

What Every Woman in
PENNSYLVANIA
Should Know About
DIVORCE



MHK ATTORNEYS

What Every Woman in
Pennsylvania
Should Know About
Divorce

MHKATTORNEYS

WHAT EVERY WOMAN IN PENNSYLVANIA SHOULD KNOW ABOUT DIVORCE

Copyright © 2021 by Connie J. Merwine, Esq.

All rights reserved. No part of this book may be used or reproduced in any manner whatsoever without written permission of the author.

Printed in the United States of America.

ISBN: 978-1-59571-663-7

INCLUDING:

- ◆ 25 important truths for women confronting divorce.
- ◆ Steps to take to prepare for divorce.
- ◆ 42 financial records with which every woman should be familiar.
- ◆ 15 questions to consider before hiring your divorce lawyer.
- ◆ Stages of divorce.
- ◆ Overview of the divorce process.
- ◆ 17 factors used to determine alimony.
- ◆ Factors Used to Determine Equitable Distribution

CONTENTS

Warning and Disclaimer	i
“Who Wrote this Book &	
Why Should I Listen to the Author?”	iii
25 Important Truths for Women Confronting Divorce	1
Take as Much Time to Plan Your Divorce	
as You Did to Plan Your Wedding	5
Financial Records with which Every Woman	
Should Be Familiar	7
In Marriage and Divorce, Look Before You Leap:	
15 Questions to Consider before	
Hiring Your Divorce Lawyer	9
Stages of Divorce	15
So, Let’s Get Started: The Bare Essentials	19
Getting the Divorce Started: Who Should File First?	21
“What Does the Divorce Process Actually Entail?”	23
Grounds for Divorce: What Is the Underlying	
Reason for the Divorce?.....	25
Fault	
Willful and Malicious Desertion	
Adultery	
Cruel and Barbarous	
Treatment Bigamy	
Felony Conviction	
Indignities	
No-Fault	
Mutual Consent	
Irretrievable Breakdown	
Fault or No-Fault?	
Affirmative Defenses to Fault Grounds	

Gathering Information	31
Discovery Process	
Request for Production of Documents	
Subpoena Duces Tecum	
Deposition	
Motion to Compel	
Resolving the Divorce	37
Separation Agreement	
Mediation	
Litigation	
Collaboration	
Financial Issues Facing Women in Divorce	43
Spousal Support/ Alimony Pendente Lite	
Alimony	
Equitable Distribution	
Retirement Accounts	
Taxes	
Custody/Visitation	51
Sample Petitions	56
About the Author	63

Warning and 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, I would be happy to meet with you and discuss whether or not you need an attorney.

A handwritten signature in cursive script that reads "Connie F. Merwine". The signature is written in a dark ink and is positioned in the lower right area of the page.

“WHO WROTE THIS BOOK AND WHY SHOULD I LISTEN TO THE AUTHOR?”

Relax. Slow Down. Breathe. It's going to be okay. The prospect of going through a divorce may seem daunting but take a deep breath and begin the process one baby step at a time. I have seen women go through the process and come through stronger and sleeker, lightened and relieved of baggage, feeling freer and more unencumbered.

If you are a woman contemplating or confronting divorce, you don't have to do it alone. Help, guidance, and information to empower you are readily available. 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 organize and structure your life into manageable parts abound in our community, so that your divorce does not seem so daunting and overwhelming.
3. That understanding the laws that govern divorce and understanding the process of divorce helps relieve the stress of divorce. Knowledge is power!

My name is Connie J. Merwine. I have been a lawyer since 1988 and have been representing families in 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 representing families in trying times and I wrote this

book for women because I sensed a need for women to have a strong, confident, knowledgeable attorney on their side during the most emotional time of their life. I also sensed a need for women to be educated when going through the divorce process and have guidance as they navigate through the divorce process. I work to give them a sense of confidence and a feeling of support.

I wrote this book to provide the handbook, not only for my clients, but also for other women, to give them guidance in each of their unique situations. 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 Women's Studies and a Master's Degree in Taxation. I am able to provide unique guidance to women who are confronting a momentous time in their lives and are often caught between various confusing emotions and conflicting loyalties. If you are like most women, you are trying to make sense of the prospect of change – for you, your children, your extended family and your friends.

MY PROMISE TO YOU

You are in the right place at the right time because we will empower you. You will have answers to more divorce questions than most women ask. And odds are that you will not only know more than your husband, but that you will also know more about getting divorced than 99 percent of the men who inhabit this planet!

25 IMPORTANT TRUTHS FOR WOMEN CONFRONTING DIVORCE

As we get started, I want to share some basic truths about divorce that I have learned while helping women get divorced.

