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For Better or Worse: The 1988 Amendments to the Pennsylvania Divorce Code

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FOR BETTER OR WORSE: THE 1988 AMENDMENTS TO THE PENNSYLVANIA DIVORCE CODE

I. INTRODUCTION

In 1980, the Pennsylvania legislature enacted the bulk of the Commonwealth’s present Divorce Code (1980 Code). The 1980 Code was intended to modernize Pennsylvania’s domestic relations law and harmonize it with the law of other states. On February 12, 1988, Governor Casey signed into law Senate Bill 409 which amended the 1980 Code in a number of substantive respects. These amendments (“1988 Amendments”), which were in some cases legislative reactions to court decisions interpreting the 1980 Code, will have far-reaching effects on the domestic relations practice in Pennsylvania. The purposes of this article are to enumerate and explain the 1988 Amendments; discuss the rationale behind the amendments and the case law which culminated in their enactment; and where applicable, analyze the impact of the amendments on the Pennsylvania domestic relations practice. This article will catalogue the bulk of the changes made by the 1988 Amendments with special emphasis on: 1) the additional factors considered in the determination of alimony, 2) the additional factors considered in the determination of equitable distribution, 3) the valuation of marital assets,


4. The effects of the 1988 Amendments will also be felt in areas ancillary to the domestic relations practice. For instance, the amendments will have an effect on real estate practitioners. See, e.g., 1988 Divorce Code, supra note 1, § 403(d) (some encumbrances and transfers of marital property may be deemed fraudulent, thus null and void). The amendments will also affect probate practice. See, e.g., id. §§ 401(b.1), 508 (upon death of one party after divorce decree has been entered, action continues with personal representative of deceased substituted as party). For a further discussion of this change, see infra notes 140-42 and accompanying text.

5. For a discussion of the factors used in the determination of alimony, see infra notes 128-31 and accompanying text.

6. For a discussion of the impact of the 1988 Amendments on the factors used in the determination of equitable distribution, see infra notes 59-69 and accompanying text.

(715)
4) the effect of agreements between parties,\(^8\) and 5) the duration of alimony.\(^9\)

II. ANALYSIS

A. DEFINITIONAL CHANGES

A number of changes were made in the definitional section of the Divorce Code.\(^{10}\) The major definitional change in the 1988 Amendments is the legislative expansion of the term "separate and apart."\(^{11}\) The term "separate and apart" is significant as an independent ground for divorce. In Pennsylvania, a unilateral no-fault divorce may be granted if the parties have lived separate and apart for a period of at least two years and the marriage is irretrievably broken.\(^{12}\) The new definition codifies case law which held that parties could reside under the same roof, and still be "separate and apart," if all cohabitation had ceased, for purposes of meeting the grounds necessary for a divorce.\(^{13}\) The effect of this expanded definition is that parties will no longer be required to undergo the economic hardship that comes with occupying separate households in order to obtain a non-consensual no-fault divorce.\(^{14}\) This change confirms the Pennsylvania legislature's commitment to making divorce law an effective tool for dealing with the realities

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7. For a discussion of how the 1988 Amendments deal with the valuation and determination of marital assets, see infra notes 70-84, 117 and accompanying text.
8. For a discussion of the 1988 Amendments' impact upon the effect of separation agreements between parties, see infra notes 95-108 and accompanying text.
9. For a discussion of the 1988 Amendments' impact upon the duration of alimony, see infra notes 132-39 and accompanying text.
10. 1988 Divorce Code, supra note 1, § 104. A relatively minor change was made by defining the term "spousal support." This term is now defined as "[c]are, maintenance, and financial assistance." Id. For a discussion of the impact of this change, see PBI, 1988 Amendments, supra note 3, at 4.
11. See 1988 Divorce Code, supra note 1, § 104. "Separate and apart" is now defined as "[c]omplete cessation of any and all cohabitation whether living in the same residence or not." Id. The definition of separate and apart in the 1980 Code did not allow the parties to live in the same residence.
12. Id. § 201(d)(1).
of marriage. Since estranged spouses can now live under the same roof and be considered "separate and apart," it is more important than ever for spouses to avoid potential confusion by clearly manifesting their intent to dissolve the marital relationship. This act will then allow the clock to run on the "separate and apart" time requirement and thereby avoid any later controversy.

B. Dissolution of the Marital Status

The next set of changes is embodied in Chapter Two of the Divorce Code, which deals with dissolution of the marital status. Under both the 1980 Code and the 1988 Code, one of the first steps in obtaining a non-consensual no-fault divorce is to file a complaint stating the grounds for a divorce. Under the 1980 Code, most practitioners who intended to file for a no-fault divorce on behalf of their clients merely included an allegation in the complaint that the marriage was irretrievably broken. Then, after the applicable waiting period had passed, the practitioner had to file an affidavit alleging that the couple had been separated for the statutory separation period as well as an amended complaint containing the same new information. Section 201(d)(1) now eliminates the need to file an amended complaint and authorizes a mere allegation of irretrievable breakdown in the complaint even though the relevant separation period has yet to take place. This change was prompted by

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15. This commitment is embodied in the legislative intent section. See 1988 Divorce Code, supra note 1, § 102(a)(1). The legislature declared it to be the policy of the Commonwealth to "[m]ake the law for legal dissolution of marriage effective for dealing with the realities of matrimonial experience." Id.


17. The grounds for a divorce are found at 1988 Divorce Code, supra note 1, § 201. For a discussion of the applicable procedure and relevant forms, see 2 J. Rounick, Pennsylvania Matrimonial Practice § 48:1 (1988).


19. Id. The separation period for a non-consensual divorce has been shortened from three years to two years. For a further discussion of this change, see infra notes 25-28 and accompanying text.


21. 1988 Divorce Code, supra note 1, § 201(d)(1). The change codified the decision in Hepp v. Hepp, 30 Pa. D. & C.3d 80 (1981) (section 201(d) merely requires that affidavit and complaint contain statutory information when read together). The language of § 201(d)(1) now reads: "It shall be lawful for the court to 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 two years] . . . ." 1988 Divorce Code, supra note 1, § 201(d)(1).
several decisions that interpreted the old section 201(d)(1) in an overly mechanical way.\(^2\) The rationale behind one of these decisions was that the legislature "has not seen fit" to amend the technical requirements of section 201(d)(1).\(^3\) Eliminating the additional requirement of an amended complaint will save litigants time and money, and thus will likely be well-received by the general public.\(^4\)

In perhaps the most publicized of the amendments, the waiting period for a non-consensual no-fault divorce was reduced from three years to two.\(^5\) The shortened waiting period brings Pennsylvania closer to the average waiting period in neighboring states.\(^6\) Since the parties to a divorce will now have less time to reconcile the financial aspects of their marriage,\(^7\) more petitions for bifurcation will likely be filed.\(^8\)

A new subsection has been added to section 201 which provides that if the grounds for a consensual or non-consensual no-fault divorce have been established, the court shall grant the divorce without requiring a hearing on any other grounds.\(^9\) As with several of the new sections, this section responds specifically to a judicial interpretation based on "an absence of legislative pronouncement."\(^10\) Precluding a hearing

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\(^2\) See supra note 20 and accompanying text.

