
Amy Edwards

FAMILY LAW

Family Matters

e-Newsletter

October 2014



Amy Edwards
FAMILY LAW

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

Connect With Us

Like me on
Facebook 



Visit my blog

Designated as a Board Certified Specialist in Family Law

by the North Carolina State Bar Board of Legal Specialization

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 reply with the subject "Remove" or use the unsubscribe feature at the end of this e-mail. Visit us online at www.GreenvilleLaw.us and for past issues visit [our archives](#).

In This Issue

[Do You Really Want to Give Your Ex the Authority to Pull Your Plug?](#)

[New Military Divorce Guide - Free Download](#)

[Sanity and Insanity When it Comes to Granting a Divorce](#)

[Can the House I Owned Before Marriage Become Marital Property?](#)

Join My Mailing List

Web Site of the Month

[Child Support Enforcement](#)

The NC Child Support Enforcement web site allows parents to track payments, use the state guidelines calculator, make payments and more.

Tip of the Month

[Lost and Found Pets](#)

You can use the Greenville Police Department page to post pictures of, or information about, pets you have lost or found.

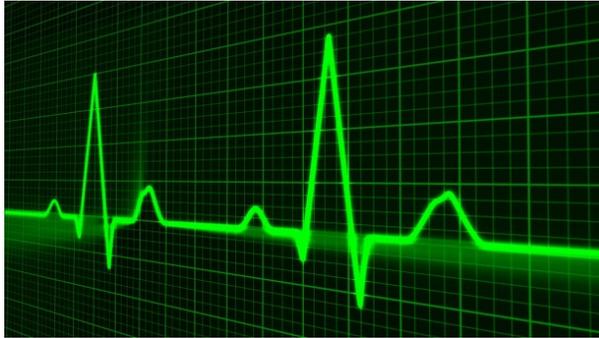
Legal Term of the Month

Trespasser

Do You Really Want Your Ex to Have the Authority to Pull Your Plug?

By Amy A. Edwards

A power of attorney is a document that permits someone to act as an agent for you. There are numerous types of these. Health care powers of attorney (HCPOAs) allow you to name an agent to make medical decisions for you if you are unable to make those decisions yourself. For example, if you are in a car accident and unconscious, or if you are on life support, you cannot make these decisions for yourself. While North Carolina uses a somewhat standard form for these, there is no requirement to use it.



HCPOAs may be written so the person who becomes your agent makes only certain medical decisions, or all of them, as follows:

Physical Health

- Employing or discharging your health care providers.
- Consenting to X-ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures.
- Consenting to your admission to a hospital, nursing home, hospice, long-term care facility, or other health care facility.
- Consenting to measures for relief of pain.

Mental Health

- Admitting you to a facility for treatment of mental illness.
- Authorizing the administration of medications for mental health treatment.
- Authorizing what is commonly known as "shock treatment."

Life and Death

- Naming a legal guardian if you need one appointed.
- Authorizing the withholding and/or withdrawal of life-prolonging measures.
- Authority to withhold artificial nutrition or hydration, which may be administered through tubes.
- Autopsy and disposition of your remains.
- Donate your organs or other parts for research.

Depending on how it is drafted, your HCPOA may permit your agent to

A person who enters on the property of another without permission and without an invitation, express or implied. See NC Gen. Stat. 38B-4

Legal Trivia

Did You Know?

The official state insect for North Carolina is the honeybee. NC Gen. Stat. §145-7.

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.

Family Matters Archive



Past issues of Family Matters are now available from [our archive](#)

Quick Links

[City of Greenville](#)

[Pitt County](#)

[Pitt County Schools](#)

[State of NC](#)

[Collaborative Divorce Assn of Eastern Carolina](#)

[Social Security Admin.](#)

[Research Family Law](#)

make life or death decisions for you if you should be placed on a ventilator (*i.e.*, life support). For quality of life or other reasons, people may state in their HCPOA their desire for the agent to withhold life-prolonging measures. Your HCPOA may allow your agent to direct the doctor to stop the ventilator, sometimes referred to as authorizing someone to pull the plug. Few other things require this much trust in a person as naming them as your healthcare agent.

