

**Wake Forest University School of Law
Advanced Legal Research Pathfinders**

Equitable Distribution in North Carolina

By Julia Wicker

Spring 2003

Last Updated: September 1, 2011

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Table of Contents

I. Introduction

- a. What is Equitable Distribution?
- b. Purpose of Pathfinder
- c. Who is the Audience?
- d. How to Get Started

II. Finding the Law Quickly

- a. Access: (Law Firm, Law School, Internet)
 - 1. On Line Sources
 - 2. Book Sources

III. The Law: Introduction to Equitable Distribution

- a. Synopsis
- b. Types of Property
- c. Legislative History
- d. Procedures
- e. Factors to Consider

IV. Explanation of the Laws

- a. Primary Sources
- b. Secondary Sources

V. Valuation

- a. Statutory Framework
- b. Types of Valuation
- c. Debts
- d. Appreciation
- e. Non-Business Assets
- f. Business Assets
- g. Financial Assets

VI. Statistical Information

VII. Special Interest Groups

- a. For Attorneys
- b. For Divorcing Spouses and Other Interested Parties

VIII. Other Related Cites and Support Information

As of 12/2009 most of the blue text in this paper isn't hyperlinks. You may be able to copy that text and put it into an Internet browser of your choice and still find the site.

I. Introduction

a. What is Equitable Distribution?

1. It is the division of marital and divisible property upon the dissolution of a marriage.
2. Property Distribution in North Carolina is often by agreement of the parties in the form of a property settlement. If it becomes necessary to seek a court ordered property distribution the parties are required to work their way through numerous steps mandated by the court system. This process is called "equitable distribution."

b. Purpose

1. The purpose of equitable distribution is to ensure that parties to a divorce are left with a division of property that will allow them to be on equal footing outside the marriage as much as reasonably possible.

c. Who is the audience?

1. Attorneys
2. Divorcing Spouses
3. Scholars
4. Activists/Feminists
5. Families of Divorcing Parties
6. Legislators/Lobbyists
7. Engaged Couples

d. How to Get Started

1. There are a variety of ways to find good resources for equitable distribution. An excellent start includes asking your librarian, your family law professor, and beginning with the North Carolina Digest Index. By looking up marriage and equitable distribution under the Digest, case law and statutes are listed and provide you with a great beginning to research the issue. Additionally, searching on line under any of the sources listed below will direct you to the relevant statutes and case law.

II. Finding the Law Quickly – good “mega sources” for those very short on time

a. Access to sources via law firm, law school, or Internet

1. On line sources

a) **Lexis:** at <http://www.lexis.com>

i. Statutes: States/North Carolina/Statutes/General Annotated

Search terms: equitable /4 distribution /2 property /3 division. You will come up with six hits and the statutes you need for equitable distribution.

- ii. Case Law: Go to State Legal: US Tab. Then click on more sources to get to North Carolina. Click on NC and under Cases, click on Cases Combined. Make sure that you are in terms and connectors

and type the following search: <equitable /2 distribution and property /3 division and 50-21 and 50-20>. You will get 43 hits/cases.

b) Westlaw: at <http://www.westlaw.com>

i. Search This Database and typed in NC GEN STAT ANN.

This put me at the North Carolina General Statutes Annotated link. Using terms and connectors: <equitable /2 distribution and property /3 division.> I received 17 results. Scrolling down the list provides you with the statutes you need.

ii. Case Law: Go to Search this Database and type in NC-CS. This will put you in the North Carolina Database. Once in the database, make sure you are in terms and connectors and type the following string: <equitable /2 distribution and property /2 division and 50-20 and 50-21>. This resulted in twenty hits for cases on point.

iii. Key Cite:

a) For Disposition of Property: using the case law found, key cites for divorce and equitable distribution began with 134k248 for Disposition of Property to 134k286(5) k for continuation of disposition of property. IF you select this number as request Most Cited Cases, it reveals a list of 34 headnotes or cases that deal with disposition of property.

b) For Stipulations and Agreements of Parties: Using the case law key note 134k249.2 k, also provided you with a Most Cited Cases link. Clicking on the link you are provided with the most cited NC cases on agreements between parties concerning equitable distribution. 48 headnotes with reference to cases were found.

c) Valuation: 134k253(3) k is the key note for valuation of assets in equitable distribution proceedings. Using the Most Cited Cases link Westlaw came up with 173 headnotes.