\(^3\) Crouch, 361 Pa. Super. at 487, 522 A.2d at 1136. Decisions such as Crouch convinced the legislature to do away with the technical requirements of § 201(d).


\(^5\) 1988 Divorce Code, supra note 1, § 201(d)(1). Although the 1988 Amendments became effective immediately, the reduced time period for divorces only applies to final separations beginning after the effective date. S. 409, 172d Leg., Reg. Sess., 1988 Pa. Legis. Serv. 51, 59 (Purdon).


\(^7\) See PBI, 1988 Amendments, supra note 3, at 6 (discussing effects of shorter waiting period).

\(^8\) See 1988 Divorce Code, supra note 1, § 401(b.1). Section 401(b.1) provides the authority for bifurcated decrees: "In the event that the court is unable for any reason to determine and dispose [of economic matters] . . . it may enter a decree of divorce or annulment." Id. Bifurcated proceedings allow parties to quickly sever their marital ties even though litigation continues as to the disposition of marital property or alimony. See Wolk v. Wolk, 318 Pa. Super. 311, 464 A.2d 1359 (1983) (referring to definition of bifurcation under § 401(b) of Divorce Code, economic claims may be severed from divorce claim). The procedural rule necessary to implement bifurcation is Pa. R. Civ. P. 1920.52(c), 42 Pa. Cons. Stat. Ann. (Purdon 1987) ("The court need not determine all claims at one time but may enter a decree adjudicating a specific claim or claims."). For a further discussion of bifurcation, see infra note 50 and accompanying text.

\(^9\) 1988 Divorce Code, supra note 1, § 201(e).

on fault grounds when sufficient grounds for a no-fault divorce have been admitted or established will speed up the divorce process in many cases and thus reduce docket congestion in the Pennsylvania family courts. Additionally, prohibiting a hearing on fault grounds will alleviate some of the emotional harm to the family which results from the marital dissolution. Because of this subsection, a litigant’s private affairs will no longer necessarily be exposed to the publicity that comes with judicial scrutiny of fault grounds. However, this amendment is difficult to reconcile with case law granting a defendant the power to defend a divorce as well as to attempt to secure a divorce on separate and distinct grounds.

C. Procedural Changes

1. Divisible Divorce

Another part of the Divorce Code that has undergone important changes is Chapter Three, which deals with procedural matters. Section 301(c) codifies and expands the doctrine of “divisible divorce.” Divisible divorce is possible when a divorce decree obtained in another state fails to address the economic questions involved in the dissolution of a marriage, and leaves these questions open for determination in other jurisdictions.

In the 1980 Code, divisible divorce was addressed by section 505. This section proved inadequate because it allowed a dependent spouse who had obtained a divorce decree to petition the Pennsylvania


32. But see 1988 Divorce Code, supra note 1, § 501(b)(14). Section 501(b)(14) makes marital misconduct by either party during the marriage a factor for consideration in determining alimony. Id. Thus a litigant’s private affairs may still be exposed to some extent under this section.

33. See Ford v. Ford, 291 Pa. Super. 381, 383-84, 435 A.2d 1278, 1279 (1981). In Ford, the court held that in the same action each party has the right to defend a divorce action and to secure a divorce in his or her favor for separate and distinct reasons. Id. It appears that § 201(e) of the 1988 Amendments implanted overrules the latter holding of Ford. Now, if no-fault grounds can be established, the court will grant a divorce without a hearing on any other grounds. 1988 Divorce Code, supra note 1, § 201(e).

34. 1988 Divorce Code, supra note 1, § 301(c).

35. See Estin v. Estin, 334 U.S. 541, 549 (1948) (Nevada divorce decree and alimony order not necessarily dispositive of economic aspects of divorce; thus, New York judgment establishing alimony did not deny full faith and credit to Nevada decree); Stambaugh v. Stambaugh, 458 Pa. 147, 329 A.2d 483 (1974) (ex parte Florida divorce decree entitled to full faith and credit, but question of alimony could still be raised in Pennsylvania since Florida court did not have personal jurisdiction over one party).

36. See 1980 Divorce Code, supra note 1, § 505.
court for alimony but not for equitable distribution. In contrast, section 301(c) now provides comprehensive protection for every economic or custody issue not dealt with in a foreign decree.

Section 505 of the 1980 Code also restricted the Pennsylvania courts by allowing economic relief only when the foreign divorce decree was *ex parte*. Section 301(c) eliminates the prerequisite of an *ex parte* foreign divorce decree before a Pennsylvania court may adjudicate the economic matters left open by the foreign decree. In place of the *ex parte* language, section 301(c) now allows Pennsylvania courts to decide economic matters left open by a foreign divorce decree "to the fullest extent allowed under the Constitution of the United States." A common situation in which the *ex parte* requirement of section 505 created problems was where both parties appeared at a foreign forum yet the foreign forum decided that a Pennsylvania court would be better suited to determine whatever economic matters were in dispute. Under section 505, a Pennsylvania court could not handle the undecided economic questions in this situation.

37. Section 505 of the 1980 Code allowed a party to obtain alimony from a Pennsylvania court if there was an *ex parte* divorce decree in another jurisdiction. *Id.* But because of the existence of § 401(d), which allows a court to provide equitable distribution only after that court has proceeded with a divorce decree, a "victim" of an *ex parte* divorce in another jurisdiction could only turn to the Pennsylvania courts for help in obtaining alimony, not for equitable distribution. For an example of such a situation, see Frisch v. Frisch, 36 Pa. D. & C.3d 220 (1985) (spouse who is resident of Pennsylvania and defendant or respondent in foreign *ex parte* action for divorce may petition court for alimony, but not for equitable distribution).

38. Section 301(c) allows courts to award spousal support, alimony, alimony *pendente lite*, counsel fees, costs, custody, visitation, child support and equitable distribution in cases of a foreign *ex parte* decree. See 1988 Divorce Code, supra note 1, § 301(c).


41. 1980 Divorce Code, supra note 1, § 505.

42. 1988 Divorce Code, supra note 1, § 301(c). This section now permits "protection for any issue which could have been raised under § 301(a) but was not dealt with in the foreign forum." *PBI, 1988 Amendments, supra note 3, at 12.

