



## Debunking New Jersey's Family Law Myths

**Divorce requires the consent of both spouses: FALSE**

A divorce requires that only one spouse actually wants the divorce. Thus, while the other spouse may not want to divorce, he or she does not have a choice if the other spouse wants to dissolve the marriage. However, the failure of one spouse to accept the reality of the divorce can increase the costs of a divorce for both parties.

**Courts determine alimony with a set of guidelines or a formula: FALSE**

A court will determine alimony by reviewing the facts of a given case in conjunction with New Jersey's alimony law and its 14 factors. While parties can privately agree in a settlement to calculate alimony however they deem appropriate, a court's use of any specific formula has been previously rejected by the Appellate Division. The amended alimony law, effective September 10, 2014, however, incorporates durational limitations on alimony. Other than marriages in excess of 20 years, alimony largely cannot be granted for longer than the term of the marriage.

**The Amended Alimony law applies retroactively: FALSE**

The amended law, effective September 10, 2014, cannot act to modify the duration of alimony ordered or agreed upon, or otherwise specifically bargained for contractual provisions, in: (a) a final judgment of divorce or dissolution; (b) a final order that has concluded post-Judgment litigation; or (c) any enforceable written agreement between the parties. The amended law, however, does apply to applications to modify alimony based on the above-referenced potential changes in circumstance (income decline, cohabitation and retirement).

**Open Durational Alimony is always indefinite: FALSE**

Open Durational Alimony (formerly known as "permanent" alimony) may end or be modified for a variety of reasons based on a given set of circumstances including, but not

limited to, the death of either party, a supported spouse's remarriage or cohabitation, or a payor spouse's retirement, job loss or income decline. In fact, obtaining relief based upon retirement, cohabitation and job loss may be easier under the new law.

**A parent can waive his or her right to child support: FALSE**

The right to child support belongs to the child, not to the parent. Thus, while parents may agree in a settlement agreement that there will be no child support, ultimately a court will have to determine what is in the best interests of the child should an issue later arise.

**All assets are divided equally in equitable distribution: FALSE**

Similar to alimony, there is no specific formula for equitably distributing an asset. Rather, the law provides a court with 16 factors to consider, some of the more notable ones of which are the income and property brought to the marriage by both parties; the contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a party as a homemaker; the tax consequences of the proposed distribution to each party; and the present value of the property. While there is often a knee-jerk reaction to equally divide all assets, this may not be appropriate given the facts and circumstances of the case. Moreover, businesses are rarely divided equally.

**Most cases go to trial: FALSE**

In fact, more than 98 percent of cases settle before trial. The court system strongly encourages privately negotiated settlements between parties by requiring that the parties engage in custody and parenting time mediation; the Early Settlement Panel; economic mediation; and intensive settlement conferences before trial.

**Legal separation exists in New Jersey: FALSE**

While this exists in other states, including New York, there is no legal form of separation in New Jersey. The closest form of legal separation is known as a divorce from “bed and board,” otherwise known as a “limited divorce.” A divorce from bed and board means that two spouses have obtained a divorce from a financial standpoint, involving a distribution of assets and determination of support, but are still legally married. As the parties are still legally married, they can then later reconcile, apply for a revocation or suspension of the Judgment of Divorce or, should no reconciliation occur, either may apply to the court for a conversion of the divorce from bed and board to that of a standard divorce “from the bounds of matrimony.” The date of a divorce complaint, however, provides a cut-off date for the length of the marriage and for the inclusion of assets and debts of the marital estate.

**There is no obligation to pay for college: FALSE**

Parents in New Jersey have an obligation to pay for a child’s college education and related expenses. The law requires that a court consider several factors when determining a party’s obligation to contribute to college expenses including, but not limited to, whether the parent, if still living with the child, would have contributed toward the costs of the requested higher education; the amount of the contribution sought by the child for the cost of higher education; the ability of the parent to pay that cost; and the relationship of the requested contribution to the kind of school or course of study sought by the child.

