

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**HOUSE BILL 1084  
Senate Judiciary I Committee Substitute Adopted 5/9/01  
Senate Judiciary I Committee Substitute # 2 Adopted 7/24/01**

Short Title: Equitable Distribution Clarification.

(Public)

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Sponsors:

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Referred to:

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April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT AN ACTION FOR EQUITABLE DISTRIBUTION  
DOES NOT ABATE UPON THE DEATH OF A PARTY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 50-21(a) reads as rewritten:

"(a) At any time after a husband and wife begin to live separate and apart from each other, a claim for equitable distribution may be ~~filed~~, filed and adjudicated, either as a separate civil action, or together with any other action brought pursuant to Chapter 50 of the General Statutes, or as a motion in the cause as provided by G.S. 50-11(e) or (f). Within 90 days after service of a claim for equitable distribution, the party who first asserts the claim shall prepare and serve upon the opposing party an equitable distribution inventory affidavit listing all property claimed by the party to be marital property and all property claimed by the party to be separate property, and the estimated date-of-separation fair market value of each item of marital and separate property. Within 30 days after service of the inventory affidavit, the party upon whom service is made shall prepare and serve an inventory affidavit upon the other party. The inventory affidavits prepared and served pursuant to this subsection shall be subject to amendment and shall not be binding at trial as to completeness or value. The court may extend the time limits in this subsection for good cause shown. The affidavits are subject to the requirements of G.S. 1A-1, Rule 11, and are deemed to be in the nature of answers to interrogatories propounded to the parties. Any party failing to supply the information required by this subsection in the affidavit is subject to G.S. 1A-1, Rules 26, 33, and 37. During the pendency of the action for equitable distribution, discovery may proceed, and the court shall enter temporary orders as appropriate and necessary for the purpose of preventing the disappearance, waste, or destruction of marital or separate property or to secure the possession thereof.

Real or personal property located outside of North Carolina is subject to equitable distribution in accordance with the provisions of G.S. 50-20, and the court may include

1 in its order appropriate provisions to ensure compliance with the order of equitable  
2 distribution."

3 **SECTION 2.** G.S. 50-20 is amended by adding a new subsection to read:

4 "(l) A pending action for equitable distribution shall not abate upon the death of a  
5 party."

6 **SECTION 3.** G.S. 50-20(c) reads as rewritten:

7 "(c) There shall be an equal division by using net value of marital property and net  
8 value of divisible property unless the court determines that an equal division is not  
9 equitable. If the court determines that an equal division is not equitable, the court shall  
10 divide the marital property and divisible property equitably. ~~Factors the~~ The court shall  
11 consider all of the following factors under this subsection are as follows:subsection:

- 12 (1) The income, property, and liabilities of each party at the time the  
13 division of property is to become ~~effective;~~effective.
- 14 (2) Any obligation for support arising out of a prior ~~marriage;~~marriage.
- 15 (3) The duration of the marriage and the age and physical and mental  
16 health of both ~~parties;~~parties.
- 17 (4) The need of a parent with custody of a child or children of the  
18 marriage to occupy or own the marital residence and to use or own its  
19 household ~~effects;~~effects.
- 20 (5) The expectation of pension, retirement, or other deferred compensation  
21 rights that are not marital ~~property;~~property.
- 22 (6) Any equitable claim to, interest in, or direct or indirect contribution  
23 made to the acquisition of such marital property by the party not  
24 having title, including joint efforts or expenditures and contributions  
25 and services, or lack thereof, as a spouse, parent, wage earner or  
26 ~~homemaker;~~homemaker.
- 27 (7) Any direct or indirect contribution made by one spouse to help educate  
28 or develop the career potential of the other ~~spouse;~~spouse.
- 29 (8) Any direct contribution to an increase in value of separate property  
30 which occurs during the course of the ~~marriage;~~marriage.
- 31 (9) The liquid or nonliquid character of all marital property and divisible  
32 ~~property;~~property.
- 33 (10) The difficulty of evaluating any component asset or any interest in a  
34 business, corporation or profession, and the economic desirability of  
35 retaining such asset or interest, intact and free from any claim or  
36 interference by the other ~~party;~~party.
- 37 (11) The tax consequences to each ~~party;~~party.
- 38 (11a) Acts of either party to maintain, preserve, develop, or expand; or to  
39 waste, neglect, devalue or convert the marital property or divisible  
40 property, or both, during the period after separation of the parties and  
41 before the time of ~~distribution;~~ and distribution.

1           (11b) In the event of the death of either party prior to the entry of any order  
2           for the distribution of property made pursuant to this subsection:

- 3           a.     Property passing to the surviving spouse by will or through  
4           intestacy due to the death of a spouse.  
5           b.     Property held as tenants by the entirety or as joint tenants with  
6           rights of survivorship passing to the surviving spouse due to the  
7           death of a spouse.  
8           c.     Property passing to the surviving spouse from life insurance,  
9           individual retirement accounts, pension or profit-sharing plans,  
10          any private or governmental retirement plan or annuity of which  
11          the decedent controlled the designation of beneficiary  
12          (excluding any benefits under the federal social security  
13          system), or any other retirement accounts or contracts, due to  
14          the death of a spouse.  
15          d.     The surviving spouse's right to claim an "elective share"  
16          pursuant to G.S. 30-3.1 through G.S. 30-33, unless otherwise  
17          waived.

