2021 HOUSE JUDICIARY

HB 1190

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary
Room JW327B, State Capitol

HB 1190
1/25/2021

Relating to the valuation date for marital property.

Chairman Klemin called the hearing to order at 10:00 AM.

Representatives	Attendance
Representative Lawrence R. Klemin	P
Representative Karen Karls	P
Representative Rick Becker	P
Representative Ruth Buffalo	A
Representative Cole Christensen	P
Representative Claire Cory	P
Representative Karla Rose Hanson	P
Representative Terry B. Jones	P
Representative Jeffery J. Magrum	P
Representative Bob Paulson	P
Representative Gary Paur	P
Representative Shannon Roers Jones	A
Representative Bernie Satrom	P
Representative Steve Vetter	P

Discussion Topics:

- Marital valuation date statute
- Separation date versus pretrial conference.
- Amendments to allow choice of valuation date
- Gap between assigned and actual value of an asset
- Problems with the current statute

Rep. M. Johnson: Introduced the bill. Testimony #2815 10:00

DeAnn Pladson, Attorney, Pladson Law Office: Testimony #2480 10:08

Christina Sambor, Attorney, Sambor Law & Consulting: Testimony #2655

Additional Written Testimony # 2661

Chairman Klemin: Closed at 10:36

DeLores D. Shimek by Donna Whetham
Committee Clerk

Mr. Chair and members of the House Education Committee

I am Rep. Mary Johnson, District 45, Fargo. Last year I asked fellow family law lawyers what they saw as one of the more pressing issues facing them as practitioners. Invariably, they said the marital valuation date statute.

Prior to 2017, Section 14-05-24(1) provided that the valuation date for marital property be the trial date. That was incredibly problematic. The law was changed to provide that if the parties did not agree on a valuation date, it would be the date of the service of the summons or the parties' separation date, whichever occurs first. This is also problematic. Please refer to Jason McLean's testimony. He identified 5 issues the change may/has caused.

Last March, the ND Supreme Court ruled in Messmer vs. Messmer, court's have no discretion in determining a marital valuation date even when the parties cannot agree on one. That was not the intent of this committee or the legislature as provided in Deeann Pladson's testimony. She provided a copy of the Supreme Court's opinion. I respectfully request that you review the opinion and Justice Fair-McEvers dissent. Also, Ms. Pladson suggested some amended language with which I would agree.

The State Bar Family Law Section members are available for technical advice and I would like to work on an amendment with them.

Thank you for your time.

Mary

Testimony of DeAnn M. Pladson
January 24, 2021

PLADSON
LAW OFFICE

The Honorable Lawrence R. Klemin
State Capitol Building
600 E. Boulevard Ave.
Bismarck, ND 58505

RE: House Bill 1190

Dear Mr. Klemin:

As a family law practitioner in North Dakota since 1992, I am in favor of House Bill 1190, although I believe some minor changes are necessary to the current draft. The current law, N.D.C.C. § 14-05-24(1) has been interpreted by the Supreme Court to limit the court's discretion to determine a valuation date, when the parties cannot agree. In the case of Messmer v. Messmer, 2020 ND 62, the Court held at paragraphs 15 through 17:

> The statute is unambiguous. It does not provide the district court with discretion when the parties do not agree upon a valuation date. In the absence of an agreement, the statute requires valuation of the marital estate as of the date of service of a summons or the date on which the parties last separated, whichever occurs first.
>
> The second sentence of N.D.C.C. § 14-05-24(1) reads: '[e]xcept as may be required by federal law for specific property, and subject to the power of the court to determine a date that is just and equitable, the valuation date for marital property is the date mutually agreed upon between the parties.' That sentence requires the district court to use the valuation date agreed upon by the parties unless the court determines the agreement would not be just and equitable.
>
> The third sentence of N.D.C.C. § 14-05-24(1) reads: '[i]f the parties do not mutually agree upon a valuation date, the valuation date for marital property is the date of service of a summons in an action for divorce or separation or the

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> date on which the parties last separated, whichever occurs first.' That sentence does not include any directive to the district court to exercise its discretion, but instructs the court, in the absence of an agreement between the parties, to value the marital property on the date of service of a summons or the date the parties last separated, whichever occurs first.
>
> Reading district court discretion into the third sentence and allowing the court to exercise its discretion in the absence of an agreement would render the legislature's directives meaningless. There would be no circumstances under which the court would not have discretion. Regardless of this Court's preference regarding district court discretion in selecting an equitable date for valuing a marital estate, "the letter of it [the law] is not to be disregarded under the pretext of pursuing its spirit." N.D.C.C. § 1-02-05.

The smallest amount of research revealed that the North Dakota legislature never intended to take away the power of the court to decide the valuation dates, even when the parties could not agree. It is preferred that the parties agreement control for the valuation date. However, when proposing this change to the law, all legislators testified that the court would have the authority to consider special circumstances and "maintain the ability to change the valuation date if there is an unfairness." (Rep. M. Nelson, February 3, 2017, House Session 12:49:44 PM.) The court was to "retain its ability to determine if [the valuation date] is unfair." (Rep. Klemin, February 3, 2017, House Session 12:58:30 PM.) The new law adopted in 2017 intended to "reserve the power of the court to determine what is equitable and fair." (Rep. K. Koppleman, February 3, 2017, House Session 12:55:40 PM.) These sentiments were echoed in the Senate by Senator Armstrong, March 15, 2017, Senate Session 1:30:49. https://www.legis.nd.gov/assembly/65-2017/bill-video/bv1325.html

House Bill 1190 will correct this situation and I strongly agree that the date of valuation should be "the initially scheduled pretrial conference." The current law has created significant problems for valuation when the parties have lived in separate households for several years, but intended to remain married, at least for a period of time. Perhaps it was a situation where the parties agreed to work on their marriage, but they needed to live separately to attempt reconciliation. At the time of the separation, neither party is intending to divorce. Using a retroactive date for the valuation back to the date of separation can create an unfair surprise to one or both of the spouses.

Additionally, a retroactive valuation date makes appraisals extremely difficult. Appraisers are being asked to put a value on property years before the appraisal is actually being prepared, and oftentimes after significant improvements or changes are made to the property. Additionally, the date of separation increases conflict between the parties to show whether or not the parties were, in fact, separated.

