

**Divorce Code –  
Recommended Amendments: Report of  
the Advisory Committee on Domestic  
Relations Law, April 1999**

The release of this report should not be construed as an indication that the members of the Executive Committee of the Joint State Government Commission endorse all of the report's findings, recommendations or conclusions.

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The Joint State Government Commission was created by act of July 1, 1937 (P.L.2460, No.459) as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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April 1999

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Joint State Government Commission is pleased to present the report of the Advisory Committee on Domestic Relations Law. This report contains recommended amendments to the Divorce Code with official comments.

The recommendations contained in this report represent the consensus of the advisory committee gained after four years of work. On behalf of the General Assembly, I thank the members of the advisory committee for their valuable time and expertise.





## **INTRODUCTION**

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This is the first report of the Joint State Government Commission Advisory Committee on Domestic Relations Law. The advisory committee and task force were formed pursuant to 1993 Senate Resolution No. 43, Pr.'s No. 1673 (adopted February 1, 1994). Senate Resolution No. 43 directed the Commission to undertake an ongoing study of domestic relations law, but excluded the subjects of child abuse and adoption. This report is limited to recommended amendments to the Divorce Code with comments. The advisory committee is chaired by Judge Emanuel A. Bertin of Montgomery County. The task force, chaired by Senator Stewart J. Greenleaf, is comprised of the majority and minority chairs of the Senate and House Judiciary Committees and the Senate and House Aging and Youth Committees.

The advisory committee decided that it would begin its review of domestic relations law with a reconsideration of the Divorce Code. In order to accomplish this review, the committee formed the following three subcommittees, based on the organizational structure of the Divorce Code:

Subcommittee on Dissolution of Marriage (Frederick N. Frank, Chair)

Subcommittee on Property Rights (John C. Howett Jr., Chair)

Subcommittee on Alimony (Ann L. Begler, Chair)

The recommendations contained in this report reflect the work of the three Divorce Code subcommittees. The report represents the consensus of the advisory committee gained after nine full advisory committee meetings, beginning in May 1995, and numerous subcommittee meetings. At its April 19, 1999 meeting, the task force received the advisory committee's report and authorized the transmittal of the report to the full General Assembly. Public hearings are planned on the proposed amendments.

A Subcommittee on Custody (Maria P. Cagnetti, Chair) is presently working on recommendations. The advisory committee will issue a separate report on custody.

The proposed amendments and the official comments of the advisory committee are set forth on the following pages. In order to place the proposed amendments in statutory context, they are set forth within a replication of the entire Divorce Code. The official comments may be utilized in determining the intent of the General Assembly. See 1 Pa.C.S. § 1939 and *In re Martin's Estate*, 365 Pa. 280, 74 A.2d 120 (1950).

#### **THE PROPOSED AMENDMENTS WOULD:**

- Clarify the definition of "separate and apart" (§ 3103)
- Establish statutory rules regarding the enforceability of premarital agreements (§ 3106(a))
- Provide that any premarital agreement executed within 60 days of the marriage is void (§ 3106(b))
- Provide for a one-year separation period as a ground for divorce (§ 3301(d))

- Amend the provisions concerning bifurcation of divorces by rejecting automatic bifurcation, providing for bifurcation with the consent of both parties, and permitting bifurcation only under limited circumstances in the absence of consent (§ 3323(c.1))
- Provide that under certain circumstances a divorce action does not abate upon the death of a party and the parties' economic rights and obligations are determined under equitable distribution principles, not under the elective share provisions of the Probate Code (§ 3323(d.1))
- Clarify how and when to measure and determine the increase in value of nonmarital property (§ 3501(a.1))
- Ensure that only the net increase in value of a party's nonmarital property is considered part of the marital estate (§ 3501(a.1))
- Reverse *Berrington v. Berrington*, adopt a coverture fraction methodology along the lines of *Holland v. Holland* and include all postseparation enhancements, except for postseparation monetary contributions by the employee spouse, in the value of a defined benefit pension (§ 3501(c))
- Clarify statutory law to specifically authorize courts to consider each marital asset independently in equitable distribution and, in the appropriate case, to apply a different percentage to each marital asset (§ 3502(a))
- Clarify that tax ramifications need not be immediate and certain to be considered in making an equitable distribution award (§ 3502(a)(10.1))

- Provide that the expenses of sale, transfer or liquidation associated with a particular asset may be considered in making an equitable distribution award (§ 3502(a)(10.2))
- Authorize interim equitable distribution awards (§ 3502(f))
- Raise the amount from \$500 to \$1,000 as the threshold for when a party may petition the court for the creation of a constructive trust for undisclosed assets (§ 3505(d))
- Revise the chapter regarding alimony in order to provide more certainty and predictability through presumptive guidelines for the amount and duration of alimony (§§ 3712 and 3713)
- Provide credit against an alimony award for alimony pendente lite and spousal support previously paid (§ 3714)
- Provide for the consideration, in awarding alimony, of the effect of marital misconduct prior to final separation on the postseparation economic circumstances of the parties (§ 3715(c)(17))
- Provide statutory rules regarding modification and termination of an alimony award (§ 3717)
- Provide that cohabitation is not an automatic bar to alimony and establish certain rules governing alimony and cohabitation (§ 3717(f))
- Provide presumptive guidelines and other rules for alimony pendente lite (§ 3721)
- Provide rules regarding health and hospitalization insurance pendente lite and attorney fees and expenses pendente lite (§§ 3722 and 3723)

# PROPOSED AMENDMENTS AND COMMENTS

## PART IV DIVORCE

### Chapter

- 31. Preliminary Provisions
- 33. Dissolution of Marital Status
- 35. Property Rights
- 37. Alimony and [Support] Pendente Lite Relief
- 39. Mediation

### CHAPTER 31

#### PRELIMINARY PROVISIONS

#### Sec.

- 3101. Short title of part.
- 3102. Legislative findings and intent.
- 3103. Definitions.
- 3104. Bases of jurisdiction.
- 3105. Effect of agreement between parties.
- 3106. Premarital agreements.

§ 3101. Short title of part.

This part shall be known and may be cited as the Divorce Code.

§ 3102. Legislative findings and intent.

(a) Policy.--The family is the basic unit in society and the protection and preservation of the family is of paramount public concern. Therefore, it is the policy of the Commonwealth to:

(1) Make the law for legal dissolution of marriage effective for dealing with the realities of matrimonial experience.

(2) Encourage and effect reconciliation and settlement of differences between spouses, especially where children are involved.

(3) Give primary consideration to the welfare of the family rather than the vindication of private rights or the punishment of matrimonial wrongs.

(4) Mitigate the harm to the spouses and their children caused by the legal dissolution of the marriage.

(5) Seek causes rather than symptoms of family disintegration and cooperate with and utilize the resources available to deal with family problems.

(6) Effectuate economic justice between parties who are divorced or separated and grant or withhold alimony according to the actual need and ability to pay of the parties and insure a fair and just determination and settlement of their property rights.

(b) Construction of part.--The objectives set forth in subsection (a) shall be considered in construing provisions of this part and shall be regarded as expressing the legislative intent.

§ 3103. Definitions.

The following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Alimony.” An order for support granted by this Commonwealth or any other state to a spouse or former spouse in conjunction with a decree granting a divorce or annulment.

“Alimony pendente lite.” An order for temporary support granted to a spouse during the pendency of a divorce or annulment proceeding.

“Divorce.” Divorce from the bonds of matrimony.

“Grounds for divorce.” The grounds enumerated in section 3301 (relating to grounds for divorce).

“Irretrievable breakdown.” Estrangement due to marital difficulties with no reasonable prospect of reconciliation.

“Qualified professionals.” Includes marriage counselors, psychologists, psychiatrists, social workers, ministers, priests, rabbis or other persons who, by virtue of their training and experience, are able to provide counseling.

“Separate and apart.” [Complete cessation] Cessation of [any and all] cohabitation, whether living in the same residence or not. In the event a complaint in divorce is filed and served, it shall be presumed that the parties commenced to live separate and apart not later than the date that the complaint was served.

**Comment: The amendment to the definition of “separate and apart” establishes a rebuttable presumption designed to address the difficulty of proving a separation date, especially when the parties have not established different residences.**

“Spousal support.” Care, maintenance and financial assistance.

§ 3104. Bases of jurisdiction.

(a) Jurisdiction.--The courts shall have original jurisdiction in cases of divorce and for the annulment of void or voidable marriages and shall determine, in conjunction with any decree granting a divorce or annulment, the following matters, if raised in the pleadings, and issue appropriate decrees or orders with reference thereto, and may retain continuing jurisdiction thereof:

(1) The determination and disposition of property rights and interests between spouses, including any rights created by any antenuptial, postnuptial or separation agreement and including the partition of property held as tenants by the entireties or otherwise and any accounting between them, and the order of any spousal support, alimony, alimony pendente lite, counsel fees or costs authorized by law.

(2) The future care, custody and visitation rights as to children of the marriage or purported marriage.

(3) Any support or assistance which shall be paid for the benefit of any children of the marriage or purported marriage.

(4) Any property settlement involving any of the matters set forth in paragraphs (1), (2) and (3) as submitted by the parties.

(5) Any other matters pertaining to the marriage and divorce or annulment authorized by law and which fairly and expeditiously may be determined and disposed of in such action.

(b) Residence and domicile of parties.--No spouse is entitled to commence an action for divorce or annulment under this part unless at least one of the



parties has been a bona fide resident in this Commonwealth for at least six months immediately previous to the commencement of the action. Both parties shall be competent witnesses to prove their respective residence, and proof of actual residence within this Commonwealth for six months shall create a presumption of domicile within this Commonwealth.

(c) Powers of court.--The court has authority to entertain an action under this part notwithstanding the fact that the marriage of the parties and the cause for divorce occurred outside of this Commonwealth and that both parties were at the time of the occurrence domiciled outside this Commonwealth. The court also has the power to annul void or voidable marriages celebrated outside this Commonwealth at a time when neither party was domiciled within this Commonwealth.

(d) Foreign forum.--After the dissolution or annulment of a marriage in a foreign forum where a matter under subsection (a) has not been decided, a court of this Commonwealth shall have jurisdiction to determine a matter under subsection (a) to the fullest extent allowed under the Constitution of the United States.

(e) Venue.--A proceeding for divorce or annulment may be brought in the county:

- (1) where the defendant resides;
- (2) if the defendant resides outside of this Commonwealth, where the plaintiff resides;
- (3) of matrimonial domicile, if the plaintiff has continuously resided in the county;

(4) prior to six months after the date of final separation and with agreement of the defendant, where the plaintiff resides or, if neither party continues to reside in the county of matrimonial domicile, where either party resides; or

(5) after six months after the date of final separation, where either party resides.

§ 3105. Effect of agreement between parties.

(a) Enforcement.--A party to an agreement regarding matters within the jurisdiction of the court under this part, whether or not the agreement has been merged or incorporated into the decree, may utilize a remedy or sanction set forth in this part to enforce the agreement to the same extent as though the agreement had been an order of the court except as provided to the contrary in the agreement.

(b) Certain provisions subject to modification.--A provision of an agreement regarding child support, visitation or custody shall be subject to modification by the court upon a showing of changed circumstances.

(c) Certain provisions not subject to modification.--In the absence of a specific provision to the contrary appearing in the agreement, a provision regarding the disposition of existing property rights and interests between the parties, alimony, alimony pendente lite, counsel fees or expenses shall not be subject to modification by the court.