1. Look out for yourself first! If you're okay, your kids will be okay. Just like on an airplane, you need to give yourself oxygen so you will be able to give it to them.
2. Never ever let him know you FEAR going to court! Embrace the court; it can be your best friend.
3. Turn his voice off in your head. He is no longer the authoritative figure in your life; you are.
4. Don't be predictable. In fact, do the unexpected; it throws him off balance. He will see he is dealing with someone new – a stronger, more focused, more autonomous you.
5. Don't sign anything! Unless your attorney says it's okay and you understand the ramifications, do not sign *anything*.
6. When you negotiate, listen! Then take time to discuss with your "board of advisors." Listening is the key. Know what you are confronting. Listen to the nuances and underlying agenda.
7. When in doubt, do nothing. Then, talk to a divorce professional (mental health provider, divorce financial professional, or divorce lawyer).
8. When he says, "Trust me" DON'T!

9. F.E.A.R. – “False Expectation Appearing Real” – Write out your worst-case scenario and then write out how you will overcome it. Then the F.E.A.R. evaporates.
10. CHOOSE Wisely! You can CHOOSE to be the victim, or you can CHOOSE to move on with your life. No one, and I mean no one, can make that choice for you.
11. Nobody will look out for you like you will. The best attorney in the world cannot know or care as much about your outcome as you do, so partner with your attorney, set achievable goals and keep communicating with your attorney.
12. 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. Protect and love them like only a mother can.
13. Divorce is about outcome, not fault. See the big picture.
14. Custody is about CHILDREN, not fault. Use the term co-parenting, not custody or visitation, when speaking with your husband.
15. The “law” is not always fair; it is “the law.”
16. It’s not called the “Fairhouse.” It’s called the “Courthouse.” Your attorney will help you understand your case in this unfamiliar venue.
17. Be observant and resourceful. Gather documents like tax returns, pension statements, bank accounts, and anything that helps prove your financial situation.
18. Read the actual laws governing spousal support, child support, custody, and property division (called “equitable distribution”).
19. Take down your Facebook, Twitter, and other social networking pages. Make sure to print a copy of his Internet pages or other signs of Internet dalliances.

20. Get your own new e-mail account with a brand-new password! Still, be careful what you send into cyberspace because most of this can be traced!
21. Never ever move out and temporarily leave your children with their dad. It is a sure way to lose physical custody. Always do and be what best serves your children.
22. Don't move out with the children unless you have a detailed plan of action with your attorney. Even then, understand that this may put you at risk of losing physical custody. This should only be done after careful consultation with an attorney who fully understands your situation.
23. If you do not have children but need spousal support, don't leave 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 your entitlement to spousal support and you don't want to jeopardize your opportunity to receive spousal support by making an impetuous decision to move out. This could affect your financial security.
24. Be cognizant that the only limitation regarding the terms of a Marital Settlement Agreement is the creativity of its author.
25. Your Marital Settlement Agreement is your Constitution, your Bill of Rights and your Declaration of Independence, all written up in one agreement. Make sure an experienced divorce attorney reviews it on your behalf BEFORE YOU SIGN 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

TAKE AS MUCH TIME TO PLAN YOUR DIVORCE AS YOU DID TO PLAN YOUR WEDDING

STEPS TO PREPARE FOR DIVORCE

1. Consult an attorney about your legal rights.
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 husband 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.
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. Before you separate, use joint funds to repair your automobile and home, if you want to keep it, buy clothes for yourself and your children, and get needed dental work and medical checkups. If you wait until after separation, those expenses will be yours alone.

10. Apply for credit cards in your own name. If possible, obtain credit cards with check writing privileges.

11. After separation, 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 husband's charges on accounts.

12. Open a post office box that you can use for your mail before you separate and while you are in the process of divorce.

13. 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.

14. Divorce is scary, but it will be less so if you figure out the worst that could happen and decide in advance how you will deal with it. Investigate community resources that are available to you.

15. Explore your career options. Use the crisis of divorce to catapult yourself into a more satisfying future.

16. Begin negotiation discussions with your husband, as calmly as possible. Find out what his hot buttons are and where he is willing to make concessions.

17. Talk to family and friends who have recently been through a divorce. Get a feel for the territory you will be crossing.

18. Find a good therapist or support group to help you through the months ahead. Divorce is too traumatic to go through it alone.

19. Take your time and don't rush matters. Planning for divorce is best done deliberately and slowly. This is your chance for a new beginning.

FINANCIAL RECORDS WITH WHICH EVERY WOMAN SHOULD BE FAMILIAR

1. Net worth statement.
2. Copies of all notes signed by yourself and your husband (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.
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 retail merchants and any other applicable 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. Prenuptial Agreements.
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 income- lawsuits, patents, copyrights, trademarks, rights to royalties.
42. Timeshare information

IN MARRIAGE AND DIVORCE, LOOK BEFORE YOU LEAP

15 Questions to Consider Before Hiring Your Divorce Lawyer

For most people, choosing a divorce lawyer is a daunting task. You are about to embark on an unfamiliar and treacherous journey through the legal system. And to make things worse, you have to do this while you are in the grip of extreme emotional turmoil.

Guiding you through this traumatic life experience should be 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.

