

*The*  
MEN'S BOOK  
**DIVORCE**  
In Pennsylvania

*The Dumbest Mistakes that Men Make  
And  
How to Avoid Them*



**MHK**ATTORNEYS

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How to Avoid Them*

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Printed in the United States of America

*Published by MHK Attorneys*

# INCLUDING:

- The 10 biggest mistakes men make in divorce.
- Get a game plan for divorce.
- 42 financial records you need to secure.
- 18 questions to consider before hiring your divorce lawyer.
- How to get the most custody of your kids.
- Overview of the divorce process.
- The grounds for divorce.
- 17 factors used to determine alimony.
- 13 factors used to determine equitable distribution.
- Books for men.

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# WARNING & DISCLAIMER

THIS BOOK IS **NOT** LEGAL ADVICE

The Pennsylvania State Bar requires that I inform you that this book is not legal advice. I am not your attorney until we enter into a written agreement that I will be your attorney. This book is for information purposes only and should not be construed as legal advice. Every divorce case is different. Once your attorney fully understands your case, he or she should be able to give you quality legal advice to protect your interests. Receiving this book does not imply an attorney/client relationship between MHK Attorneys and the reader.

After reading this book, if you have any other unanswered questions, call my office for an appointment.

A handwritten signature in cursive script that reads "Connie F. Merwine". The signature is written in a fluid, elegant style with a large initial 'C'.

## WHO WROTE THIS BOOK? & WHY SHOULD I LISTEN TO THE AUTHOR?

Divorce is an emotionally driven business transaction. As a man you have to understand that the end result is like a business deal, but how you get there is through an emotional mine field which you must be prepared to navigate. Just like other decisions you have made in your life, you need to have a game plan from the beginning, even if the divorce has not started. You must be prepared for what may happen, what your wife might file, how you will respond and more importantly what steps you will take to be in charge of your new life.

If you are a man contemplating or confronting divorce, you must first gather knowledge and information about the divorce process. Help, guidance and information to get you the best result are readily available for you. I want you to know:

1. The different and distinctive ways you can resolve your divorce.
2. Those truly effective professionals who can help you get what you want out of your divorce are in our community.
3. That understanding the laws that govern divorce and understanding the process of divorce will help you to get what you want.
4. How to handle financial issues starting RIGHT NOW.

My name is Connie J. Merwine. I have been a lawyer since 1988 and have handled divorce and custody cases since 1990. I started my law firm with my partners, Joseph P. Hanyon and



Michael B. Kaspszyk in 1997 and have focused my attention on family law. I wrote this book for men because I see that men need one organized and comprehensive handbook to answer their most important questions quickly and give them the framework in which to conduct themselves during the divorce process to avoid the mistakes other men have made in similar situations. Also, although there are a lot of resources for women, there is a void in resources for men.

Prior to becoming an attorney, I obtained my Certified Public Accountant's license from the State of Pennsylvania. After becoming an attorney, I continued my education with a Master's degree in Liberal Arts and a Master's Degree in Taxation. I am able to provide unique guidance in divorce with my business knowledge and years of experience with other men in similar situations.

## MY GOAL FOR YOU

You need to take control of your life and your divorce right now. You have already taken the first step in making your game plan. The most important thing for you to understand right up front is that you need to plan well ahead of time and get yourself organized. This book will move you forward with the information and plan you need to move through this process and make educated decisions. With that knowledge and information, you will be better able to work more effectively with your lawyer. No one can make the ultimate decisions for you but my goal for you is that you have the knowledge of the divorce process so that you can make the best decisions for you and your family.

# THE 10 BIGGEST MISTAKES MEN MAKE IN DIVORCE

*As we get started, I want to share some BIG mistakes men have made when facing divorce that I have learned while helping men get divorced.*

1.      MOVING OUT – If you already did – MOVE BACK – this action will affect you not only financially but also as to custody of your children. You need to discuss all the ramifications of moving out with a knowledgeable attorney before you even think about moving out.
2.      DATING IMMEDIATELY – why engage in this activity when you know that it will only incite raw emotions from your wife and possibly your children. Now is not the time to begin relationships when you have not completed your divorce. You will find that the knowledge that you are dating may put an end to any ongoing negotiations about property and custody. Your children may side with your wife if they feel that you have been unfaithful to their mother. Dating now will only cause you financial pain and emotional trauma. Many studies have shown that starting a new relationship while in the throes of a divorce is liable to create a mess for everyone involved including you and your new girlfriend. Finish one before you move on. If you do decide to start dating – telling your wife and children prior to the final divorce decree is definitely a **BAD IDEA**; keep it quiet.

3. BEING STUPID ON THE INTERNET – Take down your Facebook page, take down your Instagram, don't put yourself out there on other apps, stop emailing and texting others, stop it, stop it, stop it. Absolutely don't email or text your wife about anything – especially the divorce or custody. It will all come back to haunt you at the courthouse no matter how benign you think what you wrote is. Her lawyer will twist it until it hurts you. Anything can be misconstrued. Same thing goes for your girlfriend, (if you choose to not listen to MISTAKE #2). Get her to remove all her social networking from the web. It just isn't worth it.

4. CHOOSING THE WRONG ATTORNEY OR NOT USING AN ATTORNEY – you need to make it a priority to find the right lawyer for YOU – one who is knowledgeable, fits with your personality and can commit to providing you with a game plan right now and answers to your questions as the matter moves ahead. GOING IT ALONE – is just not a good idea; divorce paperwork can be complicated and since the written agreement will control your life during and after the final divorce decree you need to make sure it says what you think it says. Just because you and your wife are on speaking terms now while she is trying to get what she thinks she deserves, does not mean that she will continue to be as friendly down the road when you both start moving on with your lives. Her emotions are not under your control – you need the right agreement to enforce should things go south.

5. INVOLVING YOUR CHILDREN IN YOUR DIVORCE– Do not make your children your confidantes during your

divorce. Children should be allowed to remain children no matter how you feel or what you think. The court will dislike your involvement of your children in financial matters and your custody may be affected by your actions. Leave these matters to the adults.

**6. FAILING TO PREPARE FOR YOUR DIVORCE –** You need to right now –gather all documents such as tax returns, pension statements, bank accounts, credit card statements and anything that helps prove your financial situation. These documents will be difficult and expensive to obtain if your wife removes them and will put you behind in preparation with your attorney.

**7. NOT BEING OPEN TO NEGOTIATION WITH YOUR WIFE.** Neither you nor your attorney should dismiss any opening for possible resolution during the divorce at any stage, even if it is only a partial agreement on some of the issues you are facing. An amicable divorce is less costly financially and emotionally for all parties involved.

**8. GETTING OUT OF CONTROL WITH YOUR EMOTIONS.** Nothing is gained by shouting and swearing at your soon to be ex-wife. She will only react by being less agreeable to negotiations. Plus, you can't take back the nasty things you say – how can that help you. Keep the big picture in focus – you are getting divorced and you need to get the best deal you can. **STAY CALM AT ALL TIMES.**

**9. DON'T BE A PUSHOVER.** On the other hand, you can't let your wife and her annoying lawyer push you around. If you cannot stand up to her, you need an attorney who definitely will be able to; not only to her but to her lawyer. Get

what is yours and make sure you stand up for your rights from the beginning, especially regarding the children.

**10. FIGHTING FOR THE HOUSE.** It is just a house – move on – if she wants it and can afford it – let her have it – you won't win that one with the judge, especially if she has the children in her primary custody. Even if she doesn't want the house – are you sure you can financially afford the house after the divorce? Financially you will not be as secure – can you afford it and if you are just making it now, how will you afford it after the divorce – why would you want to be bound into living on the skinny right after a divorce? MOVE ON. Let her have it or agree to SELL IT.