§ 3106. Premarital agreements.

(a) General rule.--The burden of proof to set aside a premarital agreement shall be upon the party alleging the agreement to be unenforceable. A premarital

agreement shall not be enforceable if the party seeking to set aside the agreement proves, by clear and convincing evidence, that:

(1) the party did not execute the agreement voluntarily; or

(2) the party, before execution of the agreement:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have an adequate knowledge of the property or financial obligations of the other party.

(b) Void agreements.--Any premarital agreement executed within 60 days prior to the marriage shall be void. Any waiver of this subsection shall be unenforceable.

(c) Definition.--As used in this section the term "premarital agreement" means an agreement regarding matters within the jurisdiction of the court under this part between prospective spouses made in contemplation of marriage and to be effective upon marriage.

**Comment:** Section 3106 is new. Currently, premarital agreements are governed by case law. In *Simeone v. Simeone*, 525 Pa. 392, 581 A.2d 162 (1990), the Supreme Court discarded the approach that had been followed since its 1968 decision in *Hillegass Estate*, 431 Pa. 144, 244 A.2d 672. The *Hillegass* approach upheld a prenuptial agreement if it either made a reasonable provision for the spouse or was entered into after full and fair disclosure of financial status. The Supreme Court's 1987 plurality decision in *In re Estate of Geyer*, 516 Pa. 4982, 533 A.2d 423, stated that full and fair disclosure includes evidence that the parties are aware of the statutory rights they are relinquishing in the agreement. The

***Simeone*** decision rejected inquiry into whether a reasonable provision was made for a spouse and the parties' knowledge of their statutory rights and put premarital agreements on a par with other contracts, stating that they could be invalidated for fraud, misrepresentation or duress. It also recognized that because the parties to premarital agreements "stand in a relation of mutual confidence and trust," full and fair disclosure of the parties' financial positions is required.

Subsection (a) is modeled after section 6(a) of the Uniform Premarital Agreement Act and encompasses the approach of ***Simeone***.

Section 6(a) of the Uniform Act provides that an agreement is not enforceable if the party challenging it did not execute it voluntarily, or if the agreement was unconscionable when executed and the challenging party did not receive and did not waive disclosure of the other party's property or financial obligations and could not reasonably have had adequate knowledge of such. Section 6(b) provides that where an agreement's modification or elimination of spousal support would cause a spouse to be eligible for public assistance, the court may award support to the extent necessary to avoid the eligibility.

While embracing the voluntary execution and disclosure provisions of the Uniform Act, subsection (a) does not adopt the unconscionability or public assistance provisions. Note that under the Uniform Act, lack of disclosure would render an agreement unenforceable only if the agreement were also unconscionable when executed.

Under subsection (a), the party seeking to set aside the agreement must prove that either the agreement was not executed voluntarily (paragraph (1)) or all the elements of paragraph (2) are met.

Subsection (b) adds a certain level of protection against overreaching by declaring void any premarital agreement executed within 60 days of the marriage.

The definition of "premarital agreement" in subsection (c) is modeled after the definition in the Uniform Act, except that the Uniform Act definition does not limit the subject matter of a premarital agreement to divorce matters.

It is important to note that this section does not apply in the context of the death of either party. The section only applies

**to agreements regarding matters within the jurisdiction of the court under the Divorce Code.**

CHAPTER 33

DISSOLUTION OF MARITAL STATUS

Subchapter

- A. General Provisions
- B. Procedure
- C. Attacks Upon Decrees

SUBCHAPTER A

GENERAL PROVISIONS

Sec.

- 3301. Grounds for divorce.
- 3302. Counseling.
- 3303. Annulment of void and voidable marriages.
- 3304. Grounds for annulment of void marriages.
- 3305. Grounds for annulment of voidable marriages.
- 3306. Proceedings to determine marital status.
- 3307. Defenses.
- 3308. Action where defendant suffering from mental disorder.
- 3309. General appearance and collusion.

§ 3301. Grounds for divorce.

(a) Fault.--The court may grant a divorce to the innocent and injured spouse whenever it is judged that the other spouse has:

(1) Committed willful and malicious desertion, and absence from the habitation of the injured and innocent spouse, without a reasonable cause, for the period of one or more years.

(2) Committed adultery.

(3) By cruel and barbarous treatment, endangered the life or health of the injured and innocent spouse.

(4) Knowingly entered into a bigamous marriage while a former marriage is still subsisting.

(5) Been sentenced to imprisonment for a term of two or more years upon conviction of having committed a crime.

(6) Offered such indignities to the innocent and injured spouse as to render that spouse's condition intolerable and life burdensome.

(b) Institutionalization.--The court may grant a divorce from a spouse upon the ground that insanity or serious mental disorder has resulted in confinement in a mental institution for at least 18 months immediately before the commencement of an action under this part and where there is no reasonable prospect that the spouse will be discharged from inpatient care during the 18 months subsequent to the commencement of the action. A presumption that no prospect of discharge exists shall be established by a certificate of the superintendent of the institution to that effect and which includes a supporting statement of a treating physician.

(c) Mutual consent.--The court may grant a divorce where it is alleged that the marriage is irretrievably broken and 90 days have elapsed from the date of

commencement of an action under this part and an affidavit has been filed by each of the parties evidencing that each of the parties consents to the divorce.

(d) Irretrievable breakdown.

(1) The court may grant a divorce where a complaint has been filed alleging that the marriage is irretrievably broken and an affidavit has been filed alleging that the parties have lived separate and apart for a period of at least [two years] one year and that the marriage is irretrievably broken and the defendant either:

(i) Does not deny the allegations set forth in the affidavit.

(ii) Denies one or more of the allegations set forth in the affidavit but, after notice and hearing, the court determines that the parties have lived separate and apart for a period of at least [two years] one year and that the marriage is irretrievably broken.

**Comment: The separation period under subsection (d) is reduced from two years to one year. Discussions with litigants, practitioners and the judiciary support the idea that in the great majority of cases, the parties know after one year whether there is any prospect of reconciliation. This amendment reduces the attenuation of the divorce process that the two-year separation period allows. In comparison to other states where living separate and apart for a certain length of time is a ground for divorce, a one-year separation period is not an anomaly. Often the dependent spouse in an abusive relationship cannot get a mutual consent divorce, and the prospect of waiting two years potentially exposes the spouse to more abuse.**

**The amendment to this section must be read in concert with new section 3323(c.1) (bifurcation).**

(2) If a hearing has been held pursuant to paragraph (1)(ii) and the court determines that there is a reasonable prospect of reconciliation, then the court shall continue the matter for a period not less than 90 days nor more

than 120 days unless the parties agree to a period in excess of 120 days. During this period, the court shall require counseling as provided in section 3302 (relating to counseling). If the parties have not reconciled at the expiration of the time period and one party states under oath that the marriage is irretrievably broken, the court shall determine whether the marriage is irretrievably broken. If the court determines that the marriage is irretrievably broken, the court shall grant the divorce. Otherwise, the court shall deny the divorce.

(e) No hearing required in certain cases.--If grounds for divorce alleged in the complaint or counterclaim are established under subsection (c) or (d), the court shall grant a divorce without requiring a hearing on any other grounds.

#### § 3302. Counseling.

(a) Indignities.--Whenever indignities under section 3301(a)(6) (relating to grounds for divorce) is the ground for divorce, the court shall require up to a maximum of three counseling sessions where either of the parties requests it.

(b) Mutual consent.--Whenever mutual consent under section 3301(c) is the ground for divorce, the court shall require up to a maximum of three counseling sessions within the 90 days following the commencement of the action where either of the parties requests it.

(c) Irretrievable breakdown.--Whenever the court orders a continuation period as provided for irretrievable breakdown in section 3301(d)(2), the court shall require up to a maximum of three counseling sessions within the time period where either of the parties requests it or may require such counseling where the parties have at least one child under 16 years of age.



(d) Notification of availability of counseling.--Whenever section 3301(a)(6), (c) or (d) is the ground for divorce, the court shall, upon the commencement of an action under this part, notify both parties of the availability of counseling and, upon request, provide both parties a list of qualified professionals who provide such services.

(e) Choice of qualified professionals unrestricted.--The choice of a qualified professional shall be at the option of the parties, and the professional need not be selected from the list provided by the court.

(f) Report.--Where the court requires counseling, a report shall be made by the qualified professional stating that the parties did or did not attend.

§ 3303. Annulment of void and voidable marriages.

(a) General rule.--In all cases where a supposed or alleged marriage has been contracted which is void or voidable under this title or under applicable law, either party to the supposed or alleged marriage may bring an action in annulment to have it declared void in accordance with the procedures provided by this part and prescribed by general rules.

(b) Common-law marriage.--In the case of a purported common-law marriage where a party was under 18 years of age, a parent or guardian of the minor may bring a declaratory judgment proceeding during the party's minority to have the marriage declared void.

§ 3304. Grounds for annulment of void marriages.

(a) General rule.--Where there has been no confirmation by cohabitation following the removal of an impediment, the supposed or alleged marriage of a person shall be deemed void in the following cases:

(1) Where either party at the time of such marriage had an existing spouse and the former marriage had not been annulled nor had there been a divorce except where that party had obtained a decree of presumed death of the former spouse.

(2) Where the parties to such marriage are related within the degrees of consanguinity prohibited by section 1304(e) (relating to restrictions on issuance of license).

(3) Where either party to such marriage was incapable of consenting by reason of insanity or serious mental disorder or otherwise lacked capacity to consent or did not intend to consent to the marriage.

(4) Where either party to a purported common-law marriage was under 18 years of age.

(b) Procedures.--In all cases of marriages which are void, the marriage may be annulled as set forth in section 3303 (relating to annulment of void and voidable marriages) or its invalidity may be declared in any collateral proceeding. § 3305. Grounds for annulment of voidable marriages.

(a) General rule.--The marriage of a person shall be deemed voidable and subject to annulment in the following cases:

(1) Where either party to the marriage was under 16 years of age unless the marriage was expressly authorized by the court.

(2) Where either party was 16 or 17 years of age and lacked the consent of parent or guardian or express authorization of the court and has not subsequently ratified the marriage upon reaching 18 years of age and an

action for annulment is commenced within 60 days after the marriage ceremony.

(3) Where either party to the marriage was under the influence of alcohol or drugs and an action for annulment is commenced within 60 days after the marriage ceremony.

(4) Where either party to the marriage was at the time of the marriage and still is naturally and incurably impotent unless the condition was known to the other party prior to the marriage.

(5) Where one party was induced to enter into the marriage due to fraud, duress, coercion or force attributable to the other party and there has been no subsequent voluntary cohabitation after knowledge of the fraud or release from the effects of fraud, duress, coercion or force.

(b) Status of voidable marriage.--In all cases of marriages which are voidable, either party to the marriage may seek and obtain an annulment of the marriage but, until a decree of annulment is obtained from a court of competent jurisdiction, the marriage shall be valid. The validity of a voidable marriage shall not be subject to attack or question by any person if it is subsequently confirmed by the parties to the marriage or if either party has died.

§ 3306. Proceedings to determine marital status.

When the validity of a marriage is denied or doubted, either or both of the parties to the marriage may bring an action for a declaratory judgment seeking a declaration of the validity or invalidity of the marriage and, upon proof of the validity or invalidity of the marriage, the marriage shall be declared valid or invalid

by decree of the court and, unless reversed upon appeal, the declaration shall be conclusive upon all persons concerned.

