

## DISTRIBUTION<sup>1</sup>

### A. Philosophy

Marriage is an economic partnership. Each spouse should receive a return based on his or her contributions to the marriage and his or her economic status.

Smith v Smith  
111 NC App 460, 433 SE2D 196 (1993)

“An equal division is made mandatory unless the court determines that an equal division is not equitable.” G.S. 50-20(c).

White v White  
312 NC 770 (1985)

Smith v Smith  
111 NC App 460,  
433 SE2d 196, 220 (1993)

It is not sufficient for a trial court to conclude that “an unequal distribution is equitable.” Rather, the judgment must state that the trial court concluded that “an equal distribution is not equitable” to show trial court gave adequate weight to the presumption in favor of an equal division.

Lucas v. Lucas  
706 SE2d 270 (N.C. App. 2011)

When making an unequal award, the better practice is for the judgment to set out the specific percentage each spouse is to receive but failure to do so is not reversible error if amount distributed to each party is otherwise ascertainable from the judgment.

Barlowe v. Barlowe  
113 NC App 797 (1994)

### B. Burden of Proof

“A party desiring an unequal division of marital property bears the burden of producing evidence concerning one or more of the twelve factors in the statute and the burden of proving by a preponderance of the evidence that an equal division would not be equitable.”

---

<sup>1</sup> Original manuscript written by Judge L. Stanley Brown (retired) and Chief District Court Judge Beth Keever in 2003. Updated by Cheryl Howell, May 2013.

White v White  
312 NC 770 (1985)  
Brackney v. Brackney  
199 NC App 375 (2009)

Although the issue has not been addressed directly, there appears to be no requirement that a party request an unequal division in a pleading before the court can consider an unequal distribution. A number of reported cases hold that the trial court must consider all factors established by the evidence, see cases listed in section C. below, but none of these cases indicate there is no such requirement if neither party has expressly pled a request for an unequal distribution.

### **C. Weight of Factors**

“Court must exercise its discretion in assigning the weight each factor should receive in any given case”

White v White  
312 NC 770 (1985)

“A finding that a single factor supported an unequal distribution.....would be within the court’s discretion”

Andrews v Andrews  
79 NC App 228(1986)

Godley v Godley  
110 NC App 99, 429 SE2d 382 (1993)

Surette v Surette  
114 NC App 268, 442 SE2d 123 (1994)

Finkle v. Finkle  
162 NC App 344 (2004)

Edwards v. Edwards  
152 NC App 185 (2002)

The trial court has discretion to divide an estate equally despite the presence of distribution factors.

Freeman v. Freeman  
107 NCApp 644 (1992)

“It is not required that the trial court make findings revealing the exact weight assigned to any given factor”

Daetwyler v Daetwyler  
130 NC App 246 (1998)

Fox v Fox  
114 NC App 125, 441 SE2d 613 (1994)

“The trial court could choose to give no weight to a distributional factor”

Wall v Wall  
140 NC App 303 (2000)

Smith v. Smith  
111 NC App 460 (1993)

“There is no language within [GS 50-20(c)] which would indicate that the trial court is required to place a monetary value on any distributional factor”

Gum v Gum  
107 NC App 734 (1992)

Conway v. Conway  
131 NC App 609 (1998)

Peltzer v. Peltzer  
732 SE2d 357 (NC App 2012)

#### **D. Appellate Review**

“It is well established that, where matters are left to the discretion of the trial court, appellate review is limited to a determination of whether there was a clear abuse of discretion”

White v White  
312 NC 770 (1985)

Munn v. Munn  
112 App 15, 435 SE2d 74 (1993)

Decision that equal is not equitable will not be disturbed unless appellate court determines that the division resulted in an obvious miscarriage of justice.

Troutman v. Troutman  
193 NC App 395 (1998)

The trial court's division of specific assets and debts will not be disturbed on appeal unless the division is shown to be manifestly unsupported by reason.

Khajanchi v. Khajanchi  
140 NC App 552 (2000)

If a case is remanded after an appeal and a new distribution is required, the trial court should consider new evidence as to any distribution factor if "the existence, non-existence, or quantum thereof is likely to have changed by the time of the new hearing."