c) FindLaw at <http://www.findlaw.com>

i. Go to Legal Professionals and click on “US State Resources.” Click on North Carolina and then you will be at Findlaw’s table of contents for NC at <http://www.findlaw.com/11stategov/nc/index.html>. Once there you can select “Primary Materials” for case law, statutes, regulations, etc.

ii. You can also go under Legal Professionals and click on the “Legal Subjects” section and then click on Family Law. This gives a good general overview of all related links and databases affecting a multitude of family law issues. Once

at Family Law cite go to Primary Materials - Laws and Government Documents and then “State Family Law Statutes.” This will take you to the Cornell Website and a list of statutes by State. Click on North Carolina.

e) Cornell at <http://www.law.cornell.edu>

- i. On the left hand side of the webpage, go to “Law by source or jurisdiction. Then go to “State statutes by Topic.” Click on Divorce under the Family Law section. This gives you not only a good resource for all states with a Table summarizing the law in all 50 states, but it also provides you with a link to NC law for divorce under Chapter 50.

f) Also! Law Source at <http://www.lawsources.com/also/usa.cgi?nc>.

- i. This is a great source of state legal information, including North Carolina statutes, cases, bills, courts, law reviews, administrative laws, court rules, legal forms and the constitution.

g) Guide to Law Online at <http://www.loc.gov/law/guide/index.html>.

- i. This is an annotated guide to sources of information on government and law .

h) NC INFO at <http://ncinfo.iog.unc.edu/>.

- i. This provides links to state and local government information and to the School of Government resources.
- ii. Provides reference materials, library catalogs, news and other state and federal sites.

i) Thomas: Legislative Information on the Internet at <http://thomas.loc.gov/>

- i. Covers all aspects of Congress and federal legislation.
- ii. Provides links to state cites developed by the Library of Congress.

j) Lawrunner at <http://www.lawrunner.com/index.html>

- i. This is from the AltaVista search engine.
- ii. Allows Boolean searches to limit searches to particular jurisdiction.

k) Google at <http://www.google.com>.

- i. Very comprehensive and broad coverage for simple searching.

l) State Court Locator at

<http://www.law.villanova.edu/library/researchandstudyguides/federalcourtlocator.asp>

m) National Center for State Courts at <http://www.ncsonline.org/>

i. Links you to court related information.

n) The Supreme Court and Court of Appeals of N.C. at <http://www.aoc.state.nc.us/www/public/html/opinions.htm>

i. All N.C. Supreme Court decisions from 1997 to present.

ii. All N.C. Court of Appeal decisions from 1996 to present.

o) North Carolina General Statutes at <http://www.ncga.state.nc.us/Statutes/Statutes.html>

i. From the North Carolina General Assembly

2. Book sources

a. Case Law

1. N.C. Digest 2d: Volume 48 Words and Phrases: look up “equitable distribution” and “equitable distribution act.” Under “equitable distribution, the digest points you to the following N.C. case: Hagler v. Hagler, 354 S.E.2d 228, 319 NC 287 (1987); (Divorce 252.2). Under “equitable distribution act,” the following case was cited and on point: Hearndon v. Hearndon, 228 S.E.2d 228, 319 NC 287 (Divorce 252.3(3)).

b. Statutes

1. West’s North Carolina General Statutes Annotated 2001 Gen Index:
a) “Marriage”:

b) “Support”:

c) “Equitable Distribution”

2. These words point you to West’s North Carolina General Statutes Annotated: Chapters 50-52C

a) § 50-11: Effects of Absolute Divorce: 50-11(e): “An absolute divorce by a ct that lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property shall not destroy the right of a spouse to equitable distribution under N.C.G.S. § 50-20.

b) § 50-21: Equitable Distribution

III. The Law – Equitable Distribution

a. Synopsis of the Law in North Carolina: See generally. Family Law Practice and Procedure, North Carolina Academy of Trial Lawyers (2000).

1. Equitable Distribution is the division of marital and divisible property upon dissolution of a marriage.

2. Often after filing a complaint, parties may make a motion for interim allocation of marital assets under the revised N.C.G.S § 50-21(1).

3. Steps

a) Identify all property

¹ NC encourages such allocation unless good cause is shown that there should not be an interim distribution.