Throughout the selection process, remind yourself that all lawyers are not created equal. Protect yourself by carefully considering the following fifteen questions before parting with that retainer check:

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

Choose a lawyer who practices exclusively, or at least primarily, in the area of matrimonial and family law. This is a constantly evolving, highly complex area of practice. You need a knowledgeable and experienced lawyer in your corner, who is intimately familiar with the intricacies of divorce law and related matters. You cannot leave the welfare of your children and your future financial security 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 a golden opportunity to assess whether the attorney will treat you with compassion and dedication, or whether you will be just another number in his book and a faceless file stacked in the corner of his cluttered office. If the lawyer is checking his e-mails, typing away on his cellphone, or taking other calls during your meeting, you should go elsewhere.

3. DOES THE LAWYER HAVE AN OFFICE POLICY ENSURING THE 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 does his or her 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 him or her. 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 without feeling threatened in any way.

6. DOES THE LAWYER TREAT YOU WITH COMPASSION AND EMPATHY?

Make sure that the lawyer treats you as the unique individual that you are. A good lawyer will be eager to listen to your marital history and will make sure to understand your priorities and objectives fully, without being in a rush to help you into categories or hurry you out the door.

7. 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.

8. 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.

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

Only a very small percentage of divorce cases actually go to a hearing. The vast majority of cases are settled, some on the Courthouse steps on the very day of trial. 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.

10. IS THE 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 with regard to their and their families’ futures.

11. 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.

12. 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.

13. DOES THE LAWYER UNDERSTAND 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.

14. DOES THE LAWYER PRESENT HIMSELF OR HERSELF 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, the legal documents that he or she prepares on your behalf will most likely reflect that. The work product on your case will not be thoughtful, cogent or organized either. You want an attorney who cares enough to present himself or herself, the staff, and the office in a professional manner.

15. 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 or 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?

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 precious energy on disagreements with your lawyer. So, be sure to hire the right lawyer right from the start and save yourself the agony of lost time, big bills, and endless frustration.

STAGES OF DIVORCE

Divorcing persons move through a natural progression of stages, with each experiencing these stages differently. (Some may skip a stage or two). Since divorce adjustment has its roots in the marriage, that is where we will begin.

STAGE 1: DISILLUSIONMENT

Disillusionment begins when two spouses realize there are some very real differences between them. The person who was to fulfill almost all one's expectations, needs, and ideals turns out to be depressed, sloppy, boring, unaffectionate, anti-social, uncaring, insensitive, etc. While these thoughts and statements intrude on the happiest of marriages, prolonged time spent dwelling on them sows the seeds of destruction.

STAGE 2: EROSION

This state is characterized by a chipping away of each other's egos. One or the other says, "I'm not getting enough out of this marriage." Sometimes, a careful vigilance is maintained to make sure that one does not give any more than the other. The concentration in this period is on taking rather than giving, being loved instead of loving. Sex becomes a battleground where frigidity or impotency expresses the frozen anger.

STAGE 3: DETACHMENT

In the detachment stage the couple no longer cares enough to hate or fight. Each feels a low commitment to the relationship; they barely talk, avoid physical affection or sex, don't look into the others' eyes, etc. This period is not so much one of an intensified conflict as it is increasing boredom with the conflict. The coldness that was at first withholding of love has become habitual and natural. Emptyhulls of people pass each other in routine. The detached person begins to dream of his or her own future without the spouse.

STAGE 4: PHYSICAL SEPARATION

For those who have spent a long time preparing to get divorced by building up the courage to leave an intolerable marriage, the physical separation can bring enormous relief. For those who are unprepared and still emotionally involved with the spouse, physical separation can cause shock. Most newly separated persons have to face the loneliness, anxiety, initial confusion and fears.

American culture nourishes insidious fears of loneliness. Being alone with one's self represents nothingness, a void to most people. We are learning that loneliness can also be creative. Out of loneliness comes strong determination, courage and deep commitment. Anxiety is another common emotion following physical separation – fear of the unknown. The future is uncertain. Many divorcing individuals change their vacations, lifestyles, residences, and friends. The separated person may worry about meeting financial needs, about being attractive to the opposite sex, about the effect of divorce on children, etc. Separation brings new anxieties.

STAGE 5: MOURNING

Mourning is a web of anger, hurt, loneliness, relief and helplessness. Mourning helps rid one of ghosts. A person says, "I can't go back... but I can't go forward." He or she wants intimacy but feels that he or she cannot handle it. In this stage, the divorcing person moves from no goals to concrete goals. He or she will take off the wedding ring, rearrange the furniture and "clean out the old house," and begin as a single person. Mourning during divorce may unleash anger. Releasing anger is a necessary part of divorce. Depression may also accompany mourning.

STAGE 6: SECOND ADOLESCENCE

Instead of looking back on the former spouse with anger and attraction, during this stage the person is concentrating on his/her personal growth. Choices begin to increase. Vision clears. The excitement of possible new adventures and new risks create an almost adolescent state. Previous areas of deprivation, whether sexual, travel, fun, hobbies, friends, or training are often vigorously pursued.

