT

- Increase or decrease in marital debt is divisible debt
No need to identify 'passive or active' (yet)
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)



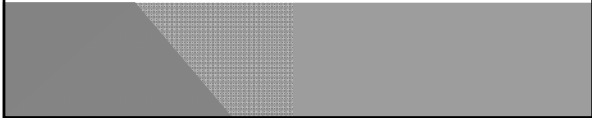
PAYMENT OF INTEREST PART OF MORTGAGE PAYMENT?

1. Divisible
2. Not divisible
3. Other



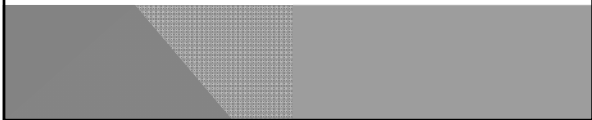
PAYMENT OF TAXES AND INSURANCE?

- 1.Divisible
- 2.Not divisible
- 3.other




I GIVE \$ FOR \$ CREDIT....

- 1.Almost always
- 2.Almost never
- 3.Sometimes



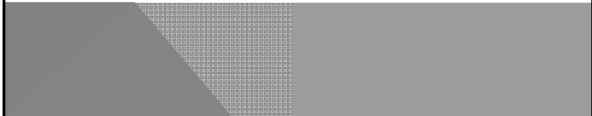
LLC

- 1.All marital
- 2.Mostly separate
- 3.other



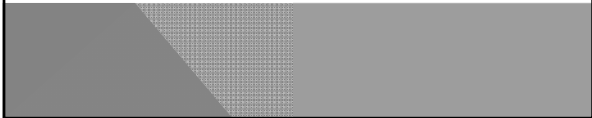
INCREASED VALUE OF LLC AFTER DOS?

- 1.Divisible property
- 2.Part divisible and part not divisible
- 3.Not divisible at all




RENTS COLLECTED FROM TENANTS AFTER DOS?

- 1.Divisible property
- 2.Partly divisible property
- 3.Not divisible property



SEVERANCE PAY?

- 1.Marital
- 2.Divisible
- 3.Not divisible or marital
- 4.Probably part divisible and part not divisible



\$82,000???

- 1.Divisible
- 2.Marital
- 3.Not divisible or marital
- 4.Probably part divisible and part not divisible

