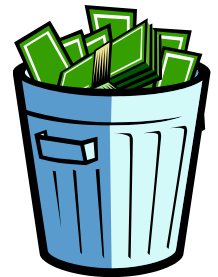
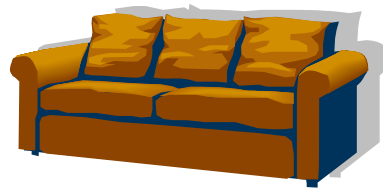


CLASSIFICATION
JANUARY 2024

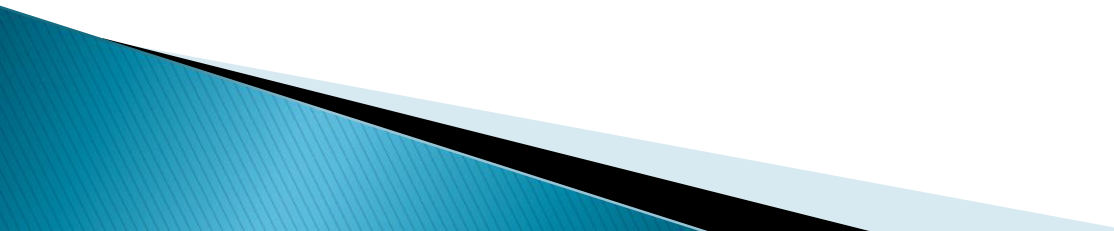
Equitable Distribution



Legal process for dividing property and debt between divorcing spouses



Tasks for the Judge

- ▶ *Classify* Property and Debt Owned/Owed on the Date of Separation
 - Identify Divisible Property/Debt
 - ▶ *Value* Marital/Divisible Property and Debt
 - ▶ *Distribute* Marital/Divisible Property and Debt
- 

Classification

- ▶ Identification of property and debt subject to the court's authority
 - Process for creating the 'pie' to be divided between the parties
 - If property is not marital or divisible, court has **no authority** to do anything with it



Key Classification Terms


- ▶ Marital Property
 - ▶ Separate Property
 - ▶ Marital Debt
 - ▶ Divisible Property
 - ▶ Divisible Debt
- 

Marital Property G.S. 50-20(b)(1)

- All real and personal property
- Acquired by either or both spouses
- Between date of marriage and date of separation
- Owned by either or both spouses on date of separation
 - Legal or equitable ownership



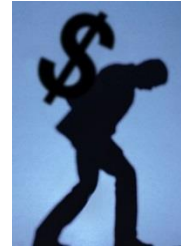
Separate Property GS 50–20(b)(2)

- ▶ Acquired before the date of marriage
 - ▶ Acquired by “a” spouse by gift or bequest during the marriage
 - ▶ Acquired in exchange for separate property during the marriage
 - ▶ Passive increase in value of or income from separate property during marriage
 - ▶ Nontransferable Licenses
- 

Mixed Property

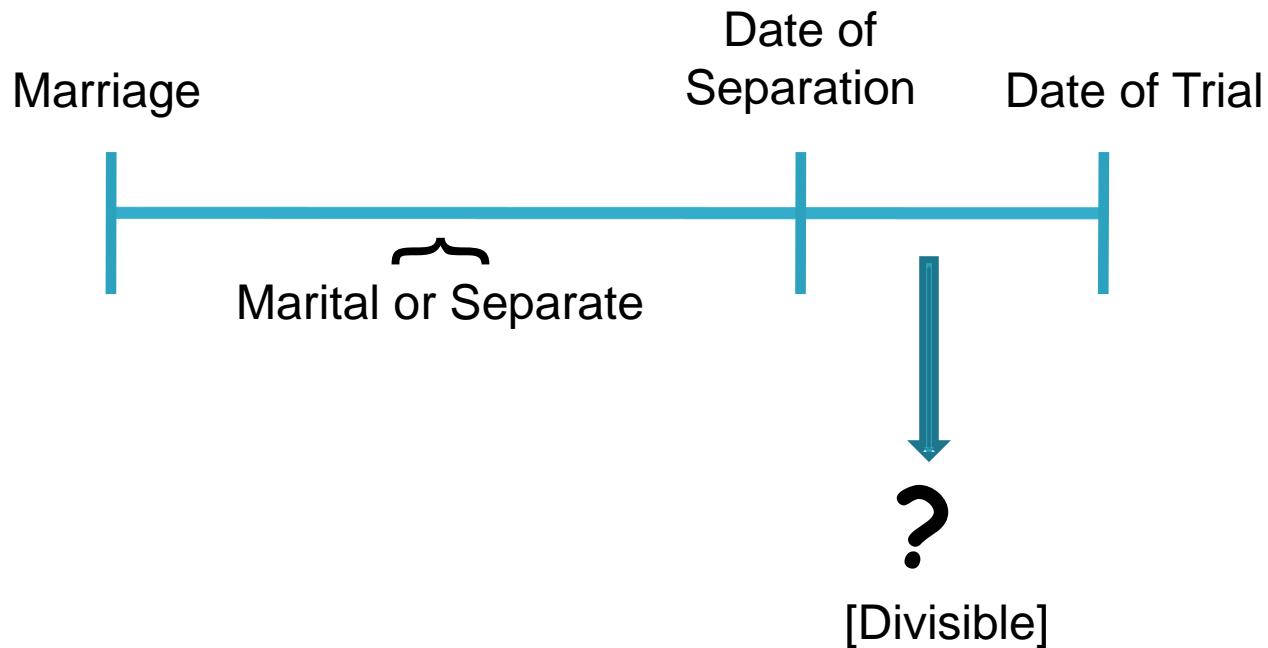
- ▶ Separate property is protected
 - Mixing marital and separate does not result in separate property 'transmuting' to marital
- ▶ Source of Funds doctrine applies to classification
 - Value of an asset on date of separation is classified according to the source of the value
 - Both the marital and the separate estates are entitled to an interest in the property "in the ratio its' contribution bears to the total investment in the property."

