



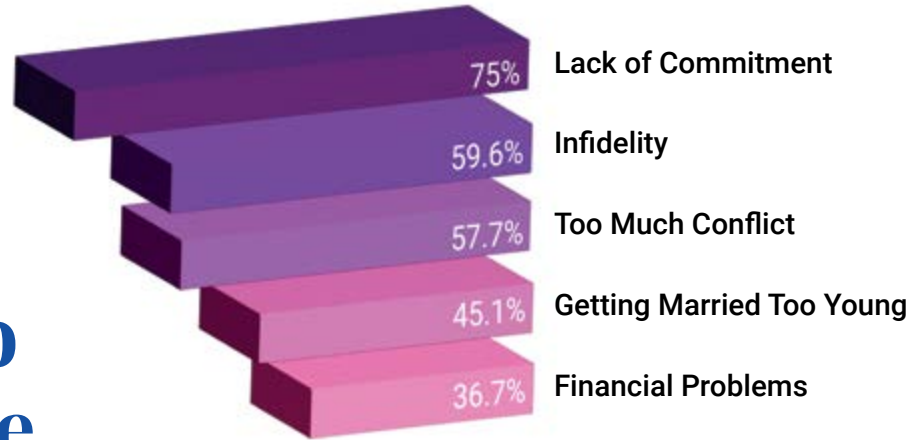
**HIGH SWARTZ**  
ATTORNEYS AT LAW  
EST. 1914

# Essential Guide to Divorce in Pennsylvania



*Most common cited reasons for divorce*

# No one enters into a marriage expecting to get a divorce.



Unfortunately, divorces happen. In 2021, for example, there were 31,691 divorces and annulments in Pennsylvania. Comparatively, that number represents a reasonably low divorce of 2.4 percent, ranking the Commonwealth 32nd among other states.

In most cases, couples cite a lack of commitment as the reason for the divorce. Three-quarters of couples presented it as the cause. Infidelity (59.6%), too much conflict (57.7%), getting married too young (45.1%), and financial problems (36.7%) round out the top five reasons for divorce.

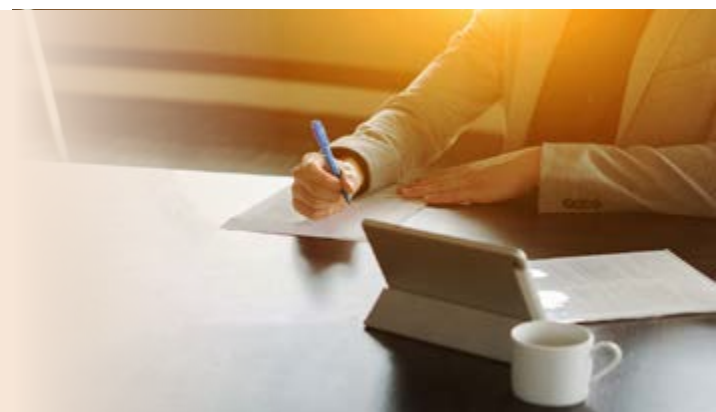
If you've reached the point where divorce has become a consideration, it's essential to understand the process and ancillary concerns. In addition, understanding that divorce laws vary from state to state is critical.

For instance, Pennsylvania is unique, allowing fault and no-fault divorces. Fortunately, however, the process is reasonably simple overall.

This guide presents essential items to consider as you consider divorce. Please note that it is not intended as a replacement for legal advice.

If you'd like legal insights and options for divorce, our family lawyers are here to help. We focus on you and your well-being versus the cold, hard legal facts surrounding divorce. So if you have questions after reviewing this guide, we'll happily answer them.

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*This handbook addresses divorce and its legalities pursuant to the Commonwealth of Pennsylvania. The information is general: we recommend that you consult a family attorney regarding your specific circumstances. The content is not meant to be considered as legal advice or a substitute for legal representation. High Swartz LLP provides legal support to clients throughout Southeastern Pennsylvania.*

# PA Divorce Law

Before July 1980, Pennsylvania was the only state in the country that retained a fault system of divorce. This meant that it carried no equitable distribution of property acquired during the marriage or post-divorce alimony.

