



Frequently Asked Questions

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How is child support calculated?

Child support is calculated pursuant to the Pennsylvania Child Support Guidelines. Both parents' incomes and/or earning capacities are utilized to determine the child support obligations. Income for purposes of child support is not the same as income for tax purposes. The definition of income for purposes of support is broader than taxable income. When you meet with one of the attorneys in our office, we will request that you come prepared with income information so we can determine a support award or obligation. While the support calculations are fairly straightforward, there are some situations that warrant a deviation. These may include items such as child care to enable one parent to work or the allocation of health insurance premiums.

Now that my spouse and I are separated, how am I going to afford health insurance and other medical expenses?

Generally, if one spouse has been providing health insurance through their employer, that spouse will continue to provide health insurance through the pendency of the divorce litigation. If you are the income-dependent spouse and health insurance has been provided by your spouse, one element of support is health insurance. This also includes dental and vision insurance if the same are available and have been provided in the past. Additionally, a percentage of unreimbursed medical may be provided as part of your support. If you are not the income-dependent spouse, but your spouse has been providing your health insurance and you do not have health insurance otherwise available to you, you can ask us about options for continuing your health insurance. Often, if you are willing to pay the portion of the premium related to your insurance, an agreement regarding the continuation of health insurance can be reached. Upon entry of a divorce decree, you will need to either obtain your own policy or obtain COBRA benefits through your spouse's employer. Health insurance for your children will be specifically delineated in the child support order. Even if neither parent is paying child support to the other parent, it is possible to obtain a child support order addressing the issue of health insurance for the children.

What is the difference between legal custody and physical custody?

Legal custody is defined in Pennsylvania as "the right to make major decisions on behalf of the child, including, but not limited to, medical, religious and educational decisions." Physical custody is defined as "the actual physical control of the child."

Can I move to another state with my children?

Relocation is possible, but absent consent of the other parent (or guardian) relocation requires permission by the court. The law requires the court to consider ten factors when determining whether to grant a relocation request:

- 1) The nature, quality, extent of involvement and duration of the child's relationship with the party proposing to relocate and with the non-relocating party, siblings and other significant persons in the child's life;
- 2) The age, developmental stage, needs of the child and the likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child;
- 3) The feasibility of preserving the relationship between the non-relocating party and the child through suitable custody arrangements, considering the logistical and financial circumstances of the parties;
- 4) The child's preference, taking into consideration the age and maturity of the child;
- 5) Whether there is an established pattern of conduct by either party to promote or thwart the relationship of the child and the other party;
- 6) Whether the relocation will enhance the general quality of life for the party seeking the relocation, including, but not limited to, financial or emotional benefit or educational opportunity;
- 7) Whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit or educational opportunity;
- 8) The reasons and motivation of each party for seeking or opposing the relocation;
- 9) The present and past abuse committed by each party or member of the party's household and whether there is a continued risk of harm to the child or an abused party; and
- 10) Any other factor affecting the best interest of the child.

My children want to live with me and not my spouse. Are they allowed to make that decision?

The short answer is “no.” How much weight the court ultimately puts on a child’s preference depends on a number of circumstances such as the age and maturity of the child, and the specifics of why the child wants to be with one parent over the other. The court is obligated to always do what is in the best interest of the child and, absent an abusive or dangerous situation the court is inclined to find that the best interest of the child is served by maintaining a relationship, and thereby custodial time, with each parent.

Can I force my spouse to leave our house now that divorce papers have been filed?

No. The act of filing does not automatically give the filing party more rights than the responding party as it relates to marital property. If one party has been physically abusive towards the other or has placed the other in fear of immediate serious bodily injury, the abused party may file a request with the court for a Protection from Abuse Order that may exclude the abuser from the marital home for up to three years. Another method by which one party may be excluded from the marital home is through the filing of a Petition for Exclusive Possession. The Pennsylvania Divorce Code allows the court to award one or both of the parties the right to reside in the marital residence. This is a harsh remedy, however, and not one the court grants easily. The court will need to be convinced that there is an abusive or dangerous situation that exists if both parties remain in the marital home before excluding one of the parties. It should be noted that even if the request is granted, the removal of one party from the home will in no way affect that party’s rights as it relates to the home’s value when assets are distributed.

My father passed away five years ago and I received a large inheritance. Is my spouse entitled to any of this inheritance as part of a divorce action?

It depends. Pursuant to the Pennsylvania Divorce Code, marital property does not include property acquired by inheritance. However, the increase in value of an inheritance will be considered part of the marital estate, subject to division between the parties. To ensure that the inheritance remains identified as a non-marital asset, it should be maintained separately from assets owned jointly by the parties.

