

THE FPT NEWS

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TILL DEATH DO US PART? DIVORCE RATES WARRANT REFLECTION

WHAT ARE THE ODDS?

The concept of marriage is as old as time itself. Once a rare phenomenon, the divorce rate in the United States is rapidly approaching 55%. Given this statistic, proper legal representation is necessary not only early in the dissolution process but even prior to the marriage. Also, with New Jersey's new civil partnership law, gay couples now have the same concerns as straight couples.

PRE-MARITAL CONSIDERATIONS

Prenuptial or Pre-Marital Agreements are becoming more popular. These agreements allow spouses with independent assets to spell out what should happen in the event of a dissolution of the marriage. The agreement must be in writing, have a statement of all of the assets attached and be based upon full disclosure of all of one's assets. To be enforceable, there must be careful compliance with the state statutes.

LEGAL CONCERNS UPON SEPARATION

One hopes, of course, your marriage survives the statistics and your relationship flourishes. The question arises, however, what should you do when you are ready to separate? Separation may be a lengthy process and has been in the past been a prerequisite, in New Jersey, to a "no fault" divorce. While there is an action for a "legal separation", it is rarely used. Since the equitable distribution of property (defined below) is measured from the date of the marriage to the date of the filing of the complaint for divorce, a Separation Agreement may be in one's best interests. These Agreements encompass many of the same considerations and issues as a Pre-

Nuptial Agreement and provide certainty to the issues that may arise in the case of a divorce.

GROUND FOR DIVORCE

The three most common grounds for divorce in New Jersey are separation, extreme cruelty, and the recently added, "irreconcilable differences." All require residency for one year in the State, that there is essentially no reasonable prospect for reconciliation, and that you must file suit in the County where you or your spouse resides.

"Separation" also requires that you be living separate and apart from your spouse for a period of eighteen months before the suit is filed. "Extreme cruelty" means any physical or mental cruelty that endangers the safety and health of the person filing suit or makes it improper or unreasonable to expect that party to continue cohabitation. There is no waiting period to file, but the acts of cruelty must have occurred at least three months before the filing of the suit. With the new divorce cause of action, "irreconcilable differences," the "differences" must be things that have caused the breakdown of the marriage for a period of six months and that make it appear the marriage should be dissolved.

TYPICAL ISSUES

IN MATRIMONIAL PROCEEDINGS

There are a number of issues that may arise in a matrimonial proceeding. Without being exhaustive, some of the typical issues are as follows:

Pendente lite relief - *Pendente lite* means "awaiting litigation." Thus, while the divorce suit is pending, one spouse may go to court to compel the other spouse to pay child support, alimony, health insurance, or other expenses and to prevent the dissipation of assets.

Equitable Distribution - A Court will "equitably distribute" all property acquired from the date of the marriage/civil union to the date of the filing of the complaint based on contribution and need. This typically means a 50-50% split, but the facts of a particular case might justify a different result. Unless commingled, certain items are exempt such as items received separately by a spouse by gift, inheritance, or devise and pre-marital assets.

Alimony - Alimony is support for an economically dependent spouse to maintain the "marital" lifestyle. There are four types of alimony: rehabilitative alimony; reimbursement alimony; limited term alimony; and permanent alimony. Rehabilitative alimony is intended to help the dependent spouse "get back on his or her feet". Reimbursement alimony is commonly awarded in most cases wherein the spouse/partner has worked while the other party has pursued a degree. Limited duration alimony is alimony for a limited period of time, which is not dependent on the rehabilitation of the other spouse/partner. Finally, permanent alimony is intended for long term marriages and civil unions.

Child Support - Child support is the right of the children to shelter, support and lifestyle maintenance. In New Jersey, child support is generally based on guidelines established by the Court and involves many variables, such as parental income, alimony paid, obligations to the person's new family; and custody.

Custody - The issue of custody is often emotional and an attorney can help guide his or her client through the issues of legal custody, physical custody, and joint custody. An attorney

is particularly vital if your spouse/partner decides that he or she wishes to move either out-of-state or far away with your children.

Pensions, Retirement Accounts - The typical rule regarding pensions is that the pre-marital portion is exempt from equitable distribution. Your attorney can arrange for a Qualified Domestic Relations Order ("QDRO"), which will allow you to share in a spouse's pension.

Business Valuations - In the case of the family or closely held (non-public) business, it is often necessary to obtain an evaluation of the business by an independent expert. Your attorney can usually choose one with your input and work closely with him or her. These valuation will often show the real value of the business and whether the spouse/partner is realizing additional income for either child support or alimony purposes. - *Joel J. Reinfeld*

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