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Attorney Jennifer Bell Joins Law Firm

*We are excited to introduce
Jennifer J. Bell as the newest member of
Amy Edwards Family Law.*

*She practices Elder Law,
Estate Planning and Family Law.*



Ms. Bell grew up in Goldsboro, North Carolina. Both of her parents are alumni of ECU and so she spent almost every Saturday of September through December in Dowdy-Ficklen cheering on the Pirates. As a result, ECU was her top choice for her undergraduate career. She never knew how much she loved living in Greenville during college until she moved to Raleigh for law school. She soon

realized how much she missed the atmosphere and just how badly she wanted to move back.

She is a graduate of East Carolina University, *summa cum laude*, and the Campbell University School of Law. Returning to her roots in Eastern North Carolina to serve her community as an attorney, she has a passion for Elder Law, Estate Planning and Family Law. Ms. Bell enjoys spending time with her family, her husband Colby, and her dog Sophie.



Grandparent Rights in North Carolina

Only the very best parents get promoted to Grandparents! Becoming a Grandparent is every parent's dream, and most often a monumental time during one's life. The Golden Age is aptly named for that time during which an individual becomes a Grandparent. Being a Grandparent means baby snuggles, toddler kisses, and adolescent adoration, all without the fuss of raising the child. All of the benefit and little to none of the burden. What could be better?! But what happens when family strife hits? Do Grandparents have any rights? Especially when it comes to their grand-babies? The answer is no, yes, and maybe.

Unfortunately, Grandparents do not have a right to see or visit with their grandchildren when the family unit is intact. Under North Carolina case law, parents have the right to choose whom their children interact with, which is also the right of association guaranteed under the 1st Amendment of the U.S. Constitution. Grandparents cannot force the parents to allow them to see or spend time with their grandchildren when the children are part of a cohesive family lifestyle. Many Grandparents call it their "right" to see their grand-babies, but as sad as it is this "right" rarely exists.

However, if mom or dad is 'unfit' to raise the child, Grandma or Grandpa may petition or sue for *custody* of the minor child. Although the burden for 'unfitness' is a tough one to meet Grandparent's most definitely have a right to sue for custody when it is met.

But what if both parents are fit, wonderful, loving parents? Then the situation becomes a bit more sticky. Grandparents may have a right to sue or petition for *visitation* of their grandchildren when an intact family unit becomes divided, for lack of a better word. There are certain hurdles a Grandparent would have to overcome in order to gain visitation rights. Examples include: their strong connection with the grandchild, frequency of visits before familial strife, and how their visits would promote the well-being of the child. It is important to note that in this instance, there must be an on-going custody case between the parents in order to seek visitation.

In summation, Grandparent s do have rights, albeit few, which depend upon the familial situation between the parent and child. If you have any questions about Grandparent's rights give our office a call today to set up a consultation!

Jennifer J. Bell is an associate attorney at Amy Edwards Family Law. She is licensed only in NC. Laws change. This article is current as of December 2017. www.AmyEdwardsFamilyLaw.com (c)2017



All About Adultery in North Carolina (Part 2 of 2)

By Amy A. Edwards

Part one of this article looked at adultery as it relates to alimony. In North Carolina, adultery can impact several legal rights, such as a legal separation, inheritance rights, criminal conversation, and even property ownership.

Adultery: Duty of Third Party to Warn Spouse of STD

If a husband or wife passes a sexually transmitted disease (STD) to the other spouse as a result of his or her adultery, the innocent spouse may with a civil suit for financial damages against the man or woman who passed the STD to the

husband or wife. To successfully prove a claim for negligent infliction of an STD, the victim spouse must prove the source of the STD, and that the infected person knew or should have known he or she was infected with venereal disease. Because it is foreseeable that the two spouses would have intercourse, the infected person has a legal duty to abstain from sexual contact, or at least a legal duty to warn the innocent spouse.

Adultery: Criminal Conversation

The term criminal conversation (CC) is somewhat misleading. Although it sounds like a crime, it is not. Instead, CC is a civil lawsuit for money damages. A married person may file a claim for CC against the third party who had sexual intercourse with his or her spouse. CC holds that third party financially accountable to the husband or wife for interference with his or her marital conjugal relationship, which is protected by law. Although the unfaithful spouse is not on the hook for financial damages, he or she generally testifies in a jury trial about the acts that took place. Alienation of affections is a completely different lawsuit that addresses alienating or stealing the spouse, regardless of whether there was sexual intercourse. CC is exclusively based on sexual intercourse.

Adultery: Divorce from Bed and Board

North Carolina recognizes a fault-based claim called *divorce from bed and board* (DBB), and one of the grounds for it is adultery. A decree for a DBB does not a "divorce" the husband and wife allowing them to remarry. It is a court decree that declares the spouses to be officially separated. This keeps a spouse from committing abandonment if he or she wants to separate. Instead, if a spouse successfully obtains a DBB, the spouse who committed adultery loses spousal rights to certain inheritance rights, including *intestate succession*, which is the right to inherit if the other spouse dies without a will. Also lost is the right to take an "elective share" of the deceased spouse's estate if the deceased spouse tried to "disinherit" him or her, as well as the right to administer that spouse's estate as an executor or executrix.