§ 3307. Defenses.

(a) General rule.--Existing common-law defenses are retained as to the grounds enumerated in section 3301(a) and (b) (relating to grounds for divorce). The defenses of condonation, connivance, collusion, recrimination and provocation are abolished as to the grounds enumerated in section 3301(c) and (d).

(b) Adultery.--In an action for divorce on the ground of adultery, it is a good defense and a perpetual bar against the action if the defendant alleges and proves, or if it appears in the evidence, that the plaintiff:

- (1) has been guilty of like conduct;
- (2) has admitted the defendant into conjugal society or embraces after the plaintiff knew of the fact;
- (3) allowed the defendant's prostitution or received hire from it; or
- (4) exposed the defendant to lewd company whereby the defendant became involved in the adultery.

§ 3308. Action where defendant suffering from mental disorder.

If a spouse is insane or suffering from serious mental disorder, an action may be commenced under this part against that spouse upon any ground for divorce or annulment.

§ 3309. General appearance and collusion.

The entry of a general appearance by, or in behalf of, a defendant does not constitute collusion. Collusion shall be found to exist only where the parties

conspired to fabricate grounds for divorce or annulment, agreed to and did commit perjury or perpetrated fraud on the court. Negotiation and discussion of terms of property settlement and other matters arising by reason of contemplated divorce or annulment do not constitute collusion.

## SUBCHAPTER B

### PROCEDURE

Sec.

3321. Hearing by master.

3322. Jury trial.

3323. Decree of court.

§ 3321. Hearing by master.

The court may appoint a master to hear testimony on all or some issues, except issues of custody and paternity, and return the record and a transcript of the testimony together with a report and recommendation as prescribed by general rules, or a judge of the court in chambers may appoint a master to hold a nonrecord hearing and to make recommendations and return the same to the court, in which case either party may demand a hearing de novo before the court.

§ 3322. Jury trial.

(a) Application for jury trial.--After service of the complaint in divorce or annulment on the defendant in the manner prescribed by general rules or entry of a general appearance for the defendant, if either of the parties desires any matter of fact that is affirmed by one and denied by the other to be tried by a jury, that party may take a rule upon the opposite party, to be allowed by a judge of the court, to show cause why the issues of fact set forth in the rule should not be

tried by a jury, which rule shall be served upon the opposite party or counsel for the opposite party.

(b) Disposition of application.--Upon the return of the rule, after hearing, the court may discharge it, make it absolute or frame issues itself. Only the issues ordered by the court shall be tried. The rule shall not be made absolute when, in the opinion of the court, a trial by jury cannot be had without prejudice to the public morals.

§ 3323. Decree of court.

(a) General rule.--In all matrimonial causes, the court may either dismiss the complaint or enter a decree of divorce or annulment of the marriage.

(b) Contents of decree.--A decree granting a divorce or an annulment shall include, after a full hearing, where these matters are raised in any pleadings, an order determining and disposing of existing property rights and interests between the parties, custody, partial custody and visitation rights, child support, alimony, reasonable attorney fees, costs and expenses and any other related matters, including the enforcement of agreements voluntarily entered into between the parties. In the enforcement of the rights of any party to any of these matters, the court shall have all necessary powers, including, but not limited to, the power of contempt and the power to attach wages.

[(c) Bifurcation.--In the event that the court is unable for any reason to determine and dispose of the matters provided for in subsection (b) within 30 days after the report of the master has been filed, it may enter a decree of divorce or annulment. Upon the request of either party and after a hearing, the court may order alimony pendente lite, reasonable counsel fees, costs and

expenses and may make a temporary order necessary to protect the interests of the parties pending final disposition of the matters in subsection (b).]

**Comment: Subsection (c) is repealed. See comment to subsection (c.1).**

(c.1) Bifurcation.--With the consent of both parties, the court may enter a decree of divorce or annulment prior to the final determination and disposition of the matters provided for in subsection (b). In the absence of the consent of both parties, the court may enter a decree of divorce or annulment prior to the final determination and disposition of the matters provided for in subsection (b) if:

(1) at least one year has elapsed since grounds have been established as provided in subsection (g); and

(2) the moving party has demonstrated that:

(i) compelling circumstances for the entry of the decree of divorce or annulment exist; and

(ii) sufficient economic protections have been provided for the other party during the pendency of the disposition of the matters provided for in subsection (b).

**Comment: New subsection (c.1) rejects the weighing of advantages and disadvantages under *Wolk v. Wolk*, 318 Pa. Super. 311, 464 A.2d 1359 (1983), rejects any notion of automatic bifurcation and statutorily provides for bifurcation with the consent of both parties. In absence of consent, bifurcation is permitted only under the limited circumstances provided for under paragraphs (1) and (2).**

**Part of the reasoning behind paragraph (1) is the idea that knowing bifurcation is not available until one year after the separation period has run (see proposed amendment to section 3301(d) reducing time period to one year) might motivate a party to move the process along by being cooperative in discovery and participating in the resolution of**

economic issues. Subsection (g) provides when grounds are established.

Paragraph (2) is intended to limit bifurcation to cases where compelling circumstances exist and where economic protections have been provided the other party. Paragraph (2) contemplates that the court will exercise its judgment as to what constitutes “compelling circumstances” and “sufficient economic protections.”

[(d) Substitution for deceased party.--If one of the parties dies after the decree of divorce has been entered, but prior to the final determination in such proceeding of the property rights and interests of the parties under this part, the personal representative of the deceased party shall be substituted as a party as provided by law and the action shall proceed.]

**Comment: Subsection (d) is repealed. See comment to subsection (d.1).**

(d.1) Death of a party.--In the event one party dies during the course of divorce proceedings, no decree of divorce has been entered and grounds have been established as provided in subsection (g), the parties' economic rights and obligations arising under the marriage shall be determined under this part rather than under 20 Pa.C.S. (relating to decedents, estates and fiduciaries).

**Comment: Subsection (d.1) is new. Presently if a divorce is granted on a bifurcated basis, and one party dies prior to equitable distribution, the action will not abate and the court will decide the equitable distribution matter with the personal representative of the deceased party substituted as a party. However, if one party dies prior to the divorce decree being entered, the divorce action abates and the surviving spouse is left to exercise his or her elective rights under the probate code. This situation makes it difficult to advise clients on whether to bifurcate divorce proceedings, because of the difficulties often involved in predicting whether equitable distribution would provide a more favorable result than the elective share procedure.**



**This practical problem is solved if the death of one party does not abate the equitable distribution action (whether or not a divorce has been granted).**

**New subsection (d.1) provides that a divorce action does not abate upon the death of a party if grounds have been established under subsection (g). The parties' economic rights and obligations are determined under equitable distribution principles, not under the elective share provisions of Chapter 22 of Title 20 (Decedents, Estates and Fiduciaries Code).**

(e) Costs.--The court may award costs to the party in whose favor the order or decree shall be entered or may order that each party shall pay their own costs or may order that costs be divided equitably as it shall appear just and reasonable.

(f) Equity power and jurisdiction of the court.--In all matrimonial causes, the court shall have full equity power and jurisdiction and may issue injunctions or other orders which are necessary to protect the interests of the parties or to effectuate the purposes of this part and may grant such other relief or remedy as equity and justice require against either party or against any third person over whom the court has jurisdiction and who is involved in or concerned with the disposition of the cause.

(g) Grounds established.--For purposes of subsections (c.1) and (d.1), grounds are established as follows:

(1) In the case of an action for divorce under section 3301(a) or (b) (relating to grounds for divorce), the court adopts a report of the master or makes its own findings that grounds for divorce exist.

(2) In the case of an action for divorce under section 3301(c), both parties have filed affidavits of consent.

(3) In the case of an action for divorce under section 3301(d), an affidavit has been filed and no counter-affidavit has been filed or, if a counter-affidavit has been filed denying the affidavit's averments, the court determines that the marriage was irretrievably broken and the parties had lived separate and apart for at least one year at the time of the filing of the affidavit.

**Comment: This subsection is critical to the operation of subsections (c.1) and (d.1).**

## SUBCHAPTER C

### ATTACKS UPON DECREES

Sec.

3331. Limitations on attacks upon decrees.

3332. Opening or vacating decrees.

3333. Res judicata and estoppel.

§ 3331. Limitations on attacks upon decrees.

The validity of a decree of divorce or annulment issued by a court shall not be questioned, except by appeal, in any court or place in this Commonwealth after the death of either party to the proceeding. If it is shown that a party who subsequently attempts to question the validity of the decree had full knowledge of the facts and circumstances later complained of at the time of issuance of the decree or failed to take any action despite this knowledge within two years after the date of the decree, the party shall be barred from questioning the decree, and it shall be valid in all courts and places within this Commonwealth.

§ 3332. Opening or vacating decrees.

A motion to open a decree of divorce or annulment may be made only within the period limited by 42 Pa.C.S. § 5505 (relating to modification of orders) and

not thereafter. The motion may lie where it is alleged that the decree was procured by intrinsic fraud or that there is new evidence relating to the cause of action which will sustain the attack upon its validity. A motion to vacate a decree or strike a judgment alleged to be void because of extrinsic fraud, lack of jurisdiction over the subject matter or a fatal defect apparent upon the face of the record must be made within five years after entry of the final decree. Intrinsic fraud relates to a matter adjudicated by the judgment, including perjury and false testimony, whereas extrinsic fraud relates to matters collateral to the judgment which have the consequence of precluding a fair hearing or presentation of one side of the case.

§ 3333. Res judicata and estoppel.

The validity of a divorce or annulment decree granted by a court having jurisdiction over the subject matter may not be questioned by a party who was subject to the personal jurisdiction of the court except by direct appeal provided or prescribed by law. A party who sought and obtained a decree, financed or agreed to its procurement, or accepted a property settlement, alimony pendente lite or alimony pursuant to the terms of the decree, or who remarries after the decree, or is guilty of laches, is barred from making a collateral attack upon the validity of the decree unless, by clear and convincing evidence, it is established that fraud by the other party prevented the making of a timely appeal from the divorce or annulment decree.

CHAPTER 35  
PROPERTY RIGHTS

Sec.

3501. Definitions.

3502. Equitable division of marital property.

3503. Effect of divorce on property rights generally.

3504. Disposition of property after termination of marriage.

3505. Disposition of property to defeat obligations.

3506. Statement of reasons for distribution.

3507. Division of entireties property between divorced persons.

3508. Conveyance of entireties property to divorced spouse.

§ 3501. Definitions.

(a) General rule.--As used in this chapter, "marital property" means all property acquired by either party during the marriage[, including the increase in value, prior to the date of final separation,] and the increase in value of any nonmarital property acquired pursuant to paragraphs (1) and (3)[, except:] as measured and determined under subsection (a.1). However, marital property does not include:

(1) Property acquired prior to marriage or property acquired in exchange for property acquired prior to the marriage.

(2) Property excluded by valid agreement of the parties entered into before, during or after the marriage.

(3) Property acquired by gift, except between spouses, bequest, devise or descent or property acquired in exchange for such nonmarital property.

**Comment: A technical amendment is made to paragraph (3) to make it consistent with paragraph (1).**

(4) Property acquired after final separation until the date of divorce, except for property acquired in exchange for marital assets.