My spouse moved out of the house when he filed for divorce. Can I change the locks and alarm code so he can’t get in?

Assuming the residence where you and your spouse resided is jointly titled, it would generally be a poor idea to change the locks and the alarm code. Simply by moving out, your spouse has not waived the right to the property. You can, however, file a petition with the court requesting that you be granted exclusive possession of the marital residence. In the event your petition is granted, your spouse would be excluded from the property. Thereafter, you would be permitted to change the locks and the alarm code.

I moved out of our marital residence and pay a lot of money to my spouse each month for child support and spousal support. Now my spouse is telling me that I have to pay for the mortgage and real estate taxes for the marital residence too. Is that true?

It depends. Support guidelines do provide for a mortgage contribution in specific circumstances. The mortgage contribution addresses the primary mortgage, any secondary mortgages, real estate taxes and homeowners insurance. Generally, a mortgage contribution is requested by the spouse who remains in the marital residence when the mortgages, real estate taxes and homeowners insurance exceed a certain percentage of their income, as defined in the support code. The court does have discretion as to whether to make an award of a mortgage contribution. However, the mortgage contribution is not available after the divorce so this is not a permanent element of your support obligation or award. If you are the income dominant spouse and paying support, but remain in the marital residence, you may be able to request a reduction in your support obligation. This is done by requesting a mortgage deviation for your payment of the mortgage. The court has complete discretion in such awards. In both situations, there is a greater likelihood that your request for the mortgage contribution will be granted if the marital residence is actively listed for sale.

I am worried about how we are going to afford college expenses for our children now that my spouse and I are getting divorced. Who will have to pay for this?

In Pennsylvania, neither party will be required to pay for college expenses or any other post-majority support for a child. However, if you and your spouse desire to pay for your child’s college education, you will need to address this in a private agreement. Usually, this will be one element of the marital settlement agreement which also addresses equitable distribution, alimony and other matters related to the financial issues of your divorce.

My spouse just told me he wants a divorce but I want to try to save our marriage. Can I make him go to marriage

counseling?

The Pennsylvania Divorce Code permits the court to require a maximum of three counseling sessions when requested by either party. It should be noted that a Divorce Complaint must be filed before a party can request counseling.

One of my friends just told me that her divorce took several years to finalize. Is this how long it usually takes?

The Pennsylvania Divorce Code establishes certain timeframes to finalize a divorce. Specifically, Section 3301(c) of the code sets forth a 90-day waiting period from the date the Divorce Complaint is served upon the non-filing party before the parties can proceed with finalizing their divorce. Upon the expiration of 90 days, if both parties agree to the divorce and if they have reached an agreement as to the distribution of their marital assets and liabilities, they may then proceed with finalizing their divorce. However, if either party does not consent to a divorce, the filing party must wait two years from the date of separation before proceeding with the divorce through the courts.

My spouse was concerned I was having an affair and accessed my password-protected email. Is he allowed to do this?

No. A spouse may access the "family computer" and most of its contents. However, if there is an expectation of privacy, that information would be considered "off limits." In the case of a file that is password-protected, the user established an expectation of privacy by use of the password. Therefore, the answer is no. Most importantly, any information gained from the entry into that password-protected file would be inadmissible in a future Court proceeding.

Are prenuptial agreements enforceable in Pennsylvania?

A prenuptial agreement is an agreement that fixes the parties' rights in the event of a subsequent separation, divorce and/or death. Such an agreement is presumed valid when it expressly provides that the parties have made full and fair disclosure of assets and income to one another. When this language is included in the agreement, the burden shifts to the party challenging the agreement to prove that full and fair disclosure was not made.

Full and fair disclosure does not need to be in writing and it does not need to be exact. The disclosure, however, must be precise enough as to indicate the general financial resources of each party. Since a prenuptial agreement is a contract, it is subject to traditional principles of contract law and, therefore, may be held invalid on grounds such as misrepresentation or fraud.

While I was on vacation my spouse decided he wanted a divorce and moved out of our house. He rented a moving truck and took a lot of our furniture and personal property with him. Can he do this?

Yes, he can. However, there are potential consequences. Do you want something that he removed? Do you want to know what he took? Did he take something of significant value? Depending on how you answer these questions will determine your course of action. After the filing of the Divorce Complaint, you can petition the court for "special relief." You can request that **all** items be returned, **certain** items be returned and/or an accounting or appraisal of all items removed be provided. A hearing will be held and a judge will make the ultimate determination as to the disposition of your personal property. You also may agree with your spouse that the personal property has now been distributed in its entirety and it will not be addressed at a later date. Thus, you have eliminated one of the many issues you will face in the course of your divorce litigation.