- b) Classify this property as marital, separate or divisible property.
 - c) Court evaluate the spouses lifestyle during the marriage and the options available to each outside the marriage using a multitude of factors under N.C.G.S. § 50-20(c).
 - d) Finally, after evaluating the circumstances, the judge must make a distribution of the assets.
4. Rather than a judge dividing up the property, the parties may enter into a valid² separation agreement.
5. The rights to equitable distribution ("ED") of marital property vest at the time of the parties' separation. The rights to ED are not, however, automatic, but must³ be specifically asserted by one or both of the parties.
6. Additionally, parties may have entered into a premarital agreement prior to marriage and if the agreement comports with the requirements under the law, then distribution of property will be controlled by the provisions agreed to by the parties in the premarital agreement.⁴

b. Types of Property

See. generally.: www.rosen.com

1. Marital Property:

Marital property is all property, however titled, acquired during marriage and before date of separation, except property acquired by bequest, devise, descent or gift, or traceable to separate property. (50-20(a)).

2. Separate Property: all real and personal property acquired before marriage, or property acquired during the marriage by bequest, devise, descent or gift. (50-20(b)).

*N.C.G.S. 50-20(b)(2) has two special provisos, the so-called spousal gift provision and the exchange provision.

3. Mixed Property: This is property that has both separate and marital attributes. For example, a stock portfolio acquired before the date of marriage by husband would be the husband's separate property at divorce. However, if the husband contributed funds from the "labor of the marriage" to the stock portfolio, that

²

This is the more common approach for divorcing parties as opposed to adversarial litigation in court.

However,

most spouses incorporate or merge the separation agreement at the time of divorce so the courts will then have power to enforce the terms under family law, not contract law.

³

Upon application of a party, the court shall determine what is the marital property and shall provide for an equitable distribution. At any time after the separation of the parties, either may file an action for ED, either as a separate action, or together with another action brought pursuant to Chapter 50, or as a motion in the cause. A final ED judgment may be rendered either before or after the parties are divorced, at the discretion of a judge. If the judgment is being entered by consent, the parties themselves can stipulate to do so prior to the divorce.

⁴

NC is a common law property state which adopted the Equitable Distribution Act in 1981, giving it community property division characteristics.

percentage must be accounted for as marital property. This is achieved by applying the Source of Funds Rule, see *infra*, no. 5.

4. Divisible Property

Includes all passive appreciation and diminution in value of marital property and divisible property occurring after the date of separation and prior to the date of distribution; all property received after the date of separation but before the date of distribution that was acquired as a result of the efforts of either spouse during the marriage and before the date of separation; passive income from marital property received after the date of separation; and increases in marital debt, financing charges and interest related to marital debt. (See. Family Law Practice and Procedure, *supra* at Loose Leaf Services).

5. Source of Funds Rule: Under this rule, property is "acquired" as it is paid for, so that it may include both marital and separate ownership interests. According to the rule, acquisition is an ongoing process, *McLeod v. McLeod*, 333 S.E. 2d 488 (1985). . Each estate is entitled to an interest in the property in the ratio in which its contribution bears to the total investment in the property. Thus, both the separate and marital estates receive a proportionate and fair return on their investments. The source of funds rule is applicable even when the property is converted after the separation. In determining whether an asset is marital property the dispositive question is whether marital assets were used to acquire the property.

c. NC Legislative History

1. Equitable Distribution Act

- i. See. White v. White, 312 N.C. 770 (1985): As to history and purposes of the Equitable Distribution Act for N.C.G.S. § 50-21.
- ii. See. Wade v. Wade, 325 S.E.2d 260, 261+, 72 N.C. App. 372, 372+ (N.C. App. Feb 05, 1985) (NO. 8415DC52): Purpose behind N.C.G.S. § 50-20.
- iii. See. Johnson v. Johnson, 341 S.E.2d 26, 315 N.C. 588 (N.C. Feb 18, 1986) (NO. 471PA85) for Purpose behind N.C.G.S. § 50-20.

d. Procedure:

1. Role of Judge

a) Responsibility

- i. Identify and value all marital assets. Little v. Little, 74 N.C. App. 12 (1985).
- ii. Value the property with sufficient detail to permit appellate review. Wade v. Wade, 72 N.C. 372 (1985).
- iii. Actively supervise evidence development.

b) Important Cases/Developments

- i. Wilson v. Wilson, 73 N.C. App. 96 (1985). Trial court's failure to actively supervise evidence development lead to case being remanded.
- ii. Rothman v. Rothman, 65 N.J. 219 (1974). NC statute modeled on NJ equitable distribution act, adopting three step process for trial judge.