(5) Property which a party has sold, granted, conveyed or otherwise disposed of in good faith and for value prior to the date of final separation.

(6) Veterans' benefits exempt from attachment, levy or seizure pursuant to the act of September 2, 1958 (Public Law 85-857, 72 Stat. 1229), as amended, except for those benefits received by a veteran where the veteran has waived a portion of his military retirement pay in order to receive veterans' compensation.

(7) Property to the extent to which the property has been mortgaged or otherwise encumbered in good faith for value prior to the date of final separation.

(8) Any payment received as a result of an award or settlement for any cause of action or claim which accrued prior to the marriage or after the date of final separation regardless of when the payment was received.

(a.1) Measuring and determining the increase in value of nonmarital property.--The increase in value of any nonmarital property acquired pursuant to subsection (a)(1) and (3) shall be measured from the date of marriage or later acquisition date to either the date of final separation or the date as close to the hearing on equitable distribution as possible, whichever date results in the lesser increase. Any decrease in value of the nonmarital property of a party shall be offset against any increase in value of the nonmarital property of that party. However, a decrease in value of the nonmarital property of a

party shall not be offset against any increase in value of the nonmarital property of the other party or against any other marital property subject to equitable division.

**Comment:** Section 3501(a.1) is new. The first sentence of this subsection essentially codifies the decision in *Litmans v. Litmans*, 449 Pa. Super. 209, 673 A.2d 382 (1996), as it pertains to when to measure the increase in value of nonmarital property. Some discussion and uncertainty regarding this issue followed the Supreme Court's decision in *Solomon v. Solomon*, 531 Pa. 113, 611 A.2d 686 (1992), because of the Court's inclusion of footnote eleven in that opinion. The *Litmans* court found that the Supreme Court in footnote eleven of *Solomon* was referring "to a situation in which the increase in value of a nonmarital asset is determined as of the date of separation, there then ensues a long period of delay between separation and distribution, and the asset itself then decreases in value by the time of distribution. In such a case, footnote eleven would require the trial court to consider the 'change in value' of the nonmarital asset as a result of the delay." 673 A.2d at 395 (emphasis added). The *Litmans* court viewed *Solomon* footnote eleven as "mere dictum" since the Supreme Court did not remand *Solomon* to the lower court for a determination in accordance with the footnote. 673 A.2d at 394.

The offset language of the second sentence of subsection (a.1) ensures that only the net increase in value of all of a party's nonmarital property is considered part of the marital estate. To find the net increase in value, the increases in value of a party's nonmarital assets are offset by the decreases in value of that party's nonmarital assets. For example: A spouse enters a marriage with two nonmarital assets, each valued at \$50 for a total of \$100. During the marriage, one asset increases in value to \$100 and the other decreases in value to \$0, so that the total value of the nonmarital assets remains \$100. Under existing law, there is an argument that there would be a \$50 increase in value which would become marital property even though the total value of the nonmarital assets remained the same during the marriage. Some masters and trial courts have refused to consider decreases in nonmarital property as an offset against increases in other nonmarital property. Subsection (a.1) will specifically require such offset. Under subsection (a.1), the \$50 increase in one asset would be offset by the \$50

**decrease in the other asset, and the resulting marital component of the nonmarital property would be \$0.**

**The last sentence of subsection (a.1) is intended to ensure that where one party has a decrease in value in that party's nonmarital property, that decrease cannot be offset against any increase in value of nonmarital property of the other party or against the marital estate.**

**No distinction is made between consumption and decrease in value. Consumption may be addressed through the advocacy of counsel, and "malicious" consumption of an asset to avoid sharing it with the other spouse may be addressed under the dissipation factor in section 3502(a)(7) or under the court's equity powers in section 3323(f).**

(b) Presumption.--All real or personal property acquired by either party during the marriage is presumed to be marital property regardless of whether title is held individually or by the parties in some form of co-ownership such as joint tenancy, tenancy in common or tenancy by the entirety. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (a).

(c) Defined benefit retirement plans.--Notwithstanding subsections (a), (a.1) and (b):

(1) In the case of the marital portion of a defined benefit retirement plan being distributed by means of a deferred distribution, the defined benefit plan shall be allocated between its marital and nonmarital portions solely by use of a coverture fraction. The denominator of the coverture fraction shall be the number of months the employee spouse worked to earn the total benefit, and the numerator shall be the number of such months during which the parties were married and not finally separated. The benefit to which the coverture fraction is applied shall include all postseparation enhancements except for

enhancements arising from postseparation monetary contributions made by the employee spouse, including the gain or loss on such contributions.

(2) In the case of the marital portion of a defined benefit retirement plan being distributed by means of an immediate offset, the defined benefit plan shall be allocated between its marital and nonmarital portions solely by use of a coverture fraction. The denominator of the coverture fraction shall be the number of months the employee spouse worked to earn the accrued benefit as of a date as close to the time of trial as reasonably possible, and the numerator shall be the number of such months during which the parties were married and not finally separated. The benefit to which the coverture fraction is applied shall include all postseparation enhancements up to a date as close to the time of trial as reasonably possible except for enhancements arising from postseparation monetary contributions made by the employee spouse, including the gain or loss on such contributions.

**Comment:** New subsection (c) seeks to reverse *Berrington v Berrington*, 534 Pa. 393, 633 A.2d 589 (1993), to adopt a coverture fraction methodology along the lines of *Holland v. Holland*, 403 Pa. Super. 116, 581 A.2d 58 (1991), and to include all postseparation enhancements except for postseparation monetary contributions by the employee spouse in the value of the pension. The new language codifies the result reached by Justices Flaherty, Cappy and Newman regarding the postseparation retirement enhancements in *Gordon v. Gordon*, 545 Pa. 391, 681 A.2d 732 (1996) (3-3 decision on this issue, affirming the Superior Court's exclusion of the enhancements from the marital estate). Three early retirement inducements were at issue in *Gordon*. The justices listed above opined that since no present efforts or contributions of the employee spouse were required to receive the supplemental retirement income and bonus inducements, they were includable in the marital estate. The third inducement was an annuity paid for partially by the employee spouse and partially by the employer. Justices Flaherty, Cappy and Newman would have included



**the portion of the annuity paid for by the employer in the marital estate.**

**Paragraph (c)(1) covers the deferred distribution of defined benefit retirement plans, and paragraph (c)(2) covers the immediate offset of such plans.**

**Where marital assets are sufficient to cover the nonemployee spouse's share of the pension, immediate offset is the preferred method of distribution. Where it is impracticable to use the immediate offset method, such as where the pension constitutes the bulk of the marital estate and the nonemployee spouse's share cannot be covered by other marital assets or where the pension has not yet vested, the distribution of the pension may be deferred.**

§ 3502. Equitable division of marital property.

(a) General rule.--[In] Upon the request of either party in an action for divorce or annulment, the court shall[, upon request of either party,] equitably divide, distribute or assign, in kind or otherwise, the marital property between the parties without regard to marital misconduct in such [proportions] percentages and in such manner as the court deems just after considering all relevant factors[, including:]. The court may consider each marital asset or group of assets independently and apply a different percentage to each marital asset or group of assets. Factors which are relevant to the equitable division of marital property include the following:

- (1) The length of the marriage.
- (2) Any prior marriage of either party.
- (3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.
- (4) The contribution by one party to the education, training or increased earning power of the other party.

(5) The opportunity of each party for future acquisitions of capital assets and income.

(6) The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.

(7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.

(8) The value of the property set apart to each party.

(9) The standard of living of the parties established during the marriage.

(10) The economic circumstances of each party, [including Federal, State and local tax ramifications,] at the time the division of property is to become effective.

(10.1) The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain.

(10.2) The expense of sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain.

(11) Whether the party will be serving as the custodian of any dependent minor children.

**Comment: The two new sentences in the introductory language of subsection (a) clarify current statutory law to specifically authorize courts to consider each marital asset independently in equitable distribution and, in the appropriate case, to apply a different percentage to each marital asset. The phrase “or group of assets” indicates that the court need not determine a distribution percentage for each individual asset in a marital estate.**

The “tax ramifications” language of current subsection (a)(10) became effective in February of 1988 as an amendment to former section 401(d)(10) of the 1980 Divorce Code. In an opinion that was not handed down until May of 1988, the Supreme Court held that “potential tax liability may be considered in valuing marital assets only where a taxable event has occurred as a result of the divorce or equitable distribution of property or is certain to occur within a time frame such that the tax liability can be reasonably predicted.” *Hovis v. Hovis*, 518 Pa. 137, 541 A.2d 1378, 1380-81 (1988). However, the *Hovis* court quoted the 1980 version of former section 401(d)(10) and noted that “[t]he Pennsylvania statute does not list potential tax liability as a factor to be considered in making an equitable distribution award.” 541 A.2d at 1380. Notwithstanding the legislative statement in the 1988 amendments, and perhaps because the *Hovis* opinion was handed down after the amendments had become effective (but clearly decided under pre-amendment law), lower court cases after *Hovis* have required tax ramifications to be immediate and certain in order for them to be considered in equitable distribution. New subsection (a)(10.1) seeks to change this interpretation by making clear that tax ramifications are relevant and need not be immediate and certain.

**New subsection (a)(10.2) covers such expenses as brokerage commissions and the transfer tax on the sale of a house.**

(b) Lien.--The court may impose a lien or charge upon property of a party as security for the payment of alimony or any other award for the other party.

(c) Family home.--The court may award, during the pendency of the action or otherwise, to one or both of the parties the right to reside in the marital residence.

(d) Life insurance.--The court may direct the continued maintenance and beneficiary designations of existing policies insuring the life or health of either party which were originally purchased during the marriage and owned by or within the effective control of either party. Where it is necessary to protect the interests of a party, the court may also direct the purchase of, and beneficiary designations on, a policy insuring the life or health of either party.

(e) Powers of the court.--If, at any time, a party has failed to comply with an order of equitable distribution, as provided for in this chapter or with the terms of an agreement as entered into between the parties, after hearing, the court may, in addition to any other remedy available under this part, in order to effect compliance with its order:

(1) enter judgment;

(2) authorize the taking and seizure of the goods and chattels and collection of the rents and profits of the real and personal, tangible and intangible property of the party;

(3) award interest on unpaid installments;

(4) order and direct the transfer or sale of any property required in order to comply with the court's order;

(5) require security to insure future payments in compliance with the court's order;

(6) issue attachment proceedings, directed to the sheriff or other proper officer of the county, directing that the person named as having failed to comply with the court order be brought before the court, at such time as the court may direct. If the court finds, after hearing, that the person willfully failed to comply with the court order, it may deem the person in civil contempt of court and, in its discretion, make an appropriate order, including, but not limited to, commitment of the person to the county jail for a period not to exceed six months;

(7) award counsel fees and costs;

(8) attach wages; or

(9) find the party in contempt.

(f) Partial distribution.--The court, upon the request of either party, may at any stage of the proceedings enter an order providing for an interim partial distribution or assignment of marital property.

**Comment: This amendment specifically authorizes the court to make interim equitable distribution awards, a power that was never intended to be proscribed but which some courts and commentators believe does not exist.**

§ 3503. Effect of divorce on property rights generally.

Whenever a decree or judgment is granted which nullifies or absolutely terminates the bonds of matrimony, all property rights which are dependent upon the marital relation, except those which are vested rights, are terminated unless the court expressly provides otherwise in its decree. All duties, rights and claims accruing to either of the parties at any time theretofore in pursuance of the marriage shall cease, and the parties shall severally be at liberty to marry again as if they had never been married.

