

When considering divorce, many people are flooded with questions and concerns. They have little to no experience with the legal system prior to a divorce action, so in addition to the emotional toll of separating from a spouse, they are forced to go through a new and scary process. Below you'll find some of the most common initial questions we are asked by potential clients.

#### How long will this take?

The length of a divorce from start to finish can vary wildly depending on the facts of each case. For an uncontested divorce, where both parties are in agreement with the divorce and have resolved all economic matters, it may take no longer than a few months. Pennsylvania law has a mandatory 90-day waiting period. A contested divorce, or one where parties can't agree as to the division of assets, requires a year of separation before a court will intervene.

#### Are there options on how to move forward with a divorce?

Absolutely. Many people think of the courts when divorce is mentioned. While traditional litigation is one way to move forward with a divorce action, it is certainly not the only option. Litigation involves bringing the matter to court where a judge or hearing officer has the ultimate authority to make decisions on the division of assets, alimony and other matters.

Mediation involves the parties hiring a certified mediator, a neutral third party, to assist them in coming to an agreement. The agreement reached in mediation is called a "Memorandum of Understanding," which is non-binding but can be converted into a binding Marriage Settlement Agreement after the fact.

Parties may also want to consider collaborative divorce, where both parties hire attorneys who are trained in this type of process and agree to resolve the matter outside of court. Together with their attorneys, and perhaps neutral financial and mental health professionals, the team participates in meetings using interest-based negotiation (rather than positional based) in a private, dignified and respectful environment.

#### Isn't it true that I get one year of alimony for every three years of marriage?

No. Pennsylvania law does not have a set formula for calculating alimony. Alimony is not guaranteed, but rather is utilized as a secondary remedy if, through the division of assets, one spouse cannot meet his/her reasonable needs. There are 17

## THE FAQs OF DIVORCE

factors a court would consider when making a determination on alimony, its length and amount, like the earnings and earning

capacities of the parties, the length of the marriage, standard of living and needs of the parties. Alimony is taxable to the recipient spouse and tax deductible to the paying spouse.

#### My retirement accounts are in my individual name—that means my spouse can't touch them, right?

Not necessarily. Pennsylvania generally defines marital property as anything earned or acquired during the marriage. This means that contributions to a retirement account made during the marriage are considered to be marital. The titling on assets is not dispositive of whether such property is ultimately determined to be marital or non-marital. For example, a house purchased during the marriage will typically be considered marital, regardless of whether it is in one spouse's individual name or in joint name with few exceptions.

#### Is Pennsylvania a 50/50 state?

No. While Pennsylvania law involves the equitable distribution of property, this does not necessarily mean equal. The court will look at 11 factors to determine an equitable split. These factors include the length of the marriage, the contribution of one party to the earning power of the other, the income available to each party, the skills, training and experience of the parties, and the standard of living established during the marriage. While cases may result in a 50/50

split, facts can also support an award that is skewed in the favor of one party.

#### My spouse cheated—is that going to get me a better settlement?

It depends. One of those 17 factors of alimony is "marital misconduct," which can include adultery. While many people automatically assume that adultery results in the wronged spouse receiving more money or property, this is not always the case. Marital misconduct is not a factor when dividing assets and debts.

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