

Q This PATHFINDER is not intended to be legal advice. If you need legal advice or assistance drafting legal documents, you must hire a private attorney.
Law Library staff **cannot** assist you in drafting legal documents.

LEGAL SEPARATION & DIVORCE Q & A

Q Can I get a Legal Separation in Pennsylvania?

A Pennsylvania law views people as either married or single.

- ! See 23 Pa. C.S.A. § 3301 et seq., for Grounds for Divorce and other provisions of the Divorce Code.
- ! See www.lccpa.org Self-Help for more information on filing for divorce.
- ! There is no method by which a Court will provide you with a document **proving** you are legally separated. It is not unusual for a married couple to live separately during marital difficulties, or even permanently split up without filing for divorce.

Q Do I have to get a divorce because we don't live together anymore?

- ! There is no legal requirement that a divorce be filed upon separation. You do not have to get divorced if you decide to separate; the choice to **remain married** is up to the spouses, not the Court.

Q But I was only married a week ago, can't I get an Annulment?

A Valid marriages can only be terminated by divorce.

- ! See 23 Pa. C.S.A. § 3301 et seq., for Grounds for Divorce and other provisions of the Divorce Code.
- ! See www.lccpa.org Self-Help for more information on filing for divorce.
- ! In most cases, if you were legally married—even for a very short time—you must get a divorce.

Q Can I get an Annulment if I don't want a Divorce for religious or other reasons?

A Valid marriages in Pennsylvania can only be terminated by divorce. A Civil Annulment declares that a marriage never actually existed.

- ! Pennsylvania annulments are for certain specific grounds where something was wrong with the marriage from the beginning that made the marriage void.
- ! Please see 23 Pa. C.S.A. § 3303 et. Seq. and the **Annulment Pathfinder** if you think these situations apply to you.
- ! **Religious annulments are granted by the Roman Catholic Church and the parties must also obtain a civil divorce from the court.**

Q We got married in England and live in different states now. Where do I file a divorce?

A Divorce is usually filed in the country, state and county where you currently live, regardless of where you were married. The Pennsylvania Court may terminate a marriage from another country.

- ! If your spouse lives in a different **COUNTRY** now, you should hire an attorney to help you determine what you should do.
- ! If you both live in the United States, you may want to read:
 - ! 17 West's Pa. Practice, Family Law § 11:5 (7th ed.) Chapter 11. Jurisdiction and Venue.
 - ! 5B Goodrich Amram 2d § 1920.2(a):1, Action of Divorce or for Annulment of Marriage, Rule 1920.2. Venue
- ! **Pa. R.C.P. No. 1920.2 Venue**, controls where a Pennsylvania resident can file for divorce in Pennsylvania, and reads:
 - (a) The action, except a claim for custody, may be brought only in the county
 - (1) in which the plaintiff or the defendant resides, or
 - (2) upon which the parties have agreed
 - (i) in a writing which shall be attached to the complaint, or

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(ii) by participating in the proceeding.

Note: Rule 1920.2 governs the venue of related claims, except a claim for custody, when joined with an action of divorce or for annulment. Venue in an action for custody is governed by [Rule 1915.2](#).

See Rule 1006(d) for the transfer of an action for the convenience of parties and witnesses.

Under subdivision (a)(2), the agreement of the parties is an independent basis for venue and is not a waiver of improper venue.

(b) The record shall establish compliance with the venue requirement of subdivision (a) prior to the entry of the decree.

(c) Notwithstanding any agreement of the parties, if neither the plaintiff nor the defendant has resided in the county at any time during the pendency of the action, the court, upon its own motion and for its own convenience, may transfer the action to the appropriate court of any other county where the action originally could have been brought.

Credits Adopted June 27, 1980, effective July 1, 1980. Amended Jan. 28, 1983, effective July 1, 1983; Feb. 7, 1989, effective July 1, 1989.

EXPLANATORY COMMENT—1994 The rule permits choice of venue where the parties both consent either by a writing attached to the complaint or by participation in the proceedings. The rule does not specify what participation is required to show consent. However, entering an appearance in order to file a preliminary objection to venue is not participation for purposes of subdivision (a)(2)(ii) 1920.2.

Q Do I have to wait a certain amount of time to begin or FILE a Divorce in Pennsylvania?