§ 3504. Disposition of property after termination of marriage.

Unless provided otherwise by the court, whenever a decree of divorce or annulment is entered by a court of competent jurisdiction, both parties whose marriage is terminated or affected shall have complete freedom of disposition as to their separate real and personal property and may mortgage, sell, grant, convey or otherwise encumber or dispose of their separate property, whether the property was acquired before, during or after coverture, and neither need join in, consent to or acknowledge a deed, mortgage or instrument of the other.

§ 3505. Disposition of property to defeat obligations.

(a) Preliminary relief.--Where it appears to the court that a party is about to leave the jurisdiction of the court or is about to remove property of that party from the jurisdiction of the court or is about to dispose of, alienate or encumber property in order to defeat equitable distribution, alimony pendente lite, alimony, child and spousal support or a similar award, an injunction may issue to prevent the removal or disposition and the property may be attached as prescribed by general rules. The court may also issue a writ of ne exeat to preclude the removal.

(b) Inventory of property.--Both parties shall submit to the court an inventory and appraisal, which shall contain all of the following:

(1) A list of the property owned or possessed by either or both of them as of:

- (i) the date of separation; and
- (ii) thirty days prior to the date of hearing on equitable distribution.

(2) A list of the value of the property owned or possessed by either or both of them as of:

- (i) the date of acquisition;
- (ii) the date of separation; and
- (iii) thirty days prior to the date of hearing on equitable distribution.

(3) A list of the liabilities of either or both of them as of 30 days prior to the date of hearing on equitable distribution, whether or not the liabilities are related to the property set forth in the inventory and appraisal.

(c) Discovery.--Discovery under this part shall be as provided for all other civil actions under the Pennsylvania Rules of Civil Procedure.

(d) Constructive trust for undisclosed assets.--If a party fails to disclose information required by [subsection (b)] general rule of the Supreme Court and in consequence thereof an asset or assets with a fair market value of [\$500] \$1,000 or more is omitted from the final distribution of property, the party aggrieved by the nondisclosure may at any time petition the court granting the award to declare the creation of a constructive trust as to all undisclosed assets for the benefit of the parties and their minor or dependent children, if any. The party in whose name the assets are held shall be declared the constructive trustee, unless the court designates a different trustee, and the trust may include any terms and conditions the court may determine. The court shall grant the petition upon a finding of a failure to disclose the assets as required [under subsection (b)] by general rule of the Supreme Court.

**Comment: The fair market value amount in subsection (d) is increased from \$500 to \$1,000 to account for the effects of inflation since the section was enacted. Technical amendments recognize that subsection (b) was suspended by court rule. See Pennsylvania Rule of Civil Procedure No. 1920.33 for the requirements regarding disclosure of assets.**

(e) Encumbrance or disposition to third parties.--An encumbrance or disposition of marital property to third persons who paid wholly inadequate consideration for the property may be deemed fraudulent and declared void.

§ 3506. Statement of reasons for distribution.

In an order made under this chapter for the distribution of property, the court shall set forth the percentage of distribution for each marital asset or group of assets and the reason for the distribution ordered.

**Comment: The amendment to this section conforms with the amendments made to section 3502(a).**

§ 3507. Division of entireties property between divorced persons.

(a) General rule.--Whenever married persons holding property as tenants by entireties are divorced, they shall, except as otherwise provided by an order made under this chapter, thereafter hold the property as tenants in common of equal one-half shares in value, and either of them may bring an action against the other to have the property sold and the proceeds divided between them.

(b) Division of proceeds.--Except as provided in subsection (c), the proceeds of a sale under this section, after the payment of the expenses of sale, shall be equally divided between the parties.

(c) Liens.--The amount of any lien entered of record jointly against both of the parties, together with any interest due on the lien and docket costs, shall be deducted from the proceeds of sale and the amount of the liens entered of record against either of the parties, together with any interest due on the liens and docket costs, shall be deducted from the share of the party against whom the lien is filed and paid to the person or persons to whom the amount of the lien is due and payable.

(d) Record of divorce decree.--No decree of divorce shall be effective to change the existing law relating to liens upon property held by tenants by the entireties except a decree of divorce that is valid in this Commonwealth and not until the decree of divorce or a certified copy of the decree is recorded in the office of the recorder of deeds of the county where the property is situate. The decree shall be indexed in the grantor's index against each of the tenants by the entireties.



§ 3508. Conveyance of entireties property to divorced spouse.

Whenever married persons have acquired real estate as tenants by entireties and thereafter are divorced, either former spouse, except as otherwise provided by an order made under this chapter, may convey to the other, without the joinder of the other, the grantor's interest in the real estate so that the grantee holds the real estate in fee simple, freed from all right, title and interest which the grantor had in the real estate as a tenant by the entireties.

**PRESENT CHAPTER 37 IS REPLICATED HERE AND WILL BE  
REPEALED BY THE IMPLEMENTING LEGISLATION.  
REVISED CHAPTER 37 BEGINS ON PAGE 47.**

[CHAPTER 37

ALIMONY AND SUPPORT

Sec.

3701. Alimony.

3702. Alimony pendente lite, counsel fees and expenses.

3703. Enforcement of arrearages.

3704. Payment of support, alimony and alimony pendente lite.

3705. Enforcement of foreign decrees.

3706. Bar to alimony.

3707. Effect of death of either party.

§ 3701. Alimony.

(a) General rule.--Where a divorce decree has been entered, the court may allow alimony, as it deems reasonable, to either party only if it finds that alimony is necessary.

(b) Factors relevant.--In determining whether alimony is necessary and in determining the nature, amount, duration and manner of payment of alimony, the court shall consider all relevant factors, including:

- (1) The relative earnings and earning capacities of the parties.
- (2) The ages and the physical, mental and emotional conditions of the parties.
- (3) The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.
- (4) The expectancies and inheritances of the parties.
- (5) The duration of the marriage.
- (6) The contribution by one party to the education, training or increased earning power of the other party.
- (7) The extent to which the earning power, expenses or financial obligations of a party will be affected by reason of serving as the custodian of a minor child.
- (8) The standard of living of the parties established during the marriage.
- (9) The relative education of the parties and the time necessary to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment.
- (10) The relative assets and liabilities of the parties.
- (11) The property brought to the marriage by either party.
- (12) The contribution of a spouse as homemaker.
- (13) The relative needs of the parties.

(14) The marital misconduct of either of the parties during the marriage. The marital misconduct of either of the parties from the date of final separation shall not be considered by the court in its determinations relative to alimony, except that the court shall consider the abuse of one party by the other party. As used in this paragraph, "abuse" shall have the meaning given to it under section 6102 (relating to definitions).

(15) The Federal, State and local tax ramifications of the alimony award.

(16) Whether the party seeking alimony lacks sufficient property, including, but not limited to, property distributed under Chapter 35 (relating to property rights), to provide for the party's reasonable needs.

(17) Whether the party seeking alimony is incapable of self-support through appropriate employment.

(c) Duration.--The court in ordering alimony shall determine the duration of the order, which may be for a definite or an indefinite period of time which is reasonable under the circumstances.

(d) Statement of reasons.--In an order made under this section, the court shall set forth the reason for its denial or award of alimony and the amount thereof.

(e) Modification and termination.--An order entered pursuant to this section is subject to further order of the court upon changed circumstances of either party of a substantial and continuing nature whereupon the order may be modified, suspended, terminated or reinstated or a new order made. Any further order shall apply only to payments accruing subsequent to the petition for the

requested relief. Remarriage of the party receiving alimony shall terminate the award of alimony.

(f) Status of agreement to pay alimony.--Whenever the court approves an agreement for the payment of alimony voluntarily entered into between the parties, the agreement shall constitute the order of the court and may be enforced as provided in section 3703 (relating to enforcement of arrearages).

§ 3702. Alimony pendente lite, counsel fees and expenses.

In proper cases, upon petition, the court may allow a spouse reasonable alimony pendente lite, spousal support and reasonable counsel fees and expenses. Reasonable counsel fees and expenses may be allowed pendente lite, and the court shall also have authority to direct that adequate health and hospitalization insurance coverage be maintained for the dependent spouse pendente lite.

§ 3703. Enforcement of arrearages.

If at any time a party is in arrears in the payment of alimony or alimony pendente lite as provided for in sections 3701 (relating to alimony) and 3702 (relating to alimony pendente lite, counsel fees and expenses), the court may, after hearing, in order to effect payment of the arrearages:

- (1) Enter judgment.
- (2) Authorize the taking and seizure of the goods and chattels and the collection of the rents and profits of the real estate of the party.
- (3) Attach no more than 50% of the wages of the party.
- (4) Award interest on unpaid installments.
- (5) Require security to insure future payments.

(6) Issue attachment proceedings, directed to the sheriff or other proper officer of the county, directing that the person named as having failed to comply with the court order be brought before the court at such time as the court may direct. If the court finds, after hearing, that the named person willfully failed to comply with the court order, it may declare the person in civil contempt of court and in its discretion make an appropriate order, including, but not limited to, commitment of the person to prison for a period not to exceed six months.

(7) Award counsel fees and costs.

§ 3704. Payment of support, alimony and alimony pendente lite.

When so ordered by the court, all payments of child and spousal support, alimony or alimony pendente lite shall be made to the domestic relations section of the court which issued the order or the domestic relations section of the court at the residence of the party entitled to receive the award. The domestic relations section shall keep an accurate record of all payments and shall notify the court immediately whenever a person subject to a payment order is 30 days in arrears of payment so that appropriate action may be taken to enforce the order of the court. The domestic relations section shall distribute the payments to the person entitled to them as soon as possible after receipt.

§ 3705. Enforcement of foreign decrees.

(a) General rule.--Whenever a person subject to a valid decree of a sister state or territory for the distribution of marital property or for the payment of alimony, temporary alimony or alimony pendente lite, or the property of that person is found within this Commonwealth, the obligee of the decree may petition

the court where the obligor or the property of the obligor is found to register, adopt as its own and enforce the decree as a properly issued and authenticated decree of a sister state or territory. Upon registration and adoption, such relief and process for enforcement as is provided or prescribed by law in similar cases originally commenced in this Commonwealth shall be available. A copy of the decree and order shall be forwarded to the court of the state or territory which issued the original decree. The obligor shall have whatever defenses and relief are available to the obligor in the state or territory which issued the original decree and may question the jurisdiction of that court if not otherwise barred. Interest may be awarded on unpaid installments and security may be required to insure future payments as in cases originally commenced in this Commonwealth. Where property of the obligor, but not the person of the obligor, is found within this Commonwealth, there shall be jurisdiction quasi in rem, and, upon registration and adoption of the decree of the sister state or territory, relief and enforcement of the decree shall be available as in other proceedings which are quasi in rem.

(b) Optional procedure.--The right of a judgment creditor to proceed under 42 Pa.C.S. § 4306 (relating to enforcement of foreign judgments) or otherwise instead of proceeding under this section remains unimpaired.

§ 3706. Bar to alimony.

No petitioner is entitled to receive an award of alimony where the petitioner, subsequent to the divorce pursuant to which alimony is being sought, has entered into cohabitation with a person of the opposite sex who is not a member of the family of the petitioner within the degrees of consanguinity.

§ 3707. Effect of death of either party.

