

# Q's & A's

## Family Law

### Should I hire an attorney to represent me in my divorce?

Yes. There are many reasons to seek competent legal advice. If you have property or debt to divide, or are not sure how you will pay your monthly bills, an attorney can provide you with valuable resources and guide you through the often-confusing divorce process. An attorney will act as your advocate to ensure your legal rights are protected and look at the big picture during this emotional time.

### I can't afford an attorney, but my spouse can. How is that fair?

It isn't. That is why Delaware law provides that a spouse who earns less or has fewer financial resources can request the Court make the other party responsible for all or a portion of their attorney's fees after the case, or in some cases, even require the other spouse advance the costs of getting divorced.

### How long does it take to get divorced?

You can file for divorce at any time, but must be separated for six months before the Court will schedule the divorce hearing or a motion to finalize the divorce. If you have children, you must also complete a parenting class and file the certificate before your divorce can be finalized.

### Does it matter that my spouse cheated on me? Does it matter that my spouse left the home?

No. The Court does not consider fault in dividing property or awarding alimony.

### Am I entitled to an interest in the house if the house is only in my spouse's name?

Yes, if the house was purchased during the marriage. If it was purchased before the marriage, it would depend on whose funds were used to purchase it, the length of the marriage, when it was purchased, and how much the value has increased during the marriage.

### Am I entitled to alimony?

Alimony is determined by the financial need of one party and the other party's ability to pay, as well as other factors. For a marriage under 20 years, you are eligible for alimony for half the length of the marriage. For a marriage of 20 years or more, you may be eligible to alimony for an indefinite time.

### Am I entitled to any part of my spouse's pension or 401(k) benefits?

If you or your spouse request the Court retain jurisdiction over marital property, the Court may divide any pension/401(k) accounts accumulated during the marriage. This is done by Court order and sent to the plan managers to process. The order securing your interest in your spouse's pension is called a Qualified Domestic Relations Order. You need an attorney to prepare this document due to its technical difficulty.

### Will my parents be reimbursed for the money they gave us to buy the house?

Probably not. The money will likely be seen as a gift to both of you, unless you signed a contract or note at the time the house was purchased promising to repay them.

### Am I responsible for my spouse's debts?

You may be responsible for a portion of debts incurred during the marriage. Debts incurred after the date of separation may not be considered marital debts.

### How is the furniture divided?

If you or your spouse request the Court retain jurisdiction over the property, furniture and household belongings will often be divided according to the two list method. One party compiles a list of the property, dividing it into two relatively equal columns; the other party then chooses which list they wish to keep.

### How can I protect myself when my spouse hits me or threatens me?

Filing for an order of Protection from Abuse can help protect you and your children.

### Can I sell marital property to help pay my bills?

Normally, no. Once a divorce petition has been filed, there is an automatic injunction in place preventing the sale of marital assets. However, an attorney could assist you in filing for interim relief.

### How is custody determined?

Custody is separate from divorce. It is determined by the best interests of the child standard. Neither parent is presumed more capable simply because of their gender. There are many variables; it is important to consult with an attorney before filing for custody.

### How is child support calculated?

Child support is also separate from divorce and is calculated according to a Court formula. It is critical to know each party's income from all sources and whether there are any day care expenses before performing the calculations. It can be tricky if one party is self-employed or is in the military, or if the children go to private school. We can provide assistance in helping to protect your rights.

### What is the next step?

Call our Kirkwood Highway office (998-0100) or our Bear office (832-3200) to schedule a consultation with our family law attorney.

### Does your firm handle other areas of law?

Yes. We handle personal injury, workers' compensation, bankruptcy, real estate, social security disability, and wills and estates. Please contact one of our statewide offices to schedule an initial consultation.

**Disclaimer:** The above is basic information about your rights and should not be considered legal advice. Please seek the advice of an attorney.

### Office Locations:

1202 Kirkwood Highway  
Wilmington, DE 19805  
(302) 998-0100

1701 Pulaski Highway  
Bear, DE 19701  
(302) 832-3200

500 W. Loockerman Street, Suite 120  
Dover, DE 19904  
(302) 674-7100

1008 N. Walnut Street  
Milford, DE 19963  
(302) 424-7744

28535 Dupont Boulevard, Suite 2  
Millsboro, DE 19966  
(302) 934-9400

1200 Norman Eskridge Highway  
Seaford, DE 19973  
(302) 628-1800