Marital Debt



- ▶ Incurred during the marriage by either or both spouses
- ▶ Owed on the date of separation
- ▶ Incurred for the *joint benefit of the parties*

Divisible Property: G.S. 50-20(b)(4)




Divisible Property: Post Separation




- *Passive* changes in value of marital property
- *Passive* income from marital property
- Property/cash earned as result of marital effort
- Increases/decreases in marital debt
 - After October 1, 2013: only *passive* increases and decreases

Classification

- ▶ A legal conclusion
 - ▶ Must be supported with findings of fact
 - ▶ Minimum findings:
 - Date property/debt acquired
 - Who acquired it
 - Date of marriage
 - Date of separation
 - (Value on date of separation)
- 

Classification process

1. What is the property interest to be classified?
 2. Was it owned in whole or in part by either or both parties on the date of separation?
 3. What was the value of that property interest on the date of separation?
 4. Where did that value come from?
- 

Marital Property Presumption

- ▶ GS 50–20(b)(1):

- “It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection.”

BURDEN OF PROOF

- **Party seeking marital classification must go first**
 - Property interest acquired during the marriage
 - By either or both spouses
 - Owned on DOS
 - Value on DOS
- **Burden shifts to party seeking to show separate property interest**

WHAT IF EVIDENCE IS NOT SUFFICIENT TO SUPPORT MARITAL CLASSIFICATION?

Grasty v. Grasty, 125 NC App 736 (1997)(business)

Johnson v. Johnson, 230 NC App 280 (2013)(military pension)



PARTY SEEKING SEPARATE CLASSIFICATION HAS THE BURDEN OF TRACING

Holterman v. Holterman, 127 NC App 109 (1997)(significant inheritances during the marriage commingled with marital assets; insufficient tracing)

Minter v. Minter, 111 NC App 321 (1993)(stock inherited during marriage used to purchase property, insufficient tracing)

Watkins v. Watkins, 228 NC App 548 (2013)(wife met burden of proving house purchased during the marriage was her separate property).

APPRECIATION OF SEPARATE PROPERTY IS PRESUMED MARITAL

Smith v. Smith, 111 NC App 460 (1993)(defendant failed to show appreciation of his separate investment in corporation that occurred during the marriage was passive; plaintiff proved it was marital by showing value on the date of marriage and the value on the date of separation).

O'Brien v. O'Brien, 131 NC App 411 (1998)(while appreciation of the account was presumed marital, wife met burden of showing appreciation of investment account established with her inheritance was passive).

GIFTS BETWEEN SPOUSES

GS 50-20(b)(2)

Gifts between spouses will be separate property only if intention is expressly stated in the conveyance

McLean v. McLean, 323 NC 543 (1988)(gift to the marriage is presumed when separate property placed in tenancy by the entirety; if donor wants property to be separate property of either party, must make that statement in the conveyance)

GIFTS FROM A PARENT

Presumed to be gift to their child only [gift to “a” spouse is separate property]

Joyce v. Joyce, 180 NC App 647 (2006)(party seeking marital classification must prove the lack of donative intent; wife showed consideration was given to husband’s father, proving property was marital)

Caudill v. Caudill, 131 NC App 854 (1998)(wife had burden to show no donative intent when husband’s mother transferred land to him during the marriage)

POSTSEPARATION INCREASE OR DECREASE IN VALUE IS PRESUMED TO BE DIVISIBLE PROPERTY

Wirth v. Wirth, 193 NC App 657 (2008)(where it was impossible to determine what part of reduction in value of corporate shares was the result of husband's actions and what part resulted from market forces, entire reduction in value was divisible property)

Romulus v. Romulus, 215 NC App 495 (2011)(husband failed to prove that his daily work on dental practice caused the postseparation appreciation of his practice)