Upon the death of the payee party, the right to receive alimony pursuant to this chapter shall cease. Upon the death of the payor party, the obligation to pay alimony shall cease unless otherwise indicated in an agreement between the parties or an order of court.]

## REVISED CHAPTER 37

### ALIMONY AND PENDENTE LITE RELIEF

**Comment: It is the intent of revised Chapter 37 to provide an element of certainty and uniformity in alimony awards throughout the Commonwealth. It is also the intent of this chapter to further the goal of achieving economic justice between the parties. To that end, revised Chapter 37 establishes a new statutory framework to consider alimony, sets forth within this framework presumptive guidelines regarding amount and duration of alimony, and provides rules governing credits against alimony awards and modifications of an award.**

#### Subchapter

- A. Alimony
- B. Pendente Lite Relief
- C. Enforcement and Payment

#### SUBCHAPTER A

#### ALIMONY

#### Sec.

- 3711. General rule and definition.
- 3712. Presumptive amount.
- 3713. Presumptive duration.
- 3714. Credit for alimony pendente lite and spousal support.
- 3715. Rebuttable presumptions.

3716. Statement of reasons.

3717. Modification and termination.

3718. Status of agreement to pay alimony.

§ 3711. General rule and definition.

(a) General rule.--Where a divorce decree has been entered, the court shall award alimony as provided under this subchapter.

**Comment: Derived from former section 3701 (relating to alimony), with the following amendments:**

**Where a divorce decree has been entered, the court [may allow] shall award alimony, as [it deems reasonable, to either party only if it finds that alimony is necessary] provided under this subchapter.**

**The award of alimony under sections 3712 (presumptive amount) and 3713 (presumptive duration) is subject to the adjustments outlined in section 3714 (credit for alimony pendente lite and spousal support) and section 3715 (rebuttable presumptions).**

**This subchapter is not intended to result in an award of alimony before the final divorce decree. In a bifurcated divorce setting, an award of alimony pendente lite continues pending the final divorce decree.**

(b) Definitions.--As used in this subchapter, the terms “income” and “net income” shall be defined as in section 4302 (relating to definitions).

**Comment: Under 23 Pa.C.S. § 4302, “income” is defined as follows:**

**“Income.” Includes compensation for services, including, but not limited to, wages, salaries, bonuses, fees, compensation in kind, commissions and similar items; income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; all forms of retirement;**



**pensions; income from discharge of indebtedness; distributive share of partnership gross income; income in respect of a decedent; income from an interest in an estate or trust; military retirement benefits; railroad employment retirement benefits; social security benefits; temporary and permanent disability benefits; worker's compensation; unemployment compensation; other entitlements to money or lump sum awards, without regard to source, including lottery winnings; income tax refunds; insurance compensation or settlements; awards or verdicts; and any form of payment due to and collectible by an individual regardless of source.**

§ 3712. Presumptive amount.

(a) Combined net monthly incomes equal to or less than \$15,000.--In those cases where the combined net monthly incomes of the parties are equal to or less than \$15,000, the court shall determine a presumptive amount of alimony as follows:

(1) Where there are no dependent children of the parties, the presumptive amount of alimony shall be 40% of the difference between the net incomes of the parties.

(2) Where there are dependent children of the parties, the presumptive amount of alimony shall be 30% of the difference between the net incomes of the parties.

**Comment: The calculation of the presumptive amount of alimony, when the combined net monthly incomes of the parties are equal to or less than \$15,000, is based on the difference between the net incomes of the parties: 40 percent if there are no dependent children of the parties and 30 percent if there are dependent children.**

**The revised child support guidelines, effective April 1, 1999, apply in cases where the combined net monthly incomes of the parties are less than or equal to \$15,000. For the sake of convenience, the same figure was chosen for this chapter.**

(b) Combined net monthly incomes exceeding \$15,000.--In those cases where the combined net monthly incomes of the parties exceed \$15,000, the court shall determine a presumptive minimum amount of alimony as follows:

**Comment: If the net monthly incomes of the parties exceed \$15,000, then the presumptive minimum amount of alimony is determined pursuant to paragraphs (1) and (2) below.**

(1) If the difference in the net monthly incomes is equal to or less than \$15,000, then there shall be a presumptive minimum amount of alimony as follows:

(i) Where there are no dependent children of the parties, 40% of the difference between the net incomes of the parties.

(ii) Where there are dependent children of the parties, 30% of the difference between the net incomes of the parties.

**Comment: If the difference in the parties' net monthly incomes is equal to or less than \$15,000, then the presumptive minimum amount of alimony is based on the difference between the net incomes of the parties: 40 percent if there are no dependent children of the parties and 30 percent if there are dependent children.**

(2) If the difference in the net monthly incomes exceeds \$15,000, then there shall be a presumptive minimum amount of alimony as follows:

(i) \$6,000 per month, where there are no dependent children of the parties.

(ii) \$4,500 per month, where there are dependent children of the parties.

**Comment: If the difference in the parties' net monthly incomes exceeds \$15,000, then the presumptive minimum amount of alimony is either \$6,000 or \$4,500, depending on whether there are dependent children of the parties.**

(c) Considerations.--

(1) In determining an award of alimony, the court shall take into account the earning capacity of each party.

(2) In determining an award of alimony, the court shall consider the income which is or could be reasonably derived from the assets awarded to each party in equitable distribution.

(3) In determining an award of alimony and child support, the court shall allocate the award unless the parties agree otherwise.

**Comment: The court may make an unallocated order if the parties agree to it.**

(4) The calculation of alimony shall be made prior to a calculation of child support. In determining child support subsequent to the alimony award, the court shall include the alimony payments as income for the petitioner and shall exclude the alimony payments as income for the respondent.

**Comment: Alimony is calculated before child support, and the payee spouse's receipt of alimony constitutes additional income for the purposes of calculating child support.**

(5) In determining an award of alimony, the court may consider the economic ramifications of the petitioner's cohabitation.

**Comment: Cohabitation is not an absolute bar to alimony, but the economic ramifications of the cohabitation may be considered in determining alimony. See comment to section 3717(f).**

(d) Effect of reduction in income and earning capacity prior to alimony award.--If, at the time of the entry of the original alimony award, the court determines that the respondent has experienced a legitimate reduction in income and earning capacity compared with the respondent's historical income and

earning capacity, then the court shall enter an alimony award based on the current income of the respondent. However, the court shall provide in the original alimony order that the petitioner may subsequently petition for an increase in the alimony award. Any modified alimony award shall not exceed the amount which would have been originally calculated had the respondent not experienced a legitimate reduction in income and earning capacity.

**Comment: A party may receive an increase in an alimony award based on the increase in the income of the other party only if the other party had experienced a legitimate reduction in income and earning capacity prior to the entry of the original alimony award. This is a limited exception to the general rule prohibiting modifications of alimony awards based on increased income. See section 3717(d).**

(e) Effect of child support obligation.--If the duration of alimony extends beyond the duration of the child support obligation for all the dependent children of the parties, then at the time the child support obligation ceases, the amount of alimony shall be presumed to be the amount which would have been initially calculated had there been no dependent children.

**Comment: At the time that all the payor party's child support obligations cease, then the new presumptive amount of alimony is that amount which would have been initially calculated under subsections (a) and (b) if there were no dependent children of the parties.**

§ 3713. Presumptive duration.--

(a) Marriage of less than 25 years.--For a marriage of a duration of less than 25 years, there shall be a presumptive duration of alimony based on a percentage of the length of the marriage. The duration shall be calculated by:

(1) multiplying the length of the marriage in years, including any fractional portion of a year, by 4%; and

(2) multiplying that product by the length of the marriage in years, including any fractional portion of a year.

**Comment:** The presumptive duration of alimony is based on a percentage of the length of marriage, if a marriage has a duration of less than 25 years. This calculation is based on a 4% sliding scale. Mathematically, the duration is the length of the marriage squared multiplied by 0.04.

For example, an alimony award for a marriage of 15 years is calculated as follows:

Percentage:  $15 \times 4\% = 60\%$

Presumptive alimony duration:  $15 \text{ years} \times 60\% = 9 \text{ years}$

In other words, the presumptive alimony duration is 15 years x 15 years x 0.04, or 9 years.

In addition, fractional parts of a year do not change the calculation. For a marriage of 15.5 years, the alimony award is calculated as follows:

Percentage:  $15.5 \times 4\% = 62\%$

Presumptive alimony duration:  $15.5 \text{ years} \times 62\% = 9.61 \text{ years}$

Again, the presumptive alimony duration is 15.5 years x 15.5 years x 0.04, or 9.61 years.

The following chart summarizes the presumptive duration of alimony:

Column 1 Duration of marriage (in years)	Column 2 Alimony as a percentage of the length of the marriage (Column 1 x 4%)	Column 3 Presumptive duration of alimony in years (Column 1 x Column 2)
1	4%	.04
2	8%	.16

3	12%	.36
4	16%	.64
5	20%	1.0
6	24%	1.44
7	28%	1.96
8	32%	2.56
9	36%	3.24
10	40%	4.0
11	44%	4.84
12	48%	5.76
13	52%	6.76
14	56%	7.84
15	60%	9.0
16	64%	10.24
17	68%	11.56
18	72%	12.96
19	76%	14.44
20	80%	16.0
21	84%	17.64
22	88%	19.36

23	92%	21.16
24	96%	23.04

**Because of the 4% sliding scale, there is little strategic advantage for a spouse to use dilatory tactics with the expectation of receiving a more favorable alimony award.**

(b) Marriage of 25 years or more.--For a marriage of a duration of 25 years or more, there shall be a presumptive duration of alimony equal to the length of the marriage.

**Comment: If a marriage has a duration of 25 years or more, the duration of alimony is equal to the length of the marriage. For example, a 26-year marriage presumptively yields 26 years of alimony; a 26 ½-year marriage presumptively yields 26½ years of alimony. While this paragraph does not incorporate the concept of alimony for an indefinite period of time, the court under section 3715 (rebuttable presumptions) may award indefinite alimony if the circumstances of the case so merit.**

(c) Marriage length.--The calculation of marriage length under this section shall be from the date of marriage to the date of final separation.

**Comment: In calculating the presumptive duration of an alimony award, the length of the marriage is measured from the date of marriage to the date of final separation. The date of the final divorce decree is irrelevant to the calculation of duration of alimony.**

§ 3714. Credit for alimony pendente lite and spousal support.

(a) Durational credit for payments pursuant to order or written agreement.-- In awarding alimony, the court shall provide to a party ordered to pay alimony a full credit for the duration that such party made previous payments to the other party, whether as alimony pendente lite or spousal support, pursuant to an order or a written agreement. The credit shall not exceed the length of the alimony

award. The court shall not make any adjustment based on the difference between any amount of alimony pendente lite and spousal support paid and the amount of alimony awarded.

**Comment: The court must provide a durational credit for alimony pendente lite and spousal support paid pursuant to an order or a written agreement. However, the durational credit may not extend longer than the actual award. In addition, in those cases where the amount of alimony differs from the amount of alimony pendente lite or spousal support paid, the court shall not adjust the alimony amount to account for any disparity between the awards.**

(b) Monetary credit for voluntary payments.--In the absence of an order or a written agreement to pay spousal support, the court in awarding alimony may provide to a party ordered to pay alimony a monetary credit which accounts for the amount of all previous voluntary payments of support to the other party. The credit shall not exceed the total amount of the alimony award.