2. Pretrial Conference

- a) N.C.R.C.P. 16(a): Pre-trial procedure; formulating issues
- b) Most districts require or strongly suggest a pre trial conference be held prior to trial for equitable distribution case.
- c) Since 1997, the district judge has had discretion to order the parties into mediated settlement conferences while the case is pending.
- d) McIntosh v. McIntosh, 74 N.C. App. 554 (1985). See. also. Byrd v. Owens, 86 N.C. App. 418 (1987). Court may accept stipulations by the parties only after they are reduced to writing and read to the parties, and after the court determines that the parties understand the legal effect of their stipulation.

3. Scope of Discovery

- a) N.C.R.C.P. 26(b-c): Scope of Discovery
 - b) Hartman v. Hartman, 346 S.E.2d 196 (1986). Discovery questions could be resubmitted if a showing that the information needed was necessary for a proper decision upon the issues.
- c) Test
 - i. Information is discoverable if "reasonably calculated" to lead to the discovery of admissible evidence.

4. Protective Orders

- a) RULE: Objection to discovery request under N.C.R.C.P. 26(c) for "unreasonable annoyance, embarrassment, oppression, or undue burden or expense."
 - i. Party must show good cause
 - ii. Authorizes judge to limit scope or manner of discovery.
 - iii. Authorizes judge to deny discovery
- b) Situations where Protective Order Needed/Motion Should Be Raised
 - i. Right to Examine Confidential Corporate Records and Patient Information
 - ii. Access to a Law Firm's Confidential Compensation Package
 - iii. Excess Earnings versus Pre-determined Values in Partnership Agreement

5. Experts

- a) Experts: North Carolina Rule of Evidence 706 (N.C.G.S. § 8C-1, Rule 706): provides for appointment and compensation of court appointed experts.
- b) Cases
 - i. Poore v. Poore, 75 N.C. App. 414 (1985)
 - ii. Dorton v. Dorton, 336 s.e.2D 415 (1985).
 - iii. Swilling v. Swilling, 404 s.e.2D 837 (1991)

6. Referees

- a) Statute
 - i. N.C.G.S. § 1A-1, Rule 53.
- b) Cases
 - i. Vick v. Vick, 80 N.C. App. 697 (1986)
 - ii. Terrell v. Terrell, 271 N.C. 95 (1967).

7. Motions

- a) Motions to Compel
 - i. N.C.R.C.P. 37(a)(2): when a deponent will not answer a question submitted on deposition or fails to answer interrogatories or fails to permit inspection under N.C.R.C.P. 34, the discovering party may move for an order compelling cooperation.
 - ii. May be awarded reasonable fees, including attorney fees.
- b) Motion for Sanctions
 - i. N.C.R.C.P. 37(b): motion for sanction when an order compelling discovery is not obeyed.
 - ii. Court may order party in contempt, strike pleadings, dismiss the action, enter a default judgment treating certain matters as admitted, or refuse to allow the disobedient party to support or oppose certain claims or defenses.
 - iii. Judge has broad discretion.
 - iv. Court may also award reasonable expenses, including attorney fees be paid by non-complying party under N.C.R.C.P. 37(b)(2)(e).

e. Factors to Consider

- 1. Premarital Agreement
- 2. Separation Agreement
- 3. Court Division

IV. Explanation of the Laws

a. Primary Sources (search using guides provided in Section II, a, 1-2).

1. Cases—Most Cited Cases

N.C. Supreme Court Cases

- a) Armstrong v. Armstrong, 322 N.C. 396 (1988)
- b) Hinton v. Hinton, 70 N.C. App. 665 (1984)
- c) Talent v. Talent, 76 N.C. App. 545 (1985)
- d) White v. White, 312 N.C. 770 (1985)
- e) Howell v. Howell, 321 N.C. 87 (1987)
- f) Johnson v. Johnson, 317 N.C. 437 (1986)
- g) Smith v. Smith, 313 N.C. 174 (1985)
- h) Hagler v. Hagler, 319 N.C. 287 (1987).

