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### News For February 2017

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**Special Guest Feature**



## **What is a Daily Money Manager and What Can They Do in Family Law Cases?**

By Kelly Kurz

We've all heard someone say, "My husband (or wife) handles all that financial stuff." This often seems like a good plan; however, what happens if that spouse is no longer in the picture? We usually think of widows or widowers facing the overwhelming task of understanding a spouse's bookkeeping system, but divorce can also wreak havoc on financial record keeping.

More often than not, one marriage partner assumes responsibility for bill paying and record keeping and acquires a greater knowledge of the family finances than the other partner. Sometimes, before a trusting marital relationship deteriorates to the point of divorce, one partner has deferred to the other for so long that they no longer know the most basic elements of family cash flow. This makes equitable distribution of assets and debts difficult.

Fortunately, a group of professionals known as daily money managers (DMMs) can often step in to help those who are unprepared for the organizational challenges of divorce. The skills DMMs have developed to help clients manage personal monetary affairs can be applied to gathering the information required for financial affidavits. DMMs also offer ongoing services such as organizing financial records, maintaining bank accounts, budgeting, coordinating benefits and paying bills.

Daily money managers work with a variety of clients. Many practices have a senior client base who needs DMM services due to changes associated with aging such as poor vision, limited writing ability or dementia. Other practices focus on high net worth clients or busy professionals who prefer that someone else handle routine financial tasks so they can enjoy their spare time.

Although some DMMs have separate professional credentials, most do not provide legal, investment or tax advice. They do, however, provide services that complement the work of other professionals and can often refer you to appropriate service providers.

Kelly Kurz, founder of Paperwork Solutions, LLC, is certified as a Professional Daily Money Manager (PDMM®) by the American Association of Daily Money Managers. Kurz has been serving clients in Pitt and surrounding counties since 2005.

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## **Five Facts You Need to Know About Your House in a North Carolina Divorce**

By Amy A. Edwards

**#1 The names on the deed and the names on the mortgage debt can be two different things.**

People don't always realize their ownership rights to property might be different from their mortgage obligation. As most people know, a deed conveys ownership of the property to the purchasers. However, the mortgage is a promissory note which can be signed by one or both property owners. Even when there are two property owners, as reflected on the deed, the bank or mortgage lender might make the loan in the name of only one property owner instead of both. This can happen when the other owner is self-employed and has irregular or sporadic income. Sometimes, the other owner has bad credit or a high debt to income ratio (too many debts for his or her income). When the mortgage note is only signed by one owner, only he or she is legally responsible for the actual payment of it, although both spouses might own the property together.

In North Carolina, the mortgage note is secured by a document called a *deed of trust*, which is recorded at the Register of Deeds. It is the actual lien against the property. Sometimes the spouse who isn't responsible for payment of the mortgage signs the deed of trust, allowing the lien to be placed against the land in which he or she has ownership interests. Just because the other owner signed the deed of trust doesn't automatically mean he or she is also responsible for payment of the loan. In other words, we can't usually tell whether the other owner is responsible for payment of the mortgage unless we see the mortgage note.

**#2 In the vast majority of cases, the only way to "remove" your name from the mortgage debt in joint names is to pay it off.**

When spouses separate and the mortgage obligation is in joint names, the person moving out of the house still has the mortgage debt on his or her credit record as an on-going debt even though he or she no longer lives there. If mortgage payments are delinquent, it is a problem for both spouses, not just the one who remained in the residence. Lenders won't usually remove someone's name from the mortgage note. The routine way divorcing spouses have one named "removed" from the mortgage debt is to pay off the debt. The two main ways to pay off a mortgage include selling the house and using the sales proceeds to pay off the debt, or refinancing the debt.

Usually, a refinance in the context of a divorce means the old mortgage in both names is paid off when the spouse who keeps the house gets a new mortgage or home equity loan in only his or her name.

### **#3 One spouse "assuming" the joint mortgage means very little protection for the other spouse.**

When one spouse agrees to legally "assume" payment of a mortgage that is in joint names of the parties, it means one spouse agrees to accept responsibility for the mortgage payment. It is an agreement that can only be made *between the spouses*. Because a joint mortgage includes a mortgage note signed by both spouses, both remain legally obligated to pay the debt. The mortgage note is an agreement made *by the bank* as the lender and the spouses as the borrowers. Spouses can't just change the terms of the mortgage note they signed unless the original mortgage is paid off. There isn't really a primary and secondary mortgage obligation in the sense many divorcing spouses believe. In our state, we have [joint and several liability](#) which means a lender has the option to seek 100% of the payment from one spouse alone if possible, or any percentage of payment from each spouse.