**Comment: The court may provide a monetary credit for all previous voluntary support payments made to the other party, if there is neither a support order nor a written agreement. However, the monetary credit may not exceed the total amount of the alimony award.**

(c) When full credit not ordered.--

(1) If special circumstances exist such that a full durational credit under subsection (a) or a full monetary credit under subsection (b) would be unjust or inappropriate, then the court may provide a partial credit or no credit.

(2) If the court does not order a full durational credit under subsection (a) or a full monetary credit under subsection (b), then it shall make a written finding, or a specific finding on the record, indicating why the full credit was not granted.



**Comment: The court may provide a partial durational or monetary credit, or no credit at all, only if there are special circumstances signifying that a full credit is unjust or inappropriate. Where the court does not order a full durational or monetary credit, it must indicate the reasons that a full credit was not ordered.**

§ 3715. Rebuttable presumptions.

(a) Combined net monthly incomes equal to or less than \$15,000.--In those cases where the presumptive amount of alimony is determined under section 3712(a) (relating to presumptive amount), a party may rebut the presumptive amount and duration by raising any relevant factor, including those set forth in subsection (c). The court shall then determine an alimony award sufficient to meet the reasonable needs of the petitioner based upon a reasonable standard of living commensurate with the parties' current financial circumstances.

**Comment: In those cases where the combined net monthly incomes of the parties are equal to or less than \$15,000, a party may rebut the presumptive amount and duration of alimony, based upon any relevant factor such as those listed in subsection (c). The standard of proof is preponderance of the evidence. The presumptive amount and duration for these cases is the starting point in determining an alimony award which sufficiently meets the reasonable needs of the petitioner.**

(b) Combined net monthly incomes exceeding \$15,000.--In those cases where the presumptive minimum amount of alimony is determined under section 3712(b), a party may rebut the presumptive minimum amount and duration by raising any relevant factor, including those set forth in subsection (c). The court shall then determine an alimony award sufficient to meet the reasonable needs of the petitioner based upon a reasonable standard of living commensurate with the parties' current financial circumstances.

**Comment:** In those cases where the combined net monthly incomes of the parties exceed \$15,000, a party may rebut the presumptive minimum amount and duration of alimony, based upon any relevant factor such as those listed in subsection (c). The standard of proof is preponderance of the evidence. The presumptive minimum amount and duration for these cases is the starting point in determining an alimony award which sufficiently meets the reasonable needs of the petitioner.

(c) Factors.--A party may rebut the presumptions under subsections (a) and (b) by raising any relevant factor, including:

(1) The relative earnings and earning capacities of the parties.

**Comment:** Derived from former section 3701(b)(1).

(2) Other income of the parties reasonably available from all sources, including the income which is or could be reasonably derived from the assets awarded to each party in equitable distribution.

**Comment:** Derived from former section 3701(b)(3), except that “income” and “benefits” are segregated. The “benefits” factor appears in paragraph (5). Also derived from former section 3701(b)(16).

(3) The ages of the parties.

**Comment:** Derived from former section 3701(b)(2), except that “ages” and “physical, mental and emotional conditions” are segregated. The “physical, mental and emotional conditions” factor appears in paragraph (4).

(4) The physical, mental and emotional conditions of the parties.

**Comment:** See comment to paragraph (3).

(5) The benefits received by or available to the parties, including, but not limited to, medical, retirement, insurance or other benefits.

**Comment:** See comment to paragraph (2).

(6) The expectancies and inheritances of the parties.

**Comment: Identical to former section 3701(b)(4).**

(7) The adverse effect on the earning capacity of a party, attributable to that party's contribution to the education, training or increased earning capacity of the other party.

**Comment: Derived from former section 3701(b)(6), which follows:**

**The contribution by one party to the education, training or increased earning power of the other party.**

(8) The extent to which the earning power, expenses or financial obligations of a party was or will be affected by reason of serving as the custodian of a minor child of the parties.

**Comment: Derived from former section 3701(b)(7) and amended as follows:**

**The extent to which the earning power, expenses or financial obligations of a party was or will be affected by reason of serving as the custodian of a minor child of the parties.**

(9) The standard of living of the parties established prior to the date of final separation.

**Comment: Derived from former section 3701(b)(8), except that the phrase "during the marriage" has been changed to "prior to the date of final separation."**

(10) The time necessary to acquire sufficient education or training to enable the party seeking alimony to find employment and enhance the earning capacity of that party.

**Comment: Derived from former section 3701(b)(9) and amended for clarification purposes. "Relative education of the parties" is segregated and appears in paragraph (11).**

(11) The relative education of the parties.

**Comment: See comment to paragraph (10).**

(12) The assets of each party, including those awarded in equitable distribution.

**Comment: Derived from former section 3701(b)(10), except that assets and liabilities are segregated. “Liabilities” appears in paragraph (13). Also derived from former section 3701(b)(16).**

(13) The reasonable liabilities of the parties, including debt service on those liabilities.

**Comment: See comment to paragraph (12). In addition, “liabilities” is limited by the modifier “reasonable.” The inclusion of “debt service on those liabilities” is for clarification purposes.**

(14) The contribution of a spouse as homemaker.

**Comment: Identical to former section 3701(b)(12).**

(15) The relative needs of the parties.

**Comment: Identical to former section 3701(b)(13).**

(16) The abuse of one party by the other party. As used in this paragraph, “abuse” shall have the meaning given to it under section 6102 (relating to definitions).

**Comment: Derived in part from former section 3701(b)(14).**

(17) The effect of marital misconduct of either party prior to the date of final separation on the postseparation economic circumstances of the parties. The court shall not consider the marital misconduct of either party after the date of final separation.

**Comment: Derived in part from former section 3701(b)(14). The focus of “marital misconduct” concerns the postseparation economic circumstances of the parties.**

(18) The Federal, State and local tax ramifications of the alimony award.

**Comment: Identical to former section 3701(b)(15).**

**Comment: The following factors from former section 3701(b) are not included in this subsection:**

(5) The duration of the marriage.

(11) The property brought to the marriage by either party.

(16) Whether the party seeking alimony lacks sufficient property, including, but not limited to, property distributed under Chapter 35 (relating to property rights), to provide for the party's reasonable needs.

(17) Whether the party seeking alimony is incapable of self-support through appropriate employment.

**Former factors (11), (16) and (17) are incorporated in concept into the listed factors. Former factor (5) is repealed because it is contained in concept under proposed section 3713 (presumptive duration).**

§ 3716. Statement of reasons.

In an order made under this subchapter which deviates from the presumptive amount and duration of alimony, the court shall set forth the reason for its award or denial of alimony, with specific reference to relevant factors.

**Comment: Derived from former section 3701(d).**

§ 3717. Modification and termination.

(a) General rule.--An award of alimony entered pursuant to this subchapter may be modified, suspended or terminated, based on changed circumstances of either party of a substantial and continuing nature, as provided in this section.

(b) Remarriage.--Remarriage of the payee party shall terminate the award of alimony.

**Comment: Derived from former section 3701(e). “Payee party” replaces “party receiving alimony.”**

(c) Decrease in income.--

(1) Where either party has a decrease in income of a substantial and continuing nature, the court may grant a petition to increase, reduce or suspend the alimony award.

(2) Where the court has granted a reduction or suspension of an alimony award based on a decrease in the payor party's income, and the income of the payor party subsequently increases, the payee party may petition for an upward modification effective as of the date of the payor party's increase in income. The subsequent alimony award shall not exceed the amount of the original alimony award.

(3) Where the court has granted an increase of an alimony award based on a decrease in the payee party's income and the income of the payee party subsequently increases, the payor party may petition for a downward modification effective as of the date of the payee party's increase in income. The subsequent alimony award shall not be less than the amount of the original alimony award.

**Comment: A court may increase, reduce or suspend an alimony award, where either the payor party or payee party has a substantial and continuing decrease in income.**

**Therefore, if the payor party has a decrease in income, the alimony award may be modified downward, as in the case of the payor party's unplanned layoff or termination. If at some later date the payor party experiences an increase in income of a substantial and continuing nature, then the payee party may petition for an upward modification not to exceed the amount of the original alimony award. The new alimony award would be effective as of the date of the payor party's**

increase in income and not the date of the filing of the petition for modification.

If, on the other hand, the payee spouse experiences a decrease in income, the alimony award may be modified upward. If at some later date the payee party experiences an increase in income of a substantial and continuing nature, then the payor party may petition for a downward modification to an amount not less than the amount of the original alimony award. The new alimony award would be effective as of the date of the payee party's increase in income and not the date of the filing of the petition for modification.

**A decrease in income must be shown to represent a legitimate reduction in income or earning capacity, compared with historical income.**

(d) Increase in income.--Except as provided in subsection (c) and section 3712(d) (relating to presumptive amount), the court shall not grant any petition to modify the amount of the alimony award based on the increase in income of either party.

**Comment: Except under the limited circumstances provided in subsection (c) and section 3712(d), a court may not modify an alimony award based upon the increase in income of either the payor party or payee party.**

Therefore, if the payor spouse receives a windfall or increased income post-divorce, then the payee spouse cannot share in any monetary benefit from such increase. If, on the other hand, the payee spouse receives a windfall or increased income post-divorce, then the payor spouse may not seek a downward modification of the alimony award. Therefore, neither spouse is penalized for receiving increased income after the divorce.

(e) Duration.--The court shall not grant any petition to modify the duration of an alimony award.

**Comment: Duration is presumptively determined under section 3713 (presumptive duration). A party may rebut that presumption under section 3715 (rebuttable presumptions). Although the court may not modify duration on a petition for**

**modification, the court may grant a reduction of an alimony award based on a decrease in the income of the payor party, pursuant to subsection (c)(1). For example, if the payor party reaches retirement age before the alimony duration expires, the payor party may petition for a decrease in the amount, although the duration would still be operative.**

(f) Cohabitation.--

(1) The court may reduce, suspend or terminate an alimony award based on the economic ramifications of the payee party's cohabitation effective as of the date of the cohabitation.

(2) The payee party shall provide to the payor party reasonable and timely notice of the cohabitation. If the court determines that the payee party did not provide such notice, then the court may order an appropriate sanction, which may include ordering the payee party to repay the amount received during the cohabitation.

(3) The court may grant a petition to reinstate a reduced or suspended alimony award if the payee party's cohabitation ceases, subject to the following:

(i) The payee party shall not be entitled to receive alimony which would have been paid during the period of reduction or suspension.

(ii) The court shall not extend the date of final payment of alimony granted under the original alimony award.

**Comment: Cohabitation is characterized by living together with financial, social and sexual interdependence. *Miller v. Miller*, 352 Pa. Super. 432, 508 A.2d 550 (1986). In determining whether cohabitation exists, the court should consider the permanency of the relationship, the length of the shared living arrangement and the interdependence resulting from the relationship. This expands the concept of cohabitation set forth in former section 3706 (bar to alimony) by eliminating the reference to "a person of the opposite sex."**



**Former section 3706 is not included in this revised chapter.  
Former section 3706 provides:**

**§ 3706. Bar to alimony.**

**No petitioner is entitled to receive an award of alimony where the petitioner, subsequent to the divorce pursuant to which alimony is being sought, has entered into cohabitation with a person of the opposite sex who is not a member of the family of the petitioner within the degrees of consanguinity.**

**During the period of cohabitation, if the court reduces or suspends the alimony award, the payee party forfeits the alimony payments that would have been payable had there been no cohabitation. The time period for the duration of alimony is not extended to account for the foregone alimony payments. The court may subsequently reinstate an alimony award after the cohabitation ceases. The payee party must inform the payor party of the cohabitation in a timely manner. If the payee party does not so inform the payor party, then the court has discretion to sanction the payee party. A sanction is not mandatory. If an alimony award is terminated, then the court has no authority to reinstate the previous alimony order.**

(g) Retroactivity.--Unless otherwise specified in this section, an order modifying an alimony award shall be retroactive only to the date of the filing of the petition for modification.

