

Marital Interests



Marital Interests

- After Death of Spouse



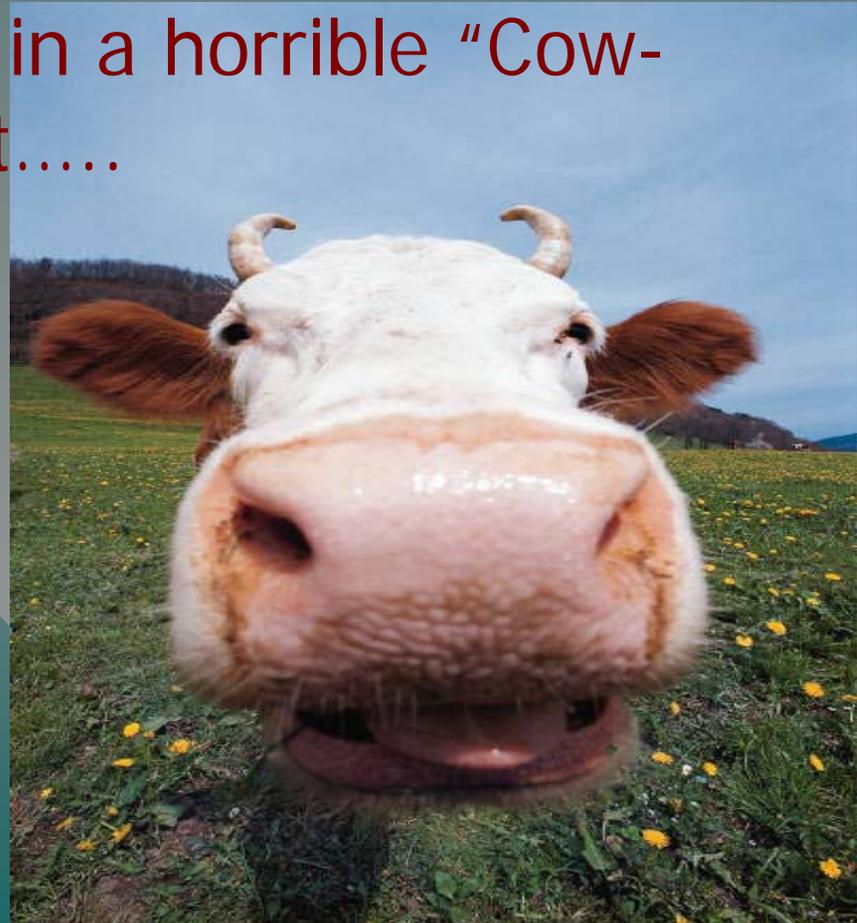
Property Owned Before Marriage

- Annabelle buys Blackacre with winnings from the South Carolina Lottery
- Annabelle marries Billy Bob
 - ...after a romantic weekend at the South of the Border resort and theme park where they purchased more lottery tickets....
- Property is vested in ??????????

Property Owned Before Marriage

- Annabelle dies in a horrible "Cow-tipping" incident.....

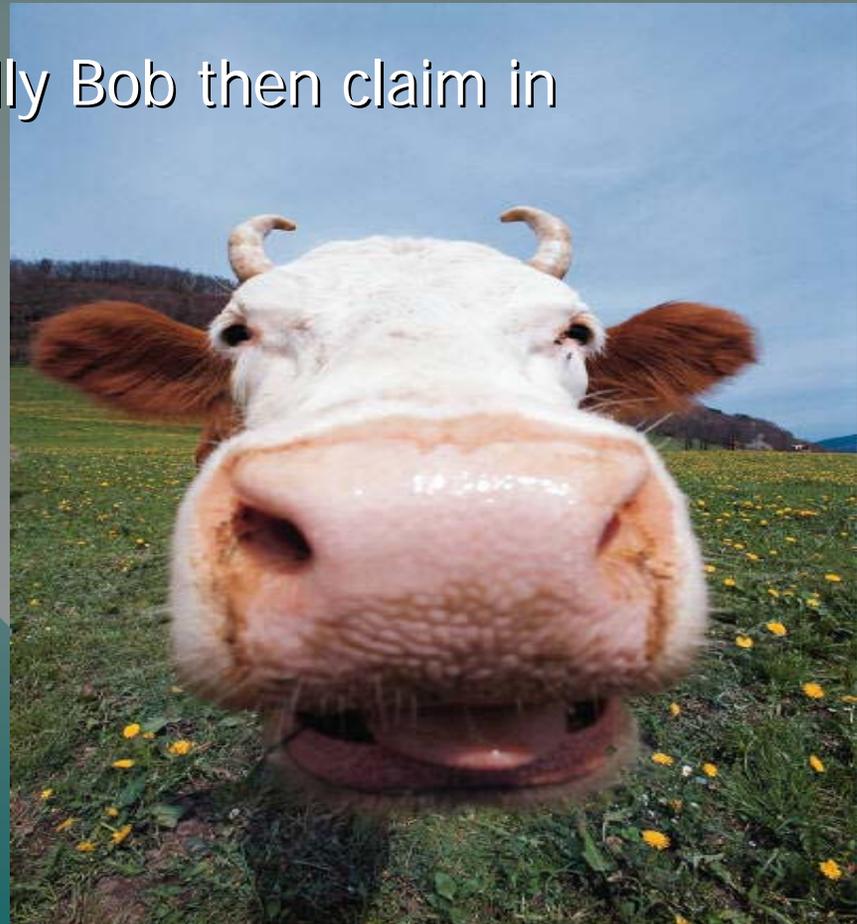
- What Interest may Billy Bob then claim in Blackacre???