*This book does not offer you a panacea to all of your problems, but it does provide you a wealth of information\**

\*For more information on divorce visit:  
[www.MHKAttorneys.com](http://www.MHKAttorneys.com)  
Or visit us on Facebook under MHK Attorneys



# HOW TO GET A GAME PLAN FOR YOUR DIVORCE

*Steps You Need to take Right now to get ready for Divorce*

1. Consult an attorney about your LEGAL RIGHTS. Read the actual laws governing spousal support, child support, custody, and property division (called "equitable distribution").
2. Write a NARRATIVE for your attorney, detailing the date you began living together, the date you married, your children's birth dates, previous separations, when various assets were acquired, and the separate property either of you brought into the marriage or inherited.
3. GATHER INFORMATION about what you own and owe. You'll need copies of financial statements, tax returns, retirement plan documents, brokerage statements, and insurance policies.
4. Obtain detailed information on each RETIREMENT PLAN in which you and your wife have participated.
5. Decide which assets you would like to keep if you divorce and what you are willing to give up. Consult with your accountant about the TAX CONSEQUENCES of various options, especially for keeping the house or liquidating retirement.
6. Get preliminary estimates of the value of the property you own and list the debts that you owe. Pay BILLS AND CREDIT CARDS from joint funds before separation, so you don't get stuck with them later.
7. Find out what is in the SAFE DEPOSIT BOX. Secure both keys, if possible.



8. Prepare a SPENDING HISTORY for last year from your checkbooks, so you can determine future needs and decide where to cut back, if necessary.
9. CLOSE JOINT CREDIT CARD ACCOUNTS. Get control of both cards issued on accounts or notify creditors that you will no longer be responsible for your wife's charges on accounts.
10. Open a post office box RIGHT NOW that you can use for your mail before you separate and while you are in the process of divorce.
11. Begin a DIVORCE NOTEBOOK in which you list all problems with impending separation and divorce. Also list each step that you take in the divorce process, including a synopsis of all telephone calls and conferences with your attorney and accountant. Keep good notes.
12. Divorce is not something you can control, but if you figure out the worst that could happen and decide in advance how you will deal with it you will obtain a BETTER RESULTS.
13. Begin NEGOTIATION DISCUSSIONS with your wife, as calmly as possible. Find out what her hot buttons are and where she is willing to make concessions.
14. TALK to family and friends who have recently been through a divorce. Get a feel for the territory you will be crossing.
15. Find a GOOD THERAPIST OR SUPPORT GROUP to help you through the months ahead. Divorce is too traumatic to go through it alone.

## FINANCIAL RECORDS YOU NEED TO HAVE FOR YOUR GAME PLAN

The time to get organized is now: you need to secure all your financial records and get them in a safe place IMMEDIATELY. You need to find out what is going on with your income (where does your paycheck go? What has your wife spent the families money on recently?), your assets (does your wife have access to all the monies and can she wipe you out today?) your debts (did your wife let the mortgage become delinquent? is your wife charging wildly on a credit card?) The list below is not exhaustive but is a good start. If you don't – you could get hit hard in the checkbook. The support orders are based off of what you and your wife show to the court, if your records are inaccurate you could end up owing far more than you can afford. Your lawyer can only present evidence and argue on your behalf if you have the ammunition that is needed. GO GET IT NOW.

1. Net worth statement.
2. Copies of all notes signed by yourself and your spouse (include 1st and 2nd mortgages).
3. Copies of any guarantees on behalf of others signed by you or your spouse.
4. Tax returns for the last 5 years—including individual, business and all other relevant returns.
5. Benefit statements of your employer and spouse's employer (pension plan, profit sharing, 401K, IRA, etc.).
6. Life insurance policies on you, your spouse, and your children.

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7. Short term disability policies on you and your spouse.
8. Long term disability policies on you and your spouse.
9. Homeowner's policy.
10. Umbrella liability policy.
11. Vehicle information—titles, registration, and insurance.
12. Health insurance policies.
13. Long term care insurance policies.
14. Other insurance policies (mortgage payment, credit life, AAA policy, cancer policy, etc.).
15. All bank account statements.
16. All credit card statements.
17. All brokerage statements.
18. Any military benefits.
19. Copy of credit history (obtain from credit reporting agencies).
20. Inventory of personal property (written and video).
21. Applicable employment contracts.
22. Copies of buy/sell agreements.
23. Copies of partnership agreements.
24. Inventory of lock box.
25. Power of Attorney for you and your spouse.
26. Medical Power of Attorney.
27. Health Care directives.
28. Wills.
29. Living Wills.
30. Copies of any Wills or Trusts of which you are the beneficiary.
31. Trusts.
32. Social Security benefits statement.
33. Pre-nuptial Agreements.

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34. Separation Agreements.
35. Lease Agreements.
36. Real Estate – addresses, purchase information, appraisals, deeds, leases, and assessments.
37. Annuity statements
38. Personal property of high monetary value, with appraisals, if possible.
39. Proof of debt owed to you and your spouse.
40. Stocks, bonds, mutual fund statements.
41. Miscellaneous matters- lawsuits, patents, copyrights, trademarks, rights to royalties.
42. Timeshare information.

## GET THE RIGHT LAWYER FOR YOUR GAME PLAN

### *18 Questions and Mistakes to Avoid when Choosing Your Divorce Lawyer*

Choosing the right divorce lawyer is KEY TO YOUR PLAN. Dealing with lawyers may be new to you and the legal system may be a complete unknown.

You need a lawyer you can trust completely, and with whom you can establish a close working relationship that will continue as long as you need—months or, in rare cases, even years. You need someone who can give you an accurate and honest assessment of your case including any deficiencies in your game plan and help you to make better plan.

Since all lawyers are not created equal, consider these eighteen questions before parting with that retainer check:

#### **1.** *IS THE LAWYER'S PRACTICE FOCUSED ON FAMILY LAW?*

Choose a lawyer who practices exclusively, or at least primarily, in the area of family law. This is a constantly evolving, highly complex area of practice. You need a knowledgeable and experienced lawyer in your corner, one who is intimately familiar with the intricacies of divorce law and related matters. You cannot leave your game plan in the hands of a “Jack of All Trades, Master of None.”

2. *IS THE LAWYER ATTENTIVE WHEN YOU ARE TALKING?*

It is crucial to have a face-to-face initial consultation with any potential lawyer before signing a retainer agreement. An initial consultation is your chance to assess whether the attorney will be responsive to your situations as they arise during the process or whether you will be just another client with a faceless file stacked in the corner of the cluttered office. If the lawyer is checking e-mails, typing away on their cellphone, or taking other calls during your meeting, you should go elsewhere.

3. *DOES THE LAWYER HAVE AN OFFICE POLICY ENSURING TIMELY RETURN OF YOUR PHONE CALLS?*

Communication between attorney and client is key in any divorce action. A lawyer should be reachable by phone and e-mail. Unfortunately, clients' main complaints against their divorce lawyers are that the lawyers fail to respond in a timely manner to their calls, e-mails, and other communications. Ask any lawyer you consider retaining whether there is an office policy regarding the prompt return of phone calls and emails. If the lawyer hesitates, there most likely is no such policy, and you will be frustrated to no end in trying to get in touch with him or her.

4. *IS THE LAWYER SELECTIVE IN ACCEPTING CASES?*

Does the lawyer you are considering accept every client that walks through the door, or the practice consist of fewer, but select, clients? In order to provide dedicated and comprehensive service, an attorney owes it to existing clients to be highly selective in accepting new matters. Make sure the

latter is the case with your attorney.

5. *IS YOUR PERSONALITY COMPATIBLE WITH THE LAWYER'S PERSONALITY?*

In order to work effectively with your lawyer, you must be comfortable with your lawyer. Make sure that the lawyer you retain is someone with whom you can talk, to whom you can listen, and with whom you will be able to share the most intimate details of your life and finances.

6. *IS THE LAWYER PROACTIVE?*

You should hire a divorce lawyer who is able to provide you with a plan of action. This attorney should listen to you and then take charge. Your lawyer needs to be willing to explain to you how the system works, your rights and your responsibilities in the divorce.

7. *WILL THE LAWYER HANDLE YOUR CASE PERSONALLY, OR WILL YOUR MATTER BE DELEGATED TO AN ASSOCIATE OR PARALEGAL?*

Find out who will handle your case. Will it be the attorney with whom you are meeting during the initial consultation? If any portion of your case is going to be delegated to an associate or paralegal, you should insist on meeting that lawyer or paralegal as well. You must be completely satisfied that any other staff member working on your case is competent and experienced. This is essential.