HB 1190 amends N.D.C.C. Sec 14-05-24(1) to restore the power of the court to make valuation determinations which are fair and equitable under the unique circumstances of the case. It also identifies a specific date, which is unambiguous, on which the parties can rely for a valuation date. It does not incentivise delay of the proceedings and allows for meaningful preparation and maximum resolution of issues prior to trial.

Valuation issues involve moving targets. The value of assets and debts can change daily and often do. y identifying the "initially scheduled pretrial conference," creates a date certain for the parties and counsel on which to value the assets. The pretrial is usually one to two months before the trial, meaning that there is a greater opportunity for the parties to agree on the values well in advance of trial. It also creates certainty for parties in terms of the present value of assets needing an appraisal rather than speculative appraisals based upon the condition or use of the property several years prior.

My concern with HB 1190 is that it specifically addresses assets and not debts, and it gives the court the discretion, but does not require the court to explain its reasoning. The court may interpret the current version to give no discretion to the court to choose an alternative date for debts. Here is an example of why it matters. The parties have a joint credit card, which on the date of the initially scheduled pretrial conference has a balance of $500. However, after the pretrial conference and before trial one party charges an additional $5,000 on the card for attorney fees. As presently drafted, HB 1190 would require the court to value the debt at $500 because the court would not have the discretion to use an alternative date for debts. Furthermore, unless the court is required to make its reasoning known, the Supreme Court will not have the opportunity for meaningful review.

I am proposing the following changes to HB 1190:

> 14-05-24. Division of property and debts.When a divorce is granted, the court shall make an equitable distribution of the property and debts of the parties. Except as may be required by federal law for specific property, ~~and subject to the power of the court to determine a date that is just and~~

~~equitable,~~ the valuation date for marital property **and debt** is the date mutually agreed upon, between the parties. If the parties do not mutually agree upon a valuation date, the valuation date for marital property **and debt** is the date of ~~service of a summons in an action for divorce or separation or the date on which the parties last separated, whichever occurs first~~ the initially scheduled pretrial conference. If there is a substantial change in value of an asset **or debt** between the date of valuation and the final distribution, the court may adjust the valuation of that asset or debt as necessary to effect an equitable distribution, **and shall make specific findings that another date of valuation is fair and equitable.**

These changes will allow parties to choose their own date of valuation, but if they do not agree, then a date certain will apply--the date of the initially scheduled pretrial conference.

This makes agreements on valuation easier and will likely produce more pre-trial agreements on the values on assets and debts. It also allows the court to use an alternative date, so long as its reasons are fair and equitable and spelled out in the court order. This protects both parties from the conduct of the other, market forces over which neither party has control, and simplifies appraisals and information gathering.

Thank you for considering my thoughts on this matter and please do not hesitate to contact me should you have any further questions or concerns.

Very truly yours,

DeAnn M. Pladson
Pladson Law Office, P.L.L.C.

CC: Anna Wischer, President, Family Law Section

21.0216.01000

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1190

Introduced by

Representatives M. Johnson, Klemin, O'Brien, Schneider

A BILL for an Act to amend and reenact subsection 1 of section 14-05-24 of the North Dakota Century Code, relating to the valuation date for marital property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 14-05-24 of the North Dakota Century Code is amended and reenacted as follows:

1. When a divorce is granted, the court shall make an equitable distribution of the property and debts of the parties. Except as may be required by federal law for specific property, and subject to the power of the court to determine a date that is just and equitable, the valuation date for marital property is the date mutually agreed upon, in writing, between the parties. If the parties do not mutually agree upon a valuation date, the valuation date for marital property is the date ~~of service of a summons in an action for divorce or separation or the date on which the parties last separated, whichever occurs first~~of the initially scheduled pretrial conference. If there is a substantial change in value of an asset between the date of valuation and the final distribution, the court may adjust the valuation of that asset as necessary to effect an equitable distribution.

Filed 03/19/20 by Clerk of Supreme Court

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2020 ND 62

Clare Messmer, Plaintiff and Appellee

v.

Robert Messmer, Defendant and Appellant

No. 20190243

Appeal from the District Court of Stark County, Southwest Judicial District, the Honorable Rhonda R. Ehlis, Judge.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Opinion of the Court by Jensen, Chief Justice, in which Justices VandeWalle, Crothers, and Tufte joined. Justice McEvers filed an opinion concurring in part and dissenting in part.

Thomas F. Murtha IV (argued) and Dennis W. Lindquist (appeared), Dickinson, ND, for plaintiff and appellee.

Jennifer M. Gooss, Beulah, ND, for defendant and appellant.

Messmer v. Messmer
No. 20190243

Jensen, Chief Justice.

[¶1] Robert Messmer appeals from an amended divorce judgment and order granting a new trial. He argues the district court erred in the inclusion of 320 acres of property in the marital estate, the valuation and distribution of the parties' property, the denial of an award of spousal support, and the denial of an award of attorney fees. We affirm the district court's inclusion of the 320 acres in the marital estate, reverse the district court's valuation of the 320 acres, and remand the case for further proceedings consistent with this opinion.

I

[¶2] Robert Messmer and Clare Messmer were married in 1984. During the marriage, Robert Messmer actively engaged in farming and ranching. Clare Messmer helped with the farming and ranching activities as well as working outside the home.

[¶3] Clare Messmer initiated divorce proceedings on June 13, 2016. A trial was held on May 7, 2018, with a judgment entered on August 22, 2018.

[¶4] On September 10, 2018, Robert Messmer filed a motion for a new trial asserting an error had been made in the valuation of a wind turbine lease. On October 5, 2018, Clare Messmer filed a motion to amend the judgment to include 320 acres of land not included within the original property distribution. On November 7, 2018, the district court granted both of the motions after finding the parties had inadvertently failed to provide evidence of the value of the wind turbine lease during the first trial, finding the 320 acres should be included within the marital estate, and setting the valuation date for the 320 acres as the date of the subsequent second trial.

