

**FALL RETREAT OF
FINANCIAL PLANNERS ASSOCIATION OF
PHILADELPHIA TRI-STATE AREA**

**BRIEF OVERVIEW OF DIVORCE LAW IN PENNSYLVANIA
Including Changes in 2005 and 2011
and
Ten Commonly Asked Questions**

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PRESENTED BY:

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Ms. Shemtob is a partner in the Blue Bell law firm of Shemtob Law, P.C. where she concentrates her practice on divorce, custody, child and spousal support, and other family law matters. She is an experienced litigator in custody, child and spousal support, and equitable distribution. She is a Fellow of the American Academy of Matrimonial Lawyers, a national honor bestowed on only 67 lawyers in Pennsylvania. She is a Family Law Arbitrator having been certified by the American Academy of Matrimonial Lawyers. In July 2012 she was elected Secretary of the Pennsylvania Chapter of the AAML. Ms. Shemtob was featured in the November 21, 2011 issue of NEWSWEEK in its Nationwide Leaders in Family Law Showcase. The Showcase highlights Lori as a "Leader in Family Law" in Pennsylvania. She is also one of the Ten Leaders of Greater Philadelphia for Matrimonial and Divorce Law.

A past Chairperson of the Family Law Section of the Montgomery Bar Association and former member of its Board of Directors, Ms. Shemtob currently serves as Co-Editor of Case Notes for the *Pennsylvania Family Lawyer*, and is a former Delegate to the Pennsylvania Bar Association. She is a Director of the Pennsylvania Bar Foundation. She was formerly on the Council of the Pennsylvania Bar Association Family Law Section and currently serves on the Judiciary Committee of the Montgomery Bar Association. She is a frequent lecturer for the Pennsylvania Bar Institute, the Montgomery Bar Association, and various other organizations and has authored several articles for the *Pennsylvania Family Lawyer*. Ms. Shemtob was recently appointed as an Advisory Board member of Prevent Child Abuse Pennsylvania Chapter. Ms. Shemtob received her B.A. *cum laude* in 1977 from the University of Massachusetts and her J.D. *cum laude* in 1987 from Temple University School of Law.

Ms. Shemtob has appeared on CN8 "Money Matters" with Mary Carriccioli, "CNN Headline News", and CN8's "It's Your Call" with Lynn Doyle. She has also been a guest on CN8's "Newsmakers", the "Irv Homer Radio Show" and the "Philadelphia Agenda with Brad Segall" explaining the ramifications of recent amendments to the Pa. Divorce Code. Channel 10 News has also called on Ms. Shemtob for assistance with its "Legal Hotline". Ms. Shemtob has also been a guest lecturer at Drexel University Earl Mack School of Law.

Ms. Shemtob has been selected as a Super Lawyer by Philadelphia Magazine for 2006, 2007, 2008, 2009, 2010, 2011 and 2012. Only 5% of all attorneys in the state are given this honor. The Super Lawyer selection process includes peer nominations, independent research of attorneys, as well as a blue ribbon panel review process. She was also named one of the Top 50 Women Attorneys in Pennsylvania as published in Philadelphia Magazine's Super Lawyer Section.

Shemtob Law, PC is a full-service family law firm based in Blue Bell, Pennsylvania. The firm assists clients throughout the Delaware Valley with divorce, division of assets, custody, alimony, child and spousal support, and prenuptial agreements.

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BRIEF OVERVIEW OF DIVORCE LAW IN PENNSYLVANIA

1. **No Fault Divorce**
 - A. Consent – Ninety (90) days after Complaint is filed and served
 - B. Two (2) year separation
2. **Equitable Distribution**
 - A. All assets acquired during marriage and prior to separation are marital regardless of title. (There are exceptions – example: inheritance, gifts, diminishing credit issue)
 - B. What is an asset – real estate, pensions, 401(K), IRA's, bank accounts, brokerage accounts, business, cars, cash value of life insurance, jewelry, furniture, etc.
 - C. Increase in value of non-marital assets is marital.
 - D. 7% Rule in Montgomery County – possibly other counties
 - E. Changes in Divorce Code, which went into effect in 2005 – Interim Equitable Distribution now possible; tax consequence may be considered
3. **Child Support**
 - A. Guidelines – if combined net income of parties is \$30,000 or less, and then a formula thereafter. A needs analysis is no longer necessary.
 - B. Extra expenses for child – camp, private school, extra-curricular activities, un-reimbursed medical and dental expenses, psychological expenses

4. Alimony Pending Litigation (APL)/Alimony
 - A. No guidelines for alimony in terms of amount or duration.
 - B. Formula for APL (alimony pendente lite)

5. Custody –NEW CUSTODY STATUTE January 24, 2011
 - A. Legal – who makes major parenting decisions – health, education, general welfare
 - B. Physical – who does the child live with – how is this determined – best interest analysis
 - C. Relocation – can a custodial parent move out of state? Out of county? Out of country? Must give notice.

6. Pre-Nuptial Agreements
 - A. Are they valid?
 - B. Complete disclosure
 - C. Must they be fair and reasonable?

7. Protection from Abuse (PFA)
 - A. This act is to provide immediate relief to victims of domestic violence
 - B. Who is protected – spouse, former spouse, parents, children, current or former sexual partners, siblings
 - C. What is abuse?
 1. Attempting to cause or intentionally causing body injury
 2. Placing another in reasonable fear of imminent serious bodily injury
 3. Physical or sexual abuse of minor child
 - D. Do not use this as a way to get a spouse out of house. Serious accusation – use it wisely.



