
Amy Edwards

FAMILY LAW

Family Matters

E-newsletter

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Welcome to our fourth issue of
Family Matters e-Newsletter.

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**Children Who "Divorce" Their Parents:
Emancipation in North Carolina**

Children Who "Divorce" Their Parents: Emancipation in NC

About Us



Amy A. Edwards is a Board Certified Specialist in Family Law. She is a principal at the Greenville law firm of Mattox, Davis, Edwards & Alexander, P.A. in Greenville, NC.

Web Site of the Month

The CSLS

Don't get scammed. The NC Secretary of State has a [Charitable Solicitation Licensing Section](#) which allows users to search a registry of particular organizations for a profile, license/exemption status and various filing made with the state. This site also has a phone [checklist for donors](#) with questions to ask callers who

In North Carolina, the age of majority is eighteen. At that age, a person is deemed an adult for legal purposes, such as voting or signing a binding lease or other contract.

Anyone under the age of eighteen is considered a minor child. There are several circumstances that create emancipation automatically, such as marriage. There is also a legal process, which is the topic of this article.

What is Emancipation?

Sometimes casually referred to as children divorcing their parents, emancipation is a legal process that allows minors who are at least sixteen years old to file a petition with the court, asking for a decree of emancipation. Of course, emancipation from one's parents or legal guardian is not a divorce in North Carolina. A divorce decree is only awarded to people who are married. An emancipation decree legally recognizes the minor child as an adult.

What's at Stake?

Parents have a legal obligation to support and care for, their minor children. Accordingly, children must be in the custody of parent(s) and are required to yield to parental authority. A parent has the legal authority to make the child's medical decisions, determine which school a child attends, give consent to extracurricular activities and the like. Parents are required to provide housing, food, clothing, medical care and other necessities for their children. Care of children includes proper supervision and creating a reasonably safe environment. When Parents fail to care for their children, or they abuse them, they lose their parental rights and authority, and the State takes custody of their children.

How Does it Work?

A minor filing a petition for emancipation must explain his or her circumstances to the court, and give the reasons for asking the court for such a decree. Both the minor and the parents have an opportunity to participate in the trial. The minor must have a plan to show he or she can support himself or herself. Additionally, the minor must disclose his or her future living arrangements and persuade the judge that he or she fully understands the consequences of being emancipated. Most importantly, a judge will rule on whether the emancipation is in the minor's best interest.

What Does the Court Consider When Deciding if Emancipation is in the Minor's Best Interest?

The court must take into account the minor's ability to function as an adult. Does she have the maturity to make adult decisions? Is he being manipulated by an adult who may be pushing the child into the emancipation process for personal gain? Another major concern is the quality of parental supervision or support, assuming the minor has surviving parents.

No two homes are exactly alike. Just as the court must carefully evaluate a child's home during a child custody case, it must do so when ruling on emancipation. If the minor child has any earnings, the court looks at the need of the parents for those earnings. For example, the petitioner could be a teenage celebrity, although there is a specific North Carolina statute that deals with minors who are in the entertainment business. The court must also consider the extent of family discord which may threaten the future reconciliation of the minor with his or her family. After all, the minor is still a child in the eyes of the court, unless and until a court says otherwise. The court is ultimately responsible for the minor child in this matter.

claim to represent a legitimate charity.

Tip of the Month

Lawsuit Records

If you participated in a lawsuit, such as a divorce, marital property, child custody or support, or alimony case, you can access the file at the office of the clerk of court ([civil division](#)). Sometimes, but not always, separation agreements are included in the court file, too.

Legal Term of the Month

Bench Trial

A bench trial is a trial where the judge, not a jury, decides what the facts are after hearing all of the evidence. In North Carolina, most family law trials are conducted as bench trials.

The term "the bench" represents the judge's bench, as opposed to "the bar" commonly used to describe the attorneys as a group.

Legal Trivia

Marriage

Did you know that in North Carolina, first cousins are entitled to marry each other?

NC Gen. Stat. 51-3

Suggestions For Future Newsletter Topics

Is there a topic you would like to see featured in a future newsletter?

Click Reply and send us an e-mail with your suggestion.

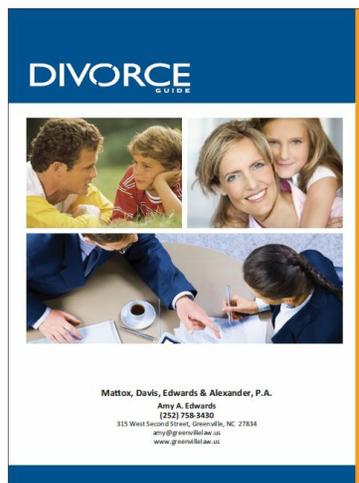
Community Education Presentations

What does an emancipation decree really mean?

