

## Cheating and Fault Divorce in PA

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Pennsylvania recognizes two types of divorce: no-fault divorce and fault divorce. Just as its name suggests, a fault divorce recognizes that one party is at fault. For example, adultery is a fault-based ground for divorce.

When a couple gets divorced in Pennsylvania, the court will distribute their marital property equitably and without regard to marital misconduct. This means that the court will not consider adultery for purposes of equitable distribution. However, the rules for alimony are different. Under Pennsylvania law, one of the factors that courts may consider in deciding issues of alimony is the marital misconduct of either party during the marriage. In other words, courts *can* consider adultery when deciding whether or not alimony is appropriate and how much alimony should be awarded. So why is it that courts are permitted to consider cheating when deciding issues of alimony, but not equitable distribution?

It certainly is not because of a typo in the statutes, or because those writing the laws are confused. Rather, there are policy reasons that explain the Pennsylvania legislature's differing treatment of fault with regard to equitable distribution and alimony.

Equitable distribution refers to the distribution of marital property, which is the property acquired by either spouse during the marriage. Think about it, wouldn't it be unfair to deprive someone of property they took part in acquiring (in some manner), simply because they cheated on their spouse? Further, you accumulate property over a lifetime, and may have only cheated at the very end. The Pennsylvania legislature assumes that in these circumstances, you should not have to lose everything you worked your whole life for.

On the other hand, alimony is a little bit different. Theoretically, the innocent spouse has made sacrifices throughout the marriage with the expectation that the marriage would last forever. So why should the innocent spouse have to pay the other spouse alimony? After all, the reason for the divorce was *their* fault, and alimony would not have become an issue but for the adultery of the other. At least, that's the idea anyway.

But does this make sense? That is for you to decide. Alimony is never supposed to be a punishment, rather, it must be based on need. If adultery is weighed heavily in determining issues of alimony, it seems as though not awarding alimony in cases where the spouse has cheated, serves as a punishment. So if alimony is never supposed to be used as a punishment, perhaps it should not be withheld as a punishment either. At the end of the day— if you need money, you need money. If you have any questions about fault or any other divorce related matters, contact Notaro & Associates today. (Blog by: Kim Seskin)