DEBT

No presumptions apply

Party seeking marital classification must prove:

- Debt was incurred during the marriage

- By either or both spouses

- Amount owed on the date of separation

- Debt was incurred for the joint benefit of the parties

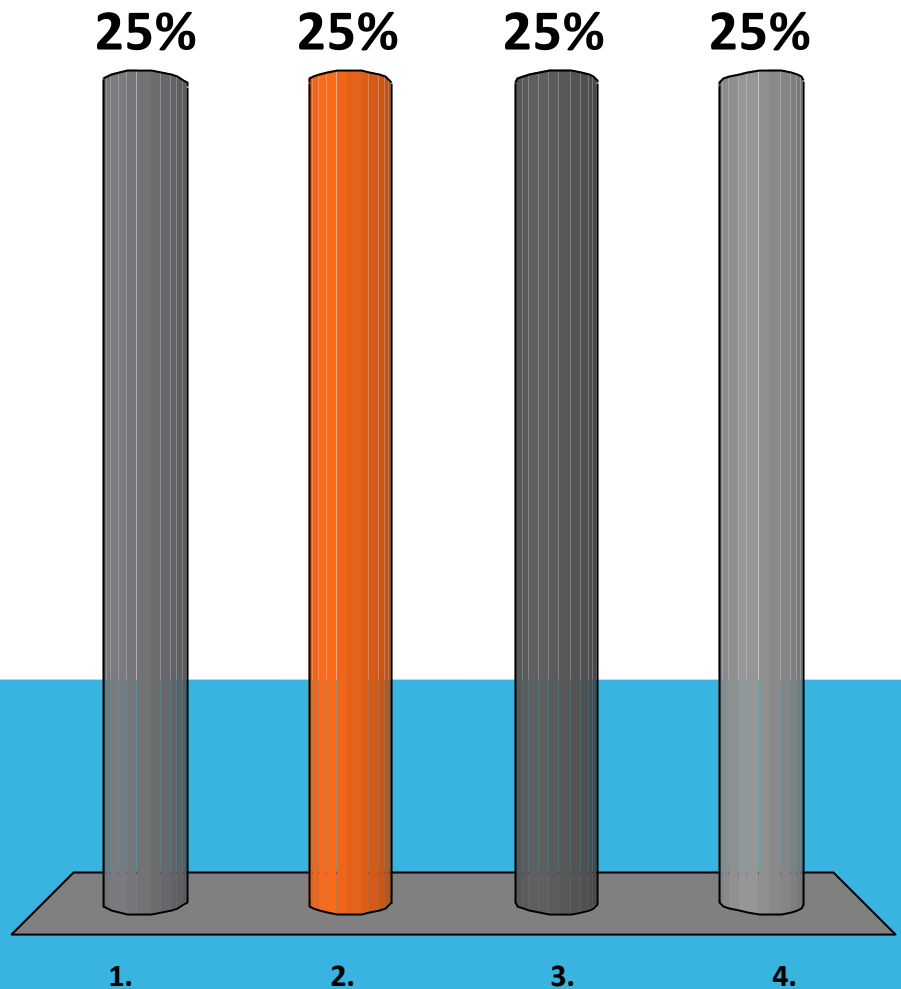
Purvis v. Purvis, 280 NC App 345 (2021)(husband proved educational loans for daughter were incurred for the joint benefit of the parties)

Classification Scenarios



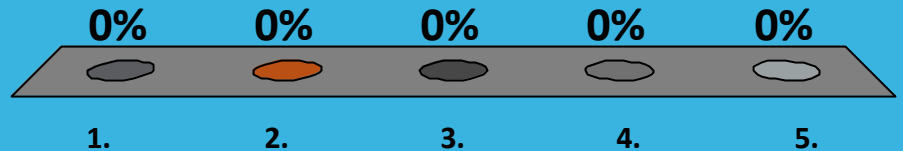
INVESTMENT ACCOUNT CLASSIFICATION?