Adultery: Criminal Law

Although it is almost certainly unconstitutional, one criminal statute that is still on the books makes voluntary adultery a crime. NC Gen. Stat. §14-184 is captioned *Fornication and Adultery*. The statute makes it a Class 2 misdemeanor "[i]f any man and woman, not being married to each other, shall lewdly and lasciviously associate, bed and cohabit together . . ." In cases for alienation of affections and criminal conversation, parties frequently used this criminal law to protect themselves from testifying. Because adultery was a crime, a person who was sued for it could plead the Fifth Amendment to avoid incriminating himself or

herself. Doing so in a civil case allows the judge or jury to assume the person did commit adultery.

Amy A. Edwards is a family law attorney 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 December 2017. www.AmyEdwardsFamilyLaw.com © 2017.



Living With Your Lover? Better Get it in Writing

By Amy A. Edwards

When people marry, the law gives them numerous rights and obligations. But what happens if you aren't married? The law treats the relationship differently, even if you have children together. If two people in a relationship purchase a home together, each might assume that having both names on the deed protects them if they

later separate. But, that can create more questions than answers. This article is about joint home ownership by unmarried people in North Carolina, and includes information to discuss with an attorney before signing the offer to purchase property.

What Are the Problems?

There are more than you might think. Below is a list of four main topics: ownership, finances, the relationship between you and the other co-owner, and estate planning matters, followed by potential ways to avoid these problems.

Ownership

- Even if both parties are named in the deed, the type of ownership (and the various rights of each type of ownership) depends completely on how the deed is written. How should it be written?
- Do you want survivorship if the other party dies before you do? Do you want to have each person leave their share of ownership to their heirs? Are you considering a life estate?
- Your property rights are different if you marry before or after you buy the property in joint names. In fact, to accomplish certain ownership rights, parties must deed the property they already owned before marriage back to themselves after they marry.
- Unmarried co-owners have an inconvenient method to divide or sell the property if they separate and can't agree on what to do. They file a lawsuit called a "partition" that requires the court to appoint three commissioners, paid by the co-owners, who meet on the premises and report to the court how they think it should be divided. NC Gen. Stat. §46.

Finances

- Who is responsible for paying the mortgage, taxes and insurance?

- Is there any protection for one co-owner if the other is sued and a judgment for money owed becomes a lien on the property, such as a small claims case which might have an 8% interest rate?
- Should one or both owners sign the promissory note for the mortgage?
- Is there a home equity line of credit? Can it be "frozen" until you figure out what to do? Who pays the loan and the interest?
- If one person pays a substantial down payment, should he or she get it back if the house is sold, even if there is no equity in the home (*i.e.*, it is "upside down")?
- If you leave the residence after you separate, will your name remain on the mortgage obligation until it is paid off? Should the house be sold if the other owner can't refinance the mortgage into his or her sole name?

The Personal Relationship

- Who will move out if you decide to separate? If you are married, the law sets out a procedure for a spouse to ask that the other spouse be ordered to leave the residence. But if you are unmarried, you are on your own if you haven't made arrangements for this in advance.
- After a separation, who pays the mortgage, and who has the right to remain in the home? If you are unmarried, there is no alimony to supplement the income of one party after the couple separates, even if they have children together or one parent is not gainfully employed.
- If you have a prenuptial agreement, it is only triggered after you marry. If not, it has no legal effect.
- If you separate, do you expect 50% of the value of the house, even if the other party has paid for the mortgage payments? Do you have records that show who paid the payments? Did you pay the mortgage from a joint bank account, making it difficult to

trace the payments that each owner made over the years?

Estate Planning

- When married people acquire a home in both names, survivorship rights are often automatic but if an unmarried co-owner dies, will his or her next-of-kin own half of the property along with the surviving co-owner?
- Should you have life insurance to help with the cost of paying for and maintaining the home if an owner dies?
- Do you want to add anything to your will or update it to account for the new legal rights and obligations you have?

What Is the Solution to These Problems?

Many of these problems that can be avoided or minimized ahead of time by written contract. Although such a contract looks kind of like a separation agreement, it is really an agreement between co-owners of real estate, as would be the case with multiple co-owners of rental property, for example. The great thing about contracts is that you can customize one to your particular situation, avoiding the burdens of filing a lawsuit or playing chicken when neither party wants to be the one paying the mortgage after the breakup. While a contract is important, proper estate planning is also critical, especially because only married couples have certain absolute rights to the other spouse's property in the event of death. If you don't make any decision on these matters, the state makes those decisions for you.

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