
Amy Edwards

FAMILY LAW

Family Matters

e-Newsletter

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Amy Edwards

FAMILY LAW

313 West 2nd St • Greenville
252-758-3430
www.GreenvilleLaw.us

**Designated as a Board Certified Specialist in Family Law
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Welcome to another issue of Family Matters e-Newsletter. This monthly divorce e-Newsletter is brought to you by Amy Edwards Family Law and Divorce Magazine. We hope you will find the information and articles useful. If you wish to be removed from our mailing list, please use the unsubscribe feature at the end of this e-mail. Please visit us online at www.GreenvilleLaw.us and see our archives for [past issues](#).

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Legal Term of the Month

Fiduciary

A fiduciary is a person or entity who holds a position of trust to act on the behalf of another, in their best interest. Attorneys are fiduciaries to their clients.

Web Site of the Month

www.abacollateralconsequences.org

This ABA web site lists all of the legal consequences for committing specific crimes aside from having a criminal conviction on your record.

Say It Ain't So: Annulment, Void and Voidable Marriages in North Carolina



By Am A. Edwards

Marital Rights Past and Present

In NC, we rarely encounter annulment. Different states have different laws on the matter. My family law professor explained that New England states had more annulments because of their Catholic history. Because divorce was frowned upon in those Catholic areas, annulment became a more acceptable procedure. King Henry VIII was Catholic, and he created the Church of England in order to obtain divorce.

Marital status was key throughout history because of bloodlines, politics, dowries and other reasons. Although modern culture is less concerned about bloodlines and dowries, there are still annulments and marital rights are quite important. Marital status determines rights to equitable distribution of marital property, alimony, survivor's rights, social security, military benefits, and a host of other legal rights.

Annulment and Divorce

A divorce terminates a valid marriage. On the other hand, an annulment recognizes the fact that there was no valid marriage, although there was a marriage ceremony. The parties were never married in the eyes of the law. At the point a divorce or annulment is granted by the court, the individuals are immediately single and eligible to marry. A child born to a couple whose marriage is annulled is still deemed to be legitimate, meaning the child has the same legal rights as a child born to a married couple.

Tip of the Month

See who represents you on the state legislature site:

<http://www.ncleg.net/Representation/WhoRepresentsMe.aspx>

Did You Know?

Clerks of Court

In North Carolina, Clerks of Court act as judges in some proceedings, such as name changes, foreclosures, estates, adoptions, and incompetency hearings.

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Our Take on Annulment in NC: Voidable Marriages

When our state grants an annulment, it does so because the marriage is deemed a *void marriage*. The only type of marriage that is always void under any circumstances is bigamy, when a person is "married" to two spouses instead of one. Any other marriage that is legally flawed is called a *voidable marriage*, which means it is valid unless and until a judge rules otherwise. In other words, a person in a voidable marriage has the option to ask the court to declare the marriage void. Sometimes, the defect in a voidable marriage may be cured, or ratified in legal terms. For example, a person who has not reached the required age to marry may ratify the marriage if he or she chooses to remain married after the age problem is cured by the passage of time. However, if either "spouse" is under 16 (but otherwise competent to marry), the marriage will not be declared void if the female is pregnant or they have a surviving child.

Voidable Marriages: the Grounds

These marriages *might* be declared void (*i.e.*, they are voidable), depending on the timing and circumstances:

1. The parties are *closer than* first cousins. Yes, sharing grandparents is perfectly acceptable here.
2. The parties are *double* first cousins.
3. A person is not 16 years of age (unless the female is pregnant or the couple has a surviving child).
4. One party is physically impotent at the time of the marriage.
5. A person is incapable of contracting the marriage. For example, the person was heavily intoxicated and not capable of legally contracting a marriage.
6. If the female represents to the male she is pregnant and the parties separate within 45 days of the date they were married, the marriage is voidable after a year of separation if no child is born "within 10 lunar months of the date of separation."

Amy A. Edwards is an attorney in Greenville, North Carolina. She is licensed in NC. Laws change. This article is current as of February 2015. www.GreenvilleLaw.us © 2015.

Equitable Distribution of Assets and Debts



Equitable Distribution: Marital Assets and Debts

By Amy A. Edwards

Equitable distribution (ED) is a form of property division between two spouses or former spouses. ED was created in our state in 1981. Before that, if a couple divorced, whoever had an asset, such as a home or vehicle, in his or her name kept it upon the divorce. This was called "title ownership" and it is how assets now continue to be owned unless one of the parties files a claim for ED of marital assets. After a case with particularly harsh consequences to a spouse in a long term marriage, the system was reformed and an ED statute was written. Unlike some areas of the law, ED laws are fairly new. They are frequently being revised and adjusted. In an ED case, a judge makes a ruling on what property or debt is separate or marital. Judges must generally divide the marital assets equally unless there are extenuating circumstances.