My spouse has a new girlfriend and just told me that he is going to name her as the beneficiary of the life insurance policy we have had for 10 years. This doesn't seem fair to me. Can I prevent him from removing me as the beneficiary on this policy?

Yes. The Pennsylvania Divorce Code allows a court to direct continued maintenance of beneficiary designations relating to existing life insurance policies. Upon the filing of a Divorce Complaint, a party may petition the court requesting an order that requires the beneficiary designation remain in place. If a spouse already has removed his or her spouse as beneficiary on an existing life insurance policy, the court can require the original beneficiary designation be re-established.

Why doesn't the court care about my spouse doing (fill in the blank) three years before I filed for divorce?

The courts cannot bog themselves down with indiscretions, whether moral or financial, that occurred during the marriage. The law does not require them to do so, but for a few very rare circumstances. It serves clients well to look forward to finalization of the process rather than dwelling in the past about what could have been done

differently. By the time an action is filed, the litigants need to play the hands they have dealt.

What are the grounds for divorce in Pennsylvania?

Pennsylvania law recognizes both "fault" and "no-fault" divorces. In a "fault" divorce, one spouse alleges that the other spouse is at fault for the divorce. The "innocent" spouse must show that the "guilty" spouse engaged in some type of misconduct, which led to the divorce.

There are a number of fault grounds available in Pennsylvania, including:

- abandonment for a period of at least one year;
- adultery;
- cruel and barbarous treatment, such as physical or mental abuse, or other behavior which made married life intolerable;
- bigamy;
- institutionalization; and,
- imprisonment in which your spouse was sentenced to a term of incarceration for two or more years

A judge may consider bad behavior when deciding whether to award alimony. For example, if a spouse cheats and then requests alimony as part of a divorce, a judge may reduce or deny alimony because of the misconduct.

A "no-fault" divorce is based on one ground: the "irretrievable breakdown" of the marriage. In addition, spouses must show a mutual consent to the divorce, meaning that both parties agree to the divorce. If one spouse does not consent, the other spouse must wait two years to obtain a divorce.

What is the date of separation, and why is it important?

The date of separation is the date on which one spouse's intent to dissolve the marital relationship is clearly manifested and communicated to the other spouse, and the couple ceases to act as husband and wife. Separation can occur when one spouse leaves the marital residence with no intention of returning or when one spouse clearly communicates to the other their intention to end the marriage.

When parties "separate" in Pennsylvania, it does not always require physical separation. In fact, spouses can be separated while still living in the same house – possibly even in the same bedroom. The key factor to consider is when did the spouses stop behaving like a married couple.

Pursuant to the Pennsylvania Divorce Code, the date of separation is defined as the date upon which the parties are living "separate and apart." The divorce code defines "separate and apart" as the cessation of cohabitation, whether living in the same residence or not. In the event a complaint in divorce is filed and served, it is presumed that the parties began to live separate and apart no later than the date that the complaint was served.

It is important to determine the date of separation for a variety of reasons. For example, the date of separation is important to properly value assets owned jointly or individually by the parties. Additionally, the date of separation marks the beginning of the two-year time period that must pass before a spouse can obtain a unilateral "no-fault" divorce without the other spouse's consent.

What is equitable distribution?

Equitable distribution is the legal term for dividing marital assets (or debts) as part of a divorce action in Pennsylvania. An asset (or debt) is marital if it was acquired anytime between the date of marriage and the date of separation, with the exception of any assets that are excluded by a prenuptial or post-nuptial agreement, or because the asset was acquired by one spouse by gift or through inheritance, as long as the gifted or inherited asset was kept separate, and not commingled with marital assets.

Additionally, even if an asset is pre-marital, meaning it was acquired prior to the marriage, any increase in value of that asset during the marriage is considered marital property. Once an asset (or debt) is determined to be marital, one must then determine the marital value.

What is important to consider when choosing a divorce attorney?

Finding a family attorney can be an overwhelming process. There are many attorneys who practice in the field but if you want to secure the best representation, there are few specific considerations. First, a skilled matrimonial attorney will usually dedicate all or at least a significant part of her or his practice to family law. It is

also important to make sure the attorney is familiar with the court system in your jurisdiction as there are often nuances from county to county and even judge to judge. The practice should be well-staffed so that your questions and concerns are answered promptly and professionally. Additionally, you should feel comfortable and at ease with the attorney you choose to represent you. Divorce can be an emotional process and you want to be certain that your attorney understands and answers your questions, listens to your concerns and communicates clearly regarding all aspects of your case.

