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The Letter of the Law

December 2018

What in the World is Divisible Property?

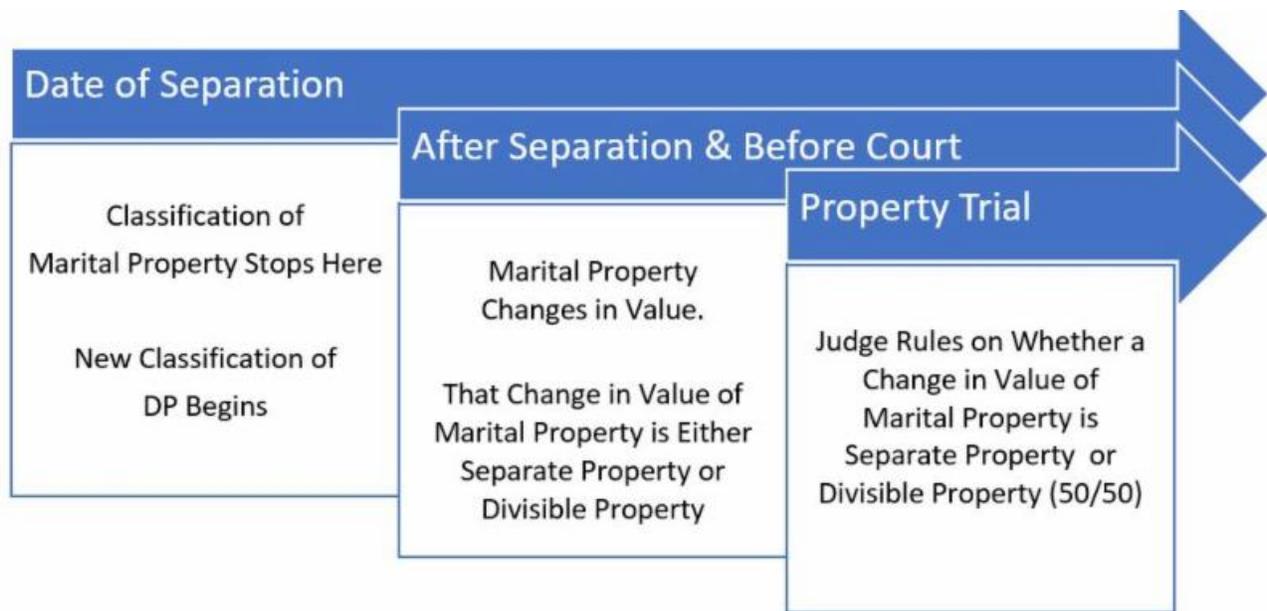
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What in the World is Divisible Property?

By Amy A. Edwards

Marital property is property that a married couple owns when they separate, as long as they acquired it during the marriage. Separate property includes property that you owned before marriage, property that was a gift to you individually, or inherited property. In 1997, North Carolina created something else, divisible property. [1] This article barely scratches the surface of it, and does not include divisible debt.

What's Included in "Divisible Property"?

Only property owned on the date of the separation is marital property. But what happens to marital property after you separate? The time from the date of separation until the date that the case finally reaches the courtroom can easily be a year or longer. If the value of a marital asset changes, the court will decide what to do with that change in value. If the court says the change in value of marital assets is divisible property, the amount of that change will be divided 50/50. Otherwise, the change in value will not be divided and that change in value is kept as separate property.

For Example . . .

Assume your home is worth \$200,000.00 when you separate, and that you still live there. By the time you reach the courtroom, after 13 months have passed, the value increases to \$225,000.00. The judge will decide whether that \$25,000.00 difference in value is divisible property. If so, it will be equally divided and each spouse would get value worth \$12,500.00. On the other hand, if the difference is not divisible property, that increase in value is the separate property is yours.

What Makes the Change in Value Divisible?

The increases and decreases in the value of marital property after separation are assumed to be divisible property, and divided equally. This assumption is based on things such as inflation, changing economic conditions and market forces, the mere passage of time and changes in tax assessments. These increases in value are divisible property because they are natural changes, which the court calls these changes "passive" in nature, generally beyond either spouse's control.