N.C. Appellate Court Cases

- a) McIver v. McIver, 92 N.C. App. 116 (1988)
- b) Seifert v. Seifert, 82 N.C. App. 329 (1987)
- c) Weaver v. Weaver, 72 N.C. App. 409 (1985)
- d) Hendrix v. Hendrix, 67 N.C. App. 354 (1984)
- e) Loeb v. Loeb, 72 N.C. App. 205 (1988)
- f) Branch Banking & Trust Co. v. Wright, 74 N.C. App. 550 (1985)
- g) Wade v. Wade, 72 N.C. App. 372 (1985)
- h) Nix v. Nix, 80 N.C. App. 110 (1986)
- i) McLean v. McLean, 88 N.C. App. 285 (1988)
- j) Lawrence v. Lawrence, 100 N.C. App. 1 (1990)
- k) Mauser v. Mauser, 75 N.C. App. 115 (1985)
- l) Locklear v. Locklear, 92 N.C. App. 299 (1988)
- m) Byrd v. Owens, 86 N.C. App. 418 (1987)
- n) Caudill v. Caudill, 131 N.C. App. 854 (1998)
- o) Ciobanu v. Ciobanu, 104 N.C. App. 461 (1991)
- p) Conway v. Conway, 131 N.C. App. 609 (1998)
- q) Little v. Little, 74 N.C. App. 12 (1985)
- r) Alexander v. Alexander, 68 N.C. App. 548 (1984)
- s) Napier v. Napier, 135 N.C. App. 364 (1999)
- t) Fountain v. Fountain, 148 N.C. App. 329 (2002)
- u) Crowder v. Crowder, 147 N.C. App. 677 (2001)
- v) Anderson v. Anderson, 145 N.C. App. 453 (2001).
- w) Hearndon v. Hearndon, 132 N.C. App. 98 (1999)
- x) Prevatte v. Prevatte, 104 N.C. App. 777 (1991).

2. Statutes/State Laws (Search using guide provided above in Section II, a, 1-2).

- a) NC GS § 50-11: Effects of Absolute Divorce
- b) [NC GS § 50-20](#): Distribution by Court of Marital and Divisible Property Upon Divorce
- c) [NC GS § 50-21](#): Procedures in Actions for Equitable Distribution of Property; Sanctions for Purposeful and Prejudicial Delay
- d) NC GS § 52-10: Contracts Between Husbands and Wife Generally; Releases.
- e) NC GS § 52B-4: Uniform Premarital Agreement Act, Content.
- f) NC GS § 52B-5: Uniform Premarital Agreement Act, Effect of Marriage.
- g) NC GS § 52B-7: Uniform Premarital Agreement Act, Enforcement.
- h) Constitution of North Carolina, Article X, Homesteads and Exemptions, Section 4, Property of Married Women Secured to Them.

3. Acts: Government

a) [North Carolina Family Law Arbitration Act](#)

It is state policy to permit, by agreement of all parties, arbitration of all issues arising from marital separation or divorce, except for divorce itself, while preserving right of modification based on substantial change of circumstances related to alimony, child custody, and child support, consistent with G.S. cc. 50, 50A, 50B, 51, 52, 52B, and 52C; default rules for conduct of arbitration proceedings are contained in this Act as well as assurance to access of courts of state for proceedings ancillary to arbitration. (50-41 to -62). Such arbitration agreement, made in writing regarding controversies arising out of marital relationship, is valid, irrevocable, and enforceable, except to agreements made before marriage regarding child support and child custody. (50-42). Act is not applicable to agreements made before Oct. 1, 1999, unless parties by separate agreement after that date state otherwise. (50-61).

b) [North Carolina Uniform Interstate Family Support Act](#).

Adopted to promote cooperation between courts in different states, ensuring payment of all common law duties of support, all statutory duties of support, and duties growing out of judgments or decrees for alimony or child support. (88 N.C. App. 533, 363 S.E.2d 883, aff'd, 323 N.C. 603, 374 S.E.2d 237). District court division is court authorized to hear matters under this Act. (52C-1-102). Establishes bases for jurisdiction over nonresidents and procedure when exercising such jurisdiction. (52C-2-201, -202). N.C. tribunal may request tribunal of another state to assist in obtaining discovery or may compel person over whom it has jurisdiction to respond to discovery issued by tribunal of another state. (52C-3-317). Authorizes N.C. tribunal to issue support orders for nonresidents or agencies of another state. (52C-4-401). Income-

withholding order from another state is to be treated by employer as if it had been issued by tribunal of N.C. (52C-5-501 to -503, 52C-6-603). If obligor is receiving unemployment compensation benefits in accordance with G.S. 96-17, income-withholding order from another state may be sent to North Carolina Employment Security Commission without first registering with tribunal of N.C., though Commission may not withhold amount in excess of 25 of obligor's benefits. (52C-5-501[a]). Law of issuing state governs nature, extent, amount, and duration of current payments and other obligations of support and payment of arrears under order. (52C-6-604).