Dating often renews old adolescent feelings. "Is he/she going to call? Will he/she accept the invitation? Are my social skills okay according to today's standard?" A divorcing person may feel considerable intrigue and excitement during this stage.

STAGE 7: EXPLORATION AND HARD WORK

With renewed vitality, the divorcing individual begins earnestly to pursue self-chosen goals. Instead of seeing overwhelming, unreachable future aspirations, a plan of action toward manageable, reachable goals is implemented. New relationships are formed; old ones with children are enhanced. You may feel a new confidence, a sense of being master over your life.

So, Let's Get Started

THE BARE ESSENTIALS

HOW DO I GET HIM OUT OF THE HOUSE?

Of all of the issues we will discuss, this is among the toughest to answer. A Protection from Abuse Order issued by the Court of Common Pleas is available to abused spouses; but short of abuse you can't make him leave and most judges simply won't kick him out. Adjust accordingly for the time being.

YOU MAY ASK, "WHY CAN'T I KICK HIM OUT OF THE HOUSE? HE IS MAKING LIFE MISERABLE FOR ME AND THE KIDS!"

Perhaps no issue is more vexing than when your family is headed for divorce and you want your husband out of the home. There are simply no easy answers to resolve this matter. The courts are very reluctant to remove anyone forcefully from his home unless there is very clear evidence of physical threat. The underlying reason for this goes back to the old English common law that your home is your castle and the king was unable to enter your home absent a writ from the court. Again, adjust accordingly, with the long-term picture in mind. Keep in mind, your husband may be trying to get you to leave the marital home and you may need counsel as to whether you should leave and when and how to leave. You do not want to leave without a jointly agreed-upon strategy with your attorney.

You wonder, "Can we be separated while living in the same house?"

To be "separated" means one of the parties has left the marriage and presumably the marital home with the intent not to return. Thus, the short answer to, "Can we be separated while living in the same house?" is no. But there have been exceptions in Pennsylvania case law that leave the door open to the possibility of in-home separation.

Further, under Pennsylvania law, the filing of a divorce complaint is considered a date of separation for purposes of Pennsylvania divorce law. Therefore, even if you are remaining in the same residence and are unable to prove separation under the same roof, the filing of a divorce complaint will provide you with that definitive date to begin your one-year separation. There are many other methods of obtaining the necessary basis for the granting of a divorce in Pennsylvania, which are discussed later in this book. So, don't get paralyzed by this issue of "living separate and apart."

GETTING THE DIVORCE STARTED, WHO SHOULD FILE FIRST?

Different situations require different analysis for getting the divorce started. In some cases, the wife should file first if she is looking to give her husband a legal wake-up call to show him that he is not in control anymore, and also to let him know that she is leveling the playing field with her new lawyer. This is a **STRATEGIC** reason. Additionally, once a divorce is filed, either you as the plaintiff or your husband as the defendant, can request three mandatory marriage-counseling sessions, pursuant to Pennsylvania law. (See example in Petition Section at the end of the book.) Filing first is also **TACTICAL** because when you file your complaint for divorce, you can request APL (alimony pendente lite) as opposed to spousal support. Pennsylvania's two support mechanisms have different rules for applicability, and one may be more advantageous than the other in your case. You need to discuss this with your attorney.

Filing first can also be a **CALCULATED** move because when you file your complaint for divorce, you can then file for other relief such as a Petition for Exclusive Possession of the Residence, or a Petition to Freeze Marital Assets. You become the "moving party" for this action. (See example in Petition Section at the end of the book.)

“WHAT DOES THE DIVORCE PROCESS ACTUALLY ENTAIL?”

Assume for a moment that your spouse has left you a note saying, “I am leaving and I’m not coming back.” In turn, you decide to file for divorce. Once you’ve made the decision to file for a divorce, normally you would hire an attorney and this person would file what is known as a Complaint. The Complaint contains certain facts like 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. (See example in Petition Section at the end of the book.) 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 then filed in the Court of Common Pleas in one of three possible counties. It can be filed in the county where you live, the county where your husband—now known as the “Defendant”—lives, or in a county agreed upon by both parties. At the same time that you file for divorce you can also file for support and custody, which will be detailed later in the book.

After filing the Complaint, the Plaintiff is required to serve it on your husband. This can be done through the Sheriff’s Office; you may hire a private process server who will serve the Complaint on your husband; or your husband can voluntarily accept it, if he signs an Acceptance of Service. The cost of filing a divorce varies from county to county, as does the cost of Sheriff’s service. The time frame for a consent divorce does not start until your husband is served with the Complaint.

