

# DIVORCE IN PHILADELPHIA COUNTY

## Do you want to file for divorce?

Divorce is a legal procedure that ends a marriage and changes the legal relationship between former spouses. Living apart from your husband or wife does not legally end a marriage.

## Types of divorce available in Pennsylvania.

There are 2 kinds of divorce: **no-fault** divorce and **fault**-based divorce. Most people in Pennsylvania obtain a no-fault divorce because it is easier and cheaper and you may not have to appear before a judge or go to court other than to file the papers necessary for the divorce. There are 2 kinds of no-fault divorce:

1. **If both parties agree to the divorce**, they can obtain a no-fault divorce. After one party files for the divorce and 90 days has passed after the complaint is served on the other spouse, each party may file an Affidavit of Consent to divorce. You may also work out any property issues you have by agreeing on how you will deal with marital property in a Property Settlement Agreement. The court rules require you to file a series of legal documents to complete the divorce. This is the fastest way to divorce in Pennsylvania, but it requires the cooperation of both parties.
2. **Unilateral** (also known as “**irretrievable breakdown**”) no-fault divorce is available if one of the spouses will not consent to the divorce but the parties have been living separate and apart (defined by the statute as “complete cessation of any and all cohabitation, whether living in the same residence or not”) **for at least 2 years** and the marriage is irretrievably broken. You may file for the divorce before you have lived separate and apart for the 2 year waiting period but you cannot get the divorce until the 2 year period is over. There may be disagreement between you and your spouse about when you started living separate and apart. It is important to try to get some legal advice on this issue.

## Where to file for divorce.

You may file for divorce in Philadelphia County if you or your spouse lived in Pennsylvania for the 6 months immediately preceding the filing of the divorce complaint, and either party currently resides in Philadelphia or you agree to divorce in Philadelphia. There is no required length of residency in the county where the divorce complaint is filed. In Philadelphia, a divorce complaint is filed with the Clerk of Family Court at 1133 Chestnut Street.

## What is the cost?

The filing fee is \$303.48. You may pay with a money order. Personal checks and cash are not accepted.

If you cannot pay the filing fee, you may ask to be excused from paying the fee by filing a petition to proceed *In Forma Pauperis* (IFP). Ask for and fill out an IFP Petition. If you are on welfare or SSI, bring your welfare photo ID or proof receipt of SSI.

## What happens to property owned by the parties in a divorce?

“Marital property” refers to almost everything that either spouse acquires during the marriage, regardless of whose name the asset is titled in. Such assets would include a house (again, regardless of whose name is on the deed or mortgage), pensions, stocks and bonds, furniture, automobiles, bank accounts, debts, etc. “Marital property” also includes ***increases in value during the marriage*** of: (1) any property owned by a spouse before the marriage and/or (2) any asset or property a spouse inherits or receives by gift during the marriage. The law provides guidance regarding the “**equitable distribution**” of marital property. Equitable distribution literally means “fair.” ***It does not necessarily mean 50-50 distribution*** of marital property.

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“Fairness” is determined by examining several factors:

- Length of marriage;
- Any prior marriage of either party;
- 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 to acquire assets and income in the future;
- The sources of income for both parties;
- The contribution of each party in the acquisition, preservation, depreciation or appreciation of marital property, including the contribution of a party as homemaker;
- The value of any property set apart to each party;
- The standard of living of the parties established during the marriage;
- The economic circumstances of each party; and
- Whether the party will be serving as the custodian of any dependent minor children.

Note that “fault” behavior (e.g., adultery) is *not* considered in determining fairness in property distribution.

## Can alimony or support for the spouse be awarded in a divorce?

Two kinds of financial support *for the spouse* can be awarded in a divorce:

- **Alimony Pendente Lite (APL)** is a form of support that is only awarded for the period after a divorce complaint has been filed and ends when the divorce is granted. Its purpose is to allow the spouse with less financial resources than the other to pursue and/or defend against the divorce action and maintain his or her standard of living during this period.
- **Alimony** is a form of financial support paid by one spouse to the other after the finalization of the divorce. The law allows the court to order alimony for as long as it is needed based on the following factors to be considered:

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- Relative earnings and earning capacities of the parties;
- Ages and physical, mental and emotional conditions of parties;
- Sources of income of both parties, including:
- Expectancies and inheritances of both parties, and
- Duration of the marriage.

Contribution by one party to the education, training, or increased earning power of the other party;

- Extent to which earning power, expenses, or financial obligations of a party will be affected by reason of serving as custodian of minor child;
- Standard of living of the parties established during the marriage;
- Relative education of the parties and time necessary to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment;
- Relative assets and liabilities of parties;
- Property brought to the marriage by either party;
- Contribution of a spouse as a homemaker;
- Relative needs of the parties;
- Marital misconduct of either party during the marriage, but not after the date of final separation (except abuse of one party by the other);
- Federal, state and local ramifications of alimony;
- Whether the party seeking alimony lacks sufficient property to provide for the party’s reasonable needs;
- Capability for self-support through appropriate employment.

## Do you need a lawyer?

Filing for a divorce can be a complicated process, especially if custody of children, support, and/or property division is involved. If possible, it is best to have legal representation.

**Legal representation may be available from:**

**PHILADELPHIA LEGAL ASSISTANCE**  
215-981-3800

**PHILADELPHIA BAR ASSOCIATION’S LAWYER REFERRAL AND INFORMATION SERVICE**  
215-238-6333