43. *See, e.g.*, Sohmer, 318 Pa. Super. at 503 n.1, 465 A.2d at 666 n.1. In Sohmer the Virginia court specifically stated that its divorce decree shall not affect the power of other states to adjudicate economic matters. *Id.* Despite this reservation of jurisdiction for other courts, the inflexibility of § 505 of the 1980 Code prevented the Pennsylvania court from adjudicating economic issues since the divorce was technically not *ex parte*. *Id.* at 506-07, 465 A.2d at 668.

44. Consequently, Pennsylvania courts began to see the drawbacks of the "*ex parte*" language and began to chip away at these restrictions found in the language of § 505 of the 1980 Code. *See, e.g.*, Cheng v. Cheng, 347 Pa. Super. 515, 500 A.2d 1175 (1985). In Cheng, the South Carolina court specifically conditioned its divorce decree on the parties' agreement to resolve economic issues.
does not contain the ex parte restriction, a Pennsylvania court can now decide these questions. Thus, Pennsylvania courts now have more flexibility in dealing with economic aspects of a divorce and can provide greater economic protection than was possible under section 505.

2. Venue

Section 301(d)\textsuperscript{45} is a new section that is designed to specify the proper county in which to bring a divorce or annulment proceeding. This section provides different venue options that depend on the time of filing.\textsuperscript{46} The rationale behind these new venue restrictions is to prevent divorce mills and mail-order divorces in counties where filing fees and costs are comparatively low, but where neither party can claim a sufficient residential connection for proper venue.\textsuperscript{47} This is a laudable objective, but its attainment is questionable in light of the confusion surrounding the issue of whether a venue objection can be waived.\textsuperscript{48}

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\textit{in Pennsylvania. Id. at 524, 500 A.2d at 1180. Since both parties appeared in the South Carolina action, the decree was not ex parte. However, the Cheng court did not allow this to prevent a Pennsylvania court from deciding economic issues. Instead, the Cheng court severely stretched the definition of ex parte so that the lower court could adjudicate the economic matters. Id. at 526, 500 A.2d at 1181.}
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\textsuperscript{45} 1988 Divorce Code, supra note 1, § 301(d).

\textsuperscript{46} The old venue provision allowed an action to be brought only in the county in which the plaintiff or the defendant resided. Pa. R. Civ. P. 1920.2, 42 Pa. Cons. Stat. Ann. (Purdon 1987). Section 301(d) of the 1988 Code now provides that after the first six months following the final separation date, a divorce or annulment proceeding may be brought in the county where either party resides. 1988 Divorce Code, supra note 1, § 301(d). During the first six months following final separation, several venue options are possible. During this period, venue is proper in: a) the county of the defendant’s residence; or b) if the defendant resides outside of Pennsylvania, the county of plaintiff’s residence; or c) the county where the plaintiff resides if that is the county where the plaintiff has continuously resided and is the county of matrimonial domicile; or d) the county of the plaintiff’s residence, even if the plaintiff no longer resides in the county of matrimonial domicile, if the defendant consents. Id. See also PBI, 1988 Amendments, supra note 3, at 13.

\textsuperscript{47} Cassel, Amendments to the Divorce Act, BARRISTER, Summer 1988, at 29. The new venue provision is an attempt by the legislature to offer enough legitimate venue options so that people will not be tempted to break the venue rules.

1. *Interim Protection*

Chapter Four, dealing primarily with property rights, contains the bulk of the new legislation. Former section 401(b) has been divided into two parts: section 401(b) and section 401(b.1). Section 401(b.1) is now the provision that authorizes the right to a bifurcated decree. This section now provides more protection for a spouse in the interim between a divorce decree and a final settlement of economic matters by allowing a court to award counsel fees and costs, and alimony *pendente lite*. Courts also now have the power to make temporary orders that are necessary to protect the parties pending final disposition. By attempting to alleviate the possible economic disadvantages endured by a dependent spouse, these protective measures make bifurcation less useful as a dilatory tactic.

Section 401(b.1) of the 1988 Amendments also attempts to alleviate the inequities that previously existed when a non-dependent party to

requirements of the 1988 Amendments can be waived by the parties, strict enforcement of these provisions cannot be guaranteed.

49. 1988 *Divorce Code*, *supra* note 1, § 401(b.1).


51. 1988 *Divorce Code*, *supra* note 1, § 401(b.1).

52. *Id.* Alimony *pendente lite* is awarded to sustain the dependent spouse on an equal basis with the other spouse while maintaining or defending the divorce action. *See* McNulty v. McNulty, 347 Pa. Super. 363, 500 A.2d 876 (1985). In contrast, the purpose of spousal support is to assure a reasonable living allowance to the dependent party. This duty arises out of the marital relationship and terminates when the marriage ends. *See* Remick v. Remick, 310 Pa. Super. 23, 35, 456 A.2d 163, 169 (1983). Pennsylvania law is not completely settled on distinguishing between spousal support and alimony *pendente lite*. *Compare* Levine v. Levine, 360 Pa. Super. 297, 302-03, 520 A.2d 466, 468 (1987) (spousal support and alimony *pendente lite* are distinct because upon entry of bifurcated decree, spousal support must be terminated while payments in form of alimony *pendente lite* may continue) *with* Ritter v. Ritter, 359 Pa. Super. 12, 16, 518 A.2d 319, 321 (1986) (spousal support and alimony *pendente lite* are indistinguishable).

53. 1988 *Divorce Code*, *supra* note 1, § 401(b.1). This power is similar to the general grant of equitable powers given to courts in the 1980 Code. *See* 1980 *Divorce Code*, *supra* note 1, § 401(c); *see also id.* § 403 (authorizing court to issue injunctions against disposition of property pending suit). For an example of a court’s power to enter an injunction to protect a party’s right to the economic settlement related to a divorce action, *see* Lazovitz v. Lazovitz, 307 Pa. Super. 341, 453 A.2d 615 (1982).

54. This protection becomes especially important if, as expected, § 201(d) of the 1988 Code creates more occasions for the use of bifurcated decrees. For a discussion of § 201(d) of the 1988 Code and its effect on bifurcated decrees, see *supra* notes 25-28 and accompanying text.

55. 1988 *Divorce Code*, *supra* note 1, § 401(b.1).
the divorce proceeding died after a divorce decree was granted but before the court’s final decision on economic matters had been rendered. Since a divorce decree ends all marital ties, the dependent spouse would forfeit any claim to the statutory share of the decedent spouse’s estate. In addition, it is commonplace for all “marital” property to be titled in the decedent spouse’s name. In this situation under prior law, a surviving spouse was left in the frightening position of having no joint property, no inheritance, and no economic settlement arising out of the divorce. Recently, Pennsylvania courts have agreed that once a divorce decree has been entered, a surviving spouse’s economic claims are vested. The Pennsylvania legislature clearly approved of this line of cases; under section 401(b.1), a personal representative is substituted for the decedent spouse and the property allocation portion of the action continues.