Fox v. Fox  
114 NC App 125 (1994)

Wall v. Wall  
140 NC App 303 (2000)

### **E. Findings of Fact**

In any order for the distribution of property made pursuant to this section, the court shall make written findings of fact that support the determination that marital property and divisible property has been equitably divided. GS 50-20(j)

"Written findings of fact are required in every case in which a distribution of marital property is ordered under the Equitable Distribution Act. We expressly disapprove cases which have held that a trial court need not make findings of fact when marital property is equally divided"

Armstrong v Armstrong  
322 NC 396 (1988)

Wade v Wade  
72 NC App 372, 376,  
325 SE2d 260 (1985)

"If there is evidence concerning a certain factor, there should be a finding of fact relating to that factor," even if the court decides an equal distribution is equitable

Little v Little  
74 NC App 12, 327 SE2d 283 (1985)

Alexander v Alexander  
68 NC App 548, 315 SE2d 772 (1984)

Smith v Smith  
71 NC App 242 (1984)

Greer v Greer  
84 NC App 471, 353, SE2d 427 (1987)

Taylor v Taylor  
92 NC App 413, 374 SE2d 644 (1988)

Fox v Fox  
103 NC App 13, 404 SE2d 354 (1991)

Haywood v Haywood  
106 NC App 91, 95, 418 SE2d 269  
(1992)

Freeman v Freeman  
107 NC App 644, 421 SE2d 623 (1992)

Surette v Surette  
114 NC App 368, 442 SE2d 123 (1994)

Burnett v Burnett  
122 NC App 712, 471 SE2d 649 (1996)

Collins v. Collins  
479 SE2d 240 (1997)

Plummer v. Plummer  
198 NC App 538 (2009)

Warren v. Warren  
175 NC App 509 (2006)

“However, where the parties ... stipulate that an equal division of the marital property is equitable, it is not only unnecessary but improper for the trial court to consider, in making that distribution, any of the distributional factors set forth in NCGS 50-20(c)”

Miller v Miller  
97 NC App 77 (1990)

Workman v Workman  
106 NC App 562, 418 SE2d 269 (1992)

Trial court has authority to set aside stipulations when justice requires, upon motion of either party or upon court’s own motion, but only after parties are given notice and an opportunity to be heard.

Plomaritis v. Plomaritis  
730 SE2d 784 (NC App July, 2012)

“Even if the trial court did not find defendant’s testimony to be credible, the court still should have made findings of fact to indicate that the court had considered the testimony but rejected it or gave it a little weight.”

Wall v Wall  
140 NC App 303(2000)

General findings about distribution factors are not sufficient for appellate review and case will be remanded for more detail. Judgment should identify the factor and the evidence relating to it. For example, trial court’s finding that “due regard” was given to contentions of the parties in statutory distributional factors was inadequate as a finding of fact regarding evidence introduced on the relative health and incomes of each spouse and that finding of fact therefore could not be the basis for an unequal distribution of marital property.

Collins v. Collins  
125 NC App 113 (1997)

Embler v. Embler  
159 NC App 186 (2003)

Mrozek v. Mrozek  
129 NC App 43 (1998)

Plummer v. Plummer  
198 NC App 538 (2009)

## **F. Factors**

For a listing of cases decided with regard to each factor listed in GS 50-20(c), see District Court Bench Book, Volume 1, Family Law, p. 6-162 through 6-180.

Factors **not** to be considered include:

1. Marital misconduct, unless it is financial misconduct or waste adversely affecting the value of marital property occurring substantially contemporaneously with separation. So, for example, trial court cannot consider domestic violence or abandonment but can consider any financial impact of either on assets or debts in the marital estate on the date of separation.

Fountain v. Fountain  
148 NC App 329 (2002)

Conway v. Conway  
131 NC App 609 (1998)

Hinton v. Hinton  
70 NC App 665 (1984)

Troutman v. Troutman  
193 NC App 395 (2008)

Coleman v. Coleman  
89 NC App 107 (1988)

2. Litigation misconduct, unless it causes additional expense for other party.

Wade v. Wade  
72 NC App 372 ((1985)

Shoffner v. Shoffner  
91 NC App 399 (1988)

Albritton v. Albritton  
109 NC App 36 (1993)

3. Custody of children alone when not being considered with regard to distribution of marital residence. GS 50-20(c)(4) allow consideration of the need of a custodial parent to occupy the marital residence but this factor does not allow the court to consider custody in general.