Pennsylvania enacted divorce reform legislation that became effective in July 1980, known as the 1980 Divorce Code, with some amendments since its release.

PA divorce law retains most of the traditional fault grounds for divorce. However, it added two grounds of the “no-fault” variety.

Under the “**mutual consent no-fault ground**,” you may obtain a divorce after a ninety-day waiting period following the service of the divorce. Both parties must consent in writing.

Under the “**unilateral no-fault ground**,” you acquire a divorce upon the request of either party. That law applies when the parties have been separated for two years providing the final separation relates to marriage difficulties.

If the parties dispute the date of separation, the court determines at what point there was public awareness of the split. Under certain circumstances, the court may require the parties to attend up to three marriage counseling sessions.

The law provides for post-divorce alimony when “necessary.” In addition, it provides for equitable property distribution (assets and liabilities) acquired by either or both parties during the marriage, with certain exceptions.



# Grounds for Divorce

As mentioned, Pennsylvania allows for fault-based and no-fault divorces. **Here's a closer look at each.**

## Fault Divorces

The Commonwealth continues to allow divorces on fault grounds. Those grounds require that the spouse seeking the divorce demonstrates that the spouse is relatively blameless and qualifies as the "innocent spouse". Also, it requires that "fault" was committed by the other spouse (*typically indignities, but also adultery, desertion, cruel treatment, etc.*).

Although fault divorces may be provable in many cases, the no fault grounds are established without the legal entanglements of pursuing a fault divorce.

## No-Fault Divorces

One of the most significant reforms of the Divorce Code is the availability of "no-fault" divorces. The Code grants divorce on one of two bases: mutual consent or one-year separation. The law requires no proof that the marriage breakdown was one spouse's fault. The court will not sanction fault divorce litigation if no fault grounds exist.

## What Does "Separate and Apart" Mean?

The statute defines "separate and apart" as the "complete cessation of any cohabitation." The Divorce Code clarifies that parties may live separately and apart due to marital difficulties, whether or not in the same residence. A divorce lawyer can determine if you meet this requirement.

## How Do You Prove Separation from a Spouse While Living Together?

Although the statute defines "separate and apart" includes the "cessation of any cohabitation whether living in the same residence or not" the statute provides that although the parties are in the same home, when a divorce Complaint is filed and served, separation is presumed to commence upon service of the divorce Complaint

Therefore the latest presumed date of separation while the parties remain in the same residence is for one party to file for divorce and have the divorce papers served to the other spouse. Separation can be disputed and the law does not assume separation with intent to divorce merely because cohabitation ceased. The court may find a brief trial reconciliation should be ignored and an earlier separation date will be found.

So you must have precise information about when you and your spouse were finally separated, as it will have an impact on the accumulation of marital assets and liabilities.



# Equitable Distribution of Marital Property

With stated exceptions, codified in the Divorce Code and further fleshed out by our appellate courts, property acquired during the marriage by the parties, regardless of its title ownership, becomes “marital property.” As such, that property is subject to “equitable distribution” upon the dissolution of the marriage.

The Code lists numerous categories of equitable factors to guide the court as to the percentage split in value between the couple, including length of the marriage, contributions to a spouse’s education, contributions of a homemaker spouse, etc.

## **What is Considered Non-Marital Property?**

An initial question in every case is what is the “non-marital property” (or separate property) that is excluded from equitable distribution. There are specific areas of exclusion, including property acquired before marriage or after separation. In addition, the Code excludes gifts and inheritance received by one spouse during the marriage. In contrast, the increase in value of non-marital property during the marriage to the time of final separation will be considered.

Therefore, pre-marital assets may have a marital value component if these assets grew in value, such that the portion representing growth from receipt to date of separation will be the marital value. A decline in the value of a non-marital asset will offset the increase of other non-marital asset values.

Generally, the law defines marital property as that which is acquired before the final separation date between the parties.

However, the dates for valuing marital property may vary, and the courts have discretion in determining what valuation date to use for certain items of marital property.

As an illustration, publicly traded stock owned as of the date of final separation may be valued in three ways:

1. Based on the date of the final separation;
2. The date of the final hearing; and
3. The selling date of the property post separation, in some circumstances.

Post 1980 Code amendments address the marital value of retirement asset to establish uniformity county by county for defined benefit retirement interests.