By state statute, it means the child "has the same right to make contracts and conveyances, to sue and to be sued, and to transact business as if the petitioner were an adult." It also cancels any right of the parent to exercise control over the child, as well as any obligations. Emancipation is a unique and quite drastic measure for those who pursue it.

This article is current as of November 2013.

Divorce Guide (Free Download in PDF)



This **Divorce Guide** includes many good articles, including:

[How to Break the News Responsibly](#)

[How to Work With Your Divorce Lawyer](#)

[Understanding the Divorce Process](#)

[An Introduction to Divorce Mediation](#)

[Selecting Your Professional Divorce Team](#)

[Popular Myths About Shared Parenting](#)

[Safe Harbor: Financial Dangers of Divorce](#)

What's in a Name: How Names Are Established and Changed in North Carolina

What's in a Name: How Names Are Established and Changed in North Carolina.

By Amy A. Edwards

According to the Merriam Webster Dictionary* a surname is defined as "the name shared by the people in the family." We sometimes take our names for granted, unless we get saddled with a name that is embarrassing or unpopular. The law has specific requirements to create and change surnames, first names, and middle names if we have them. After all, for better or worse, our names are part of our very identity.

How Are Surnames Established?

How do we end up with the names we do get and who decides? When a married mother delivers a baby, the surname (last name) of the father is automatically placed on the baby's birth certificate unless both parents agree to choose another surname. When an unmarried mother deliver a baby, her surname is used on the birth certificate,

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and the only way the father's surname is included on the birth certificate is when both he and the mother sign certain legal documents. If parents adopt a child, or even another adult, the clerk of court forwards the adoption records to the NC Vital Records, and a new birth certificate is issued, reflecting the new name of the person who was adopted. Parents who adopt children from other countries may apply to the [NC Vital Records](#) with the proper birth registration records and receive a certificate of identification.

How Are Names Changed?

People have any number of reasons why their names aren't satisfactory to them. I have seen clients who choose to change their names in honor of someone who acted as a parent to them even though they were not biologically related. Other times, the person's name might be the same as a notorious or outrageous celebrity or political figure. When a person who is born a male, but identifies as a female, a name change with a feminine connotation may make him feel more comfortable (and vice versa). So, what do you do when your parents didn't do you any favors with the name they gave you? Or, you have personal reasons for changing your name?

Aside from changing marital status, people may change their names by filing a legal proceeding with the clerk of court for a name change. If the person meets the requirements, the clerk will issue a certificate of name change. Using this method, a person may seek to change a first, middle and/or last name but an adult may use this alternative only once. The person must disclose the reason for seeking a name change, and a public notice must be filed at the courthouse for a certain number of days before the clerk will issue a certificate. A petitioner must list the reason he or she wants a new name. He or she must submit to a national and statewide criminal history, and offer at least two statements "of good character . . . by at least two citizens of the county who know his standing." Any outstanding tax or child support obligations must be disclosed to the clerk, and registered sex offenders are prohibited from obtaining a name change certificate. Name change information is forwarded to the Division of Criminal Information of the State Bureau of Investigation. Once the clerk is satisfied there is good cause to change a name, the clerk issues the certificate and adds a notation to that person's birth certificate if applicant was born in NC.



Besides name change proceedings, the most common name changes are the result of changes in marital status. After a marriage, many people change their names informally, by custom only. This means there is no legal requirement to file any paperwork. In fact, in North Carolina, a person does not need to file any paperwork in order to choose a new name he or she desires, regardless of marital status, as long as the name is not for a fraudulent or illegal reason. Although the law itself does not require a person to sign documents or file any paperwork to assume a new surname, most government agencies do. For example, the [NC Division of Motor Vehicles](#) and the [Social Security Administration](#) require a marriage certificate or certificate of divorce when applicants attempt to renew a driver's license or obtain a social security card with

a new name.

A divorced woman may petition the clerk of court (or the court if done at the same time as the divorce) to resume the use of a maiden name (birth name), the surname of a prior deceased husband, or the surname of a prior living husband if she has children with his surname. While it is not customary to see a man in North Carolina to change his surname when he married, he too may petition to change his surname upon divorce, back to the name he used before marriage. A widow (surviving wife) may resume the use of her maiden name, the name of a prior deceased husband, or a previously divorced husband. A widower (surviving husband), may resume the name he had before marriage.

This article is current as of November 2013.

* online at <http://www.merriam-webster.com>

"Grey" Property Division (Over Age 50)

Grey Divorce: Property Division

By Marlo Van Oorschot

The division of property is a major issue in grey divorce, and for most couples over the age of 50 their house is the largest asset they own. Traditionally, for the majority of homeowners, the value of their home is two-thirds of their total assets. And the latest figures from the Census Bureau show that 76% of people age 50 to 59 and 80% of those aged 60 to 69 are homeowners-with well over 80% of all homeowners being married couples. Such statistics show that, even in today's economic climate, the majority of couples in grey divorce are homeowners, and determining who gets the house is a major issue.