What Makes the Change in Value Separate or Shared Property?

Although the law assumes that the change in value is divisible property and equally divided because the change in value was passive, you can offer evidence to show why the change in value is *not* passive. In other words, if you want to show that the increase in value is your separate property, you have the burden of proof to show why. To meet that burden, you must prove the changes in value are directly caused by your action after separation. What counts as activity? For example, after the separation, you decide that the house would sell for a much higher price if you renovate the kitchen and add an extra bathroom. If you can prove that your individual *actions* actually caused the increase in value, the increase would not be divisible property. Therefore, the \$25,000.00 increase in value from our example above would be awarded to you as your separate property.



[1] NC Gen. Stat. §50-20(b)(4).

Amy A. Edwards is a family law attorney at Amy Edwards & Associates, PLLC, in Greenville, NC, certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of 2018. www.NCLawyersForYou.com© 2018.



Second Thoughts About Separating: Should We Reconcile?

By Amy A. Edwards

After spouses separate, they routinely hire attorneys and begin the negotiation and/or court process, which almost always causes the relationship to further deteriorate. But on occasion, there are couples who separate but then find their way back to each other.

Separating and Reconciling

In North Carolina, if spouses live in separate residences, and at least one of them has the intention to remain separated from the other, they are considered separated. But the law is murky on the topic of what it means to reconcile, resuming the marital relationship and "canceling" the separation. It is decided on a case-by-case basis, and is not proven by isolated incidents of sexual intercourse. NC Gen. Stat. §52-10.2. Although reconciling usually means both spouses moving into the same household together again, there are a number of complicating legal factors to decide whether the spouses have actually reconciled. This means a dispute over whether you have reconciled will probably be expensive.

Why Does it Matter?

The world of family law revolves around the date of separation. The law requires a full one-year separation before either party can file for a divorce. If the spouses separate and then reconcile, the clock starts over again, requiring a one-year-separation. Marital and non-marital assets and debts are defined, classified and valued based on the date of separation. Changing the date of separation by reconciling and separating again at a later date can have a huge financial consequence. Likewise, the date of separation can be critical in alimony and child support cases too. If the parties signed a separation agreement or there were court orders in place when spouses reconciled, that triggers another layer of problems beyond the scope of this article.

What is the Motive for Reconciling?

It can be difficult to know whether the other spouse's reason for trying to mend their relationship is genuine. People should consider talking with a counselor or other professional who can address the personal relationship between the spouses. Like any other major decision, a spouse should think long and hard about jumping back into the same situation that has already caused so much grief and expense in the first place.

As for their legal relationship, the first question to ask is whether the other spouse has any legal incentive to reconcile. Fault can be a useful tool in alimony cases. If someone has committed marital fault in the eyes of the law, such as adultery, he or she probably has a good legal reason to seek forgiveness, regardless of whether there is heart-felt regret or even a personal desire to reconcile.

Serious Consequences

An attorney might advise a spouse to move back into the family home and gain access to confidential information, sneak out personal property like jewelry, or avoid the cost of operating two households while he or she saves money to hire an attorney. Once that spouse feels he or she has the upper-hand, what will be necessary to get him or her out of the house again? That creates new risk for new marital fault, and it will almost

certainly cost you more money to address again.

If you are considering a reconciliation, talk with your attorney BEFORE making a final decision. Find out what you can do to protect yourself in the event you reconcile and then separate. There are sometimes agreements that the parties can enter into, or there might be financial strategies to lessen the impact if there is a second separation.

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Free-Trader Agreements in North Carolina

By Amy A. Edwards

When a married couple separates, if they can reach an agreement on all of the issues between them, they may choose to sign a separation agreement. It is a contract that says how they have agreed to divide property and debt, how family support will be provided, if any, and what they will do about parenting time if they have children together. One of the usual terms contained in it is a free-trader-agreement (FTA). If there is no separation agreement, an FTA can be a short contract by itself.

What's the Problem?