There are numerous complicated variations of ED, particularly when assets or debts are mixed with other assets, debts or accounts; Or, when marital money pays a debt that is a separate debt, for example. But generally, property someone owns before they marry is their separate property. Marital property is property (or debt) created after the marriage and before the separation. The parties in an ED case prepare inventories of assets and debts. Each person states whether they believe the asset or debt is marital, what the value is and who should receive it when the court rules. That leads to a summary prepared for the judge, telling him or her what is disputed. The judge then enters an order ruling what assets and debts are marital, what the values are, and who keeps the asset or debt. If one party gets more of the assets than the other, the judge may order that person to pay what amounts to a "buy out" so the division is equal.

Amy A. Edwards is a family law attorney in Greenville, North Carolina.

Did We Reconcile or Are We Still Separated?



By Amy A. Edwards

Besides obtaining a divorce, the date a couple separates can have a significant impact on equitable distribution of marital assets and debts, child support and alimony. When a married couple decides to call it quits, there is some date they separated. But when is it? The answer is not always as simple as it sounds. There is a myth that people can't be separated for purposes of divorce until they have something on paper. That is not the case. In North Carolina, if parties stop living together, and at least one intends the separation to be permanent, they are separated. Physically living apart is a requirement, however. Living in the same home in different rooms or out-buildings such as the garage or "man cave" is usually not enough. Despite what was portrayed in the *War of the Roses* movie when one duct taped a line down one-half of the house, you can't do it that way here if your goal is to seek a divorce.

The State Policy

From the viewpoint of the public policy behind this one year waiting period, marriages should be fostered and divorce should be discouraged to some extent. A waiting period gives spouses time to cool off after a major dispute. The courts would no doubt be much busier if there was no waiting period and either party could apply for a divorce on Monday morning after a fight on Friday night. There is debate about whether the year-long waiting period prevents divorces, thereby preserving marriages. The requirement that at least one of the parties intend for the separation to be permanent makes sense when you think about happily married people who are physically separated because of military service or because one of them spends an extended period of time in the hospital, for example.

What If We Try to Work Things Out?

Another question in determining whether you are separated for the purpose of divorce is whether you have made any efforts to reconcile. If a couple reconciles, meaning they return to the husband and wife relationship they had before the separation, they are no longer separated. If they reconcile and later decide to separate again, the one year wait begins from that second date of separation. Years ago, the one year period of separation required to seek a divorce would start over if the parties had intercourse. Now, the law says that an isolated act of intercourse will not start the clock over again but beyond that, it is not always clear at what point they reconciled or separated. Reconciliation and making efforts to work things out can lead to one of the spouses moving back into the home, which is almost always viewed as reconciling in legal terms. There is no black and white answer on whether the actions of a couple between those two extremes would require the one year waiting period to begin all over again. The court looks at the circumstances of each case when the date of separation is disputed.

Amy A. Edwards is a family law attorney in Greenville, North Carolina.

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Why Does Court Take So Long?



By Amy A. Edwards

It's no secret that cases take a long time to go through court, especially if you are the person who is asking the court to do something, like order support to be paid. In a nutshell, there are too few judges, a problem that is compounded by the scheduling of judges and attorneys. Our state is burdened with many more cases than available judges to hear them. There are on-going cuts in the judicial system's budget. Beyond that, family law cases such as child custody, child support, alimony and equitable distribution take time to prepare. There are numerous "housekeeping" events scheduled around the actual cases, requiring thirty minutes or an hour.

Only a small number of cases actually reach the courtroom, but the cases that do can take a long time to be presented. A custody case or equitable distribution case may take a week or longer in court if there are

numerous witness or exhibits. Real life also slows down the process, such as someone being ill that day or the air conditioning in the courthouse breaking down in July.

Cases that settle "on the courthouse steps" at the last minute might be scheduled for three days, all of which may be wasted if there aren't any cases that can be heard quickly with last minute notice. Even if a client can get there on short notice, trying to fill the court time left available is hard because of judge and attorney schedules. Certain judges have to hear certain cases, and some cases require a judge from another county because a litigant is an attorney or courthouse employee or regular witness such as a social worker or police officer. Emergency cases in family court, such as emergency custody, require the schedules to be further adjusted.

Amy A. Edwards is a family law attorney in Greenville, North Carolina. She is licensed in the state of NC.

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Thank you for reading our e-Newsletter.

Sincerely,

Amy A. Edwards

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