2. The Determination of Equitable Distribution

Important changes were made to section 401(d) of the 1980 Code. Section 401(d) of the 1988 Code sets out a non-exclusive list of the factors to be considered in the distribution of marital property. A

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59. 1988 Divorce Code, supra note 1, § 401(d).

60. See id. The statute provides that the court should consider the following factors:

(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.
court may now authorize a distribution “in kind or otherwise,”61 meaning that a buy-out is now a potential alternative to the traditional distribution scheme.62 This amended language manifests the legislature’s disapproval of case law that rigidly interpreted the statutory distribution procedure by unduly restricting buy-outs of marital assets.63

Two significant items were added to the list of factors that are used to determine equitable distribution. Under the new rules, tax ramifications will be considered when examining the economic circumstances of each party.64 Additionally, courts may now consider whether the parent has custody of the children in computing equitable distribution.65 This latter amendment appears unnecessary and redundant in light of the

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


61. 1988 DIVORCE CODE, supra note 1, § 401(d).
63. See Barletta, 506 Pa. at 408-09, 485 A.2d at 754. In Barletta, the court held that although the remedy of a “buy-out” is not prohibited, it may be an abuse of discretion where the marital property is readily severable. Id. Thus, the court imposed a set of restrictions on a court’s ability to grant a buy-out remedy. The Barletta court gave a very literal interpretation to § 401(d) of the 1980 Code which provided that a “court shall, upon request of either party, equitably divide, distribute, or assign the marital property.” 1980 DIVORCE CODE, supra note 1, § 401(d). Presumably, § 401(d) of the 1988 Code allows the remedy of a buy-out without the restrictions imposed by the Barletta court.
65. 1988 DIVORCE CODE, supra note 1, § 401(d)(11) (court may consider “whether the party will be serving as custodian of any dependent minor children”). This provision reverses the decision of Bold v. Bold, 358 Pa. Super. 7, 11-12, 516 A.2d 741, 743 (1986) (custody of minor children should not have effect on equitable distribution because needs of custodial parent adequately addressed by support proceedings).
availability of child support and alimony. The legislature may have intended for courts to apply this factor to the manner of distribution, by giving possession or use of the marital home to the custodial parent, rather than increasing the custodial parent’s share of the marital proceeds. In any event, genuine concern exists that unscrupulous parents will now be encouraged to enter into custody litigation simply to gain an edge in equitable distribution. Another concern raised by the amendment is that consideration of the custody of “any” minor children, instead of just children of the instant marriage, is an overly broad and unfair standard.

3. Marital Property

Section 401(e) of the 1988 Amendments has drastically changed the definition of “marital property”—that is, property subject to equitable distribution. Marital property now includes two categories: property acquired by either party during marriage and the increase in the value of certain non-marital property which occurs prior to final separation. The latter category now includes any increase in the value of property acquired prior to marriage. The 1988 Code does not directly...
address what "increase" in value means, but it does clarify that the cutoff date for when the increase in value of non-marital assets ceases to be considered marital property is the date of final separation.

Another significant change is that gifts between spouses are now included in the definition of marital property. This change may lead to the anomalous situation where property that is classified as non-marital or separate because it was acquired prior to marriage or in exchange for property acquired prior to marriage will be rendered marital because it was the object of an interspousal gift. This apparent unfairness is rectified in part by section 401(d)(7) of the 1988 Amendments which takes into account a spouse's contribution in the acquisition of marital property.


74. Prior to the enactment of the 1988 Amendments, a major controversy existed regarding the definition of "increase"—that is, whether an inflationary appreciation would be considered an "increase in value" under the 1980 Code. See Anthony, 355 Pa. Super. at 597, 514 A.2d at 95 (holding that inflationary increase in value is included in accretion treated as marital property). Controversy also existed as to whether the increase in value should be split if the increase is achieved primarily through the efforts of one spouse. See Johnson v. Johnson, 365 Pa. Super. 409, 414, 529 A.2d 1123, 1125 (1987) (trial court has power to consider effect of one spouse's contribution to increase in value under § 401(d)(7) of 1980 Code). Presumably, these cases are still valid law and must be applied when interpreting "increase" in value.

75. 1988 Divorce Code, supra note 1, § 401(e). Section 401(e) of the 1980 Code set no cutoff date, but simply referred to the "increase in value during the marriage." 1980 Divorce Code, supra note 1, § 401(e)(1). See Sutliff v. Sutliff, 518 Pa. 378, 384, 543 A.2d 534, 537 (1988) (proper date for valuation of marital assets is distribution date); Anthony, 355 Pa. Super. at 595, 514 A.2d at 94 (two choices for cut-off date are time of separation or time of divorce). The 1988 Amendments codify one of the Anthony alternatives and follow Sutliff by referring to "final separation" as the cutoff date. 1988 Divorce Code, supra note 1, § 401(e).


78. 1988 Divorce Code, supra note 1, § 401(d)(7).
property in the determination of equitable distribution.  

Several other changes were made in the area of marital property. First, under the 1988 Amendments, property acquired after final separation "in exchange for marital assets" is deemed marital property. Since, in most cases, property acquired shortly after separation is acquired with marital assets, most property acquired between separation and divorce can now arguably be classified as marital property. Second, under the 1980 Code, proceeds received during marriage resulting from a personal injury claim or other similar cause of action were characterized as marital property. The 1988 Amendments change this by adding section 401(e)(8), which specifically provides that the time the cause of action arises controls the characterization of the property, not the time the damage payments are received. Now, if the cause of action accrues prior to final separation, the proceeds become marital property. Finally, in sections 401(e)(5) and 401(e)(7), the cutoff date before which a good faith transfer or encumbrance will be classified as separate property has been moved back to the date of final separation; the original cutoff date was set at the commencement of the divorce proceedings.

E. Enforcement and Remedies

In an effort to add teeth to the new Divorce Code, enforcement measures and available remedies were expanded. Section 401(g) gives the court the power to "impose a lien or charge upon the property of a party as security for the payment of alimony or any other award." The old law was less flexible, allowing only marital property to be subject to a lien. Additionally, the court may award a party the right to live in the

79. Id.; see also PBI, 1988 Amendments, supra note 3, at 23 (discussing impact of § 401(d)(7)).

80. 1988 Divorce Code, supra note 1, § 401(e)(1).

81. See Hurley v. Hurley, 342 Pa. Super. 156, 161, 492 A.2d 439, 442 (1985) (court held that although cause of action accrued prior to separation, since payment not made until after separation proceeds from cause of action are separate property). Before the 1988 Amendments, no specific provision existed which dealt with the status of proceeds from a lawsuit. Cases such as Hurley, decided prior to the Amendments, were decided under the more general category of § 401(c)(4) of the 1980 Code. 1980 Divorce Code, supra note 1, § 401(c)(4) (dealing with property acquired between separation and divorce).