Many couples own real estate when they separate. After time passes but before the divorce is granted, some people consider home ownership. When married couples acquire a mortgage loan, both usually sign the promissory note, which means they both have a legal obligation to make mortgage payments. That's pretty straightforward. But when only one spouse signs a promissory note, only he or she owes the money. To oversimplify the problem, if the home-owner dies before becoming divorced, the surviving spouse has no legal responsibility to make the mortgage payments. But regardless of the fact that a married couple is separated, as a spouse, the non-home-owner would still have certain inheritance and survivorship rights to the property.

Remedy #1 - Free Trader Agreement

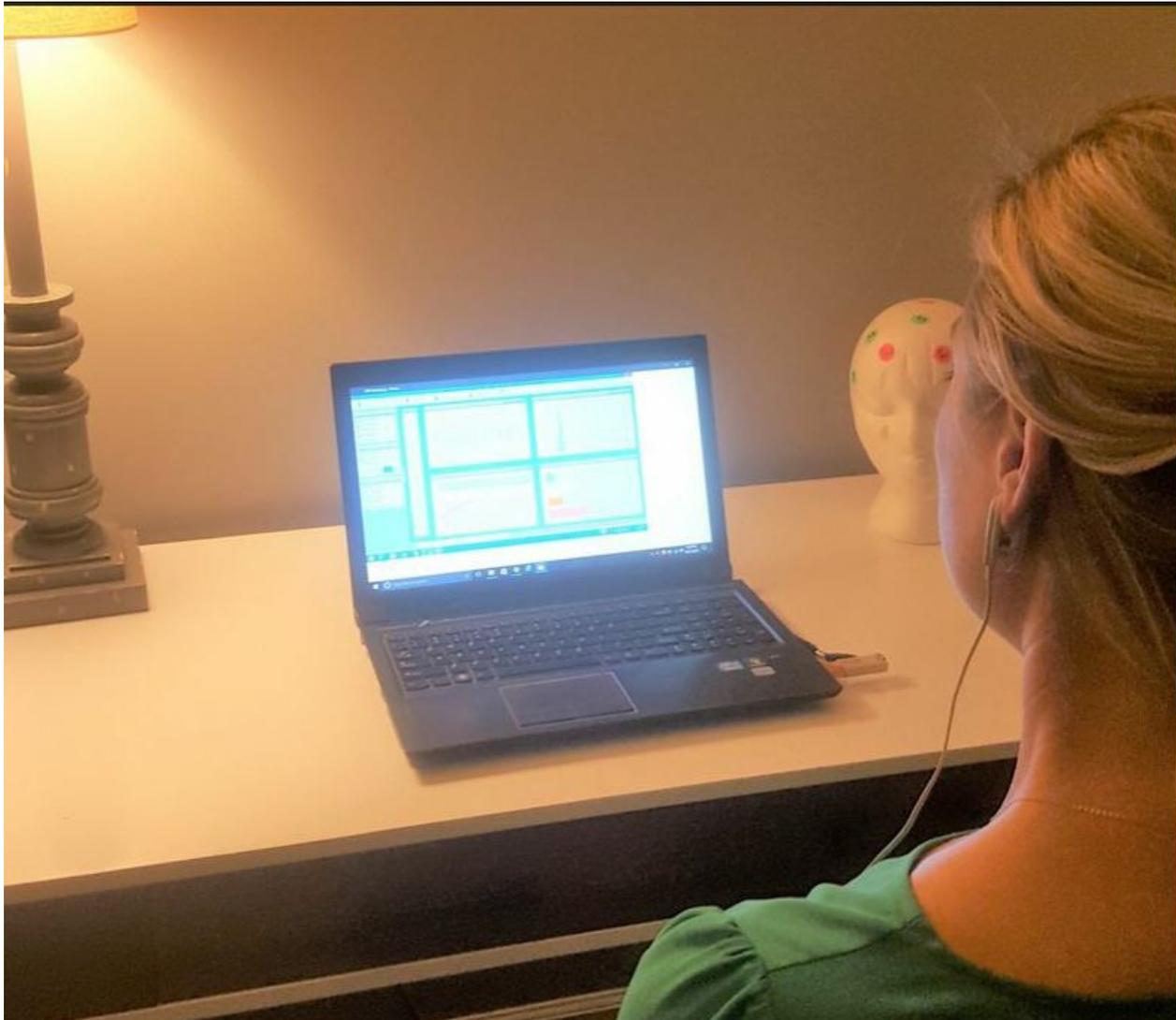
Mortgage lenders require parties to sign an FTA, which is an agreed-upon right to buy (*i.e.*, trade) freely (*i.e.*, without interference). Mortgage lenders lend money to buy a home that will be theirs if they foreclose on the loan. They don't want to share any ownership of the home with the surviving spouse (who isn't obligated to make mortgage payments). The purpose of an FTA is for the spouse who is not buying the home agrees to waive all claim to it, including inheritance and/or survivorship rights. Usually recorded on public record at the office of the Register of Deeds, these contracts clarify that the spouse buying the home has exclusive ownership of it, even though he or she is married. Because the FTA is a contract, both parties must voluntarily agree to sign it.