The most complicated valuation issues arise if a spouse owns and operates a closely held business. Consulting with a family attorney is suggested whenever a personal business interest is involved.

# Property Considerations



It's possible to dissolve the marriage and delay resolving financial matters. This is called bifurcation, which means separating the end of the marriage from settling financial claims (property valuation and distribution, legal fees and costs, alimony). If one spouse is eligible for divorce, they can ask the court to officially end the marriage even if financial issues are still unresolved. Many courts are loathe to issue a bifurcated divorce decree.

## **What are the advantages and disadvantages of bifurcation?**

You will remain married in the Commonwealth of Pennsylvania until the divorce decree. The court may order bifurcation, however, if it prefers resolving economic claims with the decree in divorce, the court will not allow the complications of bifurcation..

One benefit often cited is that bifurcation allows the parties to restructure their lives, or allow a seriously ill litigant to be divorced before passing.. But, on the contrary, an often-cited disadvantage is that once a bifurcated decree issues there may be a significant delay in finalizing economic claims.

## **What if my spouse dies?**

When grounds for divorce are established because the required paperwork has been filed without objection, then one party dies, even without a bifurcated divorce, the case continues to address economic claims. For this reason,

every litigant should review and update estate plans: will, power of attorney, and living will as soon as a divorce action begins.

A party may want to sign updated documents, revise life insurance and retirement beneficiaries when the relationship with a spouse has been affected by the divorce. A dependent spouse may ask the court to protect one's status as a beneficiary.

## **Can I spend joint savings after separation?**

After separation, some parties withdraw all monies in the joint checking or savings account. They may take jointly- owned securities or other joint assets.

Often courts react quickly to stem those efforts when divorce and equitable distribution proceedings are pending. Typically, courts remain neutral if one party secures only half of the liquid assets.





# Alimony & Spousal Support

Pennsylvania permits post-divorce alimony to a former dependent spouse. The award involves determining the amount of alimony and the timing of payments. In some cases, alimony can be for an indefinite term.

If separated, one spouse may be obligated to support the other spouse prior to the final decree in divorce. This award results from filing a petition or complaint about spousal support or alimony pendente lite referred to as APL (i.e., interim support pending the divorce litigation). There are some differences between the two kinds of support. However, they are both designed to accomplish the same purpose – to put the parties on equitable economic footing during pending divorce proceedings.

## ***What determines who gets alimony?***

The Divorce Code states that the court considers all relevant factors when determining the amount and length of time. The Code sets forth numerous non-exclusive criteria, including:

- The parties' respective assets
- Each party's earnings
- Each party's Health
- Standard of living
- Education of each party
- Length of the marriage
- Contributions of a spouse as a homemaker
- Marital misconduct of a party before the date of final separation

Note marital misconduct is one of many considerations and does not constitute a ban on the alimony award.

## ***Can alimony be changed, modified, or terminated?***

Court ordered alimony will end if the recipient dies, gets married again, or starts living with someone if they meet the criteria for cohabitation. Courts can also change the alimony amount and length of time if there are significant changes in circumstances.

Negotiated alimony agreements offer predictability but are often difficult to modify if not drafted carefully. Despite the risk of foregoing future modification, the advantage of knowing the alimony commitment is often beneficial.

### ***What determines the amount of spousal support?***

If the parties agree, they can establish the amount of support by a written document, however guidance from counsel is wise. A clear agreement will not be modified even if it was an unfair deal.

Many dependent spouses file a complaint or petition requesting the court to determine the amount. The court procedures vary by PA counties, but they may include an initial settlement conference, a trial before a hearing officer, then either an appeal or a new trial before a judge.

In making its determination, the court considers the incomes and specific expenses like medical insurance and uncovered medical bills of both parties. In addition, the court may consider earning capacity if one or both parties are under-employed.

There are specific support guidelines set forth the recommended spousal support or APL amounts to further aid the court in making its determination. Finally, the court enters its decision in the form of an order.

### ***How do you pay spousal support in PA?***

The payor spouse must make the support payments through the [Pennsylvania State Collections and Disbursements Unit \(PaSCDU\)](#) in Harrisburg, PA. It forwards payments to the recipient spouse.