82. 1988 Divorce Code, supra note 1, § 401(e)(8). The provision states: "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." Id. For a discussion of the possible problems with § 401(e)(8), see PBI, 1988 Amendments, supra note 3, at 24.

83. 1988 Divorce Code, supra note 1, § 401(c)(8).

84. Id. § 401(c)(5). (7).

85. Id. § 401(g).

86. 1980 Divorce Code, supra note 1, § 401(g). If a court only has the ability to impose a lien upon marital property, the dependent spouse may suffer
marital residence, even during the pendency of the action.\textsuperscript{87} However, it is important to note that an order granting or denying such \textit{pendente lite} relief is not appealable until final disposition of the case.\textsuperscript{88}

The 1988 Amendments also address the area of insurance. They permit a court to not only require that a party continue existing life insurance coverage, but also to order an insured party to obtain health or life insurance when it might be necessary to protect the interest of another party.\textsuperscript{89} One possible application occurs when the payor spouse is aged or in poor health and the dependent spouse can prove long-term need. In such cases, life insurance effectively guarantees the equivalent of continued support or alimony payment upon death of the payor spouse.

Finally, the Pennsylvania legislature responded to the need for the enforcement of equitable distribution orders and terms of a private separation agreement with a new section 401(k).\textsuperscript{90} Many of the enforcement measures contained in section 401(k) are simply adopted from section 503, which deals with enforcement of alimony payments, or are clarifications of the court's existing equitable powers.\textsuperscript{91} In addition, three new measures are now available to the court: an award of counsel fees and costs,\textsuperscript{92} attachment of wages,\textsuperscript{93} and the power to issue contempt sanctions.\textsuperscript{94}

because it normally takes a lengthy proceeding to determine what is marital property. See PBI, 1988 Amendments, supra note 3, at 24. This slow process is not conducive to effective enforcement. Additionally, this section now applies to interim awards as well as final awards. \textit{Id}.

\textsuperscript{87} See 1988 Divorce Code, supra note 1, § 401(b). This change codifies and expands on the decision of Laczkowski v. Laczkowski, 344 Pa. Super. 154, 162, 496 A.2d 56, 60 (1985) (trial court may temporarily award marital residence to spouse with physical custody of minor child for reasonable time period). Restrictions such as awarding the residence only to a spouse with a minor child have been removed in § 401(h) of the 1988 Code. PBI, 1988 Amendments, supra note 3, at 25.

\textsuperscript{88} PBI, 1988 Amendments, supra note 3, at 25 (citing Fried v. Fried, 509 Pa. 89, 501 A.2d 211 (1985)).

\textsuperscript{89} 1988 Divorce Code, supra note 1, § 401(i). For a discussion of the application of § 401(i) of the 1980 Code, see Chaney v. Chaney, 343 Pa. Super. 77, 88, 493 A.2d 1382, 1388 (1985) (court had no power to order husband to designate wife as beneficiary of life insurance policy because policy purchased before parties were married).

\textsuperscript{90} 1988 Divorce Code, supra note 1, § 401(k).

\textsuperscript{91} See PBI, 1988 Amendments, supra note 3, at 27.

\textsuperscript{92} 1988 Divorce Code, supra note 1, § 401(k)(7). This section was added to encourage parties to bring enforcement proceedings. PBI, 1988 Amendments, supra note 3, at 27.


\textsuperscript{94} 1988 Divorce Code, supra note 1, § 401(k)(9). For an example of a case applying contempt sanctions under the 1980 Code, see Hopkinson v. Hop-
F. Effect of Agreements

Prior to the enactment of the 1988 Amendments, Pennsylvania law governing property settlement and separation agreements was in a state of chaos.\(^{95}\) Under the 1980 Code, unless the economic provisions of an agreement, other than one for child support, were merged or incorporated by a court order, the enforcement of the agreement was left to a private contract action.\(^{96}\) Unfortunately, the distinction between an agreement with an independent existence and one that has become merged or incorporated into a decree became increasingly blurred as courts tried to apply a rigid standard to problems which merited a more flexible approach.\(^{97}\)

The 1988 Amendments have attempted to circumvent this problem by eliminating the importance of merger and incorporation.\(^{98}\) Now, "whether or not the agreement has been merged or incorporated into the decree," a party may enforce the agreement as though it were a court order, unless otherwise provided for in the agreement.\(^{99}\) It remains unclear whether the converse is true—that is, whether an agreement that is clearly incorporated may be nonetheless separately enforced in a contract action.\(^{100}\) The amendments also allow separation


\(^{97}\) The test for merger is the intent of the parties in light of the provisions of the agreement. Millstein v. Millstein, 311 Pa. Super. 495, 506-07, 457 A.2d 1291, 1297 (1983). An exception to Millstein is found in Tokach v. Tokach, 326 Pa. Super. 359, 361-62, 474 A.2d 41, 42 (1984). The Tokach court held that if an agreement is incorporated into the divorce decree by reference or in full, the agreement and decree are merged. \(Id.\)


\(^{98}\) 1988 Divorce Code, supra note 1, § 401.1(a). For a comparable provision, see Uniform Marriage and Divorce Act § 306(e), 9A U.L.A. 217 (1987) (terms of agreement set forth in decree will be enforceable by contempt and contract remedies). It should be noted that the 1988 Code only governs agreements made after the Code’s effective date. 1988 Divorce Code, supra note 1, § 103.


\(^{100}\) See Brown v. Hall, 495 Pa. 635, 640-41, 435 A.2d 859, 861-62 (1981) (implying that once contract loses its independent existence by being merged or incorporated into divorce decree, it cannot be enforced with contract remedies).
agreements to be enforced by contempt orders. This type of enforcement may lead to unanticipated due process problems.

To retain maximum flexibility in the areas of child support, custody, and visitation, the 1988 Amendments provide that these agreements "shall be subject to modification by the court upon a showing of changed circumstances." Presumably, this allows both upward and downward modifications. Courts previously had held that child support payment determinations could only be increased by a modification.

Because modification is available in the area of child support payments, litigants must rely on the courts to make sure parties do not intentionally make unenforceable promises as to child support in separation agreements. These promises could potentially be used as bargaining chips in exchange for economic sacrifices by the other party. To prevent the use of modification as a weapon, judges must prohibit modification when it appears that parties are claiming changed circumstances in hopes of reducing their bargained-for obligation.