My spouse wants to mediate our divorce matter. Should I agree?

Mediation is a form of alternative dispute resolution that has proven to be successful with helping a couple to reach agreements regarding many aspects of their divorce case, including alimony/spousal support, child custody, child support and division of marital property. The mediator helps the couple to work through their emotions, re-establish a rational level of communication, and reach an agreement that will result in a civil resolution. However, even if you decide to participate in mediation, you still should consult with your own attorney before reaching an overall settlement or signing any agreement. In many cases, it is helpful to consult with an attorney before deciding whether mediation is right for you.

How long will I have to pay child support?

The general rule of thumb in Pennsylvania is that an obligation to pay child support continues until either the child turns 18 years old or graduates high school, whichever is later. However, the length of time a responsible party is obligated to pay for the support of their children does vary depending upon the circumstances. Child support does not automatically end when the child turns 18. If the child is still in high school, for example, the support order continues until high school graduation. There are some exceptions to this rule, such as where a child is enrolled in high school but not attending school. In this case, the child support could terminate prior to high school graduation and instead terminate when the child turns 18 years old. Other situations, such as a child with special needs, also can result in child support obligation past a child's 18th birthday and into adulthood. The child support attorneys at Williams Family Law can help you review the facts of your situation to determine the best course of action for you and your family.

What is a Petition for Modification of Child Support?

A Petition to Modify an Existing Support Order is a formal request to the court that an established child support order be changed or modified in some way. In Pennsylvania, modifications typically are made only when the circumstances of one of the parties have changed substantially. For example, if one parent got a new, higher-paying job, if a parent lost his/her job or if primary physical custody of the child has changed, those circumstances all might warrant a review of the child support calculation. The modification typically will be applied retroactive to the date that the petition was filed, so it is important to file as soon as the change occurs.

Which parent is responsible for paying for the child's health insurance coverage?

As part of the child support order, a provision related to health insurance coverage will be included. It is important to the state of Pennsylvania that all children have health insurance, which is why this is one of the elements of a child support order. The parent paying child support generally is the one who is responsible for providing the child's health insurance coverage. However, this is if the cost of the health insurance is "reasonable." If the parent paying support cannot obtain health care coverage at a "reasonable" cost, the parent receiving the child support can be ordered to provide health care coverage for the children if they are able to obtain the coverage for a "reasonable" cost. If neither parent can obtain such health insurance coverage for the children, the court may order the party receiving support to apply for CHIP (Children's Health Insurance Program) or similar subsidized coverage. The allocation of the costs of the health insurance premiums also will be addressed in the support order.

What types of assets are divided in a divorce?

Once a divorce action has initiated, one of the aspects that is often contested is the division of marital property, or "equitable distribution," as it is called under Pennsylvania divorce law. Some people think of bank accounts and the family home as marital assets, but many other types of assets also should be considered, including:

- Real estate, including primary and vacation homes and investment properties
- Automobiles and motorcycles
- Household contents,
- Collectibles and antiques
- Jewelry
- Artwork

- Bank or credit union accounts
- Stocks, bonds, mutual funds, money market accounts and certificates of deposit
- Life insurance
- Pensions
- Annuities
- IRA accounts
- 401(k) accounts and 403(b) accounts
- Business ownership
- Receivables
- Intangible assets
- The increase in value of any pre-marital property that occurred during the marriage (any value of such property at date of marriage remains non-marital property).

What factors influence the division of marital property?

Like many other states, Pennsylvania employs an *equitable distribution* model to determine what parts of the marital estate each spouse will receive. Under this general rule, courts are required to consider the following factors:

- The length of the marriage.
- Any prior marriage of either party.
- The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.
- The contribution by one party to the education, training or increased earning power of the other party.
- The opportunity of each party for future acquisitions of capital assets and income.
- The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.
- The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.
- The value of the property set apart to each party.
- The standard of living of the parties established during the marriage.
- The economic circumstances of each party at the time the division of property is to become effective.
- The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain.
- The expense of sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain.
- Whether the party will be serving as the custodian of any dependent minor children.

When can a grandparent seek partial physical or supervised custody of a grandchild?

Grandparents may seek partial physical custody or supervised custody of a grandchild in situations where the child's parent is deceased or where the child resided with the grandparents for a period of at least 12 consecutive months, was removed by the parents and the grandparent filed within six months of the child's removal from their home.

Why would married couples enter postnuptial agreements?