Gum v. Gum  
107 NC App 734 (1992)

Pott v. Pott  
126 NC App 285 (1997)

Godley v. Godley  
110 NC App 99 (1993)

4. Payment or nonpayment of child support or alimony cannot be considered. GS 50-20(f). The statute specifies that the court may reconsider an existing order for alimony or child support after an equitable distribution judgment is entered, if requested to do so by either party.

Weincek-Adams v. Adams  
331 NC 688 (1992)

Smith v. Smith  
71 NC App 242 (1984)

Bowman v. Bowman  
96 NC App 253 (1989)

5. Hypothetical tax consequences. Appellate courts have consistently held that the trial court cannot consider tax consequences unless the tax consequences will result from the distribution the court actually orders. This appears to be true even though GS 50-20(c)(11) was amended in 2005 to state that the court “should consider the tax consequences to each party, including federal and state consequences that would have been incurred if the marital and divisible property had been sold or liquidated on the date of separation.” The court cannot consider tax consequences under any circumstances if no evidence of the actual consequence is produced.

Pellom v. Pellom  
194 NC App 57 (2009)

Cochran v. Cochran  
198 NC App 224 (2010)

Plummer v. Plummer  
198 App 538 (2009)

Dolan v. Dolan  
148 NC App 256 (2002)

“As for the evidence that [wife] would not be taxed on any gain received upon a sale of the marital home, since there is no evidence that such a sale would be necessary or is imminent, the evidence presents merely a speculative tax consequence as to which the court *may not* make a finding of fact.” (emphasis in opinion)

Cochran v. Cochran  
198 NC App 224 (2010)

Trial court was not required to consider evidence offered about tax consequences husband would incur if he sold his interest in business where trial court made findings of fact that such a sale was unlikely to occur. Court of appeals notes that present version of GS 50-20(c)(11) gives trial court the *discretion* not to consider tax consequences if court determines the consequences are not likely to be incurred.

Peltzer v. Peltzer  
732 SE2d 357 (2012)



Postseparation Factors. GS 50-20c (11a) and (12)

1. Change in value of marital property. Before October 1, 1997, all postseparation increases and decreases in the value of marital property were distribution factors. Following the creation of divisible property in 1997, postseparation changes in value are presumed to be divisible property. G.S. 50-20(b)(4)(1); *Wirth v. Wirth*, 193 NC App 657 (2008). However, if shown to be the result of the postseparation actions of one spouse, the changes will not be divisible property and will remain a distribution factor.

*Allen v. Allen*  
168 NC App 368 (2005)

*Larkin v. Larkin*  
165 NC App 390 (2005)

Where postseparation decrease in value of marital home was caused by failure of *both* spouses to maintain the home, the decrease was divisible property rather than a distribution factor.

*Robertson v. Robertson*  
167 NC App 567 (2004)

2. Income earned from marital property during separation. Before the creation of divisible property in 1997, income earned from marital property during separation was a distribution factor only; the trial court could not distribute the income because it is not marital property. See *Leighow v. Leighow*, 120 NC App 619 (1995). After 1997, GS 50-20(b)(4)(c) provides that “passive” income from marital property received during separation is divisible property. So, for example, interest and dividends earned without effort on the part of a spouse will be divisible property rather than a distribution factor. Income earned through efforts of one party will remain a distribution factor.
3. Exclusive use of marital property by one spouse should be considered as a distribution factor but court may not award “fair rental value” of marital property to the other spouse.

*Black v. Black*  
94 NC App 220 (1988)

*Wilkins v. Wilkins*  
111 NC App 541 (1993)  
(marital home)

Bodie v. Bodie  
727 SE2d 11 (NC App 2012)

Walter v. Walter  
149 NC App 723 (2002)  
(marital home)

Davis v. Sineath (Davis)  
129 NC App 353 (1998)

Edwards v. Edwards  
110 NC App 1 (1993)  
(use of rental house)

Plummer v. Plummer  
198 NC App 538 (2009)  
(use of retirement funds)

4. Since 2002, the postseparation payment of marital debt is classified as divisible property and is no longer a distribution factor. But see allocation of divisible debt discussed in section G. below.
5. Postseparation payments made to maintain the marital estate or to assist the other spouse may be considered as a distribution factor.

