
LEGAL INFORMATION PAMPHLET

A Preventive Law Service from the Tobyhanna Army Depot Legal Office

DIVORCE & SEPARATION

Grounds for divorce in Pennsylvania can be either NO-FAULT or FAULT. Before you can file for divorce in Pennsylvania, you or your spouse must have resided in the state for at least six months. Then you must prove that there are grounds, or lawfully acceptable reasons, for a divorce.

If a divorce is by MUTUAL CONSENT and both parties sign Affidavits of Consent to it, the court will grant a divorce three months after the service of the complaint on the other party. If only one spouse wants a divorce and the parties have been separated for at least two years, a divorce may be granted if the court determines that the marriage is irretrievably broken. Both of these are NO-FAULT grounds for divorce.

Before someone can obtain a FAULT divorce, two things must be proven. First, that he or she is innocent and injured, or not at fault, and second, that misconduct by the other spouse has caused a breakdown of the marriage. Allowable grounds for FAULT divorce are specified by law, such as violence, bigamy, adultery, desertion, conviction of a crime or insanity.

WHAT IS A LEGAL SEPARATION?

Technically, there is no such thing in Pennsylvania as a "legal separation". Separation simply means that you and your spouse no longer live together. Separation may occur by mutual consent or by one of you leaving or being expelled from your home. Under some circumstances, you may be considered separated even though you and your spouse are still living in the same residence.

Information provided is general in nature and does not constitute legal advice. Consult an attorney to address the specific needs of your case. This information is distributed persons eligible for legal

CAN I STOP MY SPOUSE FROM ENTERING OUR HOME?

Your spouse has a right to be on and in the property that you both own or rent unless a court decides otherwise. If you lock your spouse out, he or she may be able to take appropriate action to regain entry to the property.

WHAT IS A SEPARATION AND PROPERTY SETTLEMENT AGREEMENT?

After a husband and wife separate, especially if they intend to divorce, it is desirable for them to enter into a written agreement to provide for:

- division of real estate and personal property;
- support, if any, payable to the dependent spouse and children;
- responsibility for debts and legal fees;
- health and life insurance arrangements; and
- custody and visitation of children

Also included are many other items which set forth the mutual rights and duties of the two people. This agreement is a contract, but may be enforced as though it is an order of the court. Certain provisions in the agreement concerning child custody, visitation, and child support can later be modified by the court if circumstances change. The agreement is written by the attorneys representing you and your spouse following negotiations.

WHAT HAPPENS TO REAL ESTATE WE OWN?

Most married couples own their real property as "tenants by the entireties". This form of joint ownership means that neither spouse can sell the property during the marriage without the consent of the other. Upon divorce, however, unless the parties have a written agreement providing for the division of the property, the court has the power to divide the property based on equitable principles. This means that the court will take many factors into account when arriving at a fair division, although that does not always mean that the property will be divided equally.

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The court takes into consideration both spouses' economic and non-economic contributions to property acquired during the marriage. If neither you and your spouse nor the court divide the property, then the nature of your ownership automatically changes after divorce and you both become "tenants in common."

WHAT IS MARITAL PROPERTY?

The Divorce Code provides that all property acquired by either spouse during the marriage, with certain exceptions like gifts and inherited property, is marital property, regardless of in whose name the property is held. It should be noted that the increase in value during the marriage of gifts, inherited property, and premarital property which remain in one party's name, will also be considered marital. Marital property, if not divided in the separation agreement, may be divided equitably by the court.

WHO OWNS THE HOUSEHOLD GOODS?

Household items, such as drapes, carpets, furniture and appliances are generally not titled in either spouse's name. Unless you can show a different intent, the law treats all such property as being jointly owned and used for the benefit of both spouses, regardless of who actually paid for it. As part of the divorce, the court may consider these things as marital property and distribute them accordingly.

WHAT ABOUT BANK ACCOUNTS?

No matter whose name is on the account, you are both owners of the funds. If one spouse draws all of the money out of an account, he or she may have to account to the other for the money, no matter who originally put the funds into the account or if the account is titled in only one name. As part of the divorce, the court may consider the bank accounts as marital property and equitably divide the funds, regardless of whose names were on the accounts.

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WHAT IF I DON'T WANT A DIVORCE?

If the divorce is on no-fault grounds, the only defenses are showing that you have not lived apart for two years or that the marriage is not irretrievably broken.

In a fault divorce, your spouse must be "innocent and injured" to establish grounds. If you are able to prove that this is not the case, you may be able to prevent the divorce. You can also attempt to prove that the facts claimed by your spouse are false. There are certain other defenses that may apply in specific situations. You should discuss with your attorney what courses of action might be available.

WHAT WILL BE IN THE FINAL COURT ORDER?

When the court issues a Decree of Divorce, the order may include other matters if they were raised in the proceeding by either spouse. These include disposition of marital property and other property interests; child custody and visitation; child support; alimony; and enforcement of agreements voluntarily entered into by the parties.

WHO PAYS THE ATTORNEY'S FEES?

The court has the power to award preliminary counsel fees to the dependent spouse. In addition, in the final order, after the property rights of the parties are determined, the court could direct the parties to pay their own costs and fees, or it may divide the costs and expenses equitably between the parties.

The Legal Information Pamphlet is distributed by the Legal Office, Tobyhanna Army Depot, PA located in Building 11A Hap Arnold Blvd.. Our office hours are: . 0730 – 1600 hrs. You may call us for an appointment at (570)895-7210. Check out our web site at _____ for other helpful information on similar personal legal affairs topics.

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