There are three common reasons a married couple would enter a postnuptial agreement:

- It formalizes a financial agreement between the couple.
- Equitable distribution or desired distribution of a financial asset, like a family business, can be agreed upon in a postnuptial agreement.
- If a couple, in a healthy second marriage, wants to engage in estate planning, a postnuptial agreement helps them do that. A postnuptial agreement allows them to draft an estate plan and avoid interference from former spouses.

What is a Protection From Abuse order?

Protection From Abuse actions, commonly known as PFAs, are designed to protect people in familial or intimate relationships from threats, harassment or injury from the other party. Although protection from abuse actions are not criminal matters, the potential penalties for violating an existing order are quasi-criminal in that they may result in a finding of contempt and incarceration. The family law attorneys at Williams Family Law have filed and

defended many of these matters over the years and are prepared to litigate those filed frivolously or filed in an attempt to gain an advantage in collateral family law matters such as custody or in a divorce.

I have strong feelings about which school I want my child to attend, but my ex-spouse doesn't agree with me. Can I enroll my child in the school of my choice without my ex-spouse's consent?

The choice of a school can be a contentious issue between parents with shared custody of their children. Pennsylvania School Code states that when "parents reside in different school districts due to separation, divorce or other reason, the child may attend school in the district of residence of the parent with whom the child lives for a majority of the time." Beyond that, it states only that if both parents have equal physical custody, they can make a decision about which school district to choose.

If each parent resides in a high-ranking school district but they cannot come to an agreement about which school district or school is best for their child, the matter can be decided by the court. Pennsylvania's court system takes the education of children very seriously, and every aspect of the child's wellbeing will be considered when making a decision.

It is important to remember that even if one parent has more custodial time than another, legal custody – which includes responsibility for making decisions about education – is most often equally shared between parents.

I helped to raise my stepchild and now my spouse and I are divorcing. Do I have any custodial rights to my non-biological child?

It is possible in Pennsylvania to gain custodial rights to a stepchild if the stepparent is deemed by the court to stand *in loco parentis* to the child. *In loco parentis* literally means "in place of the parent." A stepparent can be deemed *in loco parentis* if either the biological parent has discharged his or her parenting duties or the stepparent has historically taken on childcare responsibilities and obligations. The stepparent may have been the child's habitual caregiver and taken the child to doctor's appointments or extracurricular activities, for example.

While stepparents may be awarded custodial rights to a stepchild in Pennsylvania, in some cases, they do not have a mandated duty to provide child support. To learn more, read our blog post.

I just filed for divorce. Can I move out with my kids immediately?

Unless your children are at risk of physical abuse by staying in the home, it is best not to move them until a custody arrangement – even a temporary one – has been arrived at. While it is always the hope of any judge that parents will cooperate and mutually agree upon a custody arrangement, he or she will readily decide for you.

When making a custody decision, a Pennsylvania judge is required to analyze 16 factors relating to each parent's ability to contribute to the children's wellbeing. Among those factors are the parent's ability to provide an emotionally healthy atmosphere for the children and whether the parent is able to cooperate effectively with the child's other parent or relatives. If you remove your children from their other parent hastily in the heat of conflict, it may cause you to appear unstable and uncooperative in the eyes of a judge.

My spouse will not consent to a divorce simply to avoid paying alimony. Can the court grant me a divorce without mutual consent?

The short answer is yes, you still can file for divorce without your spouse's consent. After a period of separation, the divorce then can proceed through the legal system. The good news is that Pennsylvania law regarding the period of separation required for a no-fault divorce recently changed. In December 2016, the waiting period for no-fault divorces was reduced from two years to one year.

Is my prenuptial agreement still valid if I caught my spouse cheating?

Prenuptial agreements are defined by the parties making the agreement. Unless you specifically included an "infidelity clause" in some form when you signed your prenuptial agreement, there is no reason to expect that your agreement will be invalidated by a judge if your spouse has committed adultery. This can be a case where hindsight can be 20/20.

Of course, if you want to stay in your marriage but protect yourself financially in the event that your spouse cheats, you can seek to draw up a postnuptial agreement.

My ex-spouse and I share custody of my children. Can we both claim them as dependents on our income tax returns?

No. A “qualifying child” can be claimed only in one household each year. The IRS allows you to designate who will be able to claim the child as a dependent for tax purposes in your child custody agreement. One parent may choose to file Form 8332 with the IRS and waive his or her right to claim the child as part of a settlement. When custody is shared equally, parents may decide to alternate the tax years in which they claim the child on their tax returns. If two parents who share custody have not reached an agreement about who can claim the child in question, the right falls to the parent who had the majority of physical custody that year. For more information on the implications of tax filing and divorce, [click here](#) to read our blog post.