

### DURATION OF MARRIAGE (DE FACTO DATE)

- Used for the determination of the marital estate
- Legal presumption duration is from date of marriage to date of final hearing. However:
  - De facto date may refer either to the date of commencement of the marriage or date of termination of the marriage.
  - If either legally presumed date is inequitable, then the court may select dates it considers equitable.
- Common examples:
  - Parties reside together for many years prior to marriage.
  - Parties separate well in advance of filing divorce.



Districts may conflict on the issue of commencement of marriage; check district decisions (e.g., *Bryan v. Bryan*, 8th Dist. Cuyahoga No. 97817, 2012-Ohio-3691; *Ward v. Ward*, 9th Dist. Summit No. 26372, 2012-Ohio-5658).

### FACTORS TO CONSIDER

[*Rogers v. Rogers*, 10th Dist. Franklin Nos. 96APF10-1333, 96APF01-67, 1997 WL 559479 (Sept. 2, 1997).]

1. Termination prior to final hearing still may apply even though one party provides support for at least part of the separation;
2. The parties separated on less than friendly terms;
3. Testimony indicates the marriage was over a year prior to the date of separation;
4. One party cohabitates with another shortly after separation;
5. The parties never engage in intimate relations as husband and wife after separation (regardless if on a few occasions the party returns to the marital residence);

6. The retention of legal counsel/legal counsel intervenes into parties' marriage;
7. The parties cease living together and maintain separate residences;
8. The date the divorce complaint was filed;
9. The parties' discussions of possible termination of their marriage prior to actual separation;
10. No financial entanglement (parties use separate bank accounts, separate life insurance, separate credit cards);
11. No meaningful attempts at reconciliation;
12. Separate business activities;
13. Both parties are involved in extramarital relationships;
14. The parties take separate vacations with other sexual partners;
15. The parties have not served as a social host for the other;
16. The parties have not attended social, business, or school events as a couple since the time of separation;
17. The parties cease contributing to each other for each other's benefits as partners would do in a joint undertaking; AND
18. Totality of the circumstances and equitable considerations.

### OTHER CONSIDERATIONS

- Actions of the parties must be bilateral and not unilateral in nature. [*Day v. Day*, 40 Ohio App.3d 155, 158, 532 N.E.2d 201 (10th Dist. 1988).]
- "There are no 'flat rules' in choosing a date of valuation and the date of separation does not automatically demonstrate a de facto termination of marriage." [*Grody v. Grody*, 10th Dist. Franklin No. 07APF-690, 2008-Ohio-4682, ¶8, citing *Rogers v. Rogers*, 10th Dist. Franklin Nos. 96APF10-1333, 96APF01-67, 1997 WL 559479 (Sept. 2, 1997)]

- “The precise date upon which any marriage irretrievably breaks down is extremely difficult to determine....It is the equitableness of the result reached that must stand the test of fairness on review.”  
[*Berish v. Berish*, 69 Ohio St.2d 318, 319, 432 N.E.2d 183 (1982).]

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- Set a hearing on the de facto issue well prior to final hearing.
- Make counsel commit to specific date.
- Require party or parties requesting a de facto date to have rough marital balance sheets for both dates.