18           (12) Any other factor which the court finds to be just and proper."

19           **SECTION 4.** G.S. 30-3.2(d) reads as rewritten:

20           "(d) "Total Net Assets" means, after the payment or provision for payment of the  
21           decedent's funeral expenses, year's allowances to persons other than to the surviving  
22           spouse, debts, ~~claims,~~ claims other than an equitable distribution of property awarded to  
23           the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent,  
24           and administration expenses, the sum of the following:

- 25           (1) All property to which the decedent had legal and equitable title  
26           immediately prior to death;  
27           (2) All property received by the decedent's personal representative by  
28           reason of the decedent's death, other than wrongful death proceeds;  
29           (3) One-half of the value of any property held by the decedent and the  
30           surviving spouse as tenants by the entirety, or as joint tenants with  
31           rights of survivorship;  
32           (4) The entire value of any interest in property held by the decedent and  
33           another person, other than the surviving spouse, as joint tenants with  
34           right of survivorship, except to the extent that contribution can be  
35           proven by clear and convincing evidence;  
36           (5) The value of any property which would be included in the taxable  
37           estate of the decedent pursuant to sections 2033, 2035, 2036, 2037,  
38           2038, 2039, or 2040 of the Code.  
39           (6) Any donative transfers of property made by the decedent to donees  
40           other than the surviving spouse within six months of the decedent's  
41           death, excluding:

- 1 a. Any gifts within the annual exclusion provisions of section  
2 2503 of the Code;
- 3 b. Any gifts to which the surviving spouse consented. A signing of  
4 a deed, or income or gift tax return reporting such gift shall be  
5 considered consent; and
- 6 c. Any gifts made prior to marriage;
- 7 (7) Any proceeds of any individual retirement account, pension or  
8 profit-sharing plan, or any private or governmental retirement plan or  
9 annuity of which the decedent controlled the designation of  
10 beneficiary, excluding any benefits under the federal social security  
11 system;
- 12 (8) Any other Property Passing to Surviving Spouse under G.S. 30-3.3;  
13 and
- 14 (9) In case of overlapping application of the same property under more  
15 than one provision, the property shall be included only once under the  
16 provision yielding the greatest value."

17 **SECTION 5.** G.S. 30-3.3(a) reads as rewritten:

- 18 "(a) Property Passing to Surviving Spouse. – For purposes of this Article,  
19 "Property Passing to Surviving Spouse" means the sum of the following:
- 20 (1) One-half of the value of any interest in property held by the decedent  
21 and the surviving spouse as tenants by the entirety or as joint tenants  
22 with rights of survivorship;
- 23 (2) The value of any interest in property (outright or in trust, including any  
24 interest subject to a general power of appointment held by the  
25 surviving spouse, as defined in section 2041 of the Code) devised by  
26 the decedent to the surviving spouse, or which passes to the surviving  
27 spouse by intestacy, or by beneficiary designation, or by exercise of or  
28 in default of the exercise of the decedent's testamentary general or  
29 limited power of appointment, or by operation of law or otherwise by  
30 reason of the decedent's death, excluding any benefits under the  
31 federal social security system;
- 32 (3) Any year's allowance awarded to the surviving spouse;
- 33 (4) The value of any property renounced by the surviving spouse;
- 34 (5) The value of the surviving spouse's interest, outright or in trust, in any  
35 life insurance proceeds on the life of the decedent;
- 36 (6) The value of any interest in property, outright or in trust, transferred  
37 from the decedent to the surviving spouse during the lifetime of  
38 decedent for which (i) a gift tax return is timely filed reporting such  
39 gift, or (ii) the surviving spouse signs a statement acknowledging such  
40 a gift. For purposes of this subdivision, any gift to the surviving spouse  
41 by the decedent of the decedent's interest in any property held by the  
42 decedent and the surviving spouse as tenants by the entirety or as joint

1 tenants with right of survivorship shall be valued at one-half of the  
2 entire value of that interest in property at the time the gift is made; ~~and~~  
3 (7) The entire value of any property held in trust for the exclusive benefit  
4 of the surviving spouse during the surviving spouse's lifetime, where  
5 the trust requires a Nonadverse Trustee to utilize the principal and  
6 income of the trust for the support and maintenance of the surviving  
7 spouse; ~~spouse~~; and

8 (8) The net value of the marital estate awarded to the surviving spouse  
9 pursuant to G.S. 50-20 subsequent to the death of the decedent."

10 **SECTION 6.** G.S. 29-14 is amended by adding a new subsection to read:

11 "(c) When an equitable distribution of property is awarded to the surviving spouse  
12 pursuant to G.S. 50-20 subsequent to the death of the decedent, the share of the  
13 surviving spouse determined under subsections (a) and (b) of this section shall be first  
14 determined as though no property had been awarded to the surviving spouse pursuant to  
15 G.S. 50-20 subsequent to the death of the decedent, and then reduced by the net value of  
16 the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to  
17 the death of the decedent."

18 **SECTION 7.** This act is effective when it becomes law and applies to  
19 actions pending or filed on or after that date.