The uncertainty regarding subsequent modifications does not present a problem as to separation agreements which deal only with alimony, alimony pendente lite, counsel fees or expenses; these agreements "shall not be subject to modification by the court" unless a specific provision allowing modification appears in the agreement. For some time now, Pennsylvania courts have struggled to decide whether agreements dealing with property and alimony should be modifiable regardless of their classification as incorporated into a decree or independent. The trend has been to prohibit modification because

101. 1988 Divorce Code, supra note 1, § 401(k)(9).
102. See Hollman v. Hollman, 347 Pa. Super. 289, 300, 500 A.2d 837, 842-43 (1985). In Hollman, the court warned: We were to make the enforcement of support agreements equivalent to the enforcement of support or alimony orders, then the full panoply of enforcement means would become available, including jailing for contempt. Thus, a person could be jailed on an obligation which never passed the due process accorded to court orders and is not subject to constant review for modification for change of circumstances or ability to pay.

Id.

103. 1988 Divorce Code, supra note 1, § 401.1(b).
104. See Millstein v. Millstein, 311 Pa. Super. 495, 501-02, 457 A.2d 1291, 1294 (1983) (separation agreement does not preclude court from increasing child support obligation, but may preclude decreasing amount to less than provided for in agreement).
105. See Brown v. Hall, 495 Pa. 635, 643-44, 435 A.2d 859, 863 (1981) (modification or non-enforcement of separation agreements "would serve to ... encourage a party to promise anything to obtain a divorce, knowing he will never be bound by it, even when [with] ... valid consideration") (quoting Brown v. Hall, 27 Cumb. L.J. 340, 349-50 (1977)).
106. 1988 Divorce Code, supra note 1, § 401.1(c).
practically "every provision is bargained for as part of a whole." 108 This non-modification provision will protect the integrity of separation agreements and the expectations of the parties involved, perhaps at the risk of a payor spouse with genuinely changed circumstances being unable to reduce his or her obligation.

G. Injunctions, Inventories, and Valuation Dates

The next set of changes involves section 403(a), 109 a provision originally designed to prevent the disposition of property in order to defeat either alimony or child support. 110 Section 403(a) has been expanded to prohibit transfers which could defeat equitable distribution. 111

In a further effort to protect the dependent spouse, the legislature has expanded the inventory and appraisal requirements of section 403(b). 112 These inventory and appraisal requirements are now significantly more detailed. 113 The old inventory rules required a party to set

in event of substantial changed circumstances) with Fleming v. Fleming, 130 Pitts. L.J. 68, 70-71 (1982) (regardless of whether alimony and equitable distribution agreement is merged into decree, it will be non-modifiable in absence of modification clause). For a discussion of the modification issue, see PBI, 1988 Amendments, supra note 5, at 29.


109. 1988 Divorce Code, supra note 1, § 403(a). Section 403(a) states: Where it appears to the court that a party is about to remove himself or herself or his or her property 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 similar award, an injunction may issue to prevent such removal or disposition and such property may be attached as provided by the Rules of Civil Procedure. The court may also issue a writ of ne exeat to preclude such removal.

Id.

110. See id. (protecting only against transfers designed to defeat alimony or child support).


112. Section 403(b) requires that parties "submit to the court an inventory and appraisement" containing information specified therein. 1988 Divorce Code, supra note 1, § 403(b). Failure to comply with § 403(b) of the 1988 Amendments will result in a variety of sanctions which were available under the 1980 Code. See Pa. R. Civ. P. 4019, 42 Pa. Cons. Stat. Ann. (Purdue 1987) (governing present sanctions). For an example of a court imposing statutory sanctions, see Box v. Box, 25 Pa. D. & C.3d 219 (1983) (master may sanction party for noncompliance by refusing to consider assets disclosed in untimely inventory).

113. Section 403(b) of the 1980 Code did not provide details as to the type
out his or her marital and separate property; the new rules do not afford a party the luxury of characterizing his or her own assets.\(^\text{114}\)

Parties must now also identify and value property acquired between final separation and thirty days before a property hearing.\(^\text{115}\) This requirement reflects the change made in section 401(e)(4)\(^\text{116}\) and will aid courts in determining whether marital funds were used in the acquisition of property for purposes of classifying the property as separate or marital. Section 403(b) requires each party to submit a list of all property held and its value at three relevant dates: acquisition, separation, and thirty days prior to the equitable distribution hearing date.\(^\text{117}\) By adopting some of the judicial changes imposed on the valuation system of the 1980 Code, section 403(b) will enable a court to choose a valuation date which will achieve economic justice between the parties.\(^\text{118}\) The 1988 Code thus attempts a more systematic and realistic approach to valuation of assets. Practitioners should first consult the section 403(b) framework to find what dates are relevant in a given situation and then use supporting case law to appeal to the court’s discretion as to which particular date should be applied.


\(^\text{115}\) 1988 Divorce Code, supra note 1, § 403(b)(1)-(2).

\(^\text{116}\) Id. § 401(e)(4). For a discussion of § 401(e)(4) of the 1988 Code, see supra note 81 and accompanying text.

\(^\text{117}\) 1988 Divorce Code, supra note 1, § 403(b). Before the 1988 Amendments, the Divorce Code contained no express provision governing the selection of a date to be used for valuation of marital property for purposes of equitable distribution.

For examples of decisions prior to the 1988 Amendments where courts struggled to find the proper date for valuation, see Sutliff v. Sutliff, 518 Pa. 378, 382, 543 A.2d 534, 536 (1988) (indicating preference for valuation at time of distribution because of considerable time passage between date of separation and date of distribution); Diamond v. Diamond, 360 Pa. Super. 101, 112, 519 A.2d 1012, 1017 (1987) (court uses separation date for valuation where increase in value of marital assets attributable to husband’s post-separation efforts); Bold v. Bold, 358 Pa. Super. 7, 15, 516 A.2d 741, 744 (1986) (court uses closest possible date, master’s hearing, for valuation of marital home). See also Sergi v. Sergi, 351 Pa. Super. 588, 593-94, 506 A.2d 928, 931 (1986). In Sergi, the court discussed the pros and cons of using either the date of trial or the separation date as the date for valuation of marital property. Id. The Sergi court determined that the trial court must have the discretion to choose between these two dates. Id. at 594, 506 A.2d at 932.