8. *IS THE LAWYER WILLING TO ATTEMPT A NEGOTIATED SETTLEMENT OF YOUR MATTER?*

Only a very small percentage of divorce cases actually go to a divorce hearing. The vast majority of cases are settled, some on the courthouse steps on the very day of the hearing. A good attorney knows that there is no “winner” in a divorce or custody hearing. If it is left unchecked, the process can be emotionally and financially devastating to both parties. Your attorney should, therefore, make every reasonable effort to negotiate a settlement on your behalf, while at the same time diligently preparing your case for the potentiality of a hearing. Cases settle when the lawyers are prepared and dedicated. An aggressive litigious approach is only to be used when the situation warrants it.

*9. IS YOUR LAWYER WILLING TO EDUCATE YOU AND TO ANSWER YOUR QUESTIONS?*

Your divorce lawyer must be a good communicator and be willing to answer all of your questions. Any skilled divorce lawyer knows that educated clients are better equipped to make sound and informed decisions.

*10. IS THE LAWYER ASSERTIVE WITHOUT BEING ARROGANT?*

Many people make the mistake of looking for a divorce lawyer who will be a “pit-bull.” In hiring a divorce lawyer, remember that louder does not necessarily mean better. A good attorney will not feel the need to compensate for a lack of skill by being obnoxious. A good attorney will aggressively and effectively advocate for you, but without an ego that squeezes the air out of any room.

*11. IS THE LAWYER BEING HONEST WITH YOU OR ARE YOU*



## *BEING PROMISED THE SUN, THE MOON AND THE STARS?*

Be very wary of any lawyer who guarantees a specific result in your divorce case. All litigation is inherently risky and can be influenced by present circumstances, future developments, and the decisions and attitude of the divorce master. Every case has strengths and weaknesses, and your lawyer should point out both. You can trust an attorney who tells it like it is—who is candid with you about your chances of obtaining a particular outcome. You cannot trust an attorney who simply tells you what you want to hear.

## **12.** *DOES THE LAWYER UNDERSCORE THAT YOUR CHILDREN'S BEST INTERESTS ARE YOUR HIGHEST PRIORITIES?*

No parent should ever use children as pawns in a divorce action. Your children's welfare and best interests should be your paramount priority. Any good lawyer will understand and support this objective and will caution you that manipulating your children will be devastating to them personally and to your chances of being awarded custody.

## **13.** *DOES THE LAWYER PRESENT WELL?*

If you are put off by your lawyer's personal grooming, dress, behavior, or language, chances are that the judge and opposing counsel will be too. If a lawyer's office is a mess of paper, pizza boxes, and dirty clothes, the legal documents prepared on your behalf will most likely reflect that. The work product on your case will not be thoughtful, cogent and organized either. You want an attorney who cares enough to present himself or herself, the staff, and the office in a professional manner.

**14.** *IS THE LAWYER ABLE TO UTILIZE THE LATEST TECHNOLOGY?*

In this day and age, your lawyer should be up to date on the latest technological tools. Your lawyer should understand how computers and the Internet are changing communications, relationships and society. He or she should be aware of the implications of this. If a lawyer has chosen to remain blindly “old school” about technology, do you think he or she cares enough to stay up to date with the latest developments in the law?

**15.** *HAVE YOU WAITED TOO LONG TO HIRE AN ATTORNEY?*

If you wait too long to hire an attorney, you will be wasting valuable time to prepare for your divorce, and it may end up costing you more money in the long run. Knowing your options and developing a plan at the first hint of divorce can be a life saver down the road. What if your wife tries to take off with the kids or kick you out of the house? If you have met with an attorney already, you will have a plan.

**16.** *DID YOU GO WITH THE LOWEST BIDDER WHEN SELECTING YOUR ATTORNEY?*

In law, like everything else, you get what you pay for. Sure, it is nice to get a free consult or legal advice, but for most attorneys however, their time and knowledge is just too valuable to give away for free. This also applies to how much they will charge for a whole case. Many potential clients will call the office and ask how much a certain type of case will cost. That is generally impossible to answer. A good attorney

knows that often unexpected events occur, or things change in a case, so to give an exact price would be impossible. Your attorney should be able to give you a general idea of what they expect and advise you that it is subject to change.

## 17. *DID YOUR ATTORNEY GIVE YOU A SALES PITCH?*

Are you buying a car? No? Then why on earth are you listening to a sales pitch about how everything will turn out great and that you have no need to worry, your attorney will take care of everything? The truth is that you are getting a divorce; things probably won't be great when it is all over. There are no guarantees when you go to court, so sadly there IS need to worry. However, if you have a good attorney who is honest with you about the prospect of your case, you can probably worry a little less. You will also be aware of all the positives and negatives, so you can prepare yourself for what the realistic future may be.

## 18. *HAVE YOU DONE YOUR HOMEWORK BEFORE SIGNING A RETAINER?*

If you need to hire a divorce lawyer, be sure to do your homework and to consider these questions before signing a retainer agreement. The last thing you need during your divorce case is to waste your time getting started with the wrong lawyer. And if you find after you have retained a lawyer that it was the wrong choice DON'T stick it out – move on right away and get yourself the right lawyer– your result will be better for the change. Save yourself the agony of lost time, big bills, and endless frustration.

## SO, WHAT'S NEXT?

### THE BASICS OF DIVORCE IN PENNSYLVANIA

*Should I leave the house?*

The easy answer is **NO** – you should not leave the house. First – staying in the house allows you to stay involved in the day to day lives of your children. If you move out, you will end up with much less time with your kids and will have to fight to get back what you have right now. Second – living at the marital residence with your family is financially better for you. If you move out, your financial situation will immediately suffer when your wife files for spousal support and/or child support. Two households can never live as well as one did: two sets of household bills in addition to the cost of moving and setting up a separate household will be a financial strain. If you are the breadwinner of the family your paycheck will be hit and be hit big, effective the date you leave the house. Third – if you move out and your wife can afford the home, even if only with child support from you, you may lose your ability to argue that you should keep the house yourself.

Your wife cannot get you out of the house except in limited situations such a Protection from Abuse Order issued by the Court of Common Pleas. By a PFA, you could be ordered out of the house for up to three years with exclusive possession being granted to your wife, who then files for support which will include a mortgage adjustment amount to help her pay for the mortgage if her income is low and your mortgage is large.

This immediately puts you in a very bad place financially and will cost you time in moving the divorce ahead. Once your wife has the house and the money, she may not want to move ahead with the divorce even if she is the one who wanted to get divorced in the first place. **DON'T MOVE OUT** and do not engage in behavior that could lead to a PFA for obvious reasons. If you do move out of the house – make sure you have secured all financial records listed above, prior to leaving. To obtain these from your wife later will be costly. You should take with you all your personal property, especially those items that are valuable to you – when and if you are allowed to go back to get things left behind from the house – they might not be there, or they might be damaged. Litigation over these issues is neither a productive use of your time or money nor the time of your attorney. Take all those important things when you go the first time.

## GETTING THE DIVORCE STARTED WHO SHOULD MAKE THE FIRST MOVE?

Some might say that it doesn't matter who files first. This is true, in theory, because in Pennsylvania each party will get their day in court in front of the judge before decisions are made. However, some situations require a more thorough analysis for getting the divorce started. In some cases, it can make a huge strategic difference if you file first: if your wife has moved from your residence county and her new county or state is more alimony friendly.

While Pennsylvania law is statutorily the same in all counties for divorces, how the courts/judges/masters interpret that law varies greatly. For example, one county might not order alimony after the divorce in a routine divorce while another county might regularly award alimony simply based upon the length of the marriage. This can greatly affect the financial burden you have for a long time. You need to analyze with your attorney's assistance, the local decision by the divorce masters and file immediately if your wife has the option of filing for divorce in a county that is more advantageous to her. Further, if your wife has moved to another state this may further complicate your divorce. If she meets the residency requirements for filing in another state and files prior to you, you may have to travel to another state, to attend hearings, find an attorney in another state and may find that she has chosen that other state for financial reasons if that state has laws that favor her. You may be giving up the first round by just letting her file.

Filing first can also be motivated by other needs you have such as keeping her out of a house. Once you file the Complaint you can then file for other relief such as a Petition for Exclusive Possession of the Residence, or a Petition to Freeze Marital Assets to keep her from liquidating marital assets. You become the “moving party”

for this action. Without the divorce complaint being filed, these requests to the court for assistance are not available to you.