Remedy #2 - The Divorce

When a divorce decree is granted, the other person is no longer a spouse, so the mortgage lender no longer has the problem of an ex who is still a surviving spouse even if they were separated for some time when the home was purchased. However, in North Carolina, a spouse can't even sign the divorce complaint, which generates the lawsuit, until he or she has been separated for at least one full year. When a spouse files for a divorce, it usually takes another two to three months before the divorce decree is granted. When the other spouse refuses to sign a FTA, the only

remedy is the divorce, which is nearly impossible to contest because it is based on a one-year separation.

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Biofeedback: Another Tool For Managing Divorce Stress

By Tami Maes Fragedakis, PhD, LPC, BCB, LRT, CTRS*

Experiencing a divorce is ranked as the second highest stressor of all life transitions (Holmes-Rahe, 1967). While people may react differently to a divorce, the life changes and transitions that accompany this experience have consequences. The many negative effects that occur may be detrimental to one's physical and mental health (Amato, 2012). Without proper coping tools, experiencing a stress response for a duration of time

may result in dysfunctional patterns of behavior and additional psychological distress. Biofeedback is an alternative form of therapy that can be used to reduce stress and gain control over the physiological dysfunctions that accompany life's transitions.

Biofeedback is a training modality used in conjunction with therapy. Through training, individuals are better able to understand and identify their personal, physiological responses to stress. In addition, individuals are able to manipulate their personal reactions, thus enabling control over the symptoms they experience. Non-invasive sensors are attached to the individual to measure the body's internal reactions. These include heart rate variability, skin temperature, skin conductance, and electrical activity of the muscles. The sensors are connected to a biofeedback device which quantifies the data. The information is then displayed on a computer screen in the form of visual and auditory feedback. The therapist helps the individual make sense of the information according to their symptoms experienced and then teaches the individual how to control these parameters.

Working in the same way as biofeedback, neurofeedback entails non-invasive sensors which are attached with conductance paste on various places of the individual's head. Electrical activity of the brain, or brain wave data, is then recorded and computed with the biofeedback equipment and displayed on a computer screen for the individual to see. The therapist explains these signals in relation to thoughts, emotions, and symptoms presented. The participant can then 'see' the electrical activity of their brain and how this activity changes with certain thought patterns and while experiencing various emotions. The brain creates loops or 'highways' of information. Neurofeedback allows the individual to see these feedback loops. Training thus enables the individual to change the feedback loops within the brain and create healthier pathways. The process allows the person to regulate their own brain wave activity to improve overall mental and emotional health and achieve their desired mental performance.

Experiencing stress in response to life events is normal. How an individual handles this stress is imperative to their overall wellbeing. Biofeedback measurements provide a visual representation of the internal stress responses in real time, which increases their self-awareness, and provides

validation for the individual's lived experience. The primary goal of biofeedback training is to provide necessary tools for individuals to develop a skill-set in order to better control their stress response and become their best self. With the ability to self-regulate, participants are able to diminish the impact of stress on their daily life, decrease symptoms associated with mental health conditions, and achieve emotional well-being.

* Dr. Fragedakis is a Licensed Professional Counselor in the state of North Carolina and is board certified nationally in biofeedback. She owns Capital Biofeedback, Inc. in Cary, North Carolina. <https://capitalbiofeedback.com>

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