\(^\text{118}\) 1988 Divorce Code, supra note 1, § 102(a)(6) (effects of “economic justice” stated policy of Pennsylvania legislature).
H. Discovery

The 1980 Code provided for structured and limited use of discovery devices and the use of discovery devices other than interrogatories required special leave of the court.\(^\text{119}\) Section 403(b.1)\(^\text{120}\) of the 1988 Code now permits use of the full range of discovery devices available in other civil actions under the Pennsylvania Rules of Civil Procedure.\(^\text{121}\) The effect of the new discovery rules on the duration of a divorce proceeding is unclear. Although attorneys no longer need to spend time petitioning the court for special permission to deposing a party,\(^\text{122}\) the pre-trial discovery process may be lengthened in the absence of court supervision as attorneys attempt to use discovery as a delay tactic. The expanded discovery options will make more information available to parties and their attorneys, which will help them to better comply with other provisions of the 1988 Code.\(^\text{123}\) However, the liberalized discovery rules may also provide a vehicle for harassment or unnecessary "fishing expeditions." To prevent this, judges must be willing to deter abuse by sanctioning irresponsible parties and their attorneys.\(^\text{124}\)

I. Alimony and Support

Significant changes were made in Chapter Five, which governs alimony and support. The 1988 Amendments eliminate "palimony" suits from the purview of this section by requiring a divorce decree before a

\(^{119}\) See Pa. R. Civ. P. 1920.22, 42 Pa. Cons. Stat. Ann. (Purdon 1987) (no discovery allowed except timely interrogatories limited to areas related to alimony or property distribution unless authorized by special court order); id. Rule 1915.13 (court has discretion to provide for special relief to allow greater discovery than under rule 1920.22); see also Newborn v. Newborn, 44 Pa. D. & C.3d 52 (1987) (party seeking leave of court for discovery must show material sought is essential for just determination of rights and not easily acquired through inventory requirements or by interrogatories).

\(^{120}\) 1988 Divorce Code, supra note 1, § 403(b.1).

\(^{121}\) Id. This provision states: "Discovery under this act shall be as provided for all other civil actions under the Pennsylvania Rules of Civil Procedure." Id.

\(^{122}\) See, e.g., Miller v. Miller, 31 Ches. C. Rep. 509, 510-11 (1983) (counsel had to first submit to court detailed outline of areas to be examined at deposition).

\(^{123}\) See, e.g., 1988 Divorce Code, supra note 1, § 403(b) (inventory requirements); id. § 401(c) (relevant dates for determination of marital or separate property).

court may consider an award of alimony.\textsuperscript{125}

The legislature also made changes in the factors to be considered in determining alimony. Two of the factors were moved from section 501(a) to section 501(b).\textsuperscript{126} This move was in response to a recent Pennsylvania Supreme Court decision which interpreted these two factors as creating a threshold test for alimony.\textsuperscript{127} The amendment reverses the "threshold" interpretation by making these two factors simply two more items to be considered in the section 501(b) "laundry list" of factors for determining the necessity, duration and amount of alimony.

1. The Determination of Alimony

The language of several of the factors to be considered in determining alimony was changed and several new factors were added. Under the 1980 Code, courts could only consider "[t]he extent to which it would be inappropriate for a party, because [the] party will be custodian of a minor child, to seek employment outside the home."\textsuperscript{128} The 1988 Code is more comprehensive because it allows courts to consider how having custody of a minor child will affect a custodial parent's earning power, expenses and financial obligations.\textsuperscript{129} The 1988 Amendments also make it clear that the "federal, state and local tax ramifications of the alimony award" will be considered by the court when shaping the alimony award.\textsuperscript{130} The final two factors added to section 501(b) consist of the factors which were deleted from section 501(a).\textsuperscript{131}

\textsuperscript{125} 1988 Divorce Code, supra note 1, § 501(a).
\textsuperscript{126} These factors were: (1) whether a party lacked enough property for that party's reasonable needs; and (2) whether the party lacked the ability to support his or her self through appropriate employment. 1980 Divorce Code, supra note 1, § 501(a). These factors are now found at § 501(b)(16), (17) of the 1988 code. 1988 Divorce Code, supra note 1, § 501(b)(16), (17).
\textsuperscript{127} See Hodge v. Hodge, 513 Pa. 264, 520 A.2d 15 (1986). In deciding how to "split" an advanced degree earned by one of the parties to a divorce, the Hodge court found that the factors listed in § 501(a) of the 1980 Code were relevant to a determination of entitlement for alimony, while the other factors found in § 501(b) were relevant only for determining amount, duration and manner of payment. Id. at 271-72, 520 A.2d at 18. Decisions prior to Hodge had rejected the "threshold" interpretation. See Bickley v. Bickley, 301 Pa. Super. 396, 406, 447 A.2d 1025, 1031 (1982) (all factors for alimony are to be considered together); accord Hess v. Hess, 327 Pa. Super. 279, 287, 475 A.2d 796, 800-01 (1984). For a further discussion of the controversy surrounding whether a threshold test existed for alimony entitlement, see PBI, 1988 Amendments, supra note 3, at 37.
\textsuperscript{128} See 1980 Divorce Code, supra note 1, § 501(b)(7).
\textsuperscript{129} 1988 Divorce Code, supra note 1, § 501(b)(7).
\textsuperscript{130} Id. § 501(b)(15). This codifies the holding in Reisinger v. Reisinger, 324 Pa. Super. 223, 227, 471 A.2d 544, 546 (1984) (amount of award should consider actual post-tax net incomes). For a discussion of how tax considerations may effect equitable distribution, see supra note 64 and accompanying text.
\textsuperscript{131} 1988 Divorce Code, supra note 1, § 501(b). For a discussion of these factors, see supra note 126 and accompanying text.
2. The Duration of Alimony

In one of the most far-reaching provisions of the 1988 Amendments, the language in the 1980 Code limiting duration of alimony was dropped in favor of a flexible "reasonableness" standard.\textsuperscript{132} Before the enactment of the Divorce Code in 1980, Pennsylvania was in the minority of states not providing for an award of alimony following divorce.\textsuperscript{133} The 1980 Code allowed alimony only for a time period sufficient to enable the dependent spouse to become self-supporting.\textsuperscript{134} The Pennsylvania courts characterized this type of alimony as "rehabilitative alimony."\textsuperscript{135} Prior to the 1988 Amendments, Pennsylvania courts could only overstep the time limits inherent in rehabilitative alimony in instances where rehabilitation would be impossible due to practical limitations such as poor health or advanced age.\textsuperscript{136} The new "reasonableness" standard enables courts to be more flexible than was possible under the enumerated exceptions found in section 501(c) of the 1980 Code.

The framework of the 1980 Code for determining the duration of alimony has been abandoned, but it is submitted that any fears that the 1988 Amendments will usher in an era of permanent alimony for everyone is unfounded. The new standard of "reasonableness" will accomplish an important purpose. It will serve to expand the meaning of "rehabilitative alimony" by allowing courts to examine more than simply a few factors and exceptions when they determine the duration of alimony.\textsuperscript{137} The reasonableness standard also allows alimony in certain

\textsuperscript{132} 1988 Divorce Code, supra note 1, § 501(c) ("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.").


\textsuperscript{134} See 1980 Divorce Code, supra note 1, § 501(c). The 1980 Code provided that the court "shall limit the duration of the [alimony] order to a period of time which is reasonable for the purpose of allowing the party seeking alimony to meet his or her reasonable needs by: (1) obtaining appropriate employment; or (2) developing an appropriate employable skill." Id.


