

Family Matters e-Newsletter



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NEWS FOR DECEMBER 2015

In This Issue:

Five Myths About Child Support in North Carolina

How Do I Get My Name Off the Mortgage?

Marital Property on the Chopping Block: Is it Always 50/50?

See Past Issues From the Archives

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Five Myths About Child Support in North Carolina

By Amy A. Edwards

Myth one: You can stop paying child support if you don't get visitation with your child. Wrong. You can't stop paying child support just because you do not get the visitation time you wanted or that you were entitled to pursuant to a separation agreement or court order. Legally, child custody or visitation and child support are completely separate matters. You must file a custody claim to get or enforce a custody order or to enforce a separation agreement.

Myth two: Once I file a motion to decrease my child support obligation, I can stop paying the amount that is owed until I see what happens in court. Wrong. You can be held in contempt of court for failure to obey a court order, even when you think the

obligation will be decreased. In other words, you do not have the right to violate an order just because you are trying to get the obligation decreased.

Myth three: I am entitled to know whether my child support payment is being used by my ex's new boyfriend or girlfriend, or wasted on something other than my child. Wrong. Child support is determined based on the incomes, insurance premiums, daycare and other expenses related to your child. Once the amount of child support is determined, that is the end of the analysis. There isn't any requirement for the parent who receives child support to report what the funds were used for, either to the other parent or to the court.

Myth four: When my child stays with me for four weeks during the summer when she is out of school, I do not have to pay my ex any child support for that month. Wrong. If you are required to pay child support by a court order, that time was already accounted for when the child support was calculated. The answer is the same when there is a separation agreement unless it specifically says you can stop paying it under these circumstances.

Myth five: My ex just got a really great job (or inherited money), so I am entitled to an increase in the child support I get, or I am entitled to a decrease if I'm paying child support. Wrong. If that is your only basis for trying to change the amount of child support, you are out of luck. That fact *alone* is not a substantial change of circumstances. Generally, there must be changes related to the child's expenses although you can sometimes meet the standard if the order is more than three years old. If a parent loses income involuntarily, such as being laid off from a business, that may

liability for mortgage debt. These terms are easy to confuse because, very often, the same people who are joint owners are also liable for mortgage debt.

Ownership: Deeds

A deed is the document that most typically transfers ownership of real property. Other times, a Last Will and Testament or even court order will convey an ownership interest. Ownership may be conveyed solely to one owner of the property; other times ownership is conveyed to multiple owners, as is often the case when two married people own a home together. A deed means ownership of real property.

Liability: Mortgage Debt

Just because you are a joint owner of a residence doesn't automatically mean you are also jointly responsible for the mortgage debt. There are occasions where only one owner is liable for the mortgage debt. When one of the property owners is self-employed, for example, the mortgage lender might approve the loan based only on the income of one spouse who has income that's easily verified by a W-2 statement. If you sign the promissory note (*i.e.*, the mortgage debt), you are responsible for repayment of the debt. If you didn't sign the note, you generally have no responsibility to pay it unless there is a court order or separation agreement that requires you to pay it. Additionally, even if you did not sign a promissory note, you probably signed a document that allows the mortgage to be a lien on property in which you have an ownership interest.

How Do You Remove Your Name?

Let's assume the property owners are married and they both signed a promissory note for the mortgage debt. If they sell the residence, the mortgage is satisfied (paid off) and neither spouse's name remains on the mortgage. If one spouse keeps the residence, the other spouse will typically want his or her name "removed from the mortgage." For our purposes, that means the spouse keeping the property will refinance the mortgage debt, acquiring a brand new mortgage debt in his or her individual name. When the new mortgage debt becomes effective, the old mortgage debt that was in both names will then be satisfied. If the mortgage debt is already in the sole name of the person who keeps the residence, there would be no need for the mortgage debt to be refinanced.

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Marital Property on the Chopping Block: Is It Always 50/50?

By Amy A. Edwards

In most equitable distribution cases, the division of marital property is an equal division. The policy of the state is to divide the marital estate equally based on the legal notion that marriage is a partnership and both spouses should walk away with an equal share of the assets and debts.

The Rule and the Exception

The general rule is that marital property must be divided equally. North Carolina law says there "shall be an equal division . . . of marital property . . . unless the court determines that an equal division is not equitable." NC Gen. Stat. §50-20. Like most laws,

there is an exception to the 50/50 rule. When an equal division would not be fair, based on factors listed in the statute, the judge has the authority to divide the marital estate unequally. When the judge rules on the value of the marital estate, he or she must then determine which assets and debts to award to each spouse. In doing this, the judge will also decide if the facts of the case justify giving one spouse more than the other.

The Factors

The court has very broad authority to decide the percentage of the marital estate each party receives. An unequal division might result in a few percentage points, perhaps 53% and 47% of the marital estate, which can be significant, especially when the marital estate is sizeable and/or the court divides retirement benefits. But there has been one NC Court of Appeals case that affirmed a fairly extreme, and rare, ruling that the marital estate would be divided on a 25% and 75% basis. *Barlowe v. Barlowe*, 113 N.C. App. 797 (1994). An unequal division might also reflect the reality that a significant asset was given to one party, and there aren't enough remaining assets to give to the other spouse an equal share.

The Judge may consider the following factors to decide whether the parties should have an equal or unequal division. While the factors look specific, they are quite flexible and recognize there are many different situations and circumstances. Ultimately, the factors serve as examples of valid reasons to consider an unequal division because the last factor is "Any other [factor] which the court finds to be just and proper factor."

(1) The income, property, and debts and liabilities of each party

at the time of the trial.

(2) Any support obligation from a former spouse/marriage.

(3) How long the parties were married, and their ages, physical and mental health.

(4) Whether the custodial parent of a child needs to remain in the home and use household property (furniture, dishes, etc.).

(5) The anticipated retirement benefits one spouse owns as his or her separate property.

(6) Certain contributions of separate property (*i.e.*, funds in a bank account owned before marriage) towards marital property, or contributions of (or lack of) services as a parent, wage earner or homemaker.

(7) Certain efforts to help educate a spouse, or to develop his or her career potential.

(8) Acts by one spouse to increase the value of the other spouse's separate property.

(9) The liquid or non-liquid nature of the property.

(10) The difficulty of actually dividing the asset between two spouses. For example: a businesses that would drop in value if both former spouses, instead of one spouse, own and operate it.

(11) The tax consequences related to the assets.

(11a) Acts of either party to preserve, develop and maintain property after the parties separate and before the property trial. Also, acts that waste, neglect, devalue or convert the property after separation.

(11b) In the event either party dies before there is a trial, the court ruling on the division of marital property must consider the inheritance and estate consequences of his or her death.

(12) Any other which the court finds to be just and proper factor.

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Sincerely,
Amy A. Edwards

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