Peltzer v. Peltzer  
732 SE2d 357 (2012)  
(payment of other party's  
education expenses)

Jones v. Jones  
unpublished  
193 NC App 610 (2008)  
(homeowners' insurance and  
property taxes on marital  
home)

## **G. Allocation of Specific Property and Debt**

Once property and debt has been classified and valued and the court has decided in what proportions its value should be divided, there is no guidance other than the discretion and

good conscience of the judge in determining which party receives which specific property or debt.

Khajamchi v. Khajanchi  
140 NC App 552 (2000)

The trial court can distribute all assets to one spouse and all debt to the other.

Conway v. Conway  
131 NC App 609 (1998)

Similarly, the judgment can classify and value all property separate and apart from the debt.

Hay v. Hay  
148 NC App 649 (2002)

The allocation of divisible debt between the parties is within the discretion of the court. There is no requirement that the paying party receive ‘dollar-for-dollar credit’ for postseparation payment of marital debt, although trial court can do so if the trial court determines it is appropriate to do so.

McNeely v. McNeely  
195 NC App 705 (2009)

Plummer v. Plummer  
198 NC App 538 (2009)

Jones v. Jones  
Unpublished  
193 NC App 610 (2009)

Bodie v. Bodie  
727 SE2d 11 (NC App 2012)

Giving ‘credit’ for postseparation payments generally is the way divisible debt is distributed between the parties.

Stovall v. Stovall  
205 NC App 405 (2010)

## **H. Manner of Distribution**

### **1. In Kind**

Since 1997, GS 50-20(e) has provided that, “subject to the presumption of subsection (c) of this section that an equal division is equitable, it shall be presumed in every action that an in-kind distribution of marital or divisible property is equitable. This

presumption may be rebutted by the greater weight of the evidence, or by evidence that the property is a closely held business entity or is otherwise not susceptible of division in-kind distribution. In any action in which the presumption is rebutted, the court in lieu of an in-kind division shall provide for a distributive award in order to achieve equity between the parties. The court may provide for a distributive award to facilitate, effectuate or supplement a distribution of marital or divisible property.” GS 50-20(e)

Trial court has authority to order marital property sold and the proceeds divided between the parties as long as the court classifies and values the property as of the date of separation.

Wall v Wall  
140 NC App 303 (2000)

Troutman v. Troutman  
193 NC App 395 (2008)

Rather than ordering a sale, the court also can divide real property between the parties in-kind, even when evidence shows the land is more valuable as one tract than as two separate tracts.

Edwards v. Edwards  
152 NC App 185 (2002)

Troutman v. Troutman  
193 NC App 395

Copeland v. Copeland  
Unpublished  
NC App (Dec. 18, 2012)

One unpublished opinion has held that the trial court can divide a tract of real property even when evidence shows that one spouse has ability to ‘buy-out’ the interest in the land in order to keep the tract intact. Court of appeals held that no existing case law requires that court find neither party has ability to ‘buy-out’ in order to support a judgment dividing a tract of land.

Copeland v. Copeland  
Unpublished  
NC App (Dec. 18, 2012)

If the court orders the transfer of real or personal property or an interest therein, the court may also enter an order which shall transfer title as provided in NCGS 1A-1, Rule 70 and NCGS 1-228. GS 50-20(g).

“It is essential to a transfer of land that the land be described with sufficient definitiveness and certainty to be located and distinguished from other land.”

