

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 973  
Second Edition Engrossed 5/11/89

Short Title: Equit. Dist./Separate Property.

(Public)

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Sponsors: Senator Sands.

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Referred to: Judiciary II.

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April 19, 1989

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT IN AN EQUITABLE DISTRIBUTION CASE,  
2 PROPERTY ACQUIRED BY GIFT FROM A SPOUSE DURING THE  
3 MARRIAGE SHALL BE CONSIDERED SEPARATE PROPERTY ONLY IF  
4 THAT INTENTION IS STATED IN THE CONVEYANCE.  
5

6 The General Assembly of North Carolina enacts:

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

8 "(b) For purposes of this section:

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

17 (2) 'Separate property' means all real and personal property acquired by a  
18 spouse before marriage or acquired by a spouse by bequest, devise,  
19 descent, or gift during the course of the marriage. However, property  
20 acquired by gift from the other spouse during the course of the  
21 marriage shall be considered separate property only if such an  
22 intention is stated in the conveyance. ~~Property acquired in exchange for  
23 separate property shall remain separate property regardless of whether the~~

1 ~~title is in the name of the husband or wife or both and shall not be considered~~  
2 ~~to be marital property unless a contrary intention is expressly stated in the~~  
3 ~~conveyance.~~—The increase in value of separate property and the income  
4 derived from separate property shall be considered separate property.  
5 All professional licenses and business licenses which would terminate  
6 on transfer shall be considered separate property. The expectation of  
7 nonvested pension, retirement, or other deferred compensation rights  
8 shall be considered separate property.

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

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

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

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

37 In the event the person receiving the award dies, the unpaid balance, if any, of the  
38 award shall pass to the beneficiaries of the recipient by will, if any, or by intestate  
39 succession. In the event the person against whom the award is made dies, the award to  
40 the recipient shall remain payable to the extent permitted by the pension or retirement  
41 system or deferred compensation plan or fund involved.

42 The Court may require distribution of the award by means of a qualified domestic  
43 relations order, as defined in Section 414(p) of the Internal Revenue Code of 1986.  
44 To facilitate the calculation and payment of distributive awards, the administrator of the

1 system, plan or fund may be ordered to certify the total contributions, years of service,  
2 and pension, retirement, or other deferred compensation benefits payable.

3 The provisions of this section and G.S. 50-21 shall apply to all pension, retirement,  
4 and other deferred compensation plans and funds, including military pensions eligible  
5 under the Federal Uniform Services Former Spouses Protection Act, and including  
6 funds administered by the State pursuant to Chapters 118, 120, 127A, 128, 135, 143,  
7 143B, and 147 of the General Statutes, to the extent of a member's accrued benefit at the  
8 date of separation, as determined by the court."

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