

# What We Know

## NEWS

### ABOUT THE AUTHOR



[Max Rodden](#) is a North Carolina Bar Board Certified Family Law Specialist and has been practicing family law since 1991. He represents clients in all aspects of family law, and has extensive trial experience at all levels of North Carolina courts including district, superior, special proceedings, juvenile, small claims, administrative proceedings, the Court of Appeals and the Supreme Court.

## Pick your battles: An alternative, cost-saving approach to property division issues

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Whether to dispute an issue in court is a frequent question faced by individuals going through a divorce. A critical factor in this decision should always be to compare the cost of litigation to the potential expected gain. In other words, is the matter in dispute worth the associated legal fees and costs, not to mention the stress and uncertainty of litigation?

This perspective is more applicable to some family law disputes than others. Deciding whether to spend legal fees when child custody is at stake certainly involves more emotional factors than simply the expense involved. On the other hand, disputes over financial and property matters in a separation and divorce should always cause each party to weigh the potential financial benefit against the likely cost to achieve it. When assets of significant value are involved, parties are understandably more inclined to pay the necessary legal fees for pursuing his or her respective claims. With personal property of relatively low value, however, such as furniture and furnishings, vehicles, boats, appliances, tools, and certain collectibles, the potential legal fees can frequently outweigh what may actually be obtained, making a careful cost-benefit analysis imperative.

An experienced family law attorney will balance the financial facts with an appropriate empathy for the dilemma that his or her clients face. Choosing not to pursue compensation for personal assets held by the other spouse can result in significant additional time and expense in furnishing and setting up a different residence or having a vehicle to drive. A client's frustration is often compounded by learning that division of property in a separation and divorce is based on fair market value – often significantly less than the cost to replace the items – limiting the amount that may actually be recovered. An additional uncertainty in these situations is the ultimate amount of legal fees that will result from litigating the dispute in court making it difficult to pin down the best approach from a purely financial perspective.

There is good news, however! An increasingly popular alternative to going to court over financial and personal property issues is to engage in arbitration as a means to settle these disputes. In arbitration, each party presents his or her case in front of a qualified

arbitrator, selected by the parties to judge the situation impartially and render a final decision about a dispute. Arbitration generally has several advantages from a cost and time standpoint. To begin, the parties can know with certainty when the arbitration will occur, as they determine themselves the date and time that the arbitration will occur; whereas cases on a court calendar are subject to being rescheduled and delayed for reasons beyond the control of the parties and their attorneys. Such court delays result in inconvenience for the parties and witnesses, and involve additional time for the attorney, adding to the overall expense of the process. In addition, in an arbitration the parties and their attorneys have the opportunity to select an arbitrator who has special expertise relative to the specific types or property involved in the case.

These factors contribute to the ability to estimate with greater certainty the legal costs associated with an arbitration of personal property division. Typically, in an arbitration each party pays a flat, fixed fee and is given a designated amount of time to present his or her case. The arbitrator then takes a set amount of time to consider the information presented, make a decision, and communicate the decision to the parties. As a result, these arbitration services allow for a clear, financially-informed decision on the best course of action.

Judges usually run out of available court time to hear all the cases on their schedule, causing them it to be postponed. Each continuance results in inconvenience for the parties and witnesses, involves additional time for the attorney, and therefore additional legal fees. Even if the case is reached on the day it is scheduled for court, the parties and their attorneys might have to wait several hours in an uncomfortable setting for the completion of other cases. An additional benefit of arbitration is the ability of the parties and attorneys to select an arbitrator who has special expertise on the subject matter of the case.

For a flat fee, I offer arbitrations of personal property disputes in separation and divorce cases as an option for the parties to avoid otherwise excessive and uncertain legal fees associated with such disputes. Each party pays a flat fee and is given a designated amount of time to present his or her case. I then consider the information the parties give me and make a decision.

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