1. Entirely marital
2. Entirely separate
3. \$25,000
separate/\$30,000
marital
4. Other



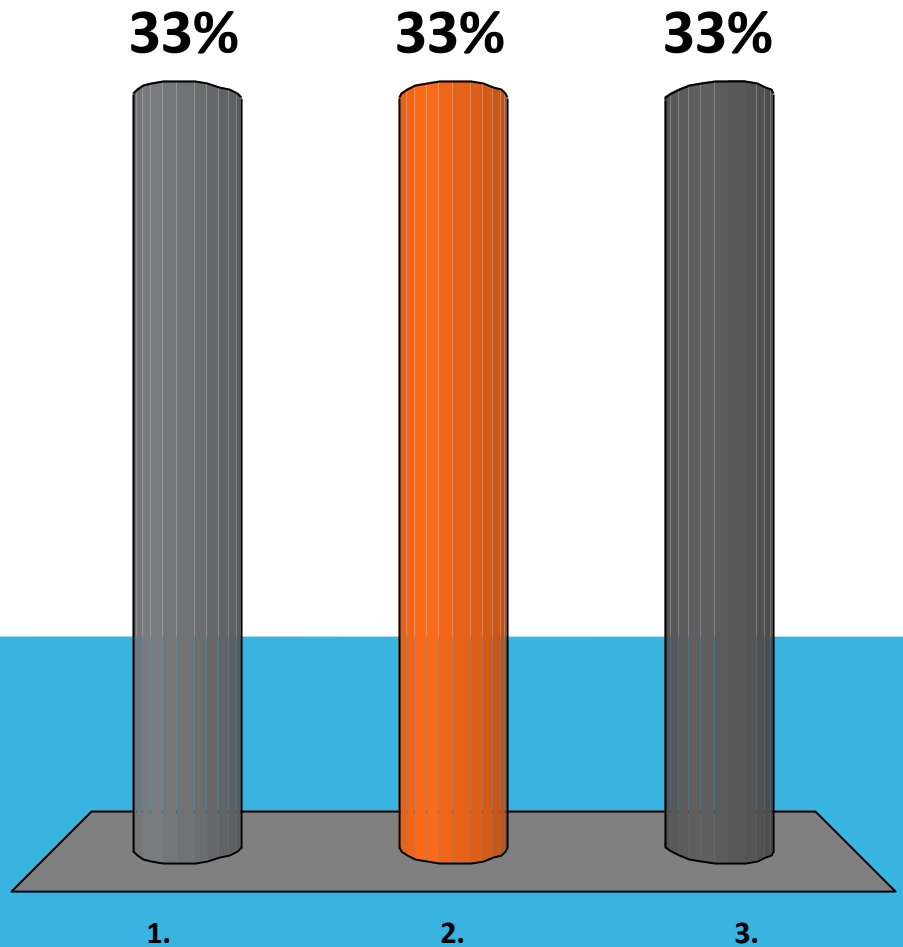
401K CLASSIFICATION?

1. \$20,000 plus a reasonable rate of return is separate
2. 4/5 marital; 1/5 separate
3. All separate
4. All marital
5. None of the above