More times than not, the spouse paying support has their wages attached to satisfy the support order. Their employer garnishes the wages and sends the support to PaSCDU. In turn, it routes the funds to the recipient spouse. The recipient of support payments usually requests an electronic deposit of payments to their bank account.

Courts may modify a support order later, showing changed circumstances of a material and/or substantial nature.







# Child Custody & Support

Even if you and your spouse aren't communicating, always consider the welfare of your children. Often, they are innocent victims of your divorce case with your spouse. Therefore, it is always best for you to work out custodial arrangements on an amicable basis, oftentimes with the help of qualified professionals like divorce lawyers and family therapists.

## **What is Shared Custody?**

Essentially, shared custody embodies two principles: physical custody (physical residence with the child) and legal custody (power to make decisions concerning the child's education, medical care, religious training, etc.). A shared custodial arrangement combines these notions of physical and legal custody.

## **Does Shared Custody Mean 50/50?**

Shared physical custody does not necessarily mean that each parent will get "equal time" with the child. A shared custody arrangement may involve the child spending more of the year residing with one parent.

## **What is Family Mediation?**

If a custody case goes to litigation, the courts mandate that the parties meet with a mediator to determine if they can settle without going to a judge.

## **Grandparent Rights**

Statutory and case law regarding grandparents' rights has expanded. Pennsylvania allows grandparents to foster their relationships with their grandchildren by seeking partial custody from the courts.

## **Child Support**

In Pennsylvania, both parents must support their children per their respective abilities. That obligation extends until the child's emancipation: the latter of age 18, or when a child graduates from high school unless certain conditions exist.

The custodial parent must seek a legal determination so payments continue after age 18 by proving a child is still legally dependent.

### ***How is child support determined?***

It is possible to agree on child support simply by discussing it with your spouse. However, it is strongly suggested you consult with a family lawyer before deciding on any specific amounts. After an agreement is reached informally, either parent still has the right to go to court.

Obtaining child support follows much the same course as seeking support for a spouse. When determining child support, the court considers the parents' income (and earning capacity) and the child's medical and educational needs. Child support guidelines determine recommended support amounts.

### ***How do you pay child support in PA?***

As with support for a spouse, the court enters its decision as an order. The parent making support payments does so through the Pennsylvania State Collections and Disbursement Unit (PaSCDU) and the wage attachment will occur if the payor has an employer.

PaSCDU forwards the support payments to the parent receiving the payments. In addition, courts will modify child support as needed upon showing changed circumstances of a material and substantial nature, or revision of the state guidelines.



# Don'ts during the Divorce Process

It's important to understand that you may be under a microscope during divorce, especially when a case is contentious. As a result, you need to take note of behaviors that can impact your divorce outcome.

**Here are some everyday things to avoid during a divorce.**

1. Don't hesitate to seek legal protection if there is ongoing abuse toward you or your children.
2. Don't hide or destroy property or documents.
3. Don't commit to settlement terms with your spouse.
4. Don't talk negatively about your spouse, especially to your children. And don't post comments on social media sites. Better yet, don't use social media at all.
5. Don't make significant purchases, sell assets, or start a business until your divorce is finalized. Get approval from your attorney first. Otherwise, this complicates equitable distribution.
6. Don't introduce the person you are dating to your children until you consult with your attorney.
7. Don't abuse drugs or drink excessively.
8. Don't leave nasty texts or voice messages for your spouse or children.
9. Don't forget to get advice on possible new tax implications.
10. Don't forget to change your will and beneficiaries following the filing of the divorce complaint.

As number one states – **protect yourself and your children against abuse.** Pennsylvania adopted the Protection from Abuse Act to protect spouses and children from physical abuse. You should inform your divorce lawyer or contact the police if a situation involving abuse or threats to you or your children exists.

It's essential that you be in control during the divorce. Any of these actions can result in criticism in child custody proceedings, lack of sympathy from the court and blown settlement prospects.



**As you can see, there's a lot to consider.**

Even if resolving divorce related issues turns out to be reasonably amicable and without significant problems, it's still a stressful time. Above all else, you need to take care of yourself.

We understand how trying the process can be, so call our team if you need experienced legal counsel.

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## Our Family Law Team

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