If you have separated from your husband or wife, do you really want him or her to make these medical decision for you? Talk with an attorney for advice on what to do about your HCPOA if you separate, or if you just change your mind about designating your healthcare agent.

Copyright 2014

This article is current as of October 2014.

New Military Divorce Guide: Free Download

See Select Articles:

Military Custody and Visitation

The Servicemembers Civil Relief Act (The SCRA)

The Impact of the Uniformed Deployed Parents
Custody and Visitation Act (The UDPCVA)

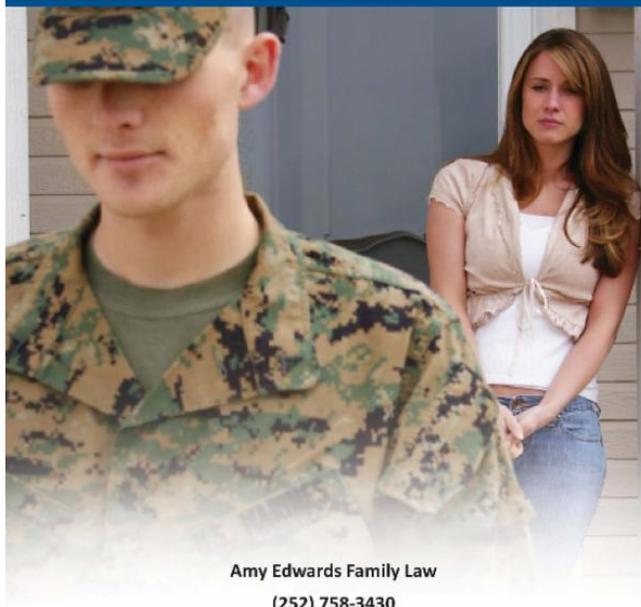
Military Retirement Benefits in Divorce

The Problem of the Absent Parent

Military Responses in Domestic Violence Cases

[Our Firm Web Site](#)

[Pitt County Courthouse](#)



Amy Edwards Family Law

(252) 758-3430

313 West 2nd Street, Greenville, NC 27834
amy@greenvillelaw.us
www.greenvillelaw.us

Sanity and Insanity When it Comes to Granting a Divorce

By Amy A. Edwards

Unless one of the parties suffers from incurable insanity, the only ground for a divorce in North Carolina is a separation of at least one year. If the required time of separation has passed, there is no other defense to a claim for divorce. That is why it is called an uncontested divorce.

The Impact

A divorce is a ruling on the legal relationship between you and your spouse. A divorce makes a critical difference in many important situations, such as health insurance, the way you file tax returns, and retirement and social security benefits, to name a few. A divorce also controls when you have the right to file claims for alimony and marital property division, and your rights to jointly owned property, including survivor rights, just to name a few.

What About Your Sanity?

If your spouse has "incurable insanity" the only way to divorce in our state is for the parties to be separated for a *minimum* of three years. To be "incurably insane," the spouse is "so mentally impaired that she does not understand what she is engaged in doing and the nature and consequences

of her acts." This definition is stated by the NC Court of Appeals in *Scott v. Scott*, 106 NC App. 606 (1992) aff'd, 336 NC 284 (1994). If the parties are divorced after the three year waiting period, "the court shall require" the sane spouse to "provide for the care and maintenance" of the insane spouse for life if the insane spouse "has insufficient income and property" to support himself or herself. If anyone who is incompetent is served with a lawsuit, the person's legal guardian is responsible and if there is not one, the court will generally expect one to be named which requires another type of lawsuit called an incompetency proceeding.



If You're Sane, Have You Really Separated?