Generally, following the service of the Complaint on your husband, he will file an Answer and often a Cross-Complaint. His Answer usually denies your allegations against him. His Cross-Complaint will contain his allegations against you. It is not uncommon for Answers or Cross-Complaints to have exaggerated allegations against you. More often than not, the allegations are designed to disturb you or intimidate you. Moreover, sometimes the allegations as written by your husband's attorney are as much to show his or her own client his 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 push your buttons; stay calm. Remember, do the unexpected and do not let him shake you. Someone, either your husband or his attorney, is trying to get under your skin.

If temporary support is an issue, you need to address it immediately through the Domestic Relations office in your county. A conference on child support, spousal support, and/or *alimony pendente lite* will be scheduled wherein the Conference Officer will decide on temporary spousal and child support. Further, a Petition for a Custody Order will result in the Custody Conference being scheduled, wherein a temporary child custody schedule will be ordered. 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."

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 is needed for 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, such as for work, 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 marry a man who is already married
5. **IMPRISONMENT FOR A TERM OF TWO OR MORE YEARS**
6. **INDIGNITIES:** Your husband 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:

1. **Mutual Consent.** In this case the marriage is irretrievably broken, and ninety days have elapsed from the date of commencement and service of the action; or
2. **Irretrievable Breakdown.** In this case, the parties have been living separate and apart for a period of at least one year and the marriage is irretrievably broken.

FAULT GROUNDS

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.

ADULTERY

Adultery is often difficult to prove in Pennsylvania. Adultery requires strict, satisfactory and conclusive proof that your husband not only had the desire to commit adultery, but that he 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 husband that he 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. In the long run, whether one spouse cheated or not matters very little to the court. 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.

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.

BIGAMY

Grounds for divorce based on bigamy exist when at the time of your marriage, either you were, or your husband 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.

FELONY CONVICTION

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.

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.

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.

IRRETRIEVABLE BREAKDOWN

A party can receive a no-fault divorce without having to prove fault on the side of her husband or by gaining his consent, if she continues to live separate and apart for a period of at least one year, which serves as proof that the marriage is irretrievably broken. If your husband does not deny the allegations set forth in the affidavit of separation, a divorce can be granted without a hearing. If your husband 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, it 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 husband 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 him after you become aware of his adulterous behavior. You have then legally condoned his unfaithful conduct.
2. **PROVOCATION**: when you have done something to justify your husband'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 she can have a paramour as well.
In such a case, the court will grant neither of the parties' 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 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 wife has also committed adultery, allowed sexual relations to resume after knowing of

husband's adultery, allowed husband to seek use of a prostitute, or exposed husband to such lewd behavior as to cause him to become involved in adultery, then wife may not use adultery as grounds for the divorce complaint.

Gathering Information

DISCOVERY PROCESS

After the divorce has been filed, your husband may be asked by your attorney to answer questions regarding assets owned, debts owed, why he thinks he 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, freelance 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, 401(K) 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 maybe 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 husband's possession or documents he 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 nontaxable) 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.*
- 2. 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, 2018 to the present.*
- 3. All summary plan descriptions and/or statements for each pension or retirement benefits plan, expense account, cafeteria plan, profit-sharing stock option plan, 401(K) 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, 2018 to the present.*

4. All reports of any experts that you intend to call to testify at trial.

5. 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

If your husband claims he has disposed of all of his 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 husband's employer requesting documents that will provide information about his benefits and retirement as well as copies of his 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 husband is asked to appear with his attorney in your attorney's office and answer questions under oath before a court reporter and you. Depositions allow your attorney to ask you husband questions to gather further information and to lock in his 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 girlfriends, 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 husband 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 him to answer appropriately the questions presented. His failure to do so after being ordered by the court could lead to a contempt hearing and possibly attorney fees being paid by the opposing party.

RESOLVING THE 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 wish to offer to your husband. The second option is to enter into mediation where you and your husband 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 by which he or she would 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 of the family are resolved. Remember, in negotiations, ultimatums 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 a woman should never sign any documents without first having them reviewed by her attorney. Frequently, I have had women come to see me with an agreement they signed saying, “Oh, my husband told me this was just a temporary agreement!” when, in fact, the document states right on the face of it that it is a final separation agreement. ***I LIKEN THE IMPORTANCE OF A SEPARATION AGREEMENT TO YOUR BILL OF RIGHTS, YOUR CONSTITUTION, AND YOUR DECLARATION OF INDEPENDENCE ALL ROLLED UP IN ONE DOCUMENT!***

Accordingly, it is very important that you not sign any such document until your attorney has approved it. I cannot stress how many times women have brought signed agreements to me thinking that they could change the terms at a later time. They then become very disappointed when they find out that they are stuck with the terms of a less-than-favorable agreement. The courts of Pennsylvania do not often set aside contracts, and the fact that a wife was emotionally depressed and/or incapable of saying “no” to her husband 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 husband. **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 HUSBAND'S ATTORNEY CANNOT REPRESENT YOU!**

THIRD— Custody, Visitation, and Child Support are always subject to change, so don't give away support or assets to obtain custody of your children. I have seen cases where the woman gave up financial assets for custody, only to lose custody several years later because her finances were unstable, while her former spouse was prospering financially. The pre-teen and teen kids wanted to live at the house with the pool, the big allowance, the ski vacations and the 4-wheeler. Do not let such a scenario happen to you.