A There is no legal requirement that a husband and wife be married or separated for any period of time in order to **begin** an action for a divorce.

! There are waiting periods **during** the divorce proceedings.

! The **Mutual Consent Divorce process, 23 Pa. C.S.A. §3301(c)**, can be started as soon as the parties decide to file.

! **There is a 90-day waiting period** in the process. If the parties complete all the necessary paperwork concerning consent, the divorce can be granted shortly after the 90 days are over. If the parties disagree, fail to consent, or ask the court to split up property, the process can be far longer.

! See www.lccpa.org Self-Help for more information on filing for divorce.

Q We have been separated for years, but they won't cooperate, what can I do?

A If parties have already lived separate and apart for a continuous period of one year, one party may seek a divorce without the consent of the other party.

! Please see **23 Pa. C.S.A. § 3301(d)** for more information about divorce after a period of separation. This is called **"Irretrievable Breakdown."**

! See www.lccpa.org Self-Help for more information on filing for divorce.

Q I have not even seen my spouse in years, do I have to know where they are?

A In most cases, you must be able to **locate** and **serve** your spouse with legal papers.

! A Court may grant permission to serve a party by Publication if the party is in hiding or has really disappeared. You must try several methods to locate the other party before asking for permission to serve by Publication.

! For more information, see the **Law Library Pathfinder on Publication of Legal Notices**.

Q What happens if I don't get a divorce?

A If you remain married but do not live together or behave as a couple, you will still be considered married.

! You may still be responsible for your spouse's living or other expenses. Although people may live in separate residences, both may be fully responsible for all debts incurred while married. This means that both may be responsible for 100% of the debt, not just one-half. If a joint bill does not get paid, the creditor will look to the party who has resources to pay, not just the party who may have possession of the particular asset involved.

Q You mean that I may still have to support the other person?

A You should consult an attorney to advise you on your specific financial situation.

- ! Spouses living separately may also be responsible for the necessities of the other. For example, a husband or wife may be responsible for medical expenses of the other even though the parties have been separated for a period of time. A spouse with the resources to do so may be legally required to support the other spouse during a period of separation. The concept of **spousal support** is similar to child support, except that the spouse with the ability to pay may challenge the right of the other spouse to get financial assistance.

Q My spouse just moved out. Doesn't he have to support me and our young children?

A If you think you should be getting spousal or child support from a spouse, you may file a petition for spousal support and/or child support.

- ! **To file a petition for spousal or child support in Lehigh County, visit:**

**Lehigh County Domestic Relations Section
455 W. Hamilton Street, Room 320
Allentown, PA 18101**

- ! A party may apply for child or spousal support services by filing a complaint at the Lehigh County Domestic Relations Section between the hours of 8:00AM-3:15PM, Monday through Friday; or online at www.humanservices.state.pa.us. A party who initiates an online application for support is still required to appear in the DRS within 30 days to complete the filing process. A hearing will be scheduled and you have the option of hiring an attorney. See DRS page at www.lccpa.org for details.

Q How do we decide who gets the house, car, money?

A If you have real estate, businesses, pensions or other valuable property that will need to be divided, you should hire an attorney to help you with the details of the property settlement.

- ! Without a private settlement agreement or court ordered equitable distribution as part of a Divorce, these problems will not be addressed.

Q My spouse wants me to move out of our house.

A You should hire an attorney to help you determine what you should do.

- ! Both parties usually have the legal right to continue to live at the marital residence. If one spouse is physically or verbally abusive to the other spouse or the parties' children, the Court may order the abusive spouse to leave the marital home.

Q How do we decide who gets custody of the children?

A You may file a divorce with custody, support and other counts included in the original divorce complaint. The repercussions of separation affect more than a husband and wife. If the parties have children, plans must be made for custody and child support.

- ! Pennsylvania law **does not require** that the parties litigate these issues within a divorce. The Courts do provide methods to address custody and support issues separately if the parents cannot agree, but do not choose to litigate these issues within the divorce.

- ! Either party may request custody or support in separate actions at any time.

! **If you would like to file for custody, please visit:**

(a) www.lccpa.org for Custody Self Help

(b) or in person, visit:

**Lehigh County Family Court Office,
455 West Hamilton Street,
4th Floor Allentown, PA 18101-1614**