Once a divorce is filed in Pennsylvania, either you as the plaintiff or your wife as the plaintiff, either party can request three mandatory marriage-counseling sessions, pursuant to Pennsylvania law. If your wife requests these, you will be ordered to attend. If you do not comply the court will not grant your divorce; the opposite is also true. If you want your wife to come to these sessions, she will be ordered to attend, or she can't get divorced from you.

## HOW DOES THE DIVORCE PROCESS ACTUALLY PLAY OUT?

Let's say you are done with your marriage and you decide to file for divorce. Next you would hire an attorney and file a Complaint for Divorce. The Complaint contains information like the date of marriage, date of separation, names of children, birth dates of children, marriage location, the parties' residence location at the time of separation, and whether fault or no fault grounds exist with regard to the divorce. You will normally sign the complaint under oath, or alternatively, your attorney may sign the complaint on your behalf. You are now known as the "Plaintiff." The Complaint is filed in the Court of Common Pleas in one of three possible counties:

1. Where you live,
2. The county where your wife—now known as the "Defendant"—lives, or
3. In a county agreed upon by both parties. At the same time that you or your wife file for divorce either of you, as they case may be, can also file for support and custody, which will be detailed later in the book.

The Complaint then must be served on your wife. This can be done through the Sheriff's Office; you may hire a private process server, who will serve the Complaint on your wife; or your wife can voluntarily accept it, if she signs an Acceptance of Service. The cost of filing a divorce varies from county to county, as does the cost of service. The 90-day mandatory waiting period in Pennsylvania for a consent divorce does not start until your wife is actually physically served with the



## Complaint.

Generally, following the service of the Complaint on your wife, she will file an Answer and often a Cross-Complaint. Her Answer usually denies your allegations against her. Her Cross-Complaint will contain her allegations against you. It is not uncommon for Answers or Cross-Complaints to have exaggerated allegations. More often than not, the allegations are designed to make you mad. Moreover, sometimes the allegations as written by your wife's attorney are as much to show his or her own client his/ her lawyer is "tough" than about your actual conduct. Remember, the attorney is creatively writing what he or she was told and is trying to make it as negative as possible about you. Don't let it aggravate you. No sense wasting emotions on court pleadings they mean very little to the end result of your divorce. Remember, you can control the whole playing field if you do not let emotions get in the way. Don't play her lawyer's game.

If your wife wants temporary support, she will be filing through the Domestic Relations. A conference on child support, spousal support, and/or alimony pendente lite (APL) will be scheduled for a Support officer to decide temporary APL, spousal and/or child support. Further, a Petition for a Custody Order is filed, and a Custody Conference will be scheduled, and a temporary child custody schedule will be put in place. Once these issues are addressed and ruled upon by the Court, then the longer-term issues regarding the divorce can be addressed, during the time remaining before your "Final Divorce Decree."

## WHAT ARE GROUNDS FOR DIVORCE?

### *What is the Underlying Reason for the Divorce?*

One of the questions I'm frequently asked is "What are the grounds for divorce in Pennsylvania?" You may know what your grounds are, but what legitimates a divorce in a court of law? Fault grounds are:

1. Willful and malicious desertion. This is when your spouse leaves the marital home without reasonable cause, for a period of one or more years;
2. Adultery;
3. Cruel and barbarous treatment. This occurs when your spouse has been abusive and has endangered your life;
4. Bigamy. This occurs when you or your spouse are already married;
5. Imprisonment for a term of two or more years; and
6. Indignities. Your spouse has done things, such as verbal abuse or actions to render your life intolerable.

Because of the available option of no-fault divorce in Pennsylvania, few divorces are based upon fault grounds. More often than not, the parties will opt for a no-fault divorce. The no-fault grounds for filing a divorce complaint in Pennsylvania are:

**MUTUAL CONSENT.** In this case the marriage is irretrievably broken, and ninety days have elapsed from the date of commencement and service of the Divorce Complaint; or

**IRRETRIEVABLE BREAKDOWN.** In this case, the parties have been living separate and apart for a period of at least two years and the marriage is irretrievably broken.

## FAULT GROUNDS

### 1.

#### WILLFUL AND MALICIOUS DESERTION

Willful and malicious desertion occurs when one spouse leaves the marital home without reasonable cause for a period of one or more years. Leaving without reasonable cause can be the sticking point here. If a spouse is forced to leave for his or her own safety, that may be considered reasonable cause rather than desertion. However, if the spouse just leaves a note, "I'm leaving and never coming back," and for one or more years he or she does not come back, that may be considered desertion.

### 2.

#### ADULTERY

Adultery is often difficult to prove in Pennsylvania. Adultery requires strict, satisfactory and conclusive proof that your wife not only had the desire to commit adultery, but that she also actually committed it. Testimony or admissions must be corroborated. This means there must be some definitive evidence beyond mere suspicion or admission by your wife that she had an affair.

In Pennsylvania, it is very hard to prove you have grounds for a divorce via adultery. Courts do not like to get involved in trying to prove or disprove the sexual activity of one or both partners. While divorce on the grounds of adultery is still

available, it is often best to seek a divorce on other grounds. Whether your spouse cheated on you or not, does not matter to the court in the long run. It is not taken into consideration when determining equitable division of the assets or child support. The only time it is considered, other than for grounds for a divorce, is when determining alimony/spousal support.

### 3.

#### CRUEL AND BARBAROUS TREATMENT

Cruel and Barbarous treatment includes either physical acts or successive acts of ill treatment or bodily harm. The courts will distinguish between normal conduct of unhappy people and cruel conduct on the part of one of the spouses.

### 4.

#### BIGAMY

Grounds for divorce based on bigamy exist when at the time of your marriage, either you were, or your wife was still legally married to someone else. In certain circumstances this also qualifies your marriage for an annulment instead of a divorce. You should discuss your specific case with your attorney to determine which option is best for you. Divorce due to felony conviction requires that a spouse be convicted of a felony and sentenced to serve two years or more in jail in order for the innocent spouse to obtain a divorce based on the felony conviction.

## 6.

### INDIGNITIES

Indignities come in the form of vulgar language, neglect, mistreatment, disdain, and any other acts of hatred that make life intolerable and burdensome for the injured and innocent spouse. However, this behavior must be habitual and continuous. Isolated incidents, while unacceptable behavior, do not meet the grounds for divorce under the indignities count.

## NO-FAULT GROUNDS

*The alternative grounds for divorce in Pennsylvania are no-fault.*

## 1.

### MUTUAL CONSENT

If both parties are agreeable to a divorce in Pennsylvania, the divorce can be finalized 90 days after the date of service of the divorce complaint, by filing for a mutual consent/no-fault divorce. This is the quickest way to be divorced in Pennsylvania. It should only be used when there is agreement on all terms necessary for finalization of the economic aspects of your divorce. Custody and support matters can also be covered in the agreement, but they can be dealt with separately by another agreement or by assistance of the court at separate conferences or hearings.

## 2.

### IRRETRIEVABLE BREAKDOWN

You can receive a no-fault divorce without having to prove fault on the side of your wife or by gaining her consent, if you live separate and apart for a period of at least one year, which serves as proof that the marriage is irretrievably broken. If your wife does not deny the allegations set forth in the affidavit of separation, a divorce can be granted without a hearing. If your wife denies the allegations, then a hearing will occur to determine if you have in fact lived separate and apart for one year. If after that hearing, the court determines you have been living separate and apart for one year and the marriage is irretrievably broken, the court will grant the divorce.

### FAULT OR NO-FAULT?

You may ask yourself the following question at this point: "Why does it matter whether I have a fault divorce or a no-fault divorce?" A fault divorce requires an extensive divorce hearing and proof of fault in order to convince the Master/Judge hearing your case that you have proven fault grounds in order to obtain a divorce. This could be required if your wife is not agreeable to one of the two methods of no-fault divorce as described above as mutual consent or irretrievable breakdown.

