

On the Mend: Reconciliation in North Carolina

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'My spouse and I are separated, but we are discussing reconciliation. If we do reconcile, how does this decision affect me?'

When faced with a divorce, this is a common question, and it is important to have an understanding as to how a reconciliation may affect your case.

Separation in North Carolina

In order to reconcile, you must first have separated. Separation in North Carolina has two components: (1) a physical separation, and (2) at the time of separation, an intention on at least one of the spouses to remain separate and apart. The physical separation component contemplates more than simply moving to separate bedrooms within the marital residence, and generally requires one of the spouses to vacate the home.

The date that you physically separate is important for several reasons. First, in order to be eligible for an absolute divorce in North Carolina, you must have been separated in excess of one year. This time clock begins to run on your date of separation.

Second, your date of separation is important for purposes of equitable distribution, which is the North Carolina claim for division of your marital assets and debts. When determining which assets and debts are marital property and subject to division, the court will consider the property that was acquired between your date of marriage and your date of separation. That property is then valued as of the date of separation.

Third, for purposes of alimony, the length of your marriage is a factor for consideration by the court in determining the amount and duration of alimony. Your date of separation determines the length of your marriage.

Now that I am separated, what is considered a reconciliation?

While attempts at reconciliation are encouraged by public policy, it is important to understand what constitutes a reconciliation and the implications that it may have on your case.

Reconciliation, or otherwise known as "resumption of marital relations," is the voluntary renewal of the spousal relationship. This definition is not black and white and will depend largely on your individual

circumstances. In determining whether a reconciliation has occurred, the court will consider the "totality of the circumstances," which means the court can consider more than one factor. The analysis will center around whether the spouses are representing themselves to the public as a married couple. Some examples of what the court can consider include, but are not limited to, things such as:

- Whether the spouses have moved back into the same residence;
- Whether the spouse that moved back in continued to maintain a separate residence as well;
- Whether the spouses are sharing household chores, finances, and responsibilities related to the children;
- Whether the spouses are being consistently intimate with each other or if there are simply isolated incidents of sexual contact (isolated instances without other factors are not enough to prove reconciliation);
- Whether the spouses are going to public places together, being seen at public events, and engaging in public displays of affection;
- Whether the spouses are representing to family and friends that they are working things out rather than pursuing a divorce.

What effect does reconciliation have on my case?

There are three primary areas of implication when a reconciliation occurs.

- *Date of Separation.* If you reconcile and later separate again, your date of separation will be deemed to be the later date. This means that the clock for pursuing divorce will start over, and anything that was acquired up until the later separation date is potentially subject to distribution inequitable distribution.
- *Separation Agreements.* While this is not always the case, the general rule is that a reconciliation will render any ongoing alimony provisions of a Separation Agreement null and void but the property division and rights at death provisions will remain in full force and effect. Some Separation Agreements contain a specific clause addressing what happens to the provisions of your Agreement during a period of reconciliation, and these provisions have been upheld in North Carolina. How a reconciliation will affect the enforceability of your Separation Agreement will depend largely on your individual circumstances and it is important to understand the effect on your rights under your Agreement.
- *Alimony.* The length of your marriage is a factor for consideration in the court's determination of amount and duration of alimony. A reconciliation of a few months will have an insignificant impact, but a reconciliation of many years will potentially change this consideration significantly. Further, a dependent spouse who engaged in illicit sexual behavior with another person during the marriage may be barred from seeking alimony. However, should the spouses reconcile after revealing the affair, it is possible that the affair could be deemed forgiven and alimony may be back in consideration.

Conclusion

It is important to know your legal rights and the implications of reconciliation on your divorce case. All individual circumstances are unique, and anyone who is considering reconciliation should consider getting the advice of a lawyer to ensure that you are protected and that you understand how a reconciliation could affect your legal rights.

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