Property Owned Before Marriage

• What Interest may Billy Bob then claim in Blackacre???

- Elective Life Estate in 1/3 of Blackacre (NCGS 29-30)
- Intestate Share (1/6 to all of Blackacre depending on number of children)
- Elective Share Taken against the Will of the Decedent (NCGS 30-1 OR NCGS 30-3.1 depending on date of death)



Property Acquired During the Marriage

- Buna Mae marries Clyde in a nice ceremony at the Conetoe Drive-Thru Wedding Chapel
 - They prosper in their hog farming operation and buy Rosy Acres sometime after marriage.....
- Rosy Acres is vested in ????????????

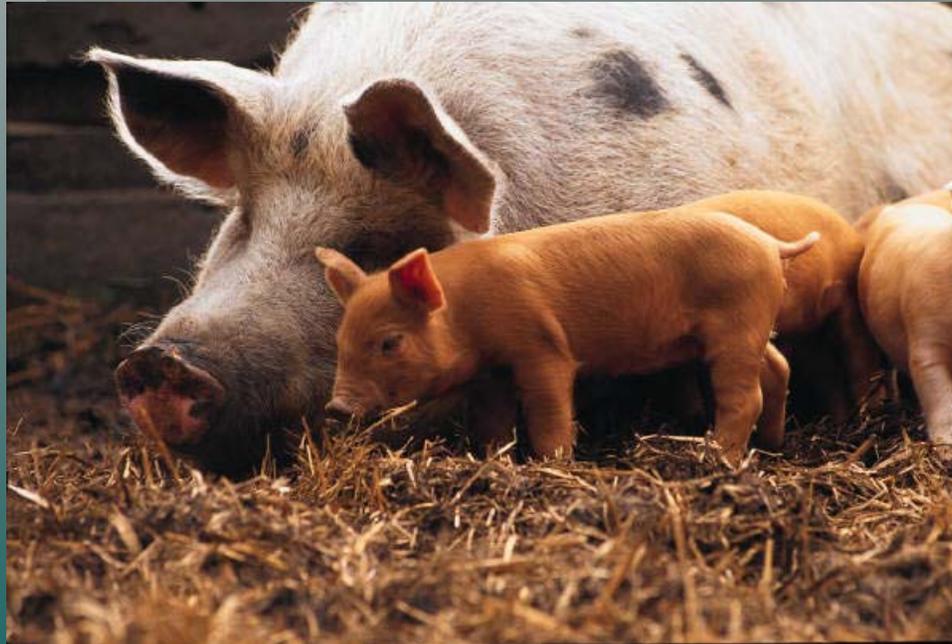
Property Acquired During the Marriage

- Rosy Acres is vested in Buna Mae and Clyde as **Tenants by the Entireties**

- **But then....**

Property Acquired During the Marriage

- Clyde is trampled by a sow pig named Lucinda as she headed for the trough

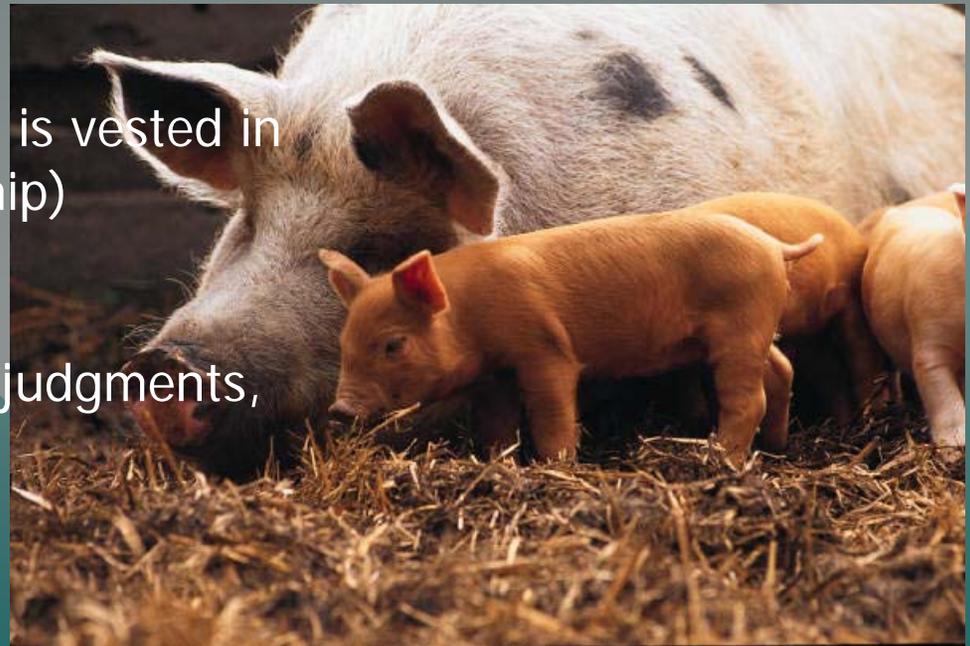


Property Acquired During the Marriage

- Clyde is trampled by a sow pig named Lucinda as she headed for the trough

- By operation of law, fee title is vested in Buna Mae (right of survivorship)

- BUT we will talk later about judgments, liens and tax liens...



Marital Interests

- After Death of Spouse
- Severing the Marital Interest

Severing the Marital Interest

- The Prenuptial Agreement



Severing the Marital Interest

- The Prenuptial Agreement
 - Pursuant to NCGS 52B-4, parties to a pre-nup may contract (in writing, signed by both parties) with respect to:
 - 1. Rights of each to property whenever acquired or located
 - 2. Right to buy, sell, mortgage, lease, transfer or otherwise manage or control property.
 - 3. Disposition of property upon separation, marital dissolution, death

Severing the Marital Interest

- The Prenuptial Agreement
- The Separation Agreement

Severing the Marital Interest

- The Separation Agreement
 - Any married couple may execute a separation agreement