Wade v Wade  
72 NC App 372 (1985)

“if it is necessary in order to achieve an equitable distribution of the marital property that the court award that part of the asset which is separate in character.....the court has it within its power in equity to do so to the extent necessary so long as plaintiff is reimbursed or given credit for the value of his separate property contribution”

Wade v Wade  
72 NC App 372 (1985)

## 2. Distributive Awards

“Distributive Award” means payments that are payable either in lump sum or over a period of time in fixed amounts, but shall not include alimony payments or other similar payments for support and maintenance which are treated as ordinary income to the recipient under the Internal Revenue Code. GS 50-20(b)(3)

A distributive award is allowed only after trial court concludes presumption in favor of an in-kind division has been rebutted. “This presumption may be rebutted by the greater weight of the evidence, or by evidence that the property is a closely held business entity or is otherwise not susceptible of division in-kind distribution shall provide for a distributive award in order to achieve equity between the parties. The court may provide for a distributive award to facilitate, effectuate or supplement a distribution of marital or divisible property. The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.” GS 50-20(e)

Judgment must contain specific conclusion that the presumption has been rebutted and must contain findings of fact supporting that conclusion.

Urciolo v. Urciolo  
166 NC App 504 (2004)

Allen v. Allen  
168 NC App 368 (2005)

Wirth v. Wirth  
193 NC App 657 (2008)  
(in-kind impractical)

“GS 50 – 20 (e) directs the court to make a distributive award “in order to achieve equity between the parties’ in those cases where a distribution in kind would be impractical, and otherwise permits a distributive award in order “to facilitate, effectuate, or supplement a distribution of marital property”

Harris v Harris  
84 NC App 353 (1987)

Warren v. Warren  
175 NC App 509 (2006)

Pellom v. Pellom  
194 NC App 57 (2009)

When there are no obvious liquid assets, the trial court must identify assets from which a distributive award would be made and if none, the court must identify the means by which the party will pay the distributive award and adjust the ED award to offset any adverse financial consequences of using nonliquid assets.

Embler v. Embler  
159 NC App 186 (2003)

Robertson v. Robertson  
167 NC App 567 (2004)

Williams v. Williams  
Unpublished  
NC App (July 2011)

The ability to refinance a mortgage attached to real property is a liquid asset for the purpose of determining whether spouse has assets from which to pay a distributive award, as is a spouse’s monthly income.

Peltzer v. Peltzer  
732 NC App 357 (2012)

“It is within the trial court’s sound discretion to determine whether the distributive award is to be made payable as a lump sum or over a fixed period of time.”

Atkins v Atkins  
102 NC App 199 (1991)

“we interpret the language of GS 50 – 20 (b)(3) as authorizing the court to make distributive awards for periods of “not more than six years after the date on which the marriage ceases”, except upon a showing by the payor spouse that legal or business

impediments, or some overriding social policy, prevent completion of the distribution within the six-year period. . . . Awards for periods longer than six years, if necessary, should be crafted to assure completion of payment as promptly as possible”

Lawing v Lawing  
81 NC App 159 (1986)

Harris v. Harris  
84 NC App 353 (1987)

Smith v Smith  
111 NC App 460, (1993)

The reason for this time limitation is that transfers that occur more than 6 years after the date of divorce will be treated as ordinary income for income tax purposes unless these findings are made.

26 C.F.R. sec. 1.1041-IT

6 years is from date of divorce and not the date of separation or ED judgment

Smith v Smith  
111 NC App 460,  
433 SE2d 196, 220 (1993)

Award must be crafted to assure completion of payment as promptly as possible.

Smith v Smith  
111 NC App 460,  
433 SE2d 196, 220 (1993)

Becker v. Becker  
127NC App 409 (1997)

“The decision of whether to order the payment of interest on a distributive award is one that lies within the discretion of the trial judge”

Mrozek v Mrozek  
129 NC App 43 (1998)

Cooper v Cooper  
143 NC App 322, 545 SE2d 775 (2001)

Ice v. Ice  
136 NC App 787 (2000)

Court can award only postjudgment interest on a distributive award and interest will run from the date the judgment is entered.

Appelbe v. Appelbe  
76 NC App 391 (1985)

Loye v. Loye  
93 NC App 328 (1989)

Ice v. Ice  
136 NC App 787 (2000)

Distributive award is enforceable through execution as any other money judgment. However, if award is payable over time, only that part of award presently due and payable is subject to execution at any given point in time.