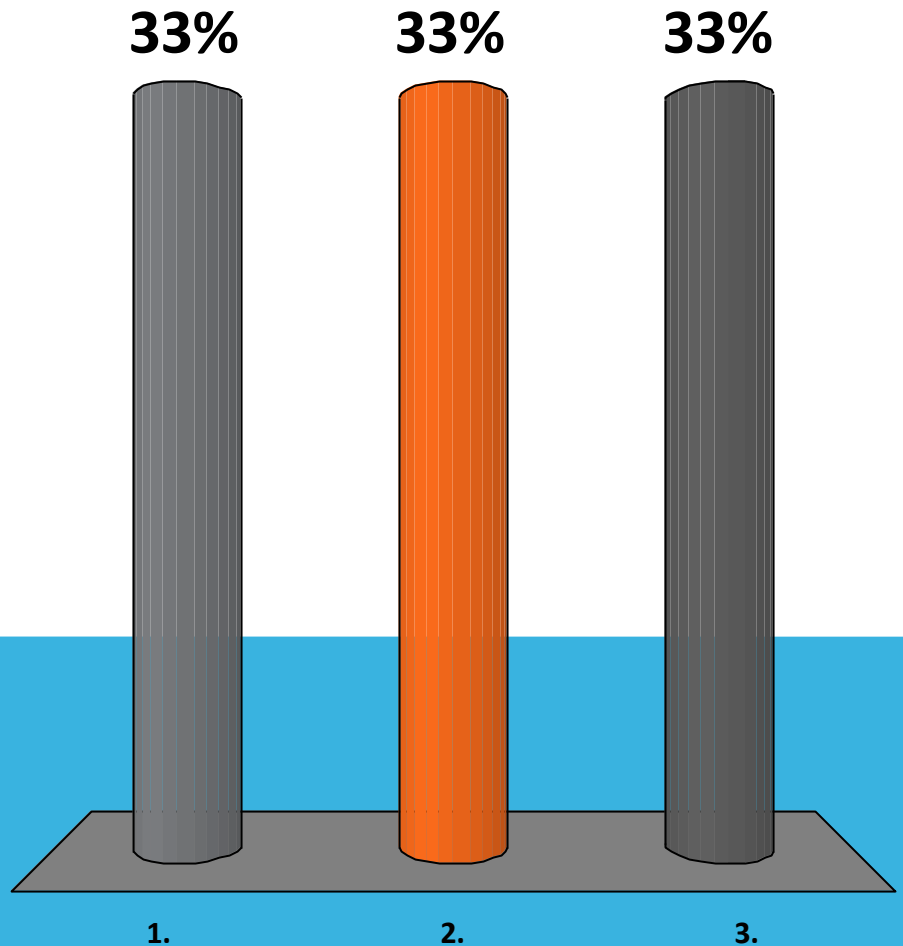
JOINT SAVINGS ACCOUNT

1. Most likely all marital
2. \$45,000 marital
3. Other



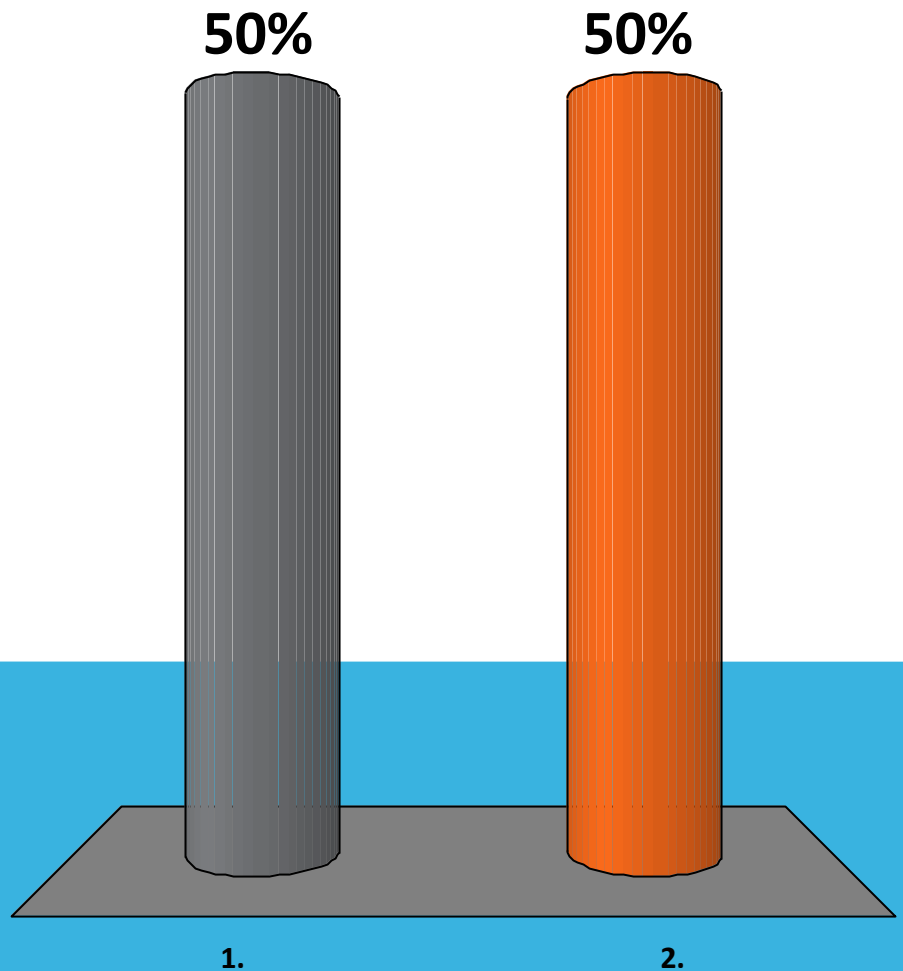
HORSE FARM CLASSIFICATION?