[¶5] On appeal, Robert Messmer raises several challenges to the district court's findings. He asserts the court erred in finding a gift of a remainder interest in the 320 acres had been delivered to him and was includable in the

marital estate, and the court erred in using the second trial date as the date for valuing the 320 acres. He also challenges the court's distribution of marital property asserting the court failed to properly consider the conduct of the parties during the marriage, erred in ordering him to make an equalization payment to Clare Messmer, and erred in the valuation of mineral interests. Additionally, he challenges the denial of his request for spousal support and the denial of his request for attorney fees.

II

[¶6] Subsequent to the first trial, the parties discovered a remainder interest in 320 acres had been gifted to Robert Messmer by his mother who had retained a life estate in the property. Robert Messmer argues the district court erred when it included the 320 acres in the marital estate. Robert Messmer asserts that, at the time of the first trial, the conveyance from his mother was not a completed gift because he did not have physical possession of the deed and he was unaware of the transfer.

[¶7] After granting a divorce, the district court is required to value the parties' property and debts and "make an equitable distribution." N.D.C.C. § 14-05-24(1). Our standard of review for distribution of marital property is well established:

> This Court reviews a district court's distribution of marital property as a finding of fact, and will not reverse unless the findings are clearly erroneous. A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if there is no evidence to support it, or if, after reviewing all the evidence, we are left with a definite and firm conviction a mistake has been made. We view the evidence in the light most favorable to the findings, and the district court's factual findings are presumptively correct.

Adams v. Adams, 2015 ND 112, ¶ 13, 863 N.W.2d 232 (internal citations and quotations omitted); *see also Holm v. Holm*, 2017 ND 96, ¶ 4, 893 N.W.2d 492.

[¶8] In order for an asset to be included within the marital estate, one or both of the parties must have a present property interest in the asset, rather than

a mere expectancy. *Paulson v. Paulson*, 2010 ND 100, ¶ 19, 783 N.W.2d 262 (citing 27B C.J.S. *Divorce* § 852 (2009)). Gifts may be included within the marital estate if the gift satisfies certain prerequisites:

> A district court may consider property to be part of the marital estate, if supported by evidence, even if a party claims it is owned by a nonparty. *Barth v. Barth*, 1999 ND 91, ¶ 8, 593 N.W.2d 359. "The principles applicable to inter vivos gifts in general apply as well to purported gifts of certificates of deposit." 38 Am.Jur.2d *Gifts* § 67 (1999). A valid gift made during the donor's lifetime must satisfy certain requirements—donative intent, delivery, actual or constructive, and acceptance by donee. *Makedonsky v. North Dakota Dep't of Human Servs.*, 2008 ND 49, ¶ 11, 746 N.W.2d 185. ("A valid gift requires an intention by the donor to then and there give the property to the donee, coupled with an actual or constructive delivery of the property to the donee and acceptance of the property by the donee.") A donor's intent is a question of fact. *Doeden v. Stubstad*, 2008 ND 165, ¶ 12, 755 N.W.2d 859. The actual or constructive delivery must be "of a nature sufficient to divest the owner of all dominion over the property and to invest the donee therewith." *In re Kaspari's Estate*, 71 N.W.2d 558, 567 (N.D. 1955).

Kovarik v. Kovarik, 2009 ND 82, ¶ 13, 765 N.W.2d 511.

[¶9] In support of her motion for a new trial, Clare Messmer cited *Dinius v. Dinius*, for the proposition that there was constructive delivery of the deed because Robert Messmer's mother had recorded it. 448 N.W.2d 210 (N.D. 1989). In *Dinius*, we affirmed a finding that deeds were delivered when the parties were in control of real property, the deeds were recorded, but the deeds were not physically delivered. *Id*. at 215-17. Whether there was actual or constructive delivery of a deed is a finding of fact. *Id*. at 216.

[¶10] The district court found, and Robert Messmer has not challenged, that the deed was filed by Robert Messmer's mother with the county recorder before the parties' separation. The court further found that neither party was aware of the transfer until after the first trial. Finally, the court found Robert

Messmer's mother had passed away between the date of the first trial and the date of the second trial.

[¶11] A conveyance by deed takes effect upon the delivery of the deed by the grantor. *CUNA Mortg. v. Aafedt*, 459 N.W.2d 801, 803-04 (N.D. 1990) (citing *Frederick v. Frederick*, 178 N.W.2d 834, 837 (N.D. 1970); N.D.C.C. § 47-09-06). A presumption of constructive delivery arose when Robert Messmer's mother filed the deed with the county recorder divesting herself of the remainder interest in the property. *Dinius*, 448 N.W.2d 210. "The recording of a deed may create a rebuttable presumption of its delivery to, and its acceptance by, the grantee." *CUNA Mortg.,* at 804. The presumption of acceptance following the recording of a deed only arises when the deed is beneficial to the grantee. *Id*.

[¶12] Failure to renounce a deed after learning of its existence may be sufficient to show a grantee accepted the deed. *CUNA Mortg.*, 459 N.W.2d 801 at 804. To rebut a presumption of delivery arising from the recording of a deed, the opposing party must provide clear and convincing evidence. *Eide v. Tveter*, 143 F.Supp. 665, 669 (D.N.D. 1956).

[¶13] The specific issue of whether the 320 acres should be included within the marital estate was raised below and contested in the district court. Robert Messmer has not challenged the court's finding the deed had been filed prior to the parties' separation. The filing creates a presumption of both delivery and acceptance occurring at the time the deed was filed. The presumption requires clear and convincing evidence to rebut. Robert Messmer offered no evidence to rebut the presumption of delivery and acceptance. Although the court found that neither party knew about the deed prior to the entry of the first judgment, Robert Messmer did not provide evidence, or even assert, he had renounced the gift during the post-trial motion or the second trial. Robert Messmer's only argument in the court below, and on appeal, is that delivery did not occur because he was not physically given the deed and he was unaware of the transfer. Under these circumstances, after having determined the deed had been recorded and in the absence of any evidence of renunciation, the court did not err in including Robert Messmer's remainder interest in the 320 acres in the marital estate.

