



by *Mary J. B. Eidelman, Esquire*

Several years ago, the Pennsylvania legislature enacted sweeping changes to Pennsylvania's Divorce Code. Most notable were changes to the grounds necessary to obtain a divorce.

Prior to the Divorce Code of 1980, the only grounds available for divorcing couples were fault grounds. This presented difficulty for couples who both wanted a divorce without necessarily blaming one another. Proving fault was messy, unnecessary, and sometimes cruel.

The current Divorce Code still provides for fault grounds to be established by the "innocent and injured spouse," such as desertion, adultery, cruel and barbarous treatment, bigamy, imprisonment, and indignities. By far, the most commonly established grounds for entry of a divorce are an irretrievable breakdown of the marriage. In that case, a divorce can be entered if both parties agree that the marriage is irretrievably broken and 90 days or more have elapsed since the

commencement of the divorce action; or if the parties are separated for a period of more than two years.

Other issues to consider

Establishment of grounds may be relatively easy in most cases. So why does it sometimes take years for the final divorce to be entered?

Grounds provides the legal basis for dissolution of the marriage. If there are no other issues to be decided, grounds, alone, are enough. However, if any property issues exist, such as who gets the marital residence or how the retirement benefits are divided, the divorce cannot be entered. Other financial issues such as the amount and duration of any alimony to be paid must also be determined before entry of the final decree in divorce.

If these issues are raised in the divorce action but not addressed by the parties or decided by the Court, the divorce will not be entered. The only method available to obtain a divorce if the property issues are not decided is to obtain a bifurcation. This requires a hearing before a Judge to prove why the divorce should be granted but the property issues left for further decision. The Court does not like bifurcations and they are often difficult to obtain.

Any assets acquired during the marriage are marital. There are some exceptions, such as gifts from third parties and inheritances, but the presumption is that all property acquired during the marriage is marital unless it falls under a specific exception. The delay in resolving the divorce is often caused

by not obtaining the required information or documentation to identify all of the marital assets.

When a divorce is filed, the parties generally enter into a "discovery" process. This is where each party is required to provide all information about marital assets or other assets owned by them. Sometimes the parties don't have the documentation and need to obtain it from other sources such as a bank or other financial institution. Appraisals of the marital residence, retirement benefits, and even personal property may need to be performed. Sometimes, one of the parties just will not cooperate in providing the information.

If one of the parties will not agree that the marriage is irretrievably broken, two years of living separate and apart, alone, will not do it. Irretrievable breakdown must then be proven through a hearing. It is rare that the marriage is not found to be irretrievably broken where the parties have been living separate and apart for more than two years, but it has happened.

In nearly all cases, establishing grounds for entry of the divorce is the least difficult or delaying task. What invariably causes delay is the inability of the parties to agree on the division of the assets. When agreements cannot be reached, an evidentiary Master's Hearing must be conducted. This is what causes the most significant delay, and expense, for both parties.

Grounds, Alone, are Not Enough

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