

includes the increase in the value of any property which one spouse acquired before the marriage or acquired by gift or inheritance, but not the property itself. It does not matter if the title to the property is in the name of only one spouse.

A couple can agree to divide their property in any way they choose. They may have the court make the agreement part of the court order. Except in unusual cases such as fraud, the court cannot modify a property division agreement as long as the parties fully disclosed their financial situations to each other and entered into the agreement knowingly and voluntarily.

An agreement is a good idea because it saves both parties money, time, and aggravation. However, if no agreement is possible, either spouse can ask the court to divide the marital property in a fair way. In deciding how to divide the marital property the court will consider many factors, such as the number of children, the parties' health, earning capacity, education, and their standard of living. The court has the right to give more of the marital property to one party than to the other.

As with alimony, a request that the court divide marital property must be made as part of the divorce action before the court finally grants the divorce.

What about child support and custody?

Unlike alimony and marital property, child support and custody do not have to be included in a divorce action. These matters can be decided at any time, and in separate court actions.

But if either party wishes, child support and custody can be included in a divorce case. A couple can make a written agreement about child support and custody and then have the court make the agreement part of a court order. If the parents cannot agree, either party can ask the court to decide these matters. Either party may ask the court to modify a child support or custody order at any time if it is in the child's best interest.

For more information about ***Child Support*** and ***Child Custody***, see separate brochures on these subjects.

Can the divorce court require me or my spouse to get counseling?

One of the purposes of the divorce law is to protect and preserve the family, especially where there are children. So in many cases, the court can order counseling if either party requests it. Counseling will not generally delay or prevent the divorce. Some courts also require the parties to attend a seminar about how to help children deal with divorce.

How much does a divorce cost?

The costs of a divorce vary. Every court charges for bringing a divorce action. There are additional costs where there must be hearings about alimony, support, or marital property. These costs can be very high. Private attorneys also charge fees, which can vary widely.

A person who cannot afford to pay court costs can ask the court to be excused from paying them. The court may grant the request if the person has a low income and little money to pay court costs.

In some cases, the court may order one spouse to pay the other's reasonable attorney's fees.

REMEMBER. The law often changes. Each case is different. This pamphlet is meant to give you general information and not to give you specific legal advice.

Please use the information found in this brochure carefully since the law is constantly changing and the information may not accurately reflect any changes in the law that occurred following the creation and publication of the brochure.

Pennsylvania Legal Aid Network, Inc.
118 Locust Street
Harrisburg, PA 17101
(800) 322-7572
www.PALegalAid.net

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Revised 12/17 This public information pamphlet was edited by Neighborhood Legal Services Association and produced by Pennsylvania Legal Aid Network, Inc.



Divorce Law in Pennsylvania

Public Information Pamphlet #4

How can I get a divorce?

What if my spouse doesn't want a divorce?

Are there still "fault" divorces?

Can one spouse stop a divorce from going through?

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The Pennsylvania Legal Aid Network of civil legal aid programs provides help for people who have no place else to turn



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■ **TO START** a divorce in Pennsylvania, one or both of the spouses must have lived in Pennsylvania for at least the past six months. The person who is asking for the divorce (the plaintiff) files a complaint that tells the court why he or she should get a divorce from his or her spouse (the defendant). A divorce is not final until a decision is made and a divorce decree is entered by a court.

The three categories of divorce in Pennsylvania are divorce by mutual consent, un-consented, and fault-based. This brochure explains the differences between them.

How can I get a divorce by mutual consent?

The only reason that the plaintiff has to tell the court for a divorce by mutual consent is that the marriage is irretrievably broken. If both the wife and husband (the spouses) want a divorce and agree that the marriage cannot be saved, things are simple. After the complaint is filed, there is a 90-day waiting period. Each party then files a sworn statement that the marriage is irretrievably broken and that each wants a divorce, and asks the Court to grant it. This type of no-fault divorce is often called a mutual consent divorce.

What if my spouse doesn't want a divorce?

An un-consented divorce can still be granted, even if one spouse does not agree, if

- the couple has been living separate and apart for at least one year (a couple can be considered to be living separate and apart even though they still live in the same home, if they are living separate lives and have very little to do with each other); and
- it is proved that the marriage is irretrievably broken.

In this case, the spouse that wants the divorce (the plaintiff) may have to wait as long as one year before requesting that the Court enter the decree to finalize the divorce.

Are there still "fault" divorces?

Yes, if

- one spouse refuses to agree to a divorce, and
- the couple has not been separated one year, and
- the spouse seeking the divorce doesn't want to wait one year. The plaintiff can still get a divorce but must prove that the other spouse is at fault—that is, did something wrong to the plaintiff—and the plaintiff must show that he or she did little or nothing wrong to the defendant. If both spouses were at fault, the Court may refuse to grant the divorce.

The legal grounds for a fault-based divorce are desertion for a year or more, bigamy, adultery, a jail sentence of two years or more for the conviction of any crime, indignities (any continuing conduct which makes the plaintiff's life unbearable), and cruel treatment which is a danger to the plaintiff's life or health.

A divorce will also be granted where the defendant has been in a mental institution for a serious mental problem for at least 18 months before the divorce is started, and will probably remain in the institution for at least 18 months after the divorce has been started.

Can one spouse stop a divorce from going through?

If a plaintiff seeks a divorce by consent, or without consent, the defendant may prevent the divorce from being granted by proving that the parties have not lived separate and apart for at least one year or that the marriage is not irretrievably broken.

If a divorce is sought on fault grounds, and the defendant proves that the plaintiff is not innocent or injured, or that the facts claimed by the plaintiff

are not true, a divorce may not be granted. These are only a few of the available defenses. Others exist depending upon the situation.

What should I do if I become involved in a divorce?

If you are involved in a divorce action, you need to consider asking for custody, alimony, support, marital property, counseling, and attorney's fees before a divorce is finalized.

Can the divorce court award alimony?

Either spouse can get alimony—support after the divorce—by an agreement of the parties or by court order. The court will consider factors such as the length of the marriage, the division of the parties' marital property, and the parties' ages, health, earning capacities, and needs in deciding whether, in what amount, and for how long to award alimony.

A couple can agree to the amount, duration, and manner of payment of alimony, but the agreement may be modified by the court.

Alimony may be ordered for a specific time or an unlimited time, depending upon whether the person can work or develop a job skill. If, because of age, disability, or the need to care for children, it is difficult for the person to work, alimony may be ordered for a long or unlimited time.

A person asking for alimony must request it as part of a divorce action before the court finally grants the divorce. ***If you don't, you can never come back and ask the court to order it.*** After alimony is granted, a person loses the right to continue getting it if he or she remarries or lives together as husband and wife with a person of the opposite sex.

Either spouse also can get a court order for temporary support until the court grants a divorce. Under this temporary order a spouse may also receive attorney's fees, medical insurance coverage, and other expenses.

What is marital property?

Marital property generally means all property acquired during the marriage. Marital property