III

[¶14] Robert Messmer also challenged the district court's valuation of the 320 acres at the time of the second trial, arguing the property should have been valued as a remainder interest on May 18, 2018, the date of the parties' first trial. The court, in its order granting the motion to reopen the case subsequent to the first judgment, found the appropriate valuation date to be the date of the second trial. The court declined "to value the land as a remainder interest as the current value should be the value of the property with Robert being the owner of the land in its entirety." In finding the appropriate valuation date to be the date of the second trial, the court relied on its finding "Robert is the owner of this property, with no further restrictions . . . [b]oth parties have an interest in this Court properly dividing all assets of the marriage, and distributing those assets in an equitable manner." The court thereafter valued the 320 acres as of the date of the second trial.

[¶15] Valuation of the marital estate is governed by N.D.C.C. § 14-05-24(1) which reads as follows:

> When a divorce is granted, the court shall make an equitable distribution of the property and debts of the parties. Except as may be required by federal law for specific property, and subject to the power of the court to determine a date that is just and equitable, the valuation date for marital property is the date mutually agreed upon between the parties. If the parties do not mutually agree upon a valuation date, the valuation date for marital property is the date of service of a summons in an action for divorce or separation or the date on which the parties last separated, whichever occurs first.

The statute is unambiguous. It does not provide the district court with discretion when the parties do not agree upon a valuation date. In the absence of an agreement, the statute requires valuation of the marital estate as of the date of service of a summons or the date on which the parties last separated, whichever occurs first.

[¶16] The second sentence of N.D.C.C. § 14-05-24(1) reads: "[e]xcept as may be required by federal law for specific property, and subject to the power of the court to determine a date that is just and equitable, the valuation date for marital property is the date mutually agreed upon between the parties." That sentence requires the district court to use the valuation date agreed upon by the parties unless the court determines the agreement would not be just and equitable.

[¶17] The third sentence of N.D.C.C. § 14-05-24(1) reads: "[i]f the parties do not mutually agree upon a valuation date, the valuation date for marital property is the date of service of a summons in an action for divorce or separation or the date on which the parties last separated, whichever occurs first." That sentence does not include any directive to the district court to exercise its discretion, but instructs the court, in the absence of an agreement between the parties, to value the marital property on the date of service of a summons or the date the parties last separated, whichever occurs first.

[¶18] Reading district court discretion into the third sentence and allowing the court to exercise its discretion in the absence of an agreement would render the legislature's directives meaningless. There would be no circumstances under which the court would not have discretion. Regardless of this Court's preference regarding district court discretion in selecting an equitable date for valuing a marital estate, "the letter of it [the law] is not to be disregarded under the pretext of pursuing its spirit." N.D.C.C. § 1-02-05.

[¶19] Through the enactment of N.D.C.C. § 14-05-24(1), the legislature has provided a definitive process for determining the date to value the marital estate that limits the district court's discretion to accepting or rejecting an agreed upon valuation date. The statute does not provide the court with discretion to select its own valuation date and the court misapplied the law by valuing the 320 acres at the date of the second trial.

[¶20] We have recently considered the district court's authority to revalue assets of a marital estate subsequent to trial in extraordinary circumstances. *Innis-Smith v. Smith*, 2018 ND 34, 905 N.W.2d 914. In *Innis-Smith*, this Court

reversed a district court's decision not to allow a case to be reopened because of a change in the value of an asset two years subsequent to trial. *Id*. at ¶ 19. We held reconsideration of a property division may be appropriate in an extraordinary case "when a substantial, unanticipated change in valuation of an asset occurs after trial but before distribution." *Id*. (quoting *Grinaker v. Grinaker*, 553 N.W.2d 204, 209 (N.D. 1996)). That decision seems inapposite to a strict application of N.D.C.C. § 14-05-24(1) which became effective August 1, 2017. However, we were not asked to consider the application of N.D.C.C. § 14-05-24(1) in *Innis-Smith*, all of the relevant events except the issuance of our opinion in *Innis-Smith* occurred prior to the effective date of the statute, and we have not been requested by either party to reconcile that case with the present case. Consideration of whether our decision in *Innis-Smith* can, or needs to be, reconciled with N.D.C.C. § 14-05-24(1) is unnecessary in this case.

IV

[¶21] On appeal, Robert Messmer raises several other issues related to the district court's allocation of the marital estate including the following: asserting the factual findings regarding the conduct of the parties during the marriage were clearly erroneous or incomplete, challenging the award of an equalization payment from Robert Messmer to Clare Messmer, challenging the manner in which certain parcels of real property were allocated, and challenging the manner in which mineral interests were allocated. He also argues the court erred by denying his request for spousal support and attorney fees. Property division and spousal support issues are interrelated and intertwined, often must be considered together, and the court is not prevented from reconsideration and reallocation of both issues on remand. *Mertz v. Mertz*, 2015 ND 13, ¶ 27, 858 N.W.2d 292. Because the remaining issues are interrelated and intertwined with the valuation of the 320 acres, it is unnecessary to address those issues on this appeal.

V

[¶22] We affirm the district court's inclusion of the 320 acres in the marital estate. We reverse the district court's use of the second trial date as the valuation date for the 320 acres and remand for use of a valuation date consistent with N.D.C.C. § 14-05-24(1). Resolution of the remaining issues raised by Robert Messmer on appeal are unnecessary in light of the remand to the district court.

[¶23] Jon J. Jensen, C.J.
Jerod E. Tufte
Daniel J. Crothers
Gerald W. VandeWalle

McEvers, Justice, concurring in part and dissenting in part.

[¶24] I concur with the majority in sections I, II, and IV, and respectfully dissent with the majority that N.D.C.C. § 14-05-24(1) is unambiguous.

[¶25] "On numerous occasions this Court has stated that statutes must be construed as a whole to determine the intent of the legislature and that the intent must be derived from the whole statute by taking and comparing every part thereof together." *State v. Mees*, 272 N.W.2d 61, 64 (N.D. 1978). A statute is ambiguous if it can produce more than one meaning and absurd results. *Id.* Under N.D.C.C. § 1-02-39:

> If a statute is ambiguous, the court, in determining the intention of the legislation, may consider among other matters:
> 1. The object sought to be attained.
> 2. The circumstances under which the statute was enacted.
> 3. The legislative history.
> 4. The common law or former statutory provisions, including laws upon the same or similar subjects.
> 5. The consequences of a particular construction.
> 6. The administrative construction of the statute.
> 7. The preamble.