### AFFIRMATIVE DEFENSES TO FAULT GROUNDS

I do want to mention, also, that there are defenses to the Fault Grounds for divorce:

1. **CONDONATION:** when the aggrieved spouse resumes cohabitation after learning of conduct constituting grounds for divorce. A good example would be that you find out that your spouse has committed adultery and you sleep with her after you become aware of her adulterous behavior. You have then legally condoned her unfaithful conduct and have no grounds for divorce.
2. **PROVOCATION:** when you have done something to justify your wife's response, such as committed equally indignant behavior, you cannot use those grounds for your divorce.
3. **COLLUSION:** when the parties make up a false ground for divorce.
4. **RECRIMINATION:** when one of the parties commits adultery and the other spouse also has an affair to show the first offending spouse that he can have a paramour as well. In such a case, the court will grant neither of the party's divorce on the grounds of adultery.
5. **CONNIVANCE:** when one spouse agrees to the marital fault of the other and then alleges the fault as grounds to obtain a divorce. For instance, a wife cannot set up her husband with a prostitute and then file divorce on adultery after he sleeps with her.

Complaints for divorce alleging adultery have their own set of defenses, which are similar to those above. If your wife has also committed adultery, allowed sexual relations to resume after knowing of her husband's adultery, allowed her husband to seek use of a prostitute, or exposed her husband to such lewd behavior as to cause him to become involved in adultery, she may not use adultery as grounds for the divorce complaint.

## HOW TO GET INFORMATION FROM YOUR SPOUSE DURING THE DIVORCE

### *The Discovery Process*

After the divorce has been filed, your wife may be asked by your attorney to answer questions regarding assets owned, debts owed, why she thinks she should have custody, etc. In Pennsylvania, each of you may be asked to provide answers to “interrogatories” which require great detail about your assets, liabilities, fault, custody and such other issues as may be raised in the divorce. I have included five such questions just to give you an idea of the detail that is often requested.

1. Provide the following information as to each employment position you have held during the past five years, whether full-time, part-time, or self-employment, free-lance or contract work, including but not limited to your employer's name, the name of your immediate supervisor, each employer's full address and telephone number, your position, your dates of service, your hours worked, your current monthly and annual gross income, listing each source separately (including bonuses, commissions, tips and overtime, stock options, deferred compensation for each year), and your fringe benefits (including insurance, retirement, profit sharing, travel pay, vacation and sick leave accrued), and state the reasons for any changes in employment and for your current employment: state how often you are paid (i.e. monthly, every two weeks) and state the date when you are next paid.



2. Provide the following information as to all bank accounts in your name individually, jointly with any other person or in the name of any entity (i.e. partnership, corporation or otherwise) in which you have an interest or that is held on your behalf, in any banking institutions, savings and loans, credit unions, stock brokerage firms or other financial or financially related corporations, from January 1, 2018 to the date of your answers, stating the name, address and telephone number of the institution, each account number(s) and the type of account, owner(s) and signatories on each account, the balance of each account as of the date of separation, as well as the present balance(s) of the accounts.
3. Provide the following information as to all Individual Retirement Accounts (IRA), Simplified Employee Pension Plans (SEP), Keogh Plans, profit-sharing, 401K plans, 403(B) plans, thrift savings plans, stock plans, retirement or pension plans, deferred compensation plans, defined contribution plans, defined benefits plan and annuities to which you are or may be entitled to receive benefits. State the name of the institution where the funds are maintained, the business address and phone number of the institutional custodian of the funds, the name and account number of each account, the balance of each account as of separation, the present balance, and whether you claim the funds are marital, separate or hybrid.
4. If you believe that your spouse is not fit to have custody or visitation with the child of the marriage, then state in detail what you allege to be the factors and circumstances which bring you to that conclusion including specific facts, actions, dates of occurrence, the persons involved and the persons witnessing such events.

5. Identify every person who has knowledge of the issues pending in this case, whether on the issue of the grounds of divorce, or on any financial issues such as custody, child support, spousal support or equitable distribution, stating their current addresses and their home and work phone numbers, their relationships to the parties involved; if the person will be called as an expert witness, state his or her name, address, telephone number and profession, and set forth the subject matter on which the expert is expected to testify, the opinion he or she will express, and a summary of the grounds for each opinion.

## REQUEST FOR PRODUCTION OF DOCUMENTS

In addition to interrogatories, you are also permitted to ask for documents in your wife's possession or documents she has ready access to. This is called a "Request for Production of Documents" and again an example is provided.

Please Provide:

1. All pay statements, or any other proof of income from any source, whether received from employers or from any entity in which you have an interest, reflecting gross income (whether taxable or non-taxable) and gains (realized or unrealized) and all withholdings, as well as income for overtime work, commissions, tips, bonuses and all contracts and/or correspondence evidencing any terms or conditions of employment that were in effect or were entered into from January 1, 2018 to the present.

All savings, checking, depository, investment or loan account statements, checks, and registers, reflecting deposits, withdrawals and account balances in any banking institutions, savings and loan association, credit union, brokerage accounts or accounts with other financial institutions or corporations, partnerships or businesses, whether such account has been held by you individually, jointly with any other person, or in the name of any entity in which you have an interest or that is held on your behalf, from January 1, 2005 to the present.

2. All summary plan descriptions and/or statements for each pension or retirement benefits plan, expense account, cafeteria plan, profit-sharing stock option plan, 401K plan, 403(B) plan, thrift savings plan, deferred compensation plan, IRA, Keogh, SEP or other retirement or pension plan, vested or non-vested, as well as any military pension plans, either by reason of employment with another or from any entity in which you have an interest from January 1, 2005 to the present.
3. All reports of any experts that you intend to call to testify at trial.
4. Any and all tangible evidence, including documents, correspondence, letters, video and/or audio tape recordings, photographs or prepared exhibits which prove, support or are relevant to your petition for custody.

## SUBPOENA DUCES TECUM

5. If your wife claims she has disposed of all of her statements, then another method of discovery is used. This is a Subpoena duces

tecum, which is a request to a third party to provide information. For example, we can send a Subpoena duces tecum to your wife's employer requesting documents that will provide information about her benefits and retirement accounts as well as copies of her last twelve months' pay records. While having to send a Subpoena duces tecum is an added expense, quite frequently it is very helpful in putting together accurate financial information.

## DEPOSITIONS

An expensive and less frequently used, but very effective discovery process, involves depositions. In a deposition, your wife is asked to appear with her attorney in your attorney's office and answer questions under oath before a court reporter and you. Depositions allow your attorney to ask your wife questions to gather further information and to lock in her testimony. Depositions are under oath and may be admitted as evidence in a court hearing, if the underlying questions are admissible. Depositions may also be taken of third parties such as new girlfriends or boyfriends, babysitters, teachers, accountants or other persons who may have information important to your case. Frequently, successful depositions can expedite settlement.

## MOTION TO COMPEL

What happens if your wife does not answer certain interrogatories or requests for production of documents, or other such discovery requests? Your attorney then files a motion to compel, asking the court to order her to answer appropriately the questions presented. Her failure to do so

after being ordered by the court could lead to a contempt hearing, and possibly attorney fees being paid for by the opposing party.

## ONE ACTION GETS AN EQUAL AND OPPOSITE REACTION

Remember that if you engage in discovery discussed above, it is very likely that your wife's attorney will immediately serve you and your attorney with the same or more extensive discovery requests which will require you to provide all the same information from your side. This will move your matter into a heightened litigious stage that is financially costly and, time intensive. Therefore, **PROCEED WITH CAUTION**. If you can work out an informal exchange of information between the parties it will be much more advantageous to moving the matter ahead quickly and less expensively. Of course, if you feel that your wife has not been forthcoming with all the necessary information then you will need to engage in a more formal discovery method, which requires that her responses be under oath under penalties of perjury.

## HOW YOU CAN RESOLVE YOUR DIVORCE

After all the discovery information is obtained, three options exist to resolve your divorce case. One option is to prepare a separation agreement containing terms that you want. The second option is to enter into mediation where you and your wife try to negotiate an agreement in the presence of a trained mediator. The third option is litigation, where you go into court, have a hearing, and a master/ judge rules on the outcome of your divorce. It is actually possible to engage in all three options or any one or two of them before your case is settled or tried.