Romulus v. Romulus  
715 SE2d 889 (NC App 2011)

### 3. Domestic Relations Order (DRO)

For detailed discussion regarding distribution of pension and retirement benefits, see Family Law volume of District Court Bench Book, beginning on page 6-210.

A DRO is an order requiring the administrator of a pension or retirement plan to divide a retirement account as provided by the ED judgment and to pay the appropriate portion directly to the non-employee spouse. An order effectuating the fixed percentage method of distribution of the marital portion of the retirement account, a method also referred to as ‘deferred distribution.’ Only ERISA-qualified plans (which include most private, nongovernmental plans) must meet the definition of a Qualified Domestic Relation Order (QDRO) found in 29 USC sec. 206(d)(3).

Patterson v. Patterson  
137 NC App 653 (2000)  
(NC state retirement)

A QDRO cannot order a plan administrator to do anything not authorized by the plan.

29 USC sec. 1056(d)(3)(D)



A DRO and QDRO can include provisions requiring the distribution of pre-retirement survivor benefits and post-retirement joint and survivor benefits if such benefits are available pursuant to the retirement plan.

Workman v. Workman  
106 NC App 562 (1992)

Stock options. While the court of appeals stated in *Fountain v. Fountain*, 148 NC App 329 (2002) that stock options should be classified and distributed as are pensions, subject to the provisions and limitations of GS 50-20.1, the supreme court specifically rejected the suggestion in *Fountain* that all forms of compensation the receipt of which is deferred to a time in the future is subject to GS 50-20.1.

Ubertaccio v. Ubertaccio  
359 NC 175 (2004), adopting dissent by  
Levinson in 161 NC App 352 (2004)

Issue: Can trial court enter a QDRO or other order dividing a retirement or deferred compensation plan when no action for equitable distribution has been filed?

A “domestic relations order” is defined by federal law as “any judgment, decree, or order (including approval of a property settlement agreement) which relates to the provision of child support, alimony payments, or marital property rights of a spouse, former spouse, child, or other dependent of a participant, and is made *pursuant to a State domestic relations law*”. 29 USC sec. 1056(d)(3)(B)(ii). This seems to say the order must be entered pursuant to authority granted to the trial court by a state ‘domestic relations law.’ NC domestic relations law recognizes a trial court’s authority to enter an order on a properly pled ED claim (generally means one filed before entry of absolute divorce) and NC law allows incorporation of or enforcement of a separation or property settlement agreement, even when no ED claim has been filed. In *Gilmore v. Garner*, 157 NC App 664 (2003), the court of appeals affirmed the trial court’s entry of a QDRO as a form of specific performance ordered in breach of separation agreement claim, rejecting former husband’s claim that the remedy amounted to an equitable distribution, the right to which had been waived by the parties in the agreement.

It seems clear, therefore, that a trial court has jurisdiction to enter a QDRO or other order dividing a retirement account when a party has filed an action pursuant to the equitable distribution statute (claim for ED can be limited in scope to just entry of the order dividing the pension) or when the party has filed an action seeking to incorporate or enforce a contract between the parties. However, a trial court does not have jurisdiction to enter an order pursuant to the equitable distribution statute unless that claim is filed before entry of absolute divorce. The contract action is not so limited and can be filed

either before or after absolute divorce. While most agreements are incorporated into a judgment of absolute divorce, there is no case law indicating incorporation is limited to divorce actions or indicating that the ability to ask the court to incorporate an agreement is affected by the entry of divorce.

Some attorneys however, have established the practice of filing a motion in the cause for entry of a QDRO in an action where the original complaint stated a claim for absolute divorce only and the final judgment of divorce has been entered. This practice is problematic because it is not clear that such a motion in the cause is sufficient to give the trial court jurisdiction to enter the order. First, there is no statute or rule of procedure authorizing the filing either a claim for ED or a claim for enforcement/incorporation of a separation agreement or property settlement in a case following the final adjudication of all claims raised by the pleadings. See *Whitworth v. Whitworth*, 731 SE2d 707 (2012)(trial court has no subject matter jurisdiction to enter any orders in a case following the final disposition of all pending claims except orders that are necessary to correct or enforce the judgment. In that case, trial court had no subject matter jurisdiction to grant a motion to intervene after entry of the final ED judgment). Second, these motions in the cause generally do not attempt to state a claim “pursuant to a state domestic relations law”. Rather, the motions generally simply state that the parties consent to entry of an order dividing the retirement account. It is unclear what cause of action would support this remedy if not ED or contract.