c) North Carolina Equitable Distribution Act:

i. N.C.G.S. Section 50-20 et seq.

ii. Enacted in 1981.

b. Secondary Sources

1. Treatises and Loose Leaf Services

a) Treatises

i. Reynolds, Suzanne. Lee's North Carolina Family Law. 5th Ed. 1993. Supp. 2002.

ii. Basics of Family Law. North Carolina Bar Association Foundation, 1994. 2 vols.

b) Loose Leaf Service--Practical Sources to Keep Around:

i. Mark E. Sullivan & Bailey J. Farrin. Family Law Practice and Procedure, North Carolina Academy of Trial Lawyers (2000).

ii. J.D. Stanley & E.A. Harman. How to File for Divorce in North Carolina: With Forms. Sourcebooks, 2001.

iii. Practical Family Law Desk Book. Wake Forest University School of Law, 1999 (KFN 7494. P73 1999).

iv. Practical Family Law Form Book. Wake Forest University School of Law, 1999. KFN 7494. A65 P73 1999).

2. Journals

a) General Information about Searching

i. Lexis: Go to North Carolina under states. Then go to Secondary Legal Material and Click on Law Reviews, Journals. In terms and connectors, type "equitable /2 distribution and property /3 division and 50-21."

ii. Westlaw: Type NC-JLR in Search Database. Using terms and connectors type ""equitable /2 distribution and property /3 division and 50-21."

b) Useful Articles on Equitable Distribution

i. Sharp, Sally B. Step By Step: The Development of the Distributive Consequences of Divorce in North Carolina. 76 N.C. L. Rev. 2017 (Sept. 1998).

- ii. A Spouse's Right to Control Assets During Marriage: Is North Carolina Living in the Middle Ages? 18 Campbell L. Rev. 203 (1996).
 - iii. An Analysis of North Carolina's Equitable Distribution of Property Statute, 61 N.C. L. Rev. 247 (1983)
- 3. ALR Annotations (Search Using Westlaw Key Citing References)
 - a) Necessity that Divorce Court Value Property Before Distributing It, 51 A.L.R.4th 11, s8 (1987).
 - b) Valuation of Stock Options for Purposes of Divorce Court's Property Distribution, 46 A.L.R.4th 698 s3a (1986).
 - c) 41 A.L.R.4th 481 §7, Divorce: equitable distribution doctrine, (1985)
 - d) Searching: Using Statutes 50-20 and 50-21, I went to the Key Cite References Tab and it provided me with a series of ALRs on point, including these sources. Helpful and quicker if once there you go to limiting citing references and limit by document type and then select ALRs.
- 4. Am Jur (Search Using Westlaw's Key Citing References)
 - a) 24 Am. Jur.2d Divorce and Separation s565, Generally, "Equitable" and "Equal" Distinguished. (2002).
 - b) 8 Am. Jur. Proof of Facts 3d. 215, Valuation of Goodwill of Professional Practice for Distribution on Divorce. (2002).
 - c) Searching: Using Statutes 50-20 and 50-21, I went to the Key Cite References Tab and it provided me with a series of Am Jurs on point, including these sources. Helpful and quicker if once there you go to limiting citing references and limit by document type and then select Am Jurs.
- 5. Other Legal Publications
 - a) Other Legal Publications
 - i. CLEs Family Law Annual Meeting. N.C. Bar Association. Raleigh, NC. (1997-2001).
 - ii. Family Law Litigation. Wake Forest University School of Law, 1998 (KFN 7494. F355 1998).

V. Equitable Distribution—Valuation

a. Statutory Framework

1. N.C.G.S. § 50-20(a-d)
2. N.C.G.S. § 50-21 (a-b)

b. Net Value

1. Alexander v. Alexander, 68 N.C. App. at 550-51 (?): "net value means market value, if any, less the amount of any encumbrance serving to offset or reduce market value."
2. Beightol v. Beightol, 90 N.C. App. 58, 60 (1988): Net value means the "fair market value less any encumbrance on the property."