In short, if you give up everything to obtain custody, you may well lose custody several years later, primarily because you gave up everything!

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 financial payments.

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 husband 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 women 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. Furthermore, if a woman is intimidated by her spouse or does not feel that she has sufficient knowledge of the family assets and liabilities, then she needs to meet with her attorney and decide whether the mediation process can ultimately be entered into after she is educated about the assets and liabilities that her family possesses.

3. LITIGATION

The least favorable and most expensive process for getting divorced is the litigation model (i.e. fighting it out in court). Oftentimes a woman may be forced into the litigation process against her will because her spouse 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 husband. 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 you or your husband do not file 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.

After your divorce, if either you or your husband 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. 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.gocollaborativepa.com

FINANCIAL ISSUES FACING WOMEN IN DIVORCE

When prospective clients come to see me, they want to know what they are entitled to and what they will receive. In order to provide this information, it is necessary to know many facts. 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 own, and what are the other assets of value and debts. Also requested is a narrative regarding each parent'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 entitlement may be explained.

Spousal Support / Alimony Pendente Lite

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 best suits your needs. 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 you may file for either one 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 may think, “This is great!” But wait; there are defenses for spousal support claims. If you caused the separation to occur by engaging in a marital fault or kicking your spouse out of the house, he might be able to use that as a defense. In those cases, you may be better off waiting until the divorce complaint is filed, because then you are eligible for APL, for which there are very limited defenses. This should be discussed with your attorney.

ALIMONY

The easiest form of support to understand is alimony, which starts after the divorce is final. It is important to note that just because it is considered a “post-divorce relief,” this does not mean you need to wait until after the divorce is final to file for it. It is quite the opposite, actually. You need to file for alimony as part of the divorce and therefore you should speak to your attorney about the proper time to file.

In determining the appropriateness 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 each for your attorney so that any unusual facts can be brought to his or her attention.

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 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 a spouse is 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.

Once it has been determined that you are entitled to support, the next obvious question is "How much alimony will I receive and for how long?" These questions will be decided by the master in your case or by the parties by agreement. Unlike child support, there is no statewide formula for alimony awarded by final divorce decree.

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 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 what you may or may not be entitled to 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 any 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 had an antique chair that was passed on to you by the death of a family member, it would legally be your chair. However, if the separate property were to increase in value during the marriage, the increase would be considered 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 your husband bought a boat in his 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 his name. Likewise, the gold bracelet that your husband gave you for Christmas as a gift is a marital asset, notwithstanding the fact that it was a gift from him to you.

Once all the assets and debts of the marriage are identified and the nature of their identity is determined, then it may be necessary to 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. After the assets have been identified and valued, then the Court will determine how those assets are to be distributed between the parties. The courts view a marriage as an economic partnership, and all monetary and non-monetary benefits of the husband and wife should be shared by the parties equitably but not necessarily equally. 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. When parties cannot agree but often this is not a contested area.

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.

Once the assets and liabilities are determined and valued, they then must be distributed. The parties can agree on the division of assets or the court will award each asset and liability to one or the other party, or divide the assets as necessary.

RETIREMENT ACCOUNTS

In Pennsylvania, retirement accounts such as: 401(k) plans; 403(b), pensions, annuities and IRAs are divided equitably, whether they are in the husband's name or the wife's name.

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 401(K)s that require more detailed discussion with your attorney.

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. Such as taxation of retirement money, who claims the children, how will I file my taxes married filing separate, head of household, et cetera

IMPORTANT TAX CONSIDERATIONS

- ◆ **DEPENDENCY EXEMPTION:** You and your husband 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 many situations this exemption may be used as a bargaining 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 monies paid to the day care.
- ◆ **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.
- ◆ **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 not taxable.

CUSTODY / VISITATION

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. 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.

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 father 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 husband 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 husband 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.

IMPORTANT - THE CARDINAL RULES ABOUT CUSTODY

6. “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.
7. Always refer to the children as “our” children, not “my” children or “my” child.
8. Never, ever, ever, talk disparagingly about the child’s father 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.
9. The court knows that you and your husband 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 husband about the children, then talk with a children’s mental health expert about how to handle specific issues.
10. 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.
11. Courts look disapprovingly at restricting access to a child. Possibly the biggest reason a father would win custody is if the mother had custody and restricted the child’s access to his father.

12. Introducing new boyfriends and 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!
13. Unless the father is abusive, have a picture of her or his father in the child's room.
14. Never deny visitation because you have not received the child support check. In the eyes of the court, the two are unrelated and it is deemed unreasonable to deny visitation even to a nonpaying father.
15. Custody is about CHILDREN, not fault. Use words like *co-parenting, parenting time, not custody or visitation*, when speaking with your husband.
16. Never ever, ever move out and temporarily leave your children with their dad. This is a sure way to lose physical custody.
17. 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.
18. If you are in 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.
19. Even if your husband's weekends with the children are your first nights off in years, 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.
20. 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.