## **I. Interim Distribution**

G.S. 50-20(i1) states “Unless good cause is shown that there should not be an interim distribution, the court may, at any time after an action for equitable distribution is filed and prior to the final judgment of equitable distribution, enter orders declaring what is separate property and also may enter orders dividing part of the marital property, divisible property or debt, or marital debt, between the parties. The partial distribution may provide for a distributive award and may also provide for a distribution of marital property, marital debt, divisible property, or divisible debt. Any such orders entered shall be taken into consideration at trial and proper credit given.”

Interim ED orders are by nature preliminary to entry of a final ED judgment and thus are interlocutory.

*Wirth v. Wirth*  
193 NC App 657 (2008)

A consent order making an interim distribution of marital property, specifically providing that the distribution was ‘final’ for purposes of ED and providing a value agreed by the

parties to be used for purposes of the final ED order, precluded the trial court from valuing the property or considering any change in value in the property after the interim distribution order was entered.

Wirth v. Wirth  
193 NC App 657 (2008)

However, an interim order stating that it was being made “subject to defendant’s rights to an equitable distribution of property, both as marital and divisible property” and further that “defendant’s rights and claims to such property are preserved until an equitable distribution of marital and divisible property” preserved defendant’s claim for equitable distribution of that particular property.

Brackney v. Brackney  
199NC App 375 (2009)

ATTACHMENT A  
SALE OF REAL PROPERTY

Issues to consider when ordering the sale of real property:

1. How shall the real estate agent be selected? If necessary, how should subsequent agents be selected?
2. Should a commissioner or commissioners be appointed to effectuate the sale and should the attorneys in the case serve?
3. Is there concern as to the condition of the property now and should an evaluation be made to ensure that any subsequent damage is charged to the appropriate party?
4. How shall repairs or other necessary expenses of sale be paid?
5. Who will be responsible for mortgage, tax and insurance payments pending sale? Will those be reimbursed wholly or partially from sale proceeds?
6. How will sale price be determined?
7. How will proceeds be divided? Be sure to indicate if net or gross proceeds are to be divided. If sale ordered prior to trial, who will hold proceeds from sale?
8. Will both parties sign necessary documents or will someone be designated to sign?
9. Have you included language that the party in possession of the property will ensure that the property is available and in an appropriate condition for showing?

## ATTACHMENT B

### TRANSFER OF PROPERTY

In most equitable distribution orders, the parties are directed to sign all necessary documents to effectuate the transfer of property. A time limit, usually 60 to 90 days after the judgment is filed, should be indicated in the order for such documents to be signed. An alternative method of transferring title should then be provided. In cases where one of the parties fails to participate in the action, an alternative method should always be included.

#### **Vehicles**

The Defendant is directed to sign the title to the 20xx Brand Automobile to the Plaintiff within 60 days of the filing of this judgment. If he fails to do so, the North Carolina Division of Motor Vehicles is directed to issue a new title solely in the Plaintiff's name for the 20xx Brand Automobile, Vehicle Identification Number 99999999999999. (Remember in issuing orders of this nature that there may be issues related to liens on vehicle titles.)

#### **Real Property**

The title to the real property located at 4726 Greensboro Way, Fayetteville, NC and more particularly described as:

Beginning at a point and other language that sets out a legal description of said property

Is transferred to Defendant husband. Plaintiff wife is ordered to transfer her interest in said property to the defendant husband through the execution of a quit claim deed within 60 days of the filing of this judgment. Should plaintiff wife fail to comply with such order, Plaintiff wife shall be divested of title to said real property pursuant to North Carolina General Statute 1A, Rule 70 and title to that property vested in Defendant husband.

Or should plaintiff wife fail to sign such quit claim deed within 60 days of the filing of this judgment, then pursuant to North Carolina General Statute 1A, Rule 70, the Cumberland County Clerk of Superior Court is directed to sign in her stead.