\textsuperscript{136} See 1980 Divorce Code, supra note 1, § 501(c) (providing exception for time restrictions of rehabilitation alimony where impediments to gainful employment such as age, physical, mental, or emotional condition, or custody of a minor child exist); see also Pacella, 342 Pa. Super. at 189, 492 A.2d at 713 (when rehabilitation not possible because of age, health, or other circumstances, alimony may be continued past rehabilitative date); Eck v. Eck, 327 Pa. Super. 334, 339-40, 475 A.2d 825, 827-28 (1984) (lack of experience, job skills, or education may prevent gainful employment for purposes of § 501(c)).

\textsuperscript{137} These factors under the 1980 Code were found at 1980 Divorce Code, supra note 1, § 501(c).
new situations in order to effectuate economic equality. This concept is known as reimbursement alimony, and was flatly rejected by Pennsylvania courts prior to the enactment of the amendments. The paradigm case where reimbursement alimony may now be awarded is in “threshold degree” cases where the spouse requesting alimony would have been ineligible for both rehabilitative and reimbursement alimony under the 1980 Code.

Another section was added which deals with the effect upon the continuation of alimony payments. When the payee party dies, “the right to receive alimony pursuant to [Chapter Five] shall cease.” When the payor party dies “the obligation to pay alimony shall cease unless otherwise indicated in an agreement between the parties or an order of court.” The 1988 Amendments allow a court to order alimony beyond the payor’s life, in recognition that there are situations where it would be inequitable for alimony payments to cease at a certain time.

The legislature has now given courts the power to extend the dura-

138. See Hodge, 513 Pa. at 271-72, 520 A.2d at 19 (trial court erroneously attempted to effectuate economic equality through use of alimony).
139. See PBI, 1988 Amendments, supra note 3, at 36. A “threshold degree” case is one where the supporting spouse recently received an advanced degree, often through the help of the now dependent spouse. In these cases the parties have accumulated little marital property by the time of separation. Thus, the dependent spouse cannot be reimbursed out of the marital property for contributions made to the supporting spouse’s education. See Lehmicke v. Lehmicke, 339 Pa. Super. 559, 489 A.2d 782 (1985). In many of these cases, the dependent spouse did not qualify for rehabilitative alimony because he or she could adequately provide for himself or herself. In addition, the dependent spouse could not even hope to share in the increased earning capacity of the supporting spouse. See Hodge, 513 Pa. at 269, 520 A.2d at 17 (increased earning capacity as result of professional license did not come within definition of “marital property” for purposes of division). This leads to an unfair situation where dependent spouses are unable to see any benefits from their sacrifices. The “reasonable needs ... under the circumstances” language in § 501(c) of the 1988 Amendments may rectify such situations.
141. 1988 Divorce Code, supra note 1, § 508. This new section codifies existing case law and adds a new twist. In Chaney v. Chaney, 343 Pa. Super. 77, 86, 493 A.2d 1382, 1387 (1985), the court found that the only way for an award of alimony to extend past a payor’s death is by an agreement between the parties. Section 508 of the 1988 Code allows for alimony to continue past the payor’s death by an agreement between the parties or an order of the court. 1988 Divorce Code, supra note 1, § 508.

Section 508 of the 1988 Code is unclear as to when a trial court may make an order extending alimony past the payor’s death. This decision could be made either during the divorce proceedings or the court could wait until the time of the payor’s death to make such an order.
142. See 1988 Divorce Code, supra note 1, § 508; see also id. § 501(c) (duration of alimony may be for definite or indefinite period of time).
tion of alimony in two separate provisions. Read together, these two sections will extend the amount of time a payor spouse, and possibly his or her estate, must support a dependent spouse when the circumstances so dictate.

III. Conclusion

The 1988 Amendments represent a major overhaul of the 1980 Divorce Code, which had taken Pennsylvania out of the dark ages in the area of domestic relations. These Amendments have built on and refined much of the 1980 Code. It appears that the 1988 Code has several objectives: (1) to enable the Divorce Code to be flexible enough to deal with "the realities of the matrimonial experience;" (2) to eliminate overtechnical approaches and interpretations of the 1980 Code which lengthened the duration of a marital dissolution proceeding; (3) to provide more meaningful information to both parties to aid them in making informed decisions in the economic matters associated with the dissolution of marriage; and (4) to clarify and simplify difficult concepts which the legislature thought it was better suited to handle than the courts.

143. Id. §§ 501(c), 508. Section 501(c) is an attempt to expand prior notions of rehabilitative alimony. For a discussion of this change, see supra notes 132-39 and accompanying text.


145. See 1988 Divorce Code, supra note 1, § 102(a)(1) (legislative intent). The 1988 Code attempts to address marital realities by clarifying such issues as "separate and apart," extending the duration for alimony, and by adding new considerations for the determination of alimony and equitable distribution. For a discussion of "separate and apart," see supra notes 11-16. For a discussion of the duration of alimony, see supra notes 152-39 and accompanying text. For a discussion of the determination of alimony, see supra notes 128-31 and accompanying text. For a discussion of the determination of equitable distribution, see supra notes 59-69 and accompanying text.

146. The 1988 Code attempts to speed up a potentially painful dissolution process through § 201(d)(1), which allows parties to avoid amending complaints, and § 201(e) which precludes hearings on fault grounds when no-fault grounds are established. For a discussion of § 201(d)(1), see supra notes 17-24 and accompanying text. For a discussion of § 201(e), see supra notes 29-33 and accompanying text.

147. The 1988 Code attempts to provide more information to the parties through § 403(b), which outline more comprehensive inventory requirements, and § 403(b)(1), which allows greater discovery rights. 1988 Divorce Code, supra note 1, § 403(b), (b.1). For a discussion of the inventory requirements, see supra notes 112-18 and accompanying text. For a discussion of discovery in domestic relations, see supra notes 119-24 and accompanying text.

148. Prior to the enactment of the 1988 Amendments, Pennsylvania courts struggled with the areas of marital property, separation agreements, and the time for valuation of marital property. For a discussion of the classification of marital property, see supra notes 70-84 and accompanying text. For a discussion of separation agreements, see supra note 95-108 and accompanying text. For a
The 1988 Amendments have yet to be extensively tested by litigation, but the objectives are laudable and provide a solid basis for courts and future legislatures to build upon. These amendments were long-awaited and necessary. Only time will tell what impact they have on the delicate area of family law. For now it is safe to say that the changes attempt to usher in the modern era of domestic relations where the main goals are the effect of economic justice and mitigation of harm to all parties involved in marital dissolutions.

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discussion of when to assess a value to marital property, see supra note 117 and accompanying text.