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. Your divorce attorney should be able to provide *you* with websites that will help you in your case.

CHILD SUPPORT

Pennsylvania has adopted a child support model that is formulaic and is based on the number of children 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. If you are interested in determining how child support is calculated, please go to www.humanservices.state.pa.us/csws. The Pennsylvania Child Support Website provides a lot of information in an effort to make understanding child support easy. There is even an online estimator tool available to help you estimate what your child support payments will be.

SAMPLE PETITIONS

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

JOAN SMITH,	:	NO.	DR	
Plaintiff,	:		NO.	CV
vs.	:			
	:			
JOHN SMITH,	:			
Defendant,	:			

PETITION FOR COUNSELING PURSUANT TO Pa.R.C.P. 1920.45

Petitioner, Joan Smith, by and through her attorneys, MERWINE HANYON & KASPSZYK, LLP by Connie J.

Merwine, Esquire, requests that this Court Order counseling for both parties in the above referenced matter and in support represents as follows:

1. Petitioner is Joan Smith, an adult individual who resides at 1 Mountain Road, Effort, Chestnut Hill Township, Monroe County, Pennsylvania 18330.
2. Respondent is John Smith, an adult individual who resides at 27 Valley Drive, Brodheadsville, Chestnut Hill, Monroe County, Pennsylvania 18322.
3. The parties were married on July 13, 1993 in Monroe County, Pennsylvania. The parties have lived separate and apart since February 3, 2010 and wife has alleged in her Divorce Complaint filed by Plaintiff that the marriage is irretrievably broken under Section 3301(c) of the Pennsylvania Divorce Code as well as under Section 3301(d). Pursuant to Pennsylvania Rules of Civil Procedure 1920.45 (c) (1 and 2), when the grounds for divorce under Section 3301(c) or Section 3301(d) under the Divorce Code, if counseling is requested by either party, the counseling must be completed within ninety (90) days after filing of the Divorce Complaint.
4. It has not been ninety (90) days since the filing of the Divorce Complaint in this matter.
5. Petitioner desires such counseling to be ordered by the court.
6. In accordance with the Rules, an Order for counseling is appropriate based on the aforementioned.

WHEREFORE, Petitioner respectfully requests this Honorable Court to enter an Order thereby providing for and making mandatory that both parties attend counseling so that an amicable attempt can be made to retrieve their marriage.

Respectfully submitted,
MERWINE, HANYON, & KASPSZYK, LLP

By: _____
Connie J. Merwine, Esquire
Attorney for Joan Smith

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

JILL JONES,	:	NO.	DR
Plaintiff	:	NO.	CV
	:		
vs.	:		
	:		
JOE JONES,	:		
Defendant	:	CIVIL ACTION - IN DIVORCE	

**PLAINTIFF'S PETITION FOR EXCLUSIVE POSSESSION
OF THE MARITAL RESIDENCE**

LLP, by Connie J. Merwine, Esquire, and avers as follows:

1. Plaintiff and Defendant were married on October 1, 1985.
2. In November, 2010, the parties separated and Plaintiff moved out of the marital residence.
3. Since November, 2010, Defendant has not lived in the marital residence and has established residency elsewhere.
4. Recently, Defendant has been entering the home without notice to Plaintiff and removing joint property from the home.
5. Given that Defendant no longer resides in the house and Plaintiff has filed for divorce, Defendant should not be entering and removing property.

WHEREFORE, Plaintiff, by and through her counsel, respectfully requests that this Honorable Court grant her exclusive possession of the marital home until the conclusion of the divorce proceedings and equitable distribution.

MERWINE HANYON & KASPSZYK, LLP

By: Connie J. Merwine, Esquire
Attorney for Jill Jones

**IN THE COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA**

Sue Brown,	:	NO. _____	DR
Plaintiff	:	NO. _____	CV
	:		
vs.	:		
	:		
Steve Brown,	:		
Defendant			: CIVIL ACTION - IN DIVORCE

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you, including custody or visitation of your children. When the ground for the divorce is indignities or irretrievable breakdown of marriage, you may request marriage counseling. A list of counselors is available in the Office of the Prothonotary, Court House, Stroudsburg, Pennsylvania.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Monroe County Bar Association
Lawyer Referral Service
PO Box 786
913 Main Street, Stroudsburg, PA 18360
(570) 424-7288

Connie J. Merwine, Esquire

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY			
FORTY-THIRD JUDICIAL DISTRICT			
COMMONWEALTH OF PENNSYLVANIA			
Sue Brown	:	NO.	DR
Plaintiff	:	NO.	CV
vs.	:		
Steve Brown,	:		
Defendant	:		
		: CIVIL ACTION - IN DIVORCE	

COMPLAINT IN DIVORCE

TO THE HONORABLE, Judge of the Court:

