

A Few Basics About Family Law Issues:

There are many popular misconceptions about divorce, the division of marital property, support, child custody and prenuptial agreements. Following are a few basic facts about these topics.

FAULT AND NO-FAULT DIVORCE

Pennsylvania recognizes two kinds of divorce: fault and no-fault divorces. A fault divorce requires the plaintiff to prove that he or she is the innocent and injured party and that the defendant is guilty of one of six types of marital misconduct: desertion, adultery, cruel and barbarous treatment, bigamy, imprisonment for a crime or indignities. There are two types of no-fault divorce. Each type of no-fault divorce requires a finding that the marriage is irretrievably broken and either that the parties have consented to the entry of a divorce decree or that the parties have been separated for more than two years. With rare exception, divorces which are granted in Pennsylvania are no-fault divorces. Although the overwhelming majority of parties consent to the entry of a divorce decree, the consents are executed, for the most part, only after issues of property and/or support have been resolved to the satisfaction of the parties and the resolution of those issues has been incorporated into a contractual document known as a Property Settlement Agreement. When parties to a divorce action resolve their economic differences, a divorce decree follows as a matter of course. If the parties are unable to resolve their economic differences, the action is tried before a Master appointed by the Court.

THE EQUITABLE DISTRIBUTION OF MARITAL PROPERTY

If spouses are unable to resolve their economic differences, marital property is divided between the parties by the Master in accord with a number of statutory factors. Equitably means “fair” and does not necessarily mean “equal”. Marital property is all property acquired by the parties between the date of marriage and the date of separation. The determination of marital property is made without regard to title, and regardless of whether or not the property is held individually or by the parties jointly. Marital property is also defined as the appreciation of any non-marital asset either from the date of marriage or from the date of acquisition to the date of separation. For example, if one of the parties comes into the marriage with an asset which has a value of \$25,000.00 and a value of \$60,000.00 at the date of separation, \$35,000.00 represents a marital asset subject to equitable distribution. Equitable distribution is a three-step process requiring the identification of marital property, the valuation of marital property and finally the application of economic factors to determine how the property is to be distributed between the parties. When marital property is divided equitably by the Court, the Court may not consider marital fault. Although marital property is generally valued as of the date of distribution, there are numerous exceptions to this rule. Marital property may take many forms, including equity in the marital home, business assets, retirement benefits, life insurance policies, etc. It is important in divorce litigation to be able to identify, quantify and value all marital assets. When the Master equitably divides marital property, the Master is required to consider eleven statutory criteria. Generally speaking, these statutory criteria, particularly in a marriage of some length, favor the dependent spouse, as a result of which the dependent spouse may receive more than 50% of the value of marital property. It is important to note that marital debts are included in the marital estate for purposes of equitable distribution.

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CHILD AND SPOUSAL SUPPORT

Parents have a proportional responsibility based upon their respective incomes to provide child support until the later of the following events: a child's graduation from high school or the child's 18th birthday. In Pennsylvania, a parent does not have an obligation to provide for a child's education beyond high school.

Subsequent to the date of separation and prior to the entry of a divorce decree, one spouse may have an obligation to provide the other spouse with either spousal support or alimony pendente lite. The amount of support is the same whether the party has an obligation to provide spousal support or alimony pendente lite. In order to be eligible for spousal support, the party seeking support cannot be responsible for the separation. A spouse may receive alimony pendente lite even though that spouse may be guilty of marital misconduct or other indiscretions. Upon the entry of a divorce decree, the Court may award alimony to a recipient spouse, depending on the amount of property which the payee spouse receives in the form of the equitable distribution of marital property and in consideration of 17 statutory factors, which, once again, favor a dependent spouse. Alimony is rarely permanent unless there are compelling reasons such as a disability, illness, etc.

Child support is non-deductible by the payor and is not treated as taxable income to the payee. However, spousal support, alimony pendente lite and alimony are tax deductible by the payor spouse and they are treated as taxable income to the payee. The amount of spousal and child support in cases where the combined monthly income of the parties is less than \$15,000.00 per month is calculated on the basis of state mandated guidelines. Where combined monthly income is in excess of \$15,000.00 per month, a complicated formula is utilized. Except in limited situations, the entry of a child and/or spousal support award will be based upon net disposable income. In addition to a payor's obligation to pay spousal and/or child support based upon the aforementioned guidelines, the payor spouse may also have an additional obligation for day care expenses and for unreimbursed medical and/or dental expenses in excess of \$250.00 per person. The law of support in Pennsylvania is complex and often requires the consideration of a variety of important legal principles.

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CHILD CUSTODY

Pennsylvania recognizes two types of custody: legal custody and primary physical custody. Legal custody is the right to make major decisions affecting the best interests of a minor child, which include medical, religious and educational decisions. Legal custody is usually shared equally by the parties while primary physical custody vests with one of the parents. The Court awards primary physical custody based upon the best interests of the child. The Court often awards primary physical custody to the parent who has been the primary nurturing parent of the child. A child's preference may be considered when based upon good reason. The Court awards the non-custodial parent visitation, which is referred to as shared custody. Child custody orders may be modified at any time based upon the best interests of the child.

In recent years, relocation cases have become more prevalent. A spouse who wishes to relocate to another jurisdiction with a child must meet a three-fold test as follows: Is the move in the best interests of the relocating parent as well as in the best interests of the minor child; is the move motivated simply by a desire to frustrate the rights of the non-custodial parent; is visitation in the new jurisdiction feasible?

PRENUPTIAL AGREEMENTS

Prenuptial agreements, which are prepared prior to marriage, may deal with inheritance rights, protection of non-marital property, the equitable distribution of marital assets, spousal support, alimony pendente lite and alimony or any other items which individuals contemplating marriage may wish to address. They are fully enforceable if there has been a full and fair disclosure of the assets of both parties prior to the execution of the agreement.

If you require representation in any of the above-described areas, we would be pleased to meet with you to discuss your needs. Please call Anthony M. Muir at 610-434-7138, extension 13, to schedule an appointment.