3. **Hamby v. Hamby, 143 N.C. App. 635 (2001): “We agree with the trial court and Mr. Whitt (the wife’s expert), in that even though Mr. Hamby cannot see it (his Nationwide agency), the agency still has value as to Mr. Hamby above and beyond a salary or the net worth of the agency’s fixed assets which could be sold.”

c. Fair Market Value

1. Carlson v. Carlson, 127 N.C. App. 87, 91 (1997). Fair market value “is defined as the price which a willing buyer would pay to purchase the asset on the open market from a willing seller, with neither party being under any compulsion to complete the transaction.” The trial court calculates the net fair market value “by reducing the fair market value of the property by the value of any debts that are attached to the asset.”

d. Valuation of Debts

1. Definition

- a) A marital debt is defined as a “debt incurred during the marriage for the joint benefit of the parties.
- b) Methods for Valuing Interest in a Business, Corporation or Profession:
 - i. Market Approach
 - ii. Comparative Sales Approach

2. Statutory Framework

- a) N.C. Gen. Stat. § 50-20(c)

3. Cases

- a) Geer v. Geer, 84 N.C. App. 471, (1987)
- b) Byrd v. Owens, 86 N.C. App. 418 (1987).
- c) Harrington v. Harrington, 110 N.C. App. 782 (1993). Debt incurred after separation has been held to be not subject to equitable distribution.
- d) Crisp v. Crisp, 126 N.C. App. 625 (1997). Medical expenses incurred for the benefit of a defendant's child were not for the joint benefit of the parties and thus were not marital debts.

e. Appreciation

1. Statutory Framework

- a) N.C.G.S. § 50-20(b)(2).—Active appreciation. Where one of the spouses owns an interest in a closely held corporation prior to marriage, problems both as to classification and valuation arise. The Act provides that the increase in value of separate property remains separate property.

2) Case Law

- a) Wade v. Wade, the statute above referred only to increases in "passive" appreciation, such as that from inflation, and the increases in value

resulting the contributions of time or money of one or both spouses is "active" appreciation, and marital property.

b) Dorton v. Dorton, 77 N.C. App. 667, 675, (1985).

When one party encumbers marital property after separation so that its value is diminished, the "encumbrances (on the property) would have to be accounted for as an additional equitable factor..."

c) Gum v. Gum, 107 N.C. App. 734, (1992).

It is implicit in the North Carolina Equitable Distribution Act that there will be a delay of at least one year in the distribution of marital assets, which is accompanied by some change in the value of those assets. Post-separation appreciation of a marital asset, whether passive appreciation or appreciation due to the efforts of an individual spouse, is not marital property and cannot be distributed by the trial court.

f. Non-Business Assets

1. Tangible Personal Property

a) Fountain v. Fountain, 148 N.C. App. 329, 559 (2002). The trial court did not err in valuing the stock options by the "intrinsic value method," which is, market value less strike price because this is an acceptable method for reasonably approximating the value of stock options. The trial court did not err in failing to adopt the Black-Scholes method.

b) Lawing v. Lawing, 81 N.C. App. 159, 163-64 (1986). Trial court can value personal property based solely on the parties' affidavits.

2. Real Estate

a) Nix v. Nix, 80 N.C. App. 110, 115 (1986). Where there is conflicting testimony as to value, the trial court may not merely guess at a figure somewhere in between, but may arrive at a middle figure after considering the factors involved in the various appraisals.

b) Smith v. Smith, 111 N.C. App. 460, 499 (1994). It is appropriate to adjust fair market value of marital residence to account for deferred maintenance costs.

- c) Dolan v. Dolan, 148 N.C. App. 256, 259 (2002). The value of commercial real estate should not be adjusted for capital gains and corporate income taxes when the distribution did not contemplate a sale of such property.

g. Business Assets

1. Closely-held Business

- a) Offerman v. Offerman, 137 N.C. App. 289, 292 (2000). In valuing a marital interest in a business, the trial court should arrive at a date of separation which ‘reasonably approximates’ the net value of the business.
- b) Draughton v. Draughton, 82 N.C. App. 738, 741 (1987). Although Poore involved the valuation of a dental practice, the valuation method discussed and approved in that opinion are applicable to the value of a closely-held business.

2. Professional Practice

- a) Weaver v. Weaver, 72 N.C. App. 409, 412 (1985). A spouse’s interest in a professional partnership is a marital asset subject to equitable distribution even though there is no real market for the asset.
- b) Harvey v. Harvey, 112 N.C. App. 788, 793 (1993). It is improper to deduct the income tax the partner would have to pay had he withdrawn from the partnership in valuing his interest therein where there is no evidence that he had actually withdrawn his interest or would be required to do so under the equitable distribution judgment.