AND NOW, comes Plaintiff, Sue Brown by and through her attorneys, MERWINE HANYON & KASPSZYK, LLP, who seeks to obtain a Decree in Divorce from the above named Defendant, Steve Brown, upon the grounds hereinafter more fully set forth:

1. Plaintiff, Sue Brown, is an adult individual and Pennsylvania resident whose mailing address is 123 Creek Lane, East Stroudsburg PA 11111.
2. Defendant, Steve Brown, is an adult individual whose last known address is 123 Creek Lane, East Stroudsburg PA 11111.
3. Plaintiff and Defendant have been bona fide residents in the Commonwealth for at least six (6) months immediately previous to the filing of this Complaint.
4. The Plaintiff and Defendant were married on February 4, 1991 in Allentown Pennsylvania.
5. There have been no prior actions of divorce or for annulment between the parties.
6. Plaintiff avers that there are no children under the age of 18.
7. The marriage is irretrievably broken.
8. Plaintiff has been advised that counseling is available and that Plaintiff may have the right to request that the Court require the parties to participate in counseling.
9. Plaintiff requests the Court to enter a decree of divorce for the following reasons:

COUNT I
DIVORCE B 3301(c)

10. Paragraphs 1 through 9 of this Complaint are incorporated herein by reference as though set forth in full.

11. The marriage is irretrievably broken.

12. At the appropriate time, Plaintiff and Defendant will file executed Affidavits with the Court consenting to the Divorce 23 Pa. C.S.A. ' 3301(c).

WHEREFORE, Plaintiff requests this Honorable Court to enter a Decree divorcing Plaintiff and Defendant pursuant to 23 Pa. C.S.A. ' 3301(c) of the Divorce Code.

COUNT II
DIVORCE- 3301(d)

13. Paragraphs 1 through 12 of this Complaint are incorporated herein by reference as though set forth in full.

14. Parties will have been living separate and apart for a period of over two years at time of filing of this Complaint.

WHEREFORE, Plaintiff requests this Honorable Court to enter a Decree divorcing Plaintiff and Defendant pursuant to 23 Pa. C.S.A. ' 3301(d) of the Divorce Code.

COUNT III
INDIGNITIES PURSUANT TO 3301(a)(6)

15. Paragraphs 1 through 14 of this Complaint are incorporated herein by reference as if set forth in full.

16. Defendant has offered such indignities to the Plaintiff who is the innocent and injured spouse as to render Plaintiff's condition intolerable and life burdensome.

17. This action is not collusive.

WHEREFORE, Plaintiff requests the Court to enter a Decree in the Divorce, divorcing Plaintiff and Defendant pursuant to Section 3301(a)(6) of the Pennsylvania Divorce Code.

COUNT IV
EQUITABLE DISTRIBUTION

18. Paragraphs 1 through 17 of this Complaint are incorporated herein by reference as if set forth in full.

19. Plaintiff and Defendant are seized of marital property

WHEREFORE, Plaintiff requests the Court to equitably divide all marital property.

Respectfully submitted,

MERWINE HANYON & KASPSZYK, LLP

By _____
Connie J. Merwine, Esquire
Attorney for Plaintiff
Attorney I.D. No 53149
Rt. 209 ☐ Merwine Commons
Brodheadsville, PA 18322
(570) 992-2109

ABOUT THE AUTHOR



Pennsylvania Divorce Attorney Connie J. Merwine has devoted much of her career to protecting the interests of families contemplating or confronting divorce or contested custody cases.

Attorney Merwine's career in the law started early when she won the Monroe County Law Day Essay Competition at age 17, when she was just a junior at PleasantValley 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; she 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 – Women's Studies

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 dividing 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 also an adjunct professor at a local college. Not only is she top-rated by her peers on [lawyers.com](https://www.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 client.

ABOUT THE AUTHOR:

“My name is Connie J. Merwine. I have focused my practice on family law and have written this book for women because I sensed a need for women to have a strong, confident, knowledgeable attorney on their side during the most emotional time of their life. I work to give them a sense of confidence and a feeling of support.”



Connie J. Merwine's compact and clearly organized book, designed to help Pennsylvania women understand their rights and options, guides readers through what steps to take (and what steps not to take) when a marriage is broken.

WRITTEN IN CLEAR LANGUAGE, THIS BOOK INCLUDES THE FOLLOWING:

- 25 important truths for women confronting divorce.
- Steps to take to prepare for divorce.
- 42 financial records in which every woman should be familiar.
- 15 questions to consider before hiring your divorce lawyer.
- Stages of divorce.
- Overview of the divorce process.
- Factors used to determine equitable distribution.
- 17 factors used to determine alimony.
- A list of helpful books.
- A resource guide to help you through this time.

MHKATTORNEYS

501 New Brodheadsville Blvd North | Brodheadsville, PA 18346
855.MHK.ATTY (855.645.2889) | Fax: 570.992.5090
MHKAttorneys.com