### 1.

#### SEPARATION AGREEMENT

Let's begin with the separation agreement. This is a document, which records the resolution of financial issues and may include custody issues and any other matters that require resolution. Typically, 90 to 95% of all divorces ultimately conclude with a separation agreement; however, how one arrives at resolution is often a convoluted process. The Separation Agreement is often the result of negotiations, mediation, collaboration, and sometimes litigation.

Turning to the option of negotiation of a separation agreement, it is common that negotiations commence with one side providing the other side a written offer of the terms to settle the divorce. Then the other side responds with alternate terms of settlement. From here, the parties continue

to give and take until all of the issues are resolved. Remember, in negotiations, ultimatums and short response time limits are not looked upon favorably, as they make settlement of issues very difficult, if not impossible.

If the parties are able to resolve matters amicably through negotiations, then the end product will be a separation agreement, which outlines all the terms of settlement. This document will then become the final terms of your divorce and will constitute much of your Final Decree of Divorce.

This brings to mind a cardinal rule that during a divorce you should never sign any documents without first having them reviewed by your attorney. Agreements are binding documents and you must fully understand all the terms before you make the decision to sign or not. This is not the time to go it alone – you will not have another chance. Accordingly, it is very important that you not sign any such document until your attorney has approved it. I cannot stress how many times clients have brought signed agreements to me thinking that they could change the terms at a later time. You most likely will be stuck with the terms of a less-than-favorable agreement. The Pennsylvania Courts do not often set aside contracts, and the fact that the signer did not have an attorney or felt pressured to sign was emotionally depressed and/or incapable of saying “no” to the other spouse is seldom, if ever, sufficient grounds to legally undo a signed written agreement.

## RULES ABOUT SEPARATION AGREEMENTS

*First* –The only limitation on the terms of your Separation Agreement is the creativity of its authors. There is no legal limit to the creativity encouraged in providing solutions to complicated issues. Don't ever let an attorney tell you there is only one way to create a favorable outcome. The options are as varied as your and your attorney's abilities to envision.

*Second* -- A Separation Agreement is a private contract between you and your wife. **DO NOT WRITE AND SIGN YOUR OWN SEPARATION AGREEMENT WITHOUT HAVING IT REVIEWED BY AN EXPERIENCED DIVORCE ATTORNEY LOOKING OUT SOLELY FOR YOUR LEGAL INTERESTS. YOUR WIFE'S ATTORNEY CANNOT REPRESENT YOU!**

*Third* -- Custody, Visitation and Child Support are always subject to change, so don't bargain for assets in exchange for less child support or give up assets to obtain custody of your children. Even if your wife says she will never try to keep the children from you – she can file anytime for a modification of custody and get in front of the court requesting just that. Even if she agrees to support lower than granted by Domestic Relations or agrees to accept it privately from you and not via a wage attachment, she can file at Domestic Relations anytime to request all of these orders from the court.

*Fourth* -- In your Agreement, make sure you include times and dates when things are going to be completed. "Time is of the essence" may be the most important five words you use



with regard to transactions that need to be completed by the parties.

*Fifth* -- Details are very important and add clarity. Be careful of broad strokes! Vagueness may create huge misunderstandings, which can be exploited by your ex and expensive to resolve.

## 2.

### MEDIATION

A second method of resolving the terms of a divorce is mediation. Mediation is a process where you and your spouse meet with one or more mediators to discuss and ultimately resolve the issues of your divorce. If the parties agree, they may bring their attorneys to their mediation sessions. My advice to parties who choose the mediation process is to meet with their attorney in advance and develop an outline of the issues and an acceptable range of terms of agreement with regard to each issue. Going into mediation unprepared can be very costly.

## 3.

### LITIGATION

The least favorable and most expensive process for getting divorced is the litigation model (i.e. fighting it out in court). Oftentimes one party is forced into the litigation process because the other party will not resolve issues fairly. When this occurs, you will have a hearing before a Master where evidence will be presented on your behalf and on behalf of

your spouse. The Master will make a recommendation regarding each and every issue presented to him or her, and this recommendation will become a Court Order if neither party files exceptions, after the issuance of the recommendation. The most important thing about litigation is to make sure that you and your attorney are fully prepared for the process. There are many strict deadlines for providing information to each of the parties and to the court, which, if not followed, can be disastrous to your case. Accordingly, if you anticipate litigation, then you will need to be able to provide the time to become adequately prepared. Testimony must be accurate and detailed, so the Master understands the numbers and has what he needs to give you what you want. You have this one opportunity to present evidence to the court. Be prepared and make sure you and your lawyer anticipate all the issues and evidence on your side and on her side. Don't be blindsided by her testimony. PREPARE YOURSELF.

After your divorce hearing, if either party is unsatisfied with the master's recommendation, the attorneys can file Exceptions to the recommendation. The Judge would then hear the Exceptions, with the attorneys arguing the case and the Judge reviewing the transcript of your divorce hearing. No additional testimony is taken at this level. The Judge would then issue a decision based upon the Exceptions filed by your attorney. The Appellate process, after the Judge's decision, goes on to the Superior Court of Pennsylvania, which usually takes between six months and a year and can be quite costly. Additionally, the Appellate Courts do not readily overturn decisions of the County Courts; you must have sound legal grounds for your appeal.

**4.**

**COLLABORATION**

The collaborative divorce process is very new to Pennsylvania and permits couples to work through issues involving their children, their financial future and their property using joint problem-solving techniques without going to court. With the help of supportive professionals serving in the capacity of coaches, child specialists, and financial specialists, the clients, their attorneys and all the other professionals work together to achieve an agreement that addresses the interests and priorities of both spouses as well as the family as a whole. Collaborative divorce requires two attorneys who have been specifically trained and is not commonly available throughout Pennsylvania at this time. For more information about collaborative divorce, go to:

[www.gocollabrativelawpa.com](http://www.gocollabrativelawpa.com)

## FINANCIAL ISSUES INVOLVED IN DIVORCE

When prospective clients come to see me, they want to know what they will have to pay to their wife and what assets they will have to give up. In order to provide this information, it is necessary to know many financial matters. Among them are the reasons for the divorce, the number of years of the marriage, the number of children and their ages, what real estate is owned, how and when it was acquired, what kind of life and health insurance they have, and what are the other assets of value and debts. I also request a narrative regarding each party's contribution to the marriage, each parent's role in raising the children, and the relative incomes of the parties. For a non-working spouse, the court will be interested in the non-monetary contributions of the party to the marriage. This includes contributions such as buying and preparing food, cleaning the home, doing the laundry, yard work, repairs, bookkeeping, caring for children, and so on. With this information, a beginning framework of financial issues may be crafted.

### SPOUSAL SUPPORT/ALIMONY PENDENTE LITE

If you leave the home, you may be responsible for spousal support/alimony pendente lite. You should not move out of the home without a plan of action agreed upon by you and your lawyer. Ask your attorney about the Pennsylvania Rules with regard to spousal support and APL (alimony pendente lite). Each county in Pennsylvania has specific rules with regard to the entitlement to spousal support and you don't want to be liable for this monthly obligation if you can avoid it. In Pennsylvania, there are three types of support awards available in divorce: spousal support, alimony pendente lite (APL), and alimony. Understanding the differences between the three can help determine what you may have to pay. The

differences between spousal support and APL can be somewhat confusing since they are both pre-divorce relief and are calculated in the same manner. Pre-divorce relief means that it is filed for prior to the divorce being finalized. Spousal support does not even require that a divorce complaint be filed, just that the spouses are living apart. You need to be concerned about spousal support right away as it will immediately affect your day to day financial situation. There are defenses for spousal support claims. If your wife caused the separation to occur by engaging in a marital fault or kicking you out of the house, you might be able to use that as a defense. Unfortunately, in those cases, you may find that your spouse will then just file for the divorce because then she may be eligible for APL, for which there are very limited defenses.

Both spousal support and APL are calculated pursuant to the Pennsylvania Guidelines and are based upon your monthly net income and that of your wife. The guidelines call for the following calculations: Obligor's monthly net income minus any child support obligations of obligor and alimony obligations not part of this action, minus Obligee's monthly net income. Take that difference, multiply by thirty-three and one-thirds percent ( $33\frac{1}{3}\%$ ) for the preliminary amount of monthly support or APL with no children involved. If there are minor children of this marriage, then the support award is 25%. See below for example. Additional child support obligations to children of this family and any other children do affect the calculation, so you need to take this into account when trying to estimate your potential obligation to your wife.