### **#4 The moment there's a divorce decree, joint ownership rights change.**

In North Carolina, married people commonly purchase their home in joint names. It is ownership known as *tenancy by the entirety* (TBTE). Instead of each spouse owning 50% of the home, each owns 100% of the home. Upon the death of a spouse, the widow or widower automatically owns 100% of the property. But when a judge enters a divorce decree, the owners are no longer married and their TBTE ownership magically becomes joint ownership as *tenants in common*. In that event, each owner owns a fractional share such as 50/50 and if one divorced owner dies, his or her ownership share is inherited by the person named in his or her will or next of kin. It is possible for the surviving divorced owner to share ownership with the deceased owner's next of kin.

### **#5 If your home is foreclosed upon, you might be on the hook for a**

## money judgment.

In these economic times, foreclosures are common. A foreclosure means the lender enforces their deed of trust, the lien on the property. Instead of receiving mortgage payments for a house the parties own, the lender becomes the legal owner of the property. Sometimes this is the end of the story. Other times, the lender might sell the property but get less money for it than what was owed. For example, if the outstanding mortgage debt was \$235,000.00 but the lender sold the house for \$150,000.00 there is a shortfall or deficiency of \$85,000.00. A lender has the option to sue the person who failed to pay the mortgage to recover the loss of \$85,000.00. If the lender is successful, a judge awards a judgment called a "deficiency judgment" making you liable for payment of that amount plus interest.

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 February 2017. [www.AmyEdwardsFamilyLaw.com](http://www.AmyEdwardsFamilyLaw.com) © 2017.

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**What's the Servicemembers Civil Relief Act (SCRA)?**

The Servicemembers Civil Relief Act is a federal law that is intended to support service members (SMs) while they are on active duty/deployed. In part, the law exists to prevent default judgments from being entered against a SM who is overseas and/or unable to manage his or her responsibilities related to the lawsuit because of his or her service. In some cases, it also offers general protections that include terminating a residential or vehicle lease early and limiting interest on bank loans, finance companies and credit cards to 6%.

The Act also gives SMs the opportunity to seek a 90 day stay from the court. A stay essentially "freezes" a case so the SM can have additional time to concentrate on his or her military duties before addressing the lawsuit. The 90 day stay *isn't* automatic. The SM must file a request for it. If applicable to the SM, the request may be for a stay that is longer than 90 days. What happens during a stay? Generally, nothing happens during a stay but it is possible the court could address "administrative" matters, such as checking the status of the SM's ongoing duties to determine whether the stay should remain in effect after 90 days, for example.

Because the SCRA is a federal law, every state must comply with it. If the SM is served with a lawsuit but is not given the opportunity to exercise his or her right to seek a stay, the consequences are serious. A judge's ruling is at risk of being set aside (legally erased) later if a stay should have been given but was not.

### **How Do SCRA Cases Get Started?**

The SCRA is triggered when a lawsuit is filed against a SM. In family law cases, this includes child custody or support, alimony and/or equitable distribution (marital property division). Courts in Pitt County usually appoint a volunteer attorney to discuss the SCRA rights with the SM to determine whether he or she meets the legal standard for seeking the 90 day stay. If so, the attorney helps the SM file the request for the 90 day stay with the court. The attorney is only appointed to make sure the SCRA rights are protected, not to represent the SM in the case itself unless the SM chooses to hire that attorney for the case.

### **Does the SM Qualify to Seek a 90 Day Stay?**

If the SM's military duties materially (significantly) affect his or her right to defend the lawsuit because the SM is unable to appear in court, and he or she has no authorized leave, the SM might qualify to ask for the 90 day stay. This right is extended to those who are not only on active duty or deployed, but to those who cannot be in court due to sickness, wounds, leave or other lawful purpose. When a SM requests the stay, the court expects him or her to provide alternate times of

availability.

## Do the SM's Duties Materially Affect His or Her Legal Rights?

With the appointed attorney, the SM seeking a 90 day stay must explain how his or her military duties materially affect his or her legal rights. Perhaps the SM is overseas in the field for the next 73 days and has no leave. In an alimony or equitable distribution case (dividing marital property), the SM might not have access to the records that are necessary for his or her attorney to move forward in the case. Is the SM able to reasonably communicate with his or her attorney by phone, or even e-mail? There are as many scenarios as there are SMs, but the goal is for the SM to meet the opposing party on equal footing to the extent possible. SMs shouldn't be penalized for their military obligations.

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 February 2017. [www.AmyEdwardsFamilyLaw.com](http://www.AmyEdwardsFamilyLaw.com) © 2017.

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Sincerely,  
Amy A. Edwards

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