[¶26] Section 14-05-24(1), N.D.C.C., reads as follows:

> When a divorce is granted, the court shall make an equitable distribution of the property and debts of the parties. Except as may be required by federal law for specific property, and subject to the power of the court to determine a date that is just and equitable, the valuation date for marital property is the date mutually agreed upon between the parties. If the parties do not mutually agree upon a valuation date, the valuation date for marital property is the date of service of a summons in an action for divorce or separation or the date on which the parties last separated, whichever occurs first.

[¶27] In breaking down N.D.C.C. § 14-05-24(1), it would be absurd to say courts will only have to follow the provision "[e]xcept as may be required by federal law" in the second sentence only if parties agree. If something is required by federal law, the parties will have to follow it whether they agree to a valuation date or not. It also seems absurd to me that the legislature intended to give the district court the power to do what is just and equitable only when the parties agree. I would suggest that the best time to give court discretion is when parties do not agree, and I think that is what the legislature intended.

[¶28] Based on the legislative history, it is clear that the intent was generally to move the valuation date earlier. *See Hearing on H.B. 1325 Before the House Judiciary Comm.,* 65th N.D. Legis. Sess. (Jan. 25, 2017) (testimony of Connie Triplett stating, "[t]he point of the bill is to move the valuation date up to three to six months after a divorce starts"). It also appears that the legislature was made aware that the courts would have to deal with property values decreasing over time through no fault of either party and it was argued the court should have discretion to deal with those situations and also to consider an exception for federal pension issues. *Id.* The House Standing Committee Minutes of the Judiciary Committee reflect the reasons for the proposed amendments to the bill:

> *Chairman K. Koppelman*: Property might be inflated or decreased in value because of the time lapsing. It is fairest to value it at the earliest date possible. Do you think your language deals with this?

> *Representative Klemin*: This clarifies the default date. If the parties agree on a date, why should anyone else decide differently. It is also subject to federal law relating to pensions that overrides everything. It is always up to the court.

[¶29] The dates in the statute were intended to be a default, but always leaving it up to the court. I invite the legislature to reconsider the need of courts to have the discretion necessary to make an equitable division of property based on the realities of the case before the court.

[¶30] Lisa Fair McEvers

SAMBOR
LAW & CONSULTING P.C.
P.O. Box 3189 | Bismarck, ND 58502 | 701.354.3375 | christina@samborlaw.com

January 25, 2021

Christina Sambor
Sambor Law & Consulting, P.C.
Testimony on HB 1190
House Judiciary Committee

Chairman Klemin and Members of the Committee:

I testify today in support of HB 1190, with the amendments described by DeAnn Pladson in her submitted testimony before this committee, as well as the additional amendments proposed herein.

In support of HB 1190, I can offer the following example which supports changing the current language in N.D.C.C. § 14-05-24(1): I recently handled a case in which the very issues raised by Ms. Pladson created barriers to settlement which complicated the parties' reaching a complete resolution. When an asset's value is set months or years prior to trial, it can create a gap between the assigned value of an asset and the actual value. For example, where a family business is awarded to one party, with a date of valuation set at the time of Summons or time of separation, the additional revenue gained by the family business between the valuation and resolution, whether by trial or settlement, in effect, "doesn't exist," as the revenues were gained after the valuation date. This situation creates significant difficulty for parties trying to settle, as the party being awarded the business does not wish to "give up" additional funds that they are techinically entitled to under the law, but the other party finds it difficult, if not impossible, to agree to the other party being awarded an asset when the valuation of that asset ignores significant amounts of money and provides the other party a windfall.

The current state of the law, while understandably enacted to bring some clarity to the division of the marital estate, has had unintended consequences as a result of further interpretation, which can and should be addressed. In addition to the amendments proposed by Ms. Pladson, I would urge this committee to consider the following: In some judicial districts, pretrial conferences are not set as a matter of course, or are set to occur 14 days prior to trial. Based upon this, I suggest the following additional amendments:

- Language should be added distinguishing financial accounts/assets, of which value can be easily ascertained, from more complex assets that require professional valuation or appraisal.
- Simple financial assets should be valued by the pretrial conference date, or by their value 14 days prior to trial if the Court does not set a date for a pretrial conference.
- The value of more complex assets, such as businesses, business assets or real estate, or other assets that require professional valuation, should bet set 90 days before trial.
- This distinction is not without a difference. Typically, 14 days before trial, the parties are in final preparations. Setting a valuation date of 14 days before trial would not allow the completion of complex valuations in time for disclosure to the opposing party, for trial or for commonly required pretrial preparations and filings.

Based upon the foregoing, I respectfully request that this committee recommend a do pass on HB 1190 with the amendments proposed by Ms. Pladson and the additional amendments proposed above. I would be happy to answer any questions.

Sincerely,

Sambor Law & Consulting, P.C.
By: Christina A. Sambor, Esq.

Jason McLean's Testimony on HB 1190

Good Morning, my name is Jason McLean. I am a family law attorney in Fargo, North Dakota. I have practiced exclusively in the area of family law since becoming licensed in this state in 2004. Prior to that time, I clerked for a family law attorney in Grand Forks. I have also practiced family law in Minnesota since 2003. With that background, I am offering this testimony in support of HB 1190 today.

Prior to the revisions to N.D.C.C. § 14-05-24 in 2017, the date of the valuation of property in a divorce, absent an agreement, was the date of trial. This created problems that were likely discussed in 2017, including what occurs when a matter is continued for long periods of time, or trial dates occur after long periods of separation. Often times, the trials themselves were used as an extension of discovery, even if the parties had completed extensive investigations during the interim. Such an arrangement also created situations where a spouse may benefit or be harmed by the increases and decreases in values as the case languished on the Court's docket. That was the impetus for a change four years ago.

However, in making that change, the pendulum swung too far in the other direction. Now, parties are required to value their property as of the date of the commencement of the action (when the summons was served) or the date of separation, ***whichever occurs first***. This change has had several consequences over the past four years:

1) It inadvertently creates a designation of "non-marital property" that does not exist in our law. It does so because any gains that are experienced during the period after separation are not subject to division. Instead, the party that takes the property profits from these uncounted increases in value.

