



HOUSE BILL 384: Amend Definitions/Property Classif./Equ. Dist.

2013-2014 General Assembly

Committee: Senate Judiciary I
Introduced by: Reps. Davis, Stevens
Analysis of: Second Edition

Date: June 3, 2013
Prepared by: Bill Patterson
Committee Counsel

SUMMARY: *House Bill 384 would amend the North Carolina Equitable Distribution Act to provide that the presumption that the conveyance by one spouse of real property creating a tenancy by the entireties is a gift to the other spouse may be rebutted by the greater weight of the evidence, and would amend the definition of "divisible property" to clarify that "increases and decreases in marital debt" means "passive increases and passive decreases in marital debt."*

BILL ANALYSIS: In the case of *McLean v. McLean*, 323 N.C. 543, 374 S.E.2d 376 (1988), the N.C. Supreme Court held, "When a spouse uses separate property in the acquisition of property titled by the entireties, a gift to the marital estate is presumed. This presumption is rebuttable only by clear, cogent and convincing evidence that a gift was not intended."

House Bill 384 would amend the definition of marital property in G.S. 50-20(b)(1) to provide that real property deeded by one spouse to the other during the marriage creating a tenancy by the entireties is considered a gift to the other spouse unless the conveying spouse establishes by the greater weight of the evidence that no gift to the other spouse was intended.

With respect to classification of property, the bill would also amend the definition of "divisible property" in G.S. 50-20(b)(4)(d) to clarify that increases and decreases in marital debt and financing charges and interest related to marital debt means *passive* increases and *passive* decreases in marital debt, financing charges and interest related to marital debt, *i.e.*, an increase or decrease that is not the result of post-separation actions or activities of a spouse.

EFFECTIVE DATE: This act becomes effective October 1, 2013.

BACKGROUND: Under the law of equitable distribution, in distributing marital property, the court must conduct a three-step analysis:

1. *Identification.* The court is required to identify and classify all the parties' property and debt as marital or separate, based upon the evidence presented regarding the nature of the asset or debt.
2. *Valuation.* The court is required to fix the net value of the marital property as of the date of separation, with net value being market value, if any, less the amount of any encumbrances.
3. *Distribution.* The court must distribute the marital property in an equitable manner. An equal division of the marital property is mandatory under the Equitable Distribution Act, unless the court determines in the exercise of its discretion that such a distribution would be inequitable.

Only marital and divisible property, which includes both assets and debts, is to be distributed.

Janice Paul, counsel to House Judiciary Subcommittee C, substantially contributed to this summary.