## EXAMPLE:

### *Husband as Obligor and Wife as Obligee*

- Husband's Monthly Net Income- \$3100
- Wife's Monthly Net Income- \$1000
- Difference- \$2100
- Multiply by  $33\frac{1}{3}\%$ - \$700- preliminary amount of support owed

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## ALIMONY

Your wife, as part of the divorce complaint may request alimony, which starts after the divorce is final. In determining the appropriateness of and the length of alimony in a final divorce hearing, there are 17 factors outlined in the spousal support section of 3701 of Title 23 of the Pennsylvania Code. It is helpful to go through each of the factors and write out your response to why the factors should not apply in your case so that your attorney can prepare your case against your wife's request for the same.

*The Court must consider the following factors to determine Alimony.*

## FACTORS:

1. The relative earnings and earning capacities of the parties.
2. The ages and the physical, mental and emotional conditions of the parties.
3. The sources of income of both parties, but not limited to, medical retirement, insurance and/or other benefits.
4. The expectancies and inheritances of the parties.
5. The duration of marriage.
6. The contribution by one party to the education, training or increased earning power of the other party.
7. The extent to which the earning power, expenses or financial obligations of a party will be affected by reason of serving as the custodian of a minor child.
8. The standard of living of the parties established during the marriage.
9. The relative education of the parties and the time necessary to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment.
10. The relative assets and liabilities of the parties.
11. The property brought to the marriage by either party.
12. The contribution of a spouse as homemaker.
13. The relative needs of the parties.
14. The marital misconduct of either of the parties during the marriage. The marital misconduct of either of the parties from the date of final separation shall not be considered by the court in its determinations relative to alimony; except that the court shall consider the abuse of one party by the other party.

15. The federal, state and local tax ramifications of the alimony award.
16. Whether the party seeking alimony lacks sufficient property, including, but not limited to, property distributed to provide for the party's reasonable needs.
17. Whether the party seeking alimony is incapable of self-support through appropriate employment.

One of the standard questions I receive during consultations with clients is how long will my wife be entitled to receive alimony, if qualified. While there are no absolute rules or presumptions in Pennsylvania, the purpose of alimony is to ensure the needs of a party, who is unable to meet his or her economic needs through suitable employment, are met. Alimony should not be seen as a punishment for one party and a reward for the other. It is simply meant to provide for life's necessities. So, you need to discuss your County's practice about alimony awards.

If the parties do not reach a marital settlement agreement, then the Master will make a decision as to the applicability of alimony, the amount and the term. Unlike child support and spousal support (pre divorce decree), there is no statewide formula for alimony awarded by final divorce decree.

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## EQUITABLE DISTRIBUTION

How Pennsylvania divides marital property (which includes all material possessions acquired by the parties during the marriage other than non-marital property) between spouses



is determined by Section 3701 of Title 23 of the Pennsylvania Code. There are two basic types of property in Pennsylvania: marital property and non-marital property. The definitions of these two types of property are very important, and your understanding of them is critical to your understanding of who gets what in your divorce.

In your court case, it is up to the attorneys to identify all of the property of the marriage and then assist the Court with evidence to show whether the property is non-marital or marital. The Court assumes that all property acquired during the marriage is marital, unless proven otherwise by one of the parties. The legal definitions of the types of property are as follows:

**NON-MARITAL PROPERTY:** This includes all property owned by one spouse prior to the marriage or after separation, or property acquired during the marriage by gift or inheritance from other than your spouse. Thus, if you received \$25,000 during marriage from your grandfather's estate and placed solely in your name at the bank it will be your bank account. However, if the bank account increased in value during the marriage, the increase is marital property.

**MARITAL PROPERTY:** This includes all property, not otherwise non-marital, acquired during the marriage, regardless of the name on the title and any increase in value of pre-marital property during your marriage. This means that if you bought a boat in your name during the marriage, with funds earned during the marriage, the boat is a marital asset, even though it may be legally titled only in your name. Likewise, the gold bracelet that you gave your wife for Christmas as a gift is a

marital asset, notwithstanding the fact that it was a gift from you to her.

Once all the assets and debts of the marriage are identified and the nature of their identity is determined, we must value the assets for the purpose of equitable distribution. Different assets are valued in different ways. For instance, a car would be valued by its Blue Book

value, whereas a home's value would normally be determined by an appraiser, or a couple may agree to use the county assessed value of the real estate. Experts may be called in to determine the value of antiques, unless the parties agree on their worth pension are valued by actuarialist.

Perhaps the most difficult evaluation issue arises from the ownership of a family business or a sole proprietorship. Evaluation experts are often required to value such assets, adding greatly to the expense of a divorce.

With real-estate assets, you are not only valuing the marital residence, but you may well have to value vacation homes, timeshares, and interests in rental homes.

The next class of assets is personal property like dishes, lamps, televisions, and furniture. Personal property must be identified and valued before being distributed. Usually we use an auctioneer to value everyday personal property.

With regard to personal property, the value is not what you paid for it but rather, what it is worth on the market today. For most people, their personal property will have relatively little value. An example might be the large screen television you

originally bought years ago for several hundred dollars, which now may only be worth a few dollars due to technological changes. With regard to personal property, it is always best for the couple to try to work out how they are going to share items rather than involving the Court or their attorneys. If the parties cannot come to an agreement there are methodologies used including alternating choices after flipping a coin to determine who goes first in selecting personal property.

After the assets have been identified and valued, then the court will determine how those assets are to be distributed between the parties or the parties can agree to a distribution. The courts view a marriage as an economic partnership, and all monetary and non-monetary benefits of the marriage should be shared by the parties equitably, but not necessarily equally. The Courts MUST, and therefore you should consider the following factors to determine what the equitable divisions of marital assets are in your case:

## 13 FACTORS

1. The length of the marriage.
2. Any prior marriage of either party.
3. The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties
4. The contribution by one party to the education, training, or increased earning power of the other party.
5. The opportunity of each party for future acquisitions of capital assets and income.
6. The sources of income of both parties, including, but not

- limited to, medical, retirement, insurance or other benefits.
7. The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.
  8. The value of the property set apart to each party.
  9. The standard of living of the parties established during the marriage.
  10. The economic circumstances of each party at the time the division of property is to become effective.
  11. Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain.
  12. The expense of sale, transfer or liquidation associated with a particular asset, which expense used need not be immediate and certain.
  - 13 Whether the party will be serving as the custodian of any dependent minor children.

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## RETIREMENT ACCOUNTS

In Pennsylvania, retirement accounts such as: 401(k) plans; 403(b), pensions, annuities and IRAs are also divided equitably. So even though you were the one going to work each day while your wife was at home, she will receive her equitable share of your retirement accounts, which were earned during the marriage. Likewise, if your spouse has a retirement account - You will receive your equitable share of her account earned during the marriage.

To determine how they will be divided, the critical dates are: the date of hire, the date of marriage and the date of separation. The formula for retirement plans is as follows: the numerator (number on top) is the total number years that husband/wife was employed with the company during the marriage to the date of separation. The denominator (or bottom number) is the total number of years employed with the company. That is multiplied by the percentages of equitable division the court or the parties have determined for your case, times the benefit received (or amount in the account).

There are issues such as what date will be used to value pensions and 401Ks that require more detailed discussion with your attorney.

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## TAXES

There are many tax implications regarding actions taken during a divorce that are not discussed in this book. You should have a tax discussion with your attorney and your accountant to ascertain possible tax issues that may arise in your divorce. Below are just a few issues to get you started thinking about what matters you need to discuss with your tax expert.

## IMPORTANT TAX CONSIDERATIONS

**DEPENDENCY EXEMPTION:** You and your wife must determine who gets to use your child's dependency exception. The law gives the exemption to the custodial parent but allows parents to agree to different terms using IRS Form 8332. In numerous situations this exemption may be used as a bargaining chip to save one parent money, leaving more money available for child support. In most cases it is best to sign the form yearly, rather than permanently transferring the exemption because circumstances can change.