2) It creates a penalty for spouses who wish to have a "trial separation" in the hopes of saving the marriage. If that trial separation is unsuccessful, the date of valuation may be months, over years, in the past.

3) It increases the ability of a party to manipulate valuations in divorce. A spouse who knows that a windfall is approaching, or that a debt is on the horizon, can now move out and set the valuation date through his or her own actions, leaving the other spouse harmed in the process.

4) It creates separate dates of valuation for separate items of property. A spouse may agree on the value of a vehicle or other personal property, but not agree on the value of a retirement account, thus making that value revert to the date of separation or commencement. This lack of uniformity provides a breeding ground for mischief in the divorce setting.

5) It creates confusion as to what the level of authority the courts have in setting valuations. Does the court have the ability to use its equitable power in all cases of valuations, or just those where a federal law may be at issue? Does the court have the inherent ability to dictate just inequitable values to make the required equitable division of property or not?

These are just a few of the problems that arose with the application of N.D.C.C. § 14-05-24. I do not believe they are all of the problems that have occurred. While the goal in 2017 may have been to provide certainty at the beginning of the process, the problems with that approach has become apparent. A change is necessary.

The changes that are submitted in HB 1190 will help to address the mentioned problems. By setting a valuation date as of the date of an initially scheduled pretrial conference, the date for valuation is not subject to the manipulation of the parties. Rather, the Courts will set that date. If there are counties or districts that do not usually hold pretrial conferences, the Court would still the opportunity to set the date for valuation versus allowing one party to manipulate the date. This creates equity and puts the parties on the equal playing field.

Likewise, HB 1191 clarifies the ability of the courts to review substantial changes to the property values and adjust them, as necessary. This provision is in keeping with the courts' powers to do what is equitable in divorce matters. It also addresses the question as to what the courts may and may not do with regard to changes in values. For example, if a farmer has a bad season and incurs several thousands of dollars' worth of debt after the date of the pretrial conference, the court could arguably determine it is necessary to include that debt in its analysis. Under the current law, those losses would not be included, and the property could be divided as though the losses do not exist. This problem, and those like it, has reared its head during the last four years.

Parties that are going through a divorce are faced with uncertainty. They are faced with major changes to lifestyles and economics. In some cases, parties made the decision to live separately, only to find that divorce was the only option. Our current law does not encourage parties to separate in hopes of saving a marriage. Instead, it punishes those who try that route. If we wish to encourage parties to try to save the marriage, we cannot place them in the position to risk their futures by doing so.

The changes made in 2017 to N.D.C.C § 14-05-24 were an over-correction. Now that we can see how the pre-divorce and commencement valuation language causes greater problems and confusion, we can correct the statute to a balance. HB 1190 provides that balance. I encourage each of you to consider this bill and give it a DO PASS recommendation from the Committee.
Thank you,

Jason McLean
Parvey, Larson, and McLean, PLLC

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary
Room JW327B, State Capitol

HB 1190
2/2/2021

Relating to the valuation date for marital property.

Chairman Klemin called the meeting to order at 4:26 PM.

Representatives	Attendance
Representative Lawrence R. Klemin	P
Representative Karen Karls	A
Representative Rick Becker	P
Representative Ruth Buffalo	P
Representative Cole Christensen	P
Representative Claire Cory	P
Representative Karla Rose Hanson	P
Representative Terry B. Jones	P
Representative Jeffery J. Magrum	P
Representative Bob Paulson	P
Representative Gary Paur	P
Representative Shannon Roers Jones	P
Representative Bernie Satrom	P
Representative Steve Vetter	P

Discussion Topics:

- Marital debts
- Amendments for the bill
- Options for dates

Rep. Vetter went over some proposed amendments.

Rep. K. Hanson: Oral questions 4:29

Motion made to adopt the amendment to add “and debts” after the words marital property on line 9 and 11 and after the word assets on line 14 and15 by **Rep. Vetter**. Seconded by **Rep. Paulson**
Voice vote: motion carried.

Motion made to adopt the amendment to remove overstrike on line 11 and 12 from ‘of service through divorce’ and leave the overstrike on the rest of the line 12 but overstrike line 13 of the initially scheduled pretrial conference. by **Rep. Jones** Seconded by **Rep. Hanson.** Voice Vote: Motion carried.

Motion for a Do Pass as amended #21.0216.01002 by **Rep. Vetter**. Seconded **Rep. Hanson.**

Roll call vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	A
Rep Becker	Y
Rep. Christensen	Y
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	Y
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	Y
Rep B. Satrom	Y
Rep Vetter	Y
Rep Buffalo	Y
Rep K. Hanson	Y

Motion carried 13-0-1.

Rep. Vetter: carrier.

Chairman Klemin Closed at 10:36 AM.

DeLores D. Shimek by Donna Whetham
Committee Clerk

Adopted by the Judiciary Committee

February 2, 2021

CP
2/2/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1190

Page 1, line 9, after "property" insert "and debt"

Page 1, line 11, after "property" insert "and debt"

Page 1, line 11, remove the overstrike over "~~of service of a summons in an~~"

Page 1, line 12, remove the overstrike over "~~action for divorce~~"

Page 1, line 13, remove "of the initially scheduled pretrial conference"

Page 1, line 14, after "asset" insert "or debt"

Page 1, line 15, after "asset" insert "or debt"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1190: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1190 was placed on the Sixth order on the calendar.

Page 1, line 9, after "property" insert "and debt"

Page 1, line 11, after "property" insert "and debt"

Page 1, line 11, remove the overstrike over "~~of service of a summons in an~~"

Page 1, line 12, remove the overstrike over "~~action for divorce~~"

Page 1, line 13, remove "of the initially scheduled pretrial conference"

Page 1, line 14, after "asset" insert "or debt"

Page 1, line 15, after "asset" insert "or debt"

Renumber accordingly

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary
Room JW327B, State Capitol

HB 1190
2/8/2021

Relating to the valuation date for marital property.

Chairman Klemin called the hearing to order at **2:57 PM**.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter.

Discussion Topics:

- Rep M Johnson amendments
- Marital property valuation date
- Proposal of 60 days before initially scheduled trial date
- Changing from service of the summons to 60 days before the initially scheduled trial date

Rep Vetter moved to reconsider HB 1190, seconded by Rep Jones.