In the current economic climate of depressed real estate values, the breadwinner may find it a good idea to keep the real estate investments including the family residence (and the tax benefits) as part of the divorce settlement because the real estate is purchased in the divorce at the current fair market value and it is the breadwinner who is most likely able to afford keeping the property. However, making the decision to keep property in the divorce must be looked at in the context of how the asset affects support obligations and the cash flow available to meet them. Conversely, the non-breadwinner and typically the stay-at-home spouse, faces a tough choice on whether or not to keep the family residence because it is often questionable if this is a good financial decision for the non-breadwinner. Keeping the real estate requires paying current obligations (mortgage, taxes, insurance, monthly maintenance), future repairs and, any future capital gains tax and the costs of sale. Capital gain taxes and the costs of sale are not owed until the sale of the home, but these items are often very expensive consequences of the decision to keep real estate in the divorce. Therefore, keeping any real estate including the family residence as part of a divorce settlement is a business decision, not an emotional one. This article focuses on the issues surrounding the family residence, as opposed to investment real estate, because typically people own family residences but not necessarily investment real estate.

In and Out Spouse

As the result of the property division, if the house is not sold, then one spouse keeps the house. The spouse keeping the family residence is often referred to as the "in spouse." The spouse who is bought out (i.e., paid for one-half of the net equity) is often

referred to as the "out spouse". After the divorce is finalized, and the finances relating to the division of the house has been finalized, it is not uncommon for the "out spouse" to be removed from the deed, yet remain liable for the mortgage obligation on the house. The reason for this is because the only way for the "out spouse" to be removed from the mortgage obligation is for the "in spouse" to refinance the mortgage into his or her name alone. If the "in spouse" is the non-breadwinner, a refinance can prove to be difficult due to the "in spouse's" lack of income, especially in a difficult economic climate. The questions that then arise are (1) Can an equal division of property occur when the "out spouse" remains liable for the mortgage? (2) Will the "out spouse's" credit be affected? (3) Do the risks outweigh the benefits of the "in spouse" keeping the residence?

Equal Division?

As part of the property division, the "out spouse" should argue that being left potentially liable for the mortgage without ownership in the house is not an equal division of the residence. If the judge agrees, then the "out spouse" may be successful in getting an order for the house to be refinanced or sold, either of which will remove the "out spouse" from the mortgage. Being removed from the mortgage obligation will also improve the ability of the "out spouse" to purchase a home in the future, because a lender is otherwise unlikely to make, in essence, a second mortgage loan to the "out spouse." The "out spouse" should request a "refinance or sale" order even if the case is settled without the help of a judge.

The "in spouse", on the other hand, may resist a sale or refinance, by arguing that the legal requirement for an equal division has been met because the "in spouse" has assumed the responsibility for the mortgage in the property settlement (or court ordered division of assets and liabilities). The logic of this argument is that there is no need to be concerned about the "out spouse's" credit score, potential financial liability or potential future inability to purchase a home, so long as the "in spouse" maintains the payments as required by the bank or lender.

Credit Score Impact

The credit score of the "out spouse" can usually be protected from destruction if the "in spouse" defaults on the mortgage. This can be accomplished by a "fire sale" in the event the "in spouse" defaults on the mortgage. An example of this is that if the "in spouse" is delinquent in payments (i.e., two consecutive payments), then the residence shall be sold at the very best price which will cause an immediate sale (i.e., a "fire sale"). The "out spouse" should insist on receiving any notices of default directly from the "in spouse" as well as from the bank or lender. The greater problem is the "out spouse's" emotional worry that the "in spouse" might default and/or that the credit liability of the old mortgage will likely prevent getting a loan for a new home. There is no solution to this emotional reality.

Risks vs. Benefits

The financial risks of keeping the family residence are relatively quantifiable. The "in spouse" needs to be sure he or she can afford not only the current expenses associated with the residence, but also the future expenses such as repairs, adjustments to the mortgage payment and any future capital gains tax and the costs of sale if the residence is later sold. While the expense figures are quantifiable, the unknown is the "in spouse's" future income of the "in spouse" is the non-breadwinner. In grey divorce, as discussed above, aging affects income such as one's ability to be competitive in the work force and health issues which will likely arise and could impact

the ability to maintain the residence. The expense consideration must be balanced against the tax benefits of owning the residence; the cost to replace housing if the residence is sold; the lost opportunity to invest the funds which would result from the sale of the residence which could be used to create a stream of income (i.e., dividend and interest income); and the emotional desire to remain in the residence. These risks and benefits must be weighted with the assistance of a divorce attorney and a financial advisor or accountant.