Though they are rare, there are cases where it was not obvious the parties have been separated for one year. Sometimes couples who separate date each other again, or perhaps they live together again before separating permanently. There is no bright line rule about what counts as a true separation. Years ago, the mere fact of sexual intercourse started the clock over again, and the one-year period would begin after the date the parties had intercourse. This discouraged couples from trying to work things out, so the law changed. Now, the law says that a judge should make this decision (of whether the parties were separated) on a case-by-case basis looking at the big picture in what the statute calls "totality of the circumstances." An isolated incident of sexual intercourse between the parties, by itself, does not automatically mean their one-year time period should start all over again.

Other Divorce Matters

Each state has its own residency requirements for divorces, and any requirement of separation. In North Carolina, one spouse must live in the state for at least six months before the divorce is filed, and the divorce permanently terminates the right to file certain marital claims. If you are served with a lawsuit for a divorce, contact an attorney promptly for advice about the divorce as well as whether you should file any counterclaims. Failure to properly respond to a complaint within a deadline may mean you permanently lose those rights.

See NC Gen. Stat. §50-5.1 and 50-6.



Can the House I Owned Before Marriage Become Marital Property?

By Amy A. Edwards

Let's assume you own a house before you get married, and you own it in your sole name. If you get married, what happens to it if you and your spouse later separate? In North Carolina, your separate property remains separate property after marriage but there are variations in how this is addressed when there are complicating factors.

No Good *Deed* Goes Unpunished

The way the deed is drafted at the time of separation matters. Although it might have had only your name on the deed when you got married, you might discover the deed has been changed. For example, at a closing when you refinanced your mortgage or got a home equity loan, the well-meaning closing attorney (who practice real estate and not family law) might've prepared a new deed that adds the name of your spouse for some reason. Such a situation creates an issue for a judge to decide, determining whether the property remains separate property or whether it has become a gift, making it marital property.

All About the Increase in Value

If the deed remains in your sole name when you separate, you will retain legal ownership of it as your separate property. However, if the value of the house has increased since the date of your marriage, your spouse can ask the court for a share of the value (not the house itself) under certain circumstances. If the increase in value occurs only from the passage of time, for example, and there are no improvements or other activity by either spouse during the marriage, the increase in value remains yours.

But, if there are certain improvements made during the marriage, or other types of activities that qualify, the property may then become a "mixed" asset. A mixed asset means that one part (the house itself) is separate property, but the other part (the amount of increase in value) is marital property. If your house is worth \$150,000.00 at the date of the marriage, and \$200,000 at the date of your separation, your spouse may try to prove that the increase in value (*i.e.*, \$50,000.00) value is marital. He or she would then be asserting the asset is mixed, being partly separate property (the house) and partly marital property (the increase in value). Proving the increase in value is marital would allow a judge to award one half of the increase, meaning your spouse may receive \$25,000.00 worth of value when the judge rules on the marital property in an equitable distribution trial.

Should I stay or Should I Go?

Unless you are in danger or fearful for your safety, you should not leave the marital home until you speak with an attorney. If you do, your spouse might allege you have committed abandonment, which is marital fault. When both parties remain in the house, there are two ways to address it. Attorneys for you and your spouse may negotiate in an effort to reach an out of court settlement. A settlement can resolve all of the matters, including who remains in the house, whether it is marital in any part, what the value is, and who is responsible for the payment of taxes, insurance and any mortgage payments. Alternatively, if either one of you files a claim related to support and/or equitable distribution (division of marital property and debt), the court will make a ruling about who remains in the home and how the expenses related to ownership of the house will be paid, along with a ruling on the value of it.

This article is current as of October 2014.
Copyright 2014.

 [Forward to a Friend](#)

Thank you for reading our newsletter.

Sincerely,

Amy A. Edwards

* This e-newsletter is not meant to be legal advice. Amy A. Edwards is only licensed to practice law in the state of North Carolina. No attorney-client relationship is formed by viewing this e-mail.