1. All separate
2. \$500,00 separate,
\$150,000 marital
3. \$500,000 separate
for sure but some
marital for sure



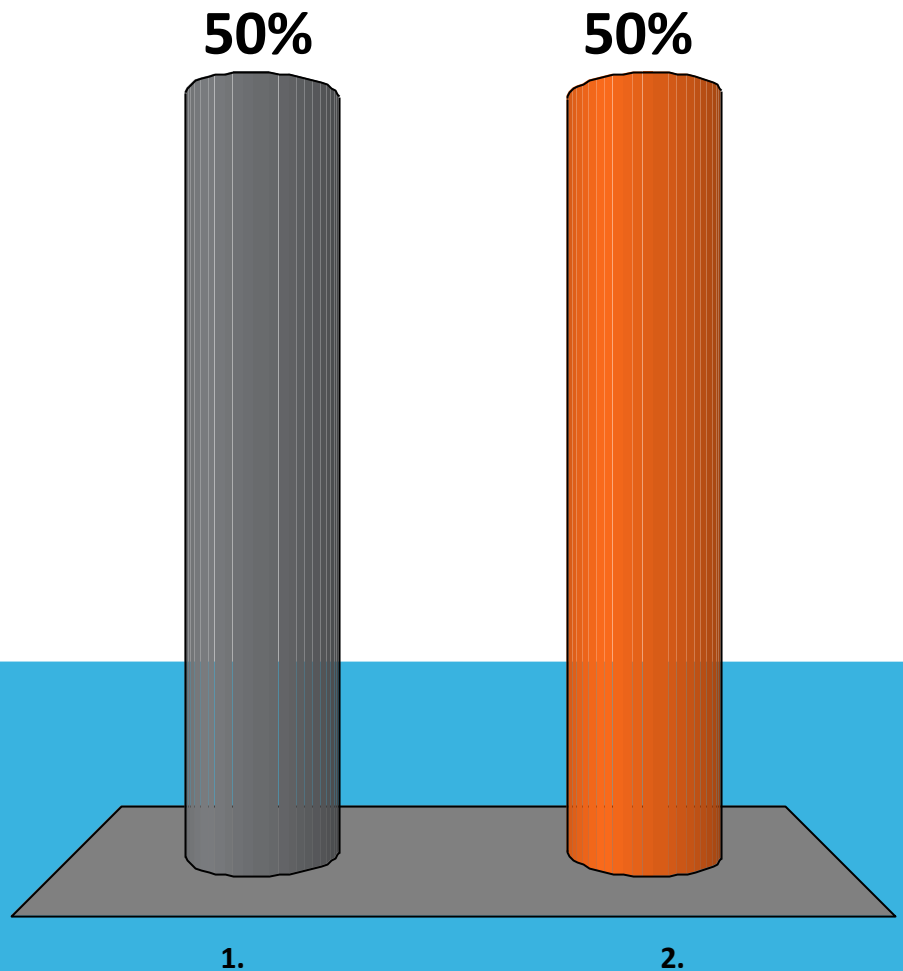
FARM AFTER TENANCY BY THE ENTIRETY

1. Same classification as last problem
2. All marital



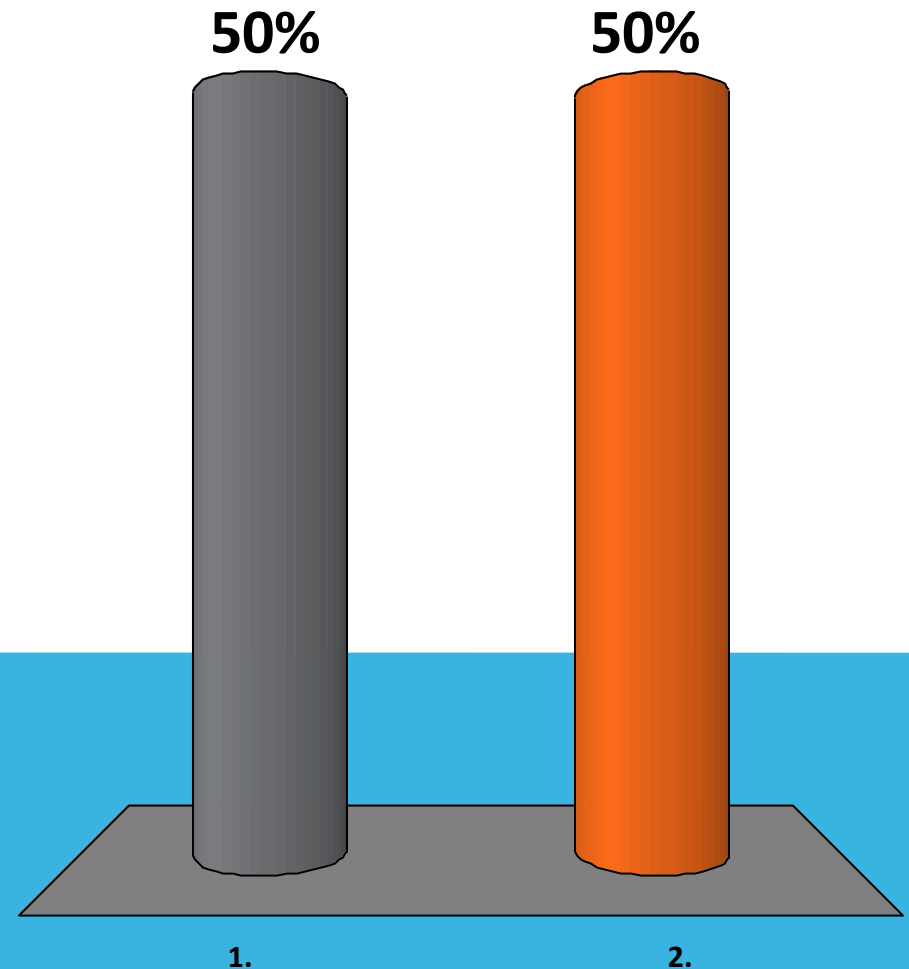
MARITAL RESIDENCE – DIVISIBLE PROPERTY?

1. Yes, \$70,000 is presumed divisible
2. No, the house is Kristen's separate property after interim order



MARITAL RESIDENCE – DOES KRISTEN GET “CREDIT” FOR POSTSEPARATION PAYMENTS?