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2005 Changes to Pennsylvania Divorce Code Go into Effect

On January 31, 2005, sweeping changes to Pennsylvania's Divorce Code went into effect—changes which may have a huge impact on couples going through separation and divorce throughout the state. (Known as Act 175.)

Major changes to the Code include:

1. Funds can now be given to a party before they are divorced.

Act 175 provides that a court now has the authority to give either party an interim equitable distribution of funds before their divorce is finalized. This will greatly help spouses in situations where one spouse is withholding funds from the other.

2. The tax consequences of assets held by a couple will now be considered in valuing those assets.

The Amendments now allow the court to consider the tax consequences of an asset. So a \$500,000 savings account and an IRA of the same amount may not be considered to have the same value when calculating the value of these assets. Rather—the amount that is available after taxes may now be considered the value of the asset.

3. The death of one spouse before a divorce decree is issued will no longer stop the divorce from proceeding

Prior to January 31, 2005, if a party died during the course of the divorce, the entire action would be abated—no divorce. Now, the court will allow the divorce action to continue—allowing a spouse to get his or her equitable distribution. That helps both the spouse—and the estate of the dead spouse. Here is why—on his death, assets held in joint name would have passed to the wife—now under the new law the Estate is protected since the spouse will only receive his/her equitable distribution.

4. Pensions will now be valued differently in a divorce.

Prior to the enactment of Act 175, pensions were valued at the time that the divorce proceeding began –instead of near its conclusion—and in most cases there would be a huge difference between the two figures given the amount of time a divorce action takes. Now Pennsylvania is more in line with many other states.

5. Separate and apart

When the parties separated is very important. The changes in the Code created a rebuttable presumption that the parties “commence” living separate and apart once a Divorce Complaint is filed and served even if the parties continue to live in the same house.

6. Pre-Marital or Pre-Nuptial Agreements

Pre-Nuptial Agreements will be treated like any other contract. The Divorce Code now codifies the previous case law. Must be full and fair disclosure.

7. Bifurcation

When a divorce is entered before the economics are determined a Court can bifurcate if the parties agree. Otherwise the person who wants bifurcation must demonstrate that compelling circumstances for bifurcation exist and that sufficient economic protections for the other spouse have been provided.

8. Non-Marital Property Value

Non-marital properties increase in value is marital and subject to division, but it stops growing at date of separation or date of distribution whichever is less to prevent a windfall to the non-property owner. Also the decrease in value of the non-marital asset will be offset by the increase in value of another non-marital asset.

9. Division of different assets can be on a different percentage

Court can divide different assets in different percentages. Court can look at fairness of division of each asset.

10. Costs of Sale

Costs of sale of an asset can be considered and need not be immediate and certain. So a Court can look at brokerage commissions and transfer tax in a sale of a house or business even if a sale is not imminent.

TEN FREQUENTLY ASKED QUESTIONS

1. **Does my spouse have to contribute to the college education of our children?**

No. The law in Pennsylvania does not require a parent to pay for college. If, however, your spouse agrees to contribute to college and that is reflected in a written Property Settlement Agreement, the obligation will be enforced by the Court.

2. **How is child support determined?**

If you and your spouse's net (after taxes) combined income is \$30,000 or less per month, the Pennsylvania Child Support Guidelines will determine the amount of child support you will receive. If you and your spouse's combined net monthly income exceeds \$30,000 per month, the Guidelines will still apply using the guide as well as a multiplier.

3. **Am I entitled to a portion of my spouse's 401(K)?**

If the 401(K) was acquired during your marriage, you are entitled to a portion of it. If it was started prior to your marriage, you are entitled to a portion of the increase in value during the marriage.

4. **My spouse inherited \$1 million dollars ten (10) years ago, and kept it in his name. Am I entitled to a portion of that?**

You are not entitled to any of the \$1 million dollars. However you are entitled to a portion of the increase in value over the past ten years. Therefore if that \$1 million dollars grew to \$5 million, the first \$1 million is 100% your spouse's, but the additional \$4 million is marital property subject to equitable distribution.

5. **Do I automatically get 50% of all of our assets?**

No. Pennsylvania is an equitable distribution state which means the Court takes into consideration many factors to determine the percentage division of assets.

6. **How long does one have to be married in order to receive alimony?**

There is no set amount of time. The Court considers 17 factors in determining whether an award of alimony is appropriate.

7. **Are pre-nuptial agreements valid?**

In most cases they are valid provided there was full and fair disclosure of assets.

8. **At what age can our children decide which parent they want to live with?**

There is no set age. A Court will talk with your children and weigh what they have to say taking into consideration their maturity level.

9. **How does a Court determine who will get custody of our children?**

The standard is the "best interest of the child". The Court will take into consideration many factors including but not limited to who was the primary custodian prior to separation, the preference of the child, the mental and physical health of the parents, the parent who can provide the best guidance for the children, the age and gender of the children, the home environment including half-siblings, and many, many other factors. Each case is extremely fact specific.

10. **What assets are divided between the parties?**

All assets acquired during the marriage are marital property and subject to equitable distribution (unless excluded in a prenuptial agreement). This includes, but is not limited to, retirement accounts (such as IRAs, pensions, and 401(K), brokerage/investment accounts, real estate, vehicles, businesses, bank accounts, cash value of life insurance, personal property, such as furniture, TVs, jewelry, etc.)