**HEAD OF HOUSEHOLD FILING:** It is possible to structure your joint custody agreement when there is more than one child, so that both parties can file as Head of Household.

**CHILD CARE CREDIT:** If you are the primary custodial parent, you may be entitled to a childcare credit for the monies paid for daycare.

**MEDICAL AND DENTAL EXPENSES:** Either parent may claim expenses incurred by them for medical or dental treatment on the itemization schedule that is above the designated percent of adjusted gross income.

**CHILD SUPPORT VERSUS ALIMONY DEDUCTIONS:** Be sure to clarify what money is being paid as child support because child support is not deductible or taxable, whereas alimony or non- allocated designated money meant to cover both is deductible and taxable if created by an order prior to January 1, 2019.

**CAPITAL GAINS:** It is important to establish the tax basis for all assets so that you can properly assess your tax liability should the assets be sold. However, property transferred between spouses during a divorce is generally not taxable.

## HOW TO GET THE MOST OF YOUR KIDS CUSTODY IN PENNSYLVANIA

The custody law has some terms commonly used in custody matters. It is important to understand what these terms now mean in order to understand what you are asking the court to do and to understand the custody order once it has been issued. **Legal custody** refers to having the ability to make major decisions about your child's medical, religious, and educational choices. This is usually shared between parents whenever possible. **Partial Physical custody** refers to where your child is at any given time.

Given the emotional nature of custody, it is important to take a step back and think about what is best for your child. Talk with your attorney to make sure you fully understand the ramifications of the custody order.

The court values a father who is FULLY INVOLVED in his children's lives. While courts do look at the history of who cared for the children during the marriage, they also must look at the future. Therefore, if you weren't an engaged dad before the separation, now is your chance to change your role and get involved. Get a fresh start with your kids - DO whatever you can with them. Go to the parent teacher conferences, go to the doctor appointments, coach the softball team for your daughter, take them to the park like you said you always wanted to but didn't have time. You need to make yourself an active parent and be there for the stability of your children's lives. With that involvement will then follow the recognition by the courts that you need to have more time with the kids. It is



a WIN –WIN situation; you get more time with your kids and your kids are happy because they have an active dad, who spends time with them, sometimes even just hanging out. Step it up whenever and wherever you can.

On the other hand, if your wife is falling down on the job because she is busy being entertained by her new lifestyle – KEEP TRACK OF HER and the effects she has on your kids. Keep a journal – what days do you have the kids, is she calling you to come get them when she wants to go out, is she dropping them off at friends' houses on her days, does she drop them early at your place, are the kids struggling in school since the separation, has she dropped the ball on being the dynamo mother she was when you all lived together? All these points can be raised at your custody conference.

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## IMPORTANT: THE CARDINAL RULES ABOUT CUSTODY

1. “The best interest of the child” is the guiding principle in custody cases. Because the best interest of the child means something different to every participant in a custody trial, don’t presume your point of view is the same as the judge’s.
2. Always refer to the children as “our” children, not “my” children or “my” child.
3. Never, ever, ever, talk disparagingly about the child’s mother to, or in the presence of, one of your children. If your child asks you a question and the honest answer requires you to address a less than flattering aspect of your spouse, speak to your child’s therapist

about how best to respond.

4. The court knows that you and your wife may differ in your philosophies of how to raise the children. The court realizes that you have differences in how rules are enforced, how you punish the children, and how you treat the children. The court does not intend to impose one parenting style over the other, so try and communicate and work with your soon- to-be ex. If you cannot communicate with your wife about the children, then talk with a children's mental health expert about how to handle specific issues.
5. If you believe that you are going to be in a contested custody case, you need to see an attorney experienced in contested custody cases immediately, so this person can give you advice on what to do, and just as importantly, what not to do.
6. Courts look disapprovingly at restricting access to a child. If the mother has custody and restricted the child's access to his father, the court should grant more custody rights to the father.
7. Let me say again: Introducing new girlfriends into the life of a child before being divorced is potentially dangerous and damaging to your child and, therefore, to your custody case. Short answer: don't do it!
8. If you have already started a romantic relationship, do not have your romantic partner spend the night when the children are there, even if you think they don't know because they are asleep.
9. On your wife's weekends with the children resist the urge to jump-start your social life and/or heal your broken heart with frequent late nights out. This behavior will be used against you.
10. Custody is about CHILDREN, not fault. Use words like co- parenting, parenting time, not custody or visitation, when speaking with your spouse.

11. Never ever, ever move out and temporarily leave your children with their mom. This is a sure way to lose physical custody.
12. Don't move out with the children unless you have a detailed plan of action coordinated with your attorney; even then, you are at risk of losing physical custody.
13. Do not let off steam by venting to your children's teachers, coaches, etc., about your ex. You do not want to appear to be the angry ex in court. If she is all those things, they already know it.

Aside from your attorney, the Internet is the number one provider of information to fathers trying to obtain custody. One merely has to Google "father's rights" or "children's rights" to see the vast amount of information that is available online to parents. Take a look at what is out there and discuss this with your attorney if applicable to your situation. Be careful though – custody is state specific and often times even county specific in its application. So, something that is important to obtaining custody in Arizona may not be applicable in any way in the Pennsylvania courts.

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## HOW TO CALCULATE CHILD SUPPORT

Pennsylvania has adopted a child support model that is formulaic and is based on the number of children, the amount of shared custody if any, and the relative incomes of the parties. The established guidelines to determine the appropriate amount of child support in each case can be found in Title 231, section 1901 of the Pennsylvania Code. To estimate child support obligation, go to:

[www.humanservices.state.pa.us/csws](http://www.humanservices.state.pa.us/csws).

## ABOUT THE AUTHOR



Pennsylvania Divorce Attorney Connie J. Merwine has devoted much of her career to complex divorce and contested custody cases.

Attorney Merwine's career in the law had early promise when she won the Monroe County Law Day Essay Competition at age 17, when she was just a junior at Pleasant Valley High School in Monroe County, PA. She went on to win many scholastic achievements, including National Honor Society in high school and Phi Beta Kappa in college. Determined to get started with her career as an attorney, she graduated from college in three years; obtained her Certified Public Accountant license while in law school and graduated second in her law school class. She is unmatched among her peers in scholastic achievement and accolades. Here are some of her accomplishments:



Lehigh University, B.S.in  
Accounting, Highest Honors



Dickinson School of Law –  
J.D. magna cum laude



Georgetown University  
Masters in Taxation.



University of Pennsylvania –  
Masters in Liberal Arts

*Certified Public Accountant since 1988.*

Married, and the mother of three children, Attorney Merwine has practiced law for over 30 years, almost exclusively in the field of family law. The edge that she brings to her clients who are forced to divide family assets and businesses is that she is a CPA and numbers expert who is able to garner financial advantage for her clients in property settlements, spousal support, child support and pre-nuptial agreements. Attorney Merwine is an adjunct professor at a local college. Not only is she top-rated by her peers on lawyers.com but by her clients as well, with a 10 out of 10 rating on Avvo, and a 4.3-star rating on google. This book was written as part of her constant quest to achieve the best possible results for her clients.

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## **ABOUT THE AUTHOR:**

“My name is Connie J. Merwine. I have focused my practice on family law and have written this book men. I first wrote a book for women but my men clients complained profusely. They explained their need for guidance and some of the disadvantages they faced because of their gender. After seeing some dumb mistakes that my clients make and some of the traps they fall into, I felt compelled to write this book for their guidance.”



Connie J. Merwine's is an outstanding lawyer that not only has a law degree, but is a certified public accountant, with a master's degree in taxation. This book shows you why it's a big advantage to having someone with notable credentials to be your divorce lawyer. This book helps men in Pennsylvania understand their rights and gives them a no-nonsense guide on how to handle their divorce.

## **WRITTEN IN CLEAR LANGUAGE, THIS BOOK INCLUDES THE FOLLOWING:**

- The 10 biggest mistakes men make in divorce.
- How to get a game plan for divorce.
- 42 financial records you need to secure.
- 18 questions to consider before hiring your divorce lawyer.
- How to get the most custody of your kids.
- Overview of the divorce process.
- The grounds for divorce.
- 17 factors used to determine alimony.
- 13 factors used to determine equitable distribution.
- Resource guide to help through your divorce.

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