1. Yes, her payment of marital/divisible debt is a distribution factor.
2. No, the mortgage is Kristen’s separate debt after interim order



DIVISIBLE DEBT

- For payments made before October 1, 2013, any increase or decrease in marital debt is divisible debt
 - No need to identify 'passive or active'
 - No presumptions apply regarding classification
- Divisible debt must be classified and distributed between the parties
 - Subject to general presumption that an equal distribution is equitable, divisible debt is distributed in discretion of trial court
 - Trial court should consider the source of payment for any decrease in marital debt. See *Bodie v. Bodie*, 221 NC App 29 (2012)

POSTSEPARATION DEBT PAYMENTS

Payments of marital debt made by one or both spouses on or after October 1, 2013 will *not* be divisible debt

- After that date, only *passive* increases and decreases in marital debt are divisible property

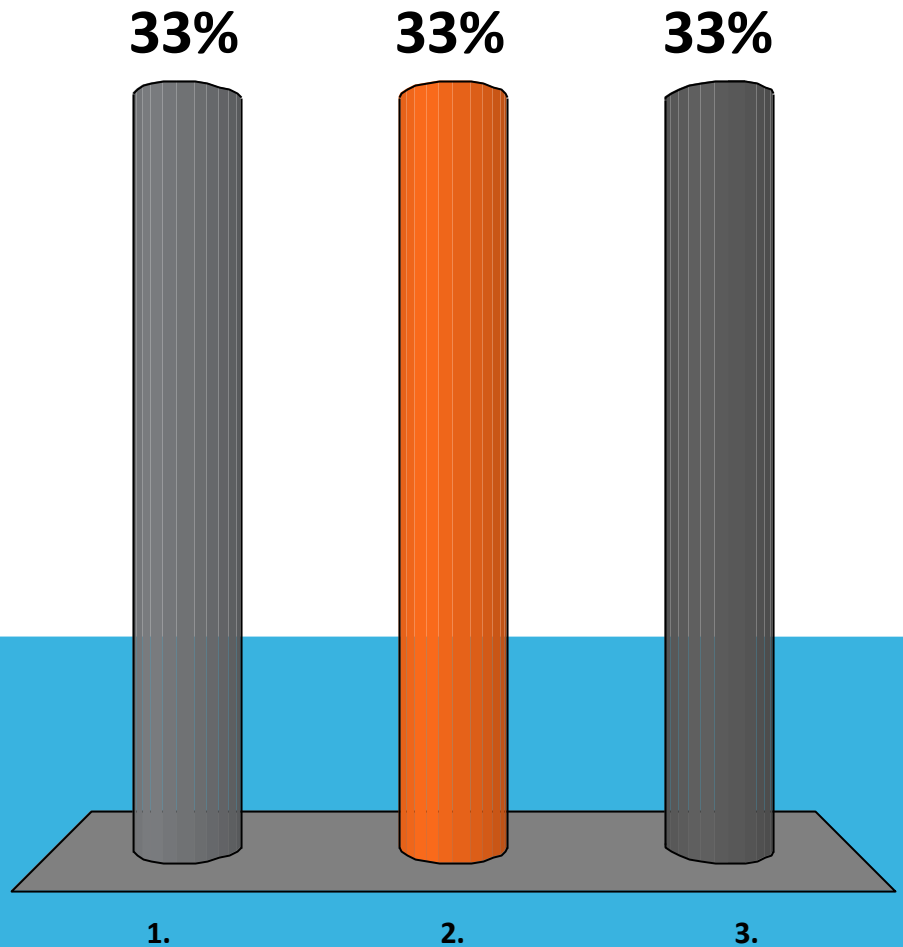
Trial court has discretion to determine appropriate way to account for postseparation payments

- Distribution factor
- “Credit”