3. Goodwill

- a) Poore v. Poore, 75 N.C. App. 414, 420-21 (1985). Some jurisdictions refuse to consider good will in valuing a professional practice, while others distinguish between professional and personal good will. Among the factors which may affect the value of good will are the age, health and professional reputation of the practitioner, the nature of the practice, the length of time the practice has been in existence, its past profits, its comparative professional success, and the value of its other assets.
- b) McLean v. McLean, 323 N.C. 543, 558 (1988). The Poore factors set out in paragraph 5 are not exhaustive.

h. Financial Assets

1. Life Insurance Policies/Securities/Pension and Retirement Plans

- a) Seifert v. Seifert, 319 N.C. 367, 360-70 (1987). The North Carolina Supreme Court has approved two methods of distribution vested pension: the immediate offset method or the deferred distribution method.
- b) Albritton v. Albritton, 109 N.C. App. 36, 41 (1993). The party claiming an interest in the pension plan has the burden of proof as to the value of the plan on the date of separation and where no evidence was presented, the trial court did not err in failing to make findings as to its value.

As of 12/2009 these links are broken but you might be able to still find the sites online.

VI. Statistical Information

1. [Divorce Magazine](#)
2. [U.S. National Center for Health Services](#)
3. [Americans for Divorce Reform](#)
4. [Fedstats](#)
5. [U.S. Census Bureau](#)

VII. Special Interest Groups

For Lawyers

1. [The American Bar Association Family Law Section](#)
2. [N.C. Divorce](#)
3. [American Academy of Matrimonial Lawyers](#)
4. [North Carolina Association of CPAs](#)
5. [National Association of Certified Valuation Analysts](#)
6. [Council of State Governments](#)
7. [National Center for State Courts](#)
8. [National Conference of State Legislatures](#)
9. [North Carolina General Assembly](#)

For Divorcing Spouses

1. [Divorce Recovery 101](#)
2. [North Carolina Association for Marriage & Family Therapy](#)
3. [American Counseling Association](#)
4. [The Grief Recovery Institute](#)
5. [The Financial Planning Association](#)
6. [Parents Without Partners](#)
7. [Divorce Directory](#)
8. [Top 10 Tips](#)
9. [Divorce Helpline](#)
10. [Divorce Magazine](#)

VIII. Other Related Cites and Support Information

a. FindLaw:

1. <http://public.findlaw.com/family/newcontent/flaw/index.html>
 2. <http://www.findlaw.com/01topics/15family/index.html>
 3. <http://www.findlaw.com/01topics/15family/sites.html>
 4. <http://public.findlaw.com/family/>
- b. Divorce Headquarters
1. <http://www.divorcehq.com/>
- c. Split-Up
1. <http://www.split-up.com/main/finance.htm>
 2. <http://www.divorcesoftware.com/splitgen/sp/xx/propertydivision.htm>
 3. <http://www.divorcesoftware.com/splitgen/sp/xx/thelegalprocess.htm>

- d. Divorce Law Info.com
 - 1. <http://www.divorcelawinfo.com/>
- e. Legal Information Institute: Cornell
 - 1. <http://www.law.cornell.edu/topics/divorce.html>
 - 2. http://www.law.cornell.edu/topics/state_statutes2.html#family
 - 3. http://www.law.cornell.edu/topics/Table_Divorce.htm
- f. Mediation Services/Explanation
 - 1. <http://www.divorcemediation.org/>
- g. NC Divorce
 - 1. <http://www.ncdivorce.com>
- h. Other Helpful Cites and Support Information
 - 1. [DivorceNet](#)
 - 2. [DivorceInfo](#)
 - 3. [Divorce Recovery](#) Support Group in Raleigh, North Carolina
 - 5. [Interact of Wake County](#): Domestic Violence Services (919) 828-7740
 - 6. [Pension Appraisers, Inc.](#)
 - 7. [Bannister Financial](#): Excellent business valuation articles and information
 - 8. [Child Support Guidelines](#): Excellent source for Child Support Information
 - 9. [Child Support Enforcement Agency Phone Numbers](#): listed by county
 - 10. [North Carolina Sheriff's Phone Numbers and Addresses](#): listed by county
 - 11. [North Carolina Clerk of Superior Court Phone Numbers and Addresses](#)
 - 12. [Women's Center of Wake County](#): (919) 829-3711
 - 13. YWCA of Raleigh: (919) 828-3205