Representatives	**Vote**
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	AB
Rep. Christensen	Y
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	AB
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	Y
Rep B. Satrom	Y
Rep Vetter	Y
Rep Buffalo	Y
Rep K. Hanson	Y

Motion carried. 12 – 0 – 2

Rep Vetter moved to withdraw the old amendment 01002, second by Rep Satrom.
Voice vote. Motion carried

Rep Vetter moved to Adopt Amendment 21.0216.01001, second by Rep Satrom.
Voice vote. Motion carried.

Rep Jones moved a Do Pass as Amended, second by Rep Satrom.
Roll call vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	AB
Rep. Christensen	Y
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	Y
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	Y
Rep B. Satrom	Y
Rep Vetter	Y
Rep Buffalo	Y
Rep K. Hanson	Y

Motion carried. 13 – 0 – 1 Rep. Vetter is carrier.

Additional written testimony:
Rep. M Johnson, Amendment 21.0216.01001 #5963

3:06 PM hearing closed.

DeLores D. Shimek
Committee Clerk

DR 2/8/21
1 of 1

21.0216.01001
Title.03000

Prepared by the Legislative Council staff for
Representative M. Johnson
January 28, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1190

Page 1, line 8, overstrike "and subject to the power of the court to determine a date that is just"

Page 1, line 9, overstrike "and equitable,"

Page 1, line 9, after "property" insert "and debt"

Page 1, line 9, remove the underscored comma

Page 1, line 10, remove "in writing,"

Page 1, line 11, after "property" insert "and debt"

Page 1, line 11, overstrike "the date"

Page 1, line 13, replace "of" with "sixty days before"

Page 1, line 13, replace "pretrial conference" with "trial date"

Page 1, line 14, after "asset" insert "or debt"

Page 1, line 14, remove "final"

Page 1, line 15, replace "distribution" with "date of trial"

Page 1, line 15, after "asset" insert "or debt"

Page 1, line 16, after "distribution" insert "and shall make specific findings that another date of valuation is fair and equitable"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1190: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1190 was placed on the Sixth order on the calendar.

Page 1, line 8, overstrike "and subject to the power of the court to determine a date that is just"

Page 1, line 9, overstrike "and equitable,"

Page 1, line 9, after "property" insert "and debt"

Page 1, line 9, remove the underscored comma

Page 1, line 10, remove "in writing,"

Page 1, line 11, after "property" insert "and debt"

Page 1, line 11, overstrike "the date"

Page 1, line 13, replace "of" with "sixty days before"

Page 1, line 13, replace "pretrial conference" with "trial date"

Page 1, line 14, after "asset" insert "or debt"

Page 1, line 14, remove "final"

Page 1, line 15, replace "distribution" with "date of trial"

Page 1, line 15, after "asset" insert "or debt"

Page 1, line 16, after "distribution" insert "and shall make specific findings that another date of valuation is fair and equitable"

Renumber accordingly

21.0216.01001
Title.

Prepared by the Legislative Council staff for
Representative M. Johnson
January 28, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1190

Page 1, line 8, overstrike "and subject to the power of the court to determine a date that is just"

Page 1, line 9, overstrike "and equitable,"

Page 1, line 9, after "property" insert "and debt"

Page 1, line 9, remove the underscored comma

Page 1, line 10, remove "in writing,"

Page 1, line 11, after "property" insert "and debt"

Page 1, line 11, overstrike "the date"

Page 1, line 13, replace "of" with "sixty days before"

Page 1, line 13, replace "pretrial conference" with "trial date"

Page 1, line 14, after "asset" insert "or debt"

Page 1, line 14, remove "final"

Page 1, line 15, replace "distribution" with "date of trial"

Page 1, line 15, after "asset" insert "or debt"

Page 1, line 16, after "distribution" insert "and shall make specific findings that another date of valuation is fair and equitable"

Renumber accordingly

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1190

Introduced by

Representatives M. Johnson, Klemin, O'Brien, Schneider

A BILL for an Act to amend and reenact subsection 1 of section 14-05-24 of the North Dakota Century Code, relating to the valuation date for marital property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 14-05-24 of the North Dakota Century Code is amended and reenacted as follows:

1. When a divorce is granted, the court shall make an equitable distribution of the property and debts of the parties. Except as may be required by federal law for specific property, ~~and subject to the power of the court to determine a date that is just and equitable,~~ the valuation date for marital property and debt is the date mutually agreed upon ~~, in writing,~~ between the parties. If the parties do not mutually agree upon a valuation date, the valuation date for marital property and debt is ~~the date of service of a summons in an action for divorce or separation or the date on which the parties last separated, whichever occurs first~~ of sixty days before the initially scheduled ~~pretrial conference~~ trial date. If there is a substantial change in value of an asset or debt between the date of valuation and the ~~final distribution~~ date of trial, the court may adjust the valuation of that asset or debt as necessary to effect an equitable distribution and shall make specific findings that another date of valuation is fair and equitable.

2021 SENATE JUDICIARY

HB 1190

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1190
3/17/2021

Relating to the valuation date for marital property

Hearing called to order, [9:29] all senators are present: **Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, and Larson.**

Discussion Topics:

- Spousal property litigation statute
- Property rights afforded by the constitution

Representative Mary Johnson [9:29], introduced HB 1190 and provided Oral testimony

Jason W McLean [9:38] Legislative Subcommittee of the Family Law Section of SBAND, #9667

Senator Luick [9:49] moved to DO PASS HB 1190
Senator Myrdal [9:50] seconded the motion

Senators	Vote
Senator Janne Myrdal	Y
Senator Larry Luick	Y
Senator Michael Dwyer	Y
Senator Jason G. Heitkamp	Y
Senator Robert O. Fors	Y
Senator JoNell A. Bakke	Y
Senator Diane Larson	Y

The motion passes 7-0-0 [9:50]
Senator Luick [9:51] will carry

Additional written testimony:
Mitchel S Sanderson #9638

Hearing adjourned [9:52]

Jamal Omar, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1190, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1190 was placed on the Fourteenth order on the calendar.

