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**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)

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**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**

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### 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

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### 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

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### 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 *Bodie v. Bodie*, 727 SE2d (NC App 2012)

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**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"

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