**A palimony agreement does not need to be in writing for it to be enforceable: TRUE AND FALSE**

Palimony is a promise by one party to support the other party in a non-marital personal relationship, either during the course of the relationship or after its end. In 2010, New Jersey passed a law requiring that all palimony agreements be in writing in order for them to be enforceable. In *Maeker v. Ross*, the Supreme Court of New Jersey held that only palimony agreements entered into after enactment of the 2010 law had to be in writing in order for them to be enforceable. While there is legislation pending that would make the 2010 law retroactive in its application, thereby applying to verbal agreements and agreements established by conduct, such is not the law at this time.

**You can provide for child support and child custody in premarital agreements: FALSE**

Provisions regarding child support and child custody in premarital agreements are void as a matter of public policy.

**Domestic violence requires physical violence: FALSE**

Domestic violence can include conduct that does not involve physical violence, such as harassment, stalking, threats of violence or placing someone in a situation where he or she fears for their safety. It could even include having a GPS tracking device placed on your vehicle or a recording device placed in your bedroom.

**The enforceability of a premarital agreement is determined at the time the agreement is signed: TRUE AND FALSE**

Premarital agreements entered into prior to July 27, 2013, will not be enforceable if the party seeking to set aside the agreement proves that they executed the agreement involuntarily, or the agreement was unconscionable either at the time of execution or at the time enforcement is sought. Premarital agreements entered into on or after July 27, 2013, or entered into prior to that date but voluntarily revised by the parties on or after the effective date, can no longer be deemed unenforceable if the agreement is unconscionable at the time enforcement is sought. A premarital agreement will also not be enforced if prior to the execution of the agreement a party (1) executed the agreement involuntarily; or (2) the agreement was unconscionable when it was executed because the party, before execution of the agreement: (a) was not provided full and fair disclosure of the earnings, property and financial obligations of the other party; (b) 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; (c) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party; or (d) did not consult with independent legal counsel or did not voluntarily and expressly waive, in writing, the opportunity to consult with independent legal counsel.

**Parties can enter into post-nuptial or mid-marriage agreements to resolve issues between them: TRUE AND FALSE**

While it is possible for parties to enter into such agreements, they are disfavored under New Jersey law and are difficult to

enforce. It is possible that a reconciliation agreement, which is an agreement entered into when there was a significant event(s) that placed the marriage at the precipice of divorce, could be enforceable under the law. However, even then the agreement must involve full disclosure, no sign of duress or coercion and otherwise cannot be unconscionable.

**The mother always gets custody of the children: FALSE**

The custody statute is a gender neutral statute and decisions regarding custody are based upon the best interests of the children in light of the 16 statutory factors. However, to the extent that one parent was a stay at home parent while the other parent worked full time, the stay at home parent may have a practical advantage when it comes to residential custody.

**Joint residential custody is never granted and the standard parenting plan is alternate weekends and one night per week for dinner: FALSE**

Shared parenting, defined as anything from 28 percent to 50 percent of the overnights is becoming increasingly common. Much of the research relied upon by custody experts would suggest that as much time as possible with each of the parents is in the child's best interests. As such, alternate weekends, plus a dinner during the week is, quite

often, the minimum amount of parenting time that the non-custodial parent will receive. It is not uncommon to see the non-custodial parent receiving four, five or six overnights in a two week cycle, as long as it is logistically possible to make such a parenting plan work. While less common, even 50-50 parenting plans are possible.

**If one spouse commits adultery, it can have a significant outcome on the case: FALSE**

While adultery is still an existing fault-based cause of action to obtain a divorce, it will rarely impact a case beyond the initial pleading. For adultery, or any other fault-based ground to impact support or equitable distribution, there must exist "extreme fault," which is a rare occurrence. However, to the extent that one party used marital funds to further adultery, the other spouse would have a claim in equitable distribution for the money that was spent on this non-marital purpose.

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