

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 973

Short Title: Equit. Dist./Separate Property.

(Public)

Sponsors: Senator Sands.

Referred to: Judiciary II.

April 19, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT IN AN EQUITABLE DISTRIBUTION CASE, SEPARATE PROPERTY USED TO ACQUIRE PROPERTY HELD AS TENANTS BY THE ENTIRETY SHALL BE CONSIDERED SEPARATE PROPERTY AND MAY NOT BE CONSIDERED A GIFT TO THE MARITAL ESTATE UNLESS THERE IS A CLEAR STATEMENT IN THE DEED THAT THE SEPARATE PROPERTY IS A GIFT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-20(b) reads as rewritten:

"(b) For purposes of this section:

(1) 'Marital property' means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property in accordance with subdivision (2) of this section. Marital property includes all vested pension, retirement, and other deferred compensation rights, including military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act.

(2) 'Separate property' means all real and personal property acquired by a spouse before marriage or acquired by a spouse by bequest, devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if such an intention is stated in the conveyance. Property acquired in exchange

1 for separate property shall remain separate property regardless of
2 whether the title is in the name of the husband or wife or both and shall
3 not be considered to be marital property unless a contrary intention is
4 expressly stated in the conveyance. Separate property used to acquire
5 property titled by the entireties shall be considered separate property
6 and may not be presumed to be a gift to a spouse unless the deed for
7 the property titled by the entireties clearly states that the separate
8 property is a gift to the spouse. The increase in value of separate
9 property and the income derived from separate property shall be
10 considered separate property. All professional licenses and business
11 licenses which would terminate on transfer shall be considered
12 separate property. The expectation of nonvested pension, retirement, or
13 other deferred compensation rights shall be considered separate
14 property.

- 15 (3) 'Distributive award' means payments that are payable either in a lump
16 sum or over a period of time in fixed amounts, but shall not include
17 alimony payments or other similar payments for support and
18 maintenance which are treated as ordinary income to the recipient
19 under the Internal Revenue Code.

20 The distributive award of vested pension, retirement, and other
21 deferred compensation benefits may be made payable:

- 22 a. As a lump sum by agreement;
23 b. Over a period of time in fixed amounts by agreement;
24 c. As a prorated portion of the benefits made to the designated
25 recipient at the time the party against whom the award is made
26 actually begins to receive the benefits; or
27 d. By awarding a larger portion of other assets to the party not
28 receiving the benefits, and a smaller share of other assets to the
29 party entitled to receive the benefits.

30 Notwithstanding the foregoing, the court shall not require the administrator of the
31 fund or plan involved to make any payments until the party against whom the award is
32 made actually begins to receive the benefits. The award shall be determined using the
33 proportion of time the marriage existed, (up to the date of separation of the parties),
34 simultaneously with the employment which earned the vested pension, retirement, or
35 deferred compensation benefit, to the total amount of time of employment. The award
36 shall be based on the vested accrued benefit, as provided by the plan or fund, calculated
37 as of the date of separation, and shall not include contributions, years of service or
38 compensation which may accrue after the date of separation. The award shall include
39 gains and losses on the prorated portion of the benefit vested at the date of separation.
40 No award shall exceed fifty percent (50%) of the benefits the person against whom the
41 award is made is entitled to receive as vested pension, retirement, or other deferred
42 compensation benefits.

43 In the event the person receiving the award dies, the unpaid balance, if any, of the
44 award shall pass to the beneficiaries of the recipient by will, if any, or by intestate

1 succession. In the event the person against whom the award is made dies, the award to
2 the recipient shall remain payable to the extent permitted by the pension or retirement
3 system or deferred compensation plan or fund involved.

4 The Court may require distribution of the award by means of a qualified domestic
5 relations order, as defined in Section 414(p) of the Internal Revenue Code of 1986.
6 To facilitate the calculation and payment of distributive awards, the administrator of the
7 system, plan or fund may be ordered to certify the total contributions, years of service,
8 and pension, retirement, or other deferred compensation benefits payable.

9 The provisions of this section and G.S. 50-21 shall apply to all pension, retirement,
10 and other deferred compensation plans and funds, including military pensions eligible
11 under the Federal Uniform Services Former Spouses Protection Act, and including
12 funds administered by the State pursuant to Chapters 118, 120, 127A, 128, 135, 143,
13 143B, and 147 of the General Statutes, to the extent of a member's accrued benefit at the
14 date of separation, as determined by the court."

15 Sec. 2. This act shall become effective October 1, 1989, and shall apply to
16 civil actions filed on or after that date.