 - Must be in writing, acknowledged before a notary
 - Need not be recorded to be valid (but recording is helpful)
 - Sep. Agmnts do not CONVEY property unless they include the min. requirements of a deed.
 - Sep. Agmnts therefore, generally do not sever Tenancy by the Entireties
 - Sep. Agmnts can prevent the attachment of the statutory marital interest for property acquired during marriage.

Severing the Marital Interest

- The Prenuptial Agreement
- The Separation Agreement
- Agreements During Marriage

Severing the Marital Interest

- Agreements During Marriage
 - NCGS 52-10 - agreements signed by BOTH parties, under seal, acknowledged before a notary and in recordable form can determine marital rights
 - Should be recorded
 - The Quitclaim Deed - generally not signed by BOTH parties - Does it work?????

Severing the Marital Interest

- The Prenuptial Agreement
- The Separation Agreement
- Agreements During Marriage
- Final Divorce Decree

Severing the Marital Interest

- Final Divorce Decree
 - Marital interests terminate upon the final divorce decree.
 - Tenancy by the Entireties becomes a Tenancy in Common (w/o right of survivorship) upon divorce.



Marital Interests

- After Death of Spouse
- Severing the Marital Interest
- Judgments, Liens & Tax Liens

Judgments, Liens & Taxes

- Entireties Property

- Until recently, the rule had always been that judgments and liens (even tax liens with their “super priority”) against one spouse did not attach to entireties property.
 - “Lands held by husband and wife as tenants by the entirety are not subject to levy under execution on a judgment rendered against either the husband or the wife alone” 188 N.C. 200
- U.S. v. Craft, 535 U.S. 274. Federal tax liens “attach” to husband’s interest in entireties property
- State Tax Liens. Presumably, the rule in NC is still that such liens do not attach to entireties property.