

**Equitable  
Distribution  
Update**

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Cheryl Howell  
October 2015

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**Classification of Joint Accounts**

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- ☞ Account opened during marriage and owned on date of separation
- ☞ Date of separation value is \$100,000
- ☞ Both parties agree that husband deposited \$20,000 received from an inheritance 5 years before date of separation
- ☞ Is account marital, separate or mixed?

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**Joint Accounts**

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- ☞ Account is presumed marital
- ☞ Person seeking separate classification has burden to trace separate funds to the date of separation
  - ☞ *Power v. Power*, 763 SE2d 565 (2014)
  - ☞ *Comstock v. Comstock*, 771 SE2d 602 (2015)

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### Power v. Power



- ☞ No consideration of tax consequences unless there is evidence of the consequences
  - ☞ And only if consequences will occur as a result of the ED judgment
    - ☞ See *Cochran v. Cochran*, 198 NC App 224 (2009)
- ☞ Kelly Blue Book is admissible hearsay
  - ☞ Rule 803(17)

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### Divisible Property



- ☞ GS 50-20(b)(4):
  - ☞ (a) All appreciation and diminution in value of marital property and divisible property of the parties occurring after the date of separation and prior to the date of distribution, except that appreciation or diminution in value which is the result of postseparation actions or activities of a spouse shall not be treated as divisible property.
  - ☞ ...
  - ☞ (c) Passive income from marital property received after the date of separation, including, but not limited to, interest and dividends.

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### Montegue



- ☞ Money received by one party during separation from marital LLC
  - ☞ If funds are distributions from the LLC = divisible
  - ☞ If funds are salary/fees paid for effort of one party during separation = not divisible
- ☞ Increase in value of LLC during separation
  - ☞ If caused by work of one party = not divisible
  - ☞ If 'passive' - not caused by work = divisible
  - ☞ If caused by compensated work = divisible

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## Comstock



### ☞ Marital debt

- ☞ Party seeking marital classification must show joint benefit
  - ☞ Just showing money borrowed was used for household expenses was insufficient
  - ☞ *But cf. Glaspy*, 143 NC App 435 (2001) and *Godley*, 110 NC App 99 (1993).
- ☞ Amounts charged for "women, alcohol, cigars and gambling" were not for the joint benefit of the parties
- ☞ Party who pays marital debt after separation with marital funds is not entitled to "credit" for the payment of marital debt

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## Warren



### ☞ Classification of student loan debt:

- ☞ "In order for the court to classify student loan debt as marital debt, the parties must present evidence regarding whether the marriage lasted long enough after incurring the debt and receiving the degree for the married couple to substantially enjoy the benefits of the degree or higher earnings."

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## LLCs are people too 😊



- ☞ Property owned by an LLC or other business entity cannot be marital property
  - ☞ Unless party/parties are equitable owners (meaning court can impose constructive or resulting trust)
- ☞ Trial court has no jurisdiction to order LLC to do anything or to order anything that effects property owned by LLC or effects the business structure of LLC unless LLC is joined as a party to the ED action
  - ☞ *Campbell v. Campbell*, NC App (June 2, 2015)

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## As are Trusts.....



☞ Trusts are legal entities

☞ *Nicks v. Nicks*

☞ Court cannot affect trust or property owned by a trust unless trust is joined as a party

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## Pension and Retirement Accounts



☞ Survivor Benefit Plan

☞ Can be distributed along with retirement account

☞ *Workman v. Workman*, 106 NC App 562 (1992)

☞ *Ellison v. Ellison*

☞ 2002 judgment ordered survivor benefits for plaintiff

☞ Defendant failed to execute required documents

☞ Motion filed in 2014 to obtain order necessary for plan to distribute the benefits to plaintiff

☞ Federal law must be followed to effectuate division

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