

## Does North Carolina law allow reconciliation agreements?

Spouses in North Carolina are free to contract with each other before, during and after marriage. The [Uniform Premarital Agreement Act](#) regulates contracts entered in anticipation of marriage, see [GS Chapter 52B](#); [GS 52-10](#) and [GS 50-20\(d\)](#) provide statutory authorization for contracts entered during marriage, and [GS 52-10.1](#) is the statutory authorization for agreements made in consideration of living separate and apart. Married people generally are free to enter into any contract “not inconsistent with public policy.” [GS 52-10\(a\)](#).

What about agreements made during separation when the parties intend to resume the marital relationship rather than to end it, setting out what will happen should the parties separate again in the future? Are such ‘reconciliation agreements’ consistent with public policy?

### ***Williams v. Williams***

Three years after they separated, Mr. and Ms. Williams entered into a contract. The agreement stated that the parties were considering reconciliation and contained the following provision:

“Husband and Wife agree that Husband shall continue to make a payment of Five Hundred Dollars (\$500.00) per month to Wife for her support and maintenance. Both parties acknowledge that should parties hereinafter again separate, Husband shall continue to pay permanent alimony of Five Hundred Dollars (\$500.00) per month pursuant to prior Agreement of parties; that he will be collaterally estopped from pleading the resumption of marital relationship as a bar to his continued paying this sum; he acknowledges that the resumption of marital relationship shall have no effect on the payment of this amount as his obligation to pay said amount was and remains an intrical (*spelling in original*) part of this property settlement and for that reason not modifiable and not affected by the resumption.”

*Williams v. Williams*, 120 NC App 707, (1995), *affirmed per curiam*, 343N.C. 299 (1996).

After the contract was executed, the parties reconciled and lived together for a number of years. Upon a subsequent separation, wife filed a complaint asking that husband be ordered to pay alimony in accordance with the terms of the contract. The trial court dismissed her complaint and the court of appeals affirmed, holding that the contract was void because it violated public policy.

According to the court of appeals, contracts “looking towards a future separation” are contracts that contradict public policy and therefore are void. The court pointed to *Matthews v. Matthews*, 2 NC App 143 (1968), wherein an agreement was voided because it encouraged rather than discouraged a future separation.

In *Matthews*, some fifteen years before separation, husband signed an agreement wherein he stated:

“If I ever leave [my wife], everything I have or will have will be hers to have and hold for the benefit of our children and herself – I make no claim on anything we own jointly, and separately.”

Holding the contract to be void, the court stated that the agreement:

“would induce the wife to goad the husband into separating from her in order that the agreement could be put into effect and she could strip him of all of his property. Our society has been built around the home, and its perpetuation is essential to the welfare of the community. And the law looks with disfavor upon an agreement which will encourage or bring about a destruction of the home.”

The court in *Williams* decided that the reconciliation agreement at issue was substantially similar to the agreement in *Matthews*. The court in *Williams* explained that the provision providing wife would receive alimony upon a future separation:

“would serve to discourage [her] from putting forth a concerted effort to maintain the marriage because of the knowledge she would continue to receive alimony regardless of whether the parties separated following reconciliation.”

The majority in *Williams* rejected the argument that public policy in North Carolina had changed since the time of the *Matthews* decision, but a dissent argued that legislation enacted since *Matthews* proved that the General Assembly supports all forms of marital contracts because they “promote marital stability” rather than “incite divorce and separation.” Because [GS 50-20\(d\)](#) allows parties to settle some property issues before, during or after marriage and [the Uniform Premarital Agreement Act](#) allows parties to settle before marriage most issues that will arise upon a future separation, including support, the dissent argued that “there is no justification for adhering to a different public policy with regard to non-property postmarital agreements, especially when the agreement, as in this case, is entered into between married parties who are not living together.”

By affirming the majority in the Court of Appeals *per curiam*, the North Carolina Supreme Court indicated in *Williams* that it was not inclined, at least in that case, to agree with the dissent’s point of view.

### **GS 50-10(a1)**

In 2013, the General Assembly amended [GS 50-10\(a1\)](#) to provide that, effective June 19, 2013, agreements such as the one in *Williams* probably now are enforceable, at least with regard to support provisions. That statute provides:

“A contract between a husband and wife made, with or without a valuable consideration, during a period of separation to waive, release, or establish rights and obligations to post separation support, alimony, or spousal support is valid and not inconsistent with public policy. A provision

waiving, releasing, or establishing rights and obligations to post separation support, alimony, or spousal support *shall remain valid following a period of reconciliation and subsequent separation*, if the contract satisfies all of the following requirements:

- (1) The contract is in writing.
- (2) The provision waiving the rights or obligations is clearly stated in the contract.
- (3) The contract was acknowledged by both parties before a certifying officer.”

It seems that new [GS 50-10\(a1\)](#) authorizes only reconciliation agreements regarding alimony that are made separate and apart from a separation agreement. First of all, the amendment was added to [GS 52-10](#) (contracts between spouses) rather than [GS 52-10.1](#) (separation agreements). Second, the law is clear that all provisions in a separation agreement, including property settlement provisions negotiated in consideration of separation, are voided by reconciliation. *Morrison v. Morrison*, 102 NC App 514 (1991). Therefore, any provision regarding a future separation will be voided by reconciliation if the provision is part of an integrated separation agreement. *Morrison; Stegall v. Stegall*, 100 NC App 398 (1991).

### **What about property provisions?**

New [GS 52-10\(a1\)](#) specifically addresses spousal support. What about property provisions in a reconciliation agreement? In *Matthews*, the decision relied upon by the court in *Williams*, husband agreed to give all of his property to wife if they separated. The court held that agreement was void because it encouraged a future separation. Is *Matthews* still good law?

Of course, we now have [GS 50-20\(d\)](#) authorizing contracts regarding “the distribution of marital and divisible property” entered “before, during or after marriage.” But we also had that statute at the time the court decided *Williams* and affirmed the holding in *Matthews*.

Does a reconciliation agreement with property provisions advantageous to one or both spouses violate public policy because it “looks towards a future separation?” Perhaps a contract providing for an “equitable” distribution of marital and divisible property is okay because of [GS 50-20\(d\)](#) but a contract dealing with property that is not marital or divisible, or an obviously one-sided distribution of marital and divisible property, will be subject to scrutiny?