Marlo Van Oorschot is a respected Los Angeles-based family law attorney who for nearly 20 years has focused her practice on resolving divorce, child custody, child and spousal support and property disputes. She is the founding and managing partner of Law Offices of Marlo Van Oorschot, APLC. This article has been adapted with permission from: How to Survive Grey Divorce: What You Need to Know About Divorce After 50.

The Forensic CPA -- Your Ally in Divorce

The Forensic CPA -- Your Ally in Divorce

By Lee Gould and Fred Lieber

Let's first dispel a popular misconception: Forensic does not mean dealing with the dead, as in Forensic Pathology's well known Dr. Quincy. Black's Law Dictionary defines Forensic as "Belonging to courts of justice". Breathe a sigh of relief-Divorce and Death are not joined at the hip!!

Often, a participant in a divorce is forced to address a significant amount of financial detail for the first time. This, of course, is in addition to all of the other practical and emotional considerations affecting their lives. Spouses generally understand the basics of the family finances, but it is often the husband who assumes the role as the head of the family financial affairs. It is not uncommon in the divorce process that investments, bank and brokerage accounts and other assets are "discovered" that were unknown to a participant. In addition, if a business is involved, the non-participant often understands little about the affairs of the business.

An experienced Forensic CPA has training and experience in understanding and locating financial information and knowledge of the Divorce process. Consequently, he or she is an invaluable member of your professional team when you are in the process of a dissolution. Let's look at several areas where this experienced professional will serve you well:

1) Review of Personal Tax Returns

The filing of the family's individual tax return is a time when financial information can be studied and shared by both spouses. However, depending on the complexity of the tax return, it may be a document which neither party has a high degree of familiarity with. This provides an opportunity to "gloss over" items not thoroughly disclosed to one of the signers. Although sounding simplistic on its face, the review of the personal tax returns provides a wealth of information that will feed other aspects of the Forensic CPA's assistance. Items that may be discovered are:

- Security investments
- Partnership and/or Corporate (Business) investments
- Real Estate ownership-
- Investment property

- Vacation/Second homes
- Beneficial interests in Trusts and Estates
- Overpayment of taxes applicable to future years
- Refunds due from over payments
- Loss carry forwards to future years

As can be seen, this reporting form provides a framework for the historical family financial affairs. It is a source of significant information and should be studied in detail by a professional who understands the wealth of information that it contains.

2) Business Valuation

If a family owned business is a part of the Marital Estate, an experienced Business Valuation Expert is critical to the determination of the company's value. In most instances where a business is part of the family's assets, it is by far the most valuable asset owned. There is no marketplace, listing or database that will provide a value for a private business. The performance of a Business Valuation requires the skills of an experienced professional. It requires an in-depth study and analysis of the business, its industry, its history and future, the financial markets and many other considerations. Additionally, knowledge of transactions, the marketplace and seasoned judgement on value is required. Do not make the mistake of believing that any accountant is capable of this undertaking!

3) Financial Investigations

There are instances coincidental to a divorce when the wage earning spouse claims that the marital cash flow has decreased. A detailed review of documents, expenditures or other records becomes necessary. The Forensic CPA is trained to perform these reviews, and knows what to look for. Additionally, when there is concern that assets may be hidden, this professional has access to databases, public records and other means of ferreting out undisclosed assets.

4) Retirement Plan Reviews

Both individual and company sponsored retirement plans need to be reviewed and understood in reaching an equitable conclusion to the dissolution process. A Forensic CPA participates in the establishment and review of many such plans in his or her career. This area of increasing complexity needs careful scrutiny. Over the past five years, the stock market has increased dramatically. As a result, retirement plans have increased in value proportionately. These plans are an important part of one's future and must be understood by both parties.

5) Tax and Financial Advice in the Settlement Process

The great majority of divorces end in a negotiated settlement. When considering the myriad of tax and financial possibilities, sound advice is required. Future cash flow analyses, income tax ramifications, retirement fund considerations and related asset transfers, and other such areas of decision making must be understood and considered for not only today, but also for the rest of your life! These decisions should be made with the best advisors available. One can begin to see the complexity of the dissolution process when considering the few highlighted items above. Each case is different and has its own complexities and involvement. A participant in this process requires a good deal of assistance and counsel. The Forensic CPA will be an invaluable advisor during this process.

Lee Gould and Fred Lieber are practicing Forensic CPAs. They have in-depth Forensic and Business Valuation experience in divorce proceedings. They are partners in the Chicago-based CPA firm of Russell Novak & Company, LLP.

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Thank you for reading our newsletter.

Sincerely,

Amy Edwards

Mattox, Davis, Edwards & Alexander, P.A.

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