Family Law Section of the State Bar of North Dakota
Legislative Subcommittee
Christina Sambor, Chair

The Honorable Diane Larson
State Capitol Building
600 E. Boulevard Ave.
Bismarck, ND 58505

RE: House Bill 1190

Dear Ms. Larson:

We are writing to you today in support of House Bill 1190. This bill was originally introduced by representatives M. Johnson, Klemin, O'Brien and Schneider, at the urging of a concerned family law attorney regarding the status of our current law. The current law, N.D.C.C. § 14-05-24(1) has been interpreted by the Supreme Court to limit the court's discretion to determine a valuation date, when the parties cannot agree. In the case of Messmer v. Messmer, 2020 ND 62, the Court held at paragraphs 15 through 17:

> The statute is unambiguous. It does not provide the district court with discretion when the parties do not agree upon a valuation date. In the absence of an agreement, the statute requires valuation of the marital estate as of the date of service of a summons or the date on which the parties last separated, whichever occurs first.
>
> The second sentence of N.D.C.C. § 14-05-24(1) reads: '[e]xcept as may be required by federal law for specific property, and subject to the power of the court to determine a date that is just and equitable, the valuation date for marital property is the date mutually agreed upon between the parties.' That sentence requires the district court to use the valuation date agreed upon by the parties unless the court determines the agreement would not be just and equitable.
>
> The third sentence of N.D.C.C. § 14-05-24(1) reads: '[i]f the parties do not mutually agree upon a valuation date, the valuation date for marital property is the date of service of a summons in an action for divorce or separation or the date on which the parties last separated, whichever occurs first.' That sentence does not include any directive to the district court to exercise its discretion, but instructs the court, in the absence of an agreement between the parties, to value the marital property on the date of service of a summons or the date the parties last separated, whichever occurs first.

Reading district court discretion into the third sentence and allowing the court to exercise its discretion in the absence of an agreement would render the legislature's directives meaningless. There would be no circumstances under which the court would not have discretion. Regardless of this Court's preference regarding district court discretion in selecting an equitable date for valuing a marital estate, "the letter of it [the law] is not to be disregarded under the pretext of pursuing its spirit." N.D.C.C. § 1-02-05.

The smallest amount of research revealed that the North Dakota legislature never intended to take away the power of the court to decide the valuation dates, even when the parties could not agree. It is preferred that the parties agreement control for the valuation date. However, when

proposing this change to the law, all legislators testified that the court would have the authority to consider special circumstances and "maintain the ability to change the valuation date if there is an unfairness." (Rep. M. Nelson, February 3, 2017, House Session 12:49:44 PM.) The court was to "retain its ability to determine if [the valuation date] is unfair." (Rep. Klemin, February 3, 2017, House Session 12:58:30 PM.) The new law adopted in 2017 intended to "reserve the power of the court to determine what is equitable and fair." (Rep. K. Koppleman, February 3, 2017, House Session 12:55:40 PM.) These sentiments were echoed in the Senate by Senator Armstrong, March 15, 2017, Senate Session 1:30:49. https://www.legis.nd.gov/assembly/65-2017/bill-video/bv1325.html

House Bill 1190 will correct this situation. The current law has created significant problems for valuation when the parties have lived in separate households for several years, but intended to remain married, at least for a period of time. Perhaps it was a situation where the parties agreed to work on their marriage, but they needed to live separately to attempt reconciliation. At the time of the separation, neither party is intending to divorce. Using a retroactive date for the valuation back to the date of separation can create an unfair surprise to one or both of the spouses.

Additionally, the current retroactive valuation date makes appraisals extremely difficult. Appraisers are being asked to put a value on property years before the appraisal is actually being prepared, and oftentimes after significant improvements or changes are made to the property. Additionally, the date of separation increases conflict between the parties to show whether or not the parties were, in fact, separated.

HB 1190 amends N.D.C.C. Sec 14-05-24(1) to restore the power of the court to make valuation determinations which are fair and equitable under the unique circumstances of the case. It also identifies a specific date, which is unambiguous, on which the parties can rely for a valuation date. It does not incentivize delay of the proceedings and allows for meaningful preparation and maximum resolution of issues prior to trial.

Valuation issues involve moving targets. The value of assets and debts can change daily and often do. Identifying the valuation date as "sixty days before the initially scheduled trial date" creates a date certain for the parties and counsel on which to value the assets. This is two months before the trial, meaning that there is a greater opportunity for the parties to agree on the values well in advance of trial. It also creates certainty for parties in terms of the present value of assets needing an appraisal rather than speculative appraisals based upon the condition or use of the property several years prior.

The sixty-day deadline was reached after several discussions between the members of the legislative committee, members of the House, and practitioners as a fair and equitable timeframe. Having the date be subject to the trial date set by the Court limits the ability of the parties to manipulate the valuation dates, as can occur now. Moreover, it prevents the creation of "non-marital property," which does not exist in our law. This law seeks to provide certainty for parties, while still allowing some level of discretion for the Courts.

These changes will allow parties to choose their own date of valuation, but if they do not agree, then a date certain will apply—sixty days before the initially scheduled trial date.
This makes agreements on valuation easier and will likely produce more pre-trial agreements on the values on assets and debts. It also allows the court to use an alternative date, so long as its reasons are fair and equitable and spelled out in the court order. This protects both parties from the conduct of the other, market forces over which neither party has control, and simplifies appraisals and information gathering.

Thank you for considering our thoughts on this very important family law issue.

/s/ Jason W. McLean
jason@plmfamilylaw.com
701.532.0702

/s/ DeAnn M. Pladson
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701.356.7676

/s/ Alisha Ankers, Attorney
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/s/ Kristen A. Hushka
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701.356.7676

/s/ Erica J. Shively, Attorney
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Bismarck, ND 58501
701-557-3384
erica@nodaklaw.com

Senator,

At some point this family law needs to start making sense.

If a person was married for 3 years and divorces, they have NO legal claim to any personal or real property that the other spouse had BEFORE the marriage.

They only should have claim to the property they brought into the marriage and half of any property gained in the marriage if they had a hand in paying for it.

This crap where gold diggers get half the family farm is just that crap! They had no hand in working for or paying for it!

Thank you,

Mr. Mitchel S. Sanderson