



## Debunking Delaware's Family Law Myths

**You can only get a divorce in Delaware if your marriage ceremony took place in Delaware: FALSE** Under Delaware law, the Family Court has jurisdiction over actions for divorce if, at the time the petition is filed, either party lives in Delaware and has lived in Delaware for six consecutive months.

**In custody actions, the law favors mothers: FALSE** Delaware law specifically provides that neither parent has a presumption of right or superior fitness. Family Court judges are charged with making custody and visitation decisions in the best interests of the child or children involved. In doing so, the presiding judge is required to consider all relevant factors, including eight specifically enumerated factors, such as the child's wishes, any history of domestic violence and the mental and physical health of the parties.

**If you acquire an asset during the marriage in your own name it will never be considered marital property: FALSE** Delaware law presumes that assets acquired during the marriage are marital property regardless of how they are titled.

**Parties are required to have a hearing if a petition is filed: FALSE** If parties reach an agreement on the subject of the petition (i.e., custodial arrangements, property division, alimony or child support), they may file a stipulation advising the Family Court of their agreement. The Court may sign the agreement, which makes it a court order and eliminates the need for a hearing.

**Alimony, if awarded, lasts forever: FALSE** A dependent husband or wife is eligible to receive alimony for a period no longer than half the length of the marriage, unless the parties were married for 20 years or longer. If parties were married for 20 years or more, there is no time limit to eligibility. Regardless of the duration of eligibility, Delaware law provides that alimony terminates with the death of either party or when the party receiving alimony remarries or cohabits.

**Marital assets and debts are always divided equally in a divorce: FALSE** Marital assets and debts are "equitably" divided in Delaware. An equitable division is not necessarily an equal

division. In order to determine what constitutes an equitable division, the Family Court considers 11 specifically enumerated factors, such as the age and health of the parties and the contribution of the parties to the growth or squandering of the marital estate.

**Marital misconduct impacts the division of assets and debts: TRUE and FALSE** Delaware is a "no fault" state. As a result, when the Family Court considers how to equitably divide the marital estate, it typically does so without regard for the misconduct of a party. Misconduct may be considered if it impacts or squanders the marital estate.

**A protection from abuse (PFA) order will only be entered if there is physical abuse: FALSE** While the PFA statute does apply to physical abuse, it also includes other forms of abuse, such as placing someone in fear of physical harm, intentionally or recklessly damaging property and any other conduct that a reasonable person under the circumstances would find threatening or harmful.

**Child support must be paid while a child is in college: FALSE** A Delaware order to pay support for a child remains in effect only until the child has reached age 18 and is no longer enrolled in high school, or 19, whichever occurs first. However, support orders do not terminate automatically, and the Court will only address the termination of a support obligation after one of the parties files an application with the Court.

**All Family Court matters are closed to the public: FALSE** Most proceedings in the Family Court are closed to the public. However, some matters, such as protection from abuse matters, child support and criminal/delinquency matters are open.

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If you have any questions about these laws, please contact:

**Leslie B. Spoltore**  
302.622.4203  
lspoltore@foxrothschild.com