**Comment: Subsection (g) is based on the second sentence of former section 3701(e) and clarified.**

**§ 3718. Status of agreement to pay alimony.**

Whenever the parties enter an agreement for the payment of alimony, the agreement shall constitute an order of the court for enforcement purposes as provided in section 3731 (relating to enforcement of arrearages). Absent a specific provision to the contrary, an agreement for the payment of alimony is not subject to modification.

**Comment: The first sentence is derived from former section 3701(f) and clarified. The second sentence conforms with section 3105(c).**

SUBCHAPTER B  
PENDENTE LITE RELIEF

Sec.

3721. Alimony pendente lite.

3722. Health and hospitalization insurance pendente lite.

3723. Reasonable attorney fees and expenses pendente lite.

§ 3721. Alimony pendente lite.

(a) General rule.--Where a divorce complaint has been filed, but a divorce decree has not been entered, the court shall award alimony pendente lite as provided under this section.

**Comment: Derived from former section 3702.**

**This section is not intended to enable one party to receive alimony pendente lite, where both parties remain in the marital residence and the payor party continues to financially secure the necessities of life for the family. See, e.g., *Shilling v. Shilling*, 394 Pa. Super. 154, 575 A.2d 145 (1990); and *Commonwealth v. George*, 358 Pa. 118, 56 A.2d 228 (1948).**

(b) Presumptive amount.--The presumptive amount of the alimony pendente lite award shall be determined in accordance with section 3712(a) and (b) (relating to presumptive amount).

**Comment: The presumptive amount of alimony pendente lite is calculated in the same manner as alimony.**

(c) Considerations.--The court shall consider the following in determining the award of alimony pendente lite:

(1) The income reasonably derived from assets awarded in an interim equitable distribution shall be considered part of the recipient's income.

**Comment: See comment to section 3712(c)(1).**

(2) In determining an award of alimony pendente lite and child support, the court shall allocate the award unless the parties agree otherwise.

**Comment: The court may make an unallocated order if the parties agree to it.**

(3) Child support shall be calculated before alimony pendente lite.

(d) Rebuttable presumptions.--

(1) In those cases where the presumptive amount of alimony pendente lite is calculated pursuant to section 3712(a) or the presumptive minimum amount of alimony pendente lite is calculated pursuant to section 3712(b), a party may rebut the amount so determined by raising any factor set forth in paragraph (2). The court shall then determine an award of alimony pendente lite sufficient to meet the reasonable needs of the petitioner based upon a reasonable standard of living commensurate with the parties' current financial circumstances.

**Comment: The presumptive amount of alimony pendente lite for these cases is the starting point in determining an amount which sufficiently meets the reasonable needs of the petitioner. The presumption may be rebutted only by the eight factors listed in paragraph (2). The standard of proof is preponderance of the evidence.**

(2) The court shall consider only the following factors:

- (i) The relative earnings and earning capacities of the parties.
- (ii) Other income of the parties reasonably available from all sources.
- (iii) The benefits received by or available to the parties, including, but not limited to, medical, retirement, insurance or other benefits.

(iv) The standard of living of the parties established during the marriage.

(v) The reasonable liabilities of the parties, including debt service on those liabilities.

(vi) The relative needs of the parties.

(vii) The Federal, State and local tax ramifications of the alimony pendente lite award.

(viii) The abuse of one party by the other party. As used in this paragraph, "abuse" shall have the meaning given to it under section 6102 (relating to definitions).

**Comment: This is an exclusive list of factors.**

(e) Limitation.--The court may refuse to allow alimony pendente lite and may reduce or vacate any such order where the payee party has engaged in dilatory conduct.

**Comment: An example of dilatory conduct occurs where the payor party files an affidavit of consent to the payee party's complaint under section 3301(c) (grounds for divorce), and the payee party does not file an affidavit of consent. See, e.g., *Rueckert v. Rueckert*, 20 D.&C.3d 191 (1981).**

(f) Modification.--An award of alimony pendente lite entered pursuant to this subchapter may be modified, suspended or terminated based on changed circumstances of either party of a substantial and continuing nature. An order modifying an award of alimony pendente lite shall be retroactive only to the date of the filing of the petition for modification.

(g) Statement of reasons.--In an order made under this section which deviates from the presumptive amount of alimony pendente lite, the court shall

set forth the reason for its award or denial of alimony pendente lite, with specific reference to relevant factors.

(h) Definition.--As used in this section, the term "income" shall be defined as in section 4302 (relating to definitions).

**Comment: See the comment following section 3711(b).**

§ 3722. Health and hospitalization insurance pendente lite.

(a) Maintenance of insurance coverage.--The court may direct a party to maintain adequate health and hospitalization insurance coverage for the other party pendente lite.

(b) Termination of insurance coverage.--Existing health and hospitalization insurance coverage shall not be terminated by the action or inaction of a party without leave of court or the consent of both parties.

**Comment: Subsection (a) is derived from former section 3702(a). Subsection (b) is new.**

§ 3723. Reasonable attorney fees and expenses pendente lite.

Upon petition, the court may allow a party reasonable attorney fees and expenses pendente lite. In determining the amount of the fees and expenses, the court shall consider the following factors:

(1) Whether there has been or is likely to be protracted litigation due to the complexity of the case.

(2) The availability of the parties' respective assets to pay attorney fees and expenses.

(3) The relative incomes of the parties.

(4) Whether either party has engaged in dilatory or other improper conduct.

(5) The need to hire expert witnesses.

**Comment: Derived from former section 3702 and expanded. The court may award reasonable attorney fees and expenses after considering the five listed factors.**

## SUBCHAPTER C

### ENFORCEMENT AND PAYMENT

Sec.

3731. Enforcement of arrearages.

3732. Payment of support, alimony and alimony pendente lite.

3733. Enforcement of foreign decrees.

3734. Effect of death of either party.

§ 3731. Enforcement of arrearages.

If at any time a party is in arrears in the payment of alimony or alimony pendente lite as provided for in Subchapter A (relating to alimony) or B (relating to pendente lite relief), the court may, after hearing, in order to effect payment of the arrearages:

- (1) Enter judgment.
- (2) Authorize the taking and seizure of the goods and chattels and the collection of the rents and profits of the real estate of the party.
- (3) Attach no more than 50% of the wages of the party.
- (4) Award interest on unpaid installments.
- (5) Require security to insure future payments.
- (6) Issue attachment proceedings, directed to the sheriff or other proper officer of the county, directing that the person named as having failed to comply with the court order be brought before the court at such time as the

court may direct. If the court finds, after hearing, that the named person willfully failed to comply with the court order, it may declare the person in civil contempt of court and in its discretion make an appropriate order, including, but not limited to, commitment of the person to prison for a period not to exceed six months.

(7) Award counsel fees and costs.

**Comment: Identical to former section 3703.**

§ 3732. Payment of support, alimony and alimony pendente lite.

When so ordered by the court, all payments of child and spousal support, alimony or alimony pendente lite shall be made to the domestic relations section of the court which issued the order or the domestic relations section of the court at the residence of the party entitled to receive the award. The domestic relations section shall keep an accurate record of all payments and shall notify the court immediately whenever a person subject to a payment order is 30 days in arrears of payment so that appropriate action may be taken to enforce the order of the court. The domestic relations section shall distribute the payments to the person entitled to them as soon as possible after receipt.

**Comment: Identical to former section 3704.**

§ 3733. Enforcement of foreign decrees.

(a) General rule.--Whenever a person subject to a valid decree of a sister state or territory for the distribution of marital property or for the payment of alimony, temporary alimony or alimony pendente lite, or the property of that person is found within this Commonwealth, the obligee of the decree may petition the court where the obligor or the property of the obligor is found to register,

adopt as its own and enforce the decree as a properly issued and authenticated decree of a sister state or territory. Upon registration and adoption, such relief and process for enforcement as is provided or prescribed by law in similar cases originally commenced in this Commonwealth shall be available. A copy of the decree and order shall be forwarded to the court of the state or territory which issued the original decree. The obligor shall have whatever defenses and relief are available to the obligor in the state or territory which issued the original decree and may question the jurisdiction of that court if not otherwise barred. Interest may be awarded on unpaid installments and security may be required to insure future payments as in cases originally commenced in this Commonwealth. Where property of the obligor, but not the person of the obligor, is found within this Commonwealth, there shall be jurisdiction quasi in rem, and, upon registration and adoption of the decree of the sister state or territory, relief and enforcement of the decree shall be available as in other proceedings which are quasi in rem.

(b) Optional procedure.--The right of a judgment creditor to proceed under 42 Pa.C.S. § 4306 (relating to enforcement of foreign judgments) or otherwise instead of proceeding under this section remains unimpaired.

**Comment: Identical to former section 3705.**

§ 3734. Effect of death of either party.

(a) Death of payee party.--Upon the death of the payee party, the right to receive alimony or alimony pendente lite pursuant to this chapter shall cease.



(b) Death of payor party.--Upon the death of the payor party, the obligation to pay alimony or alimony pendente lite shall cease unless otherwise indicated in an agreement between the parties or an order of court.

**Comment: Derived from former section 3707, with the addition of “alimony pendente lite.”**

## CHAPTER 39

### MEDIATION

Sec.

3901. Mediation programs.

3902. Fees and costs.

3903. Review of programs.

3904. Existing programs.

§ 3901. Mediation programs.

(a) Establishment.--A court may establish a mediation program for actions brought under this part or Chapter 53 (relating to custody).

(b) Issues subject to mediation.--When a program has been established pursuant to subsection (a), the court may order the parties to attend an orientation session to explain the mediation process. Thereafter, should the parties consent to mediation, the court may order them to mediate such issues as it may specify.

(c) Local rules.--

(1) The court shall adopt local rules for the administration of the mediation program to include rules regarding qualifications of mediators, confidentiality and any other matter deemed appropriate by the court.

(2) The court shall not order an orientation session or mediation in a case where either party or child of either party is or has been a subject of domestic violence or child abuse at any time during the pendency of an action under this part or within 24 months preceding the filing of any action under this part.

(d) Model guidelines.--The Supreme Court shall develop model guidelines for implementation of this section and shall consult with experts on mediation and domestic violence in this Commonwealth in the development thereof. The effective date of this chapter shall not be delayed by virtue of this subsection.

§ 3902. Fees and costs.

(a) Imposition of fee.--A county in which the court has established a mediation program may impose an additional filing fee of up to \$20 on divorce and custody complaints to be used to fund the mediation program.

(b) Assessment of additional costs.--The court may assess additional costs of mediation on either party.

§ 3903. Review of programs.

The Supreme Court shall monitor mediation programs established by courts of common pleas. The Supreme Court shall establish procedures for the evaluation of the effectiveness of the program.

§ 3904. Existing programs.

This chapter shall not affect any existing mediation program established in any judicial district pursuant to local rule.