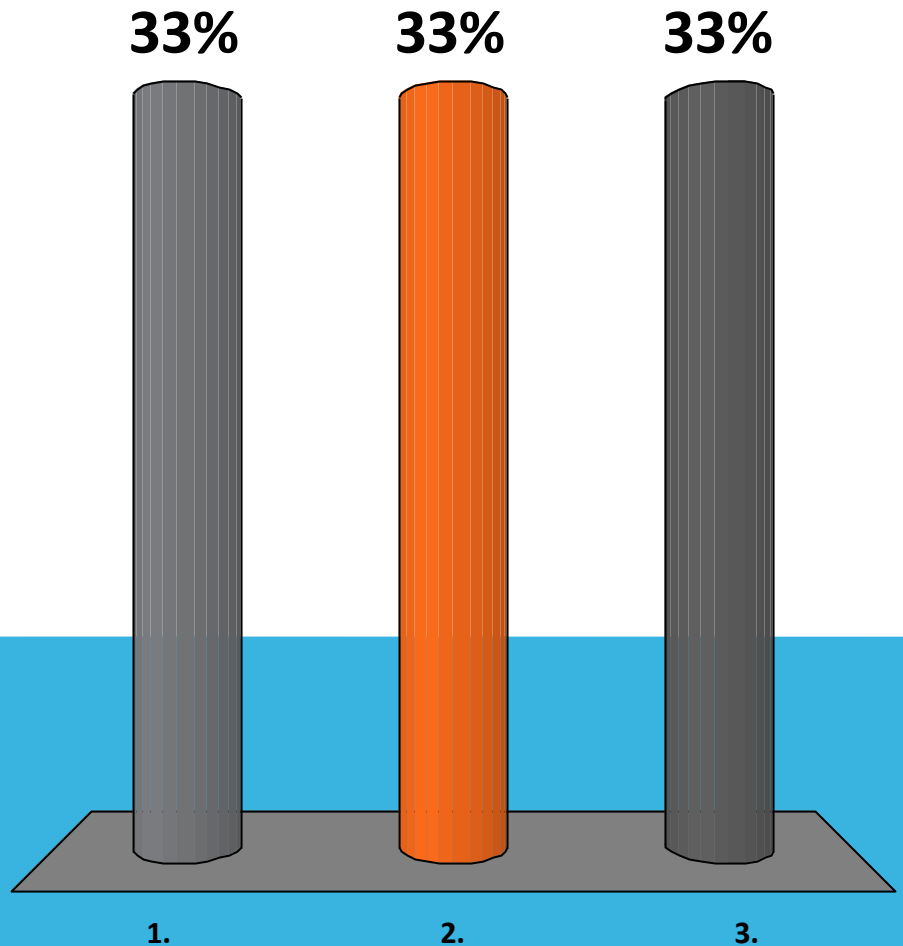
LLC

1. All marital
2. Mostly separate
3. other



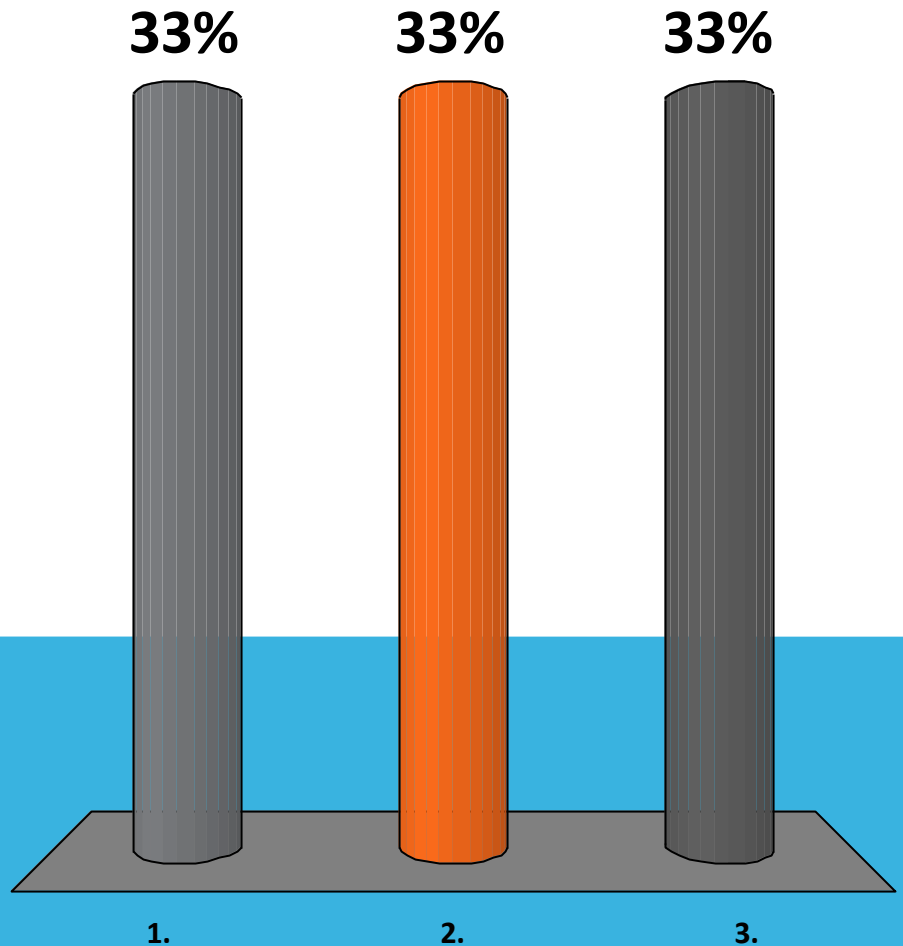
INCREASED VALUE OF LLC AFTER DOS?

1. Divisible property
2. Part divisible and part not divisible
3. Not divisible at all



RENTS COLLECTED FROM TENANTS AFTER DOS?

1. Divisible property
2. Partly divisible property
3. Not divisible property



SEVERANCE PAY?

1. Marital
2. Divisible
3. Not divisible or marital
4. Probably part divisible and part not divisible

