

DIVORCE IN VIRGINIA



ANDREWS LAW CENTER 2011

This handout provides a basic overview of the terms and concepts involved with divorce in Virginia.

RESIDENCY REQUIREMENT

One of the parties must have lived in Virginia for 6 months prior to filing for divorce.

GROUND FOR DIVORCE

- Adultery or sodomy outside marriage;
- Conviction of a felony if the guilty spouse is sentenced to confinement for more than 1 year and the parties do not live together after knowledge of such confinement;
- Desertion, cruelty, or causation of reasonable apprehension of bodily harm, if one year has passed since the act occurred;
- 1-year separation, where the parties have lived separate and apart without cohabitation and without interruption for 1 year; and
- 6-month separation, where the parties have entered a separation agreement, there are no minor children, and the parties have lived separate and apart without any cohabitation and without interruption for 6 months.

To be granted a divorce for adultery or sodomy outside the marriage, clear and convincing proof must be presented to show that the spouse did engage in sexual relations with another. If the guilty spouse can show that the other spouse "condoned" the adultery by voluntarily living with the guilty spouse after knowing of the adultery, divorce will not be granted on this ground. The adultery must have occurred within 5 years of the filing of the suit for divorce. Adultery committed after the couple is legally separated can be grounds for divorce.

DIVORCE FROM BED AND BOARD

When the court decrees a divorce from bed and board, it means that the parties are legally separated,

but are not permitted to remarry. The grounds for divorce from bed and board in Virginia are: cruelty, reasonable apprehension of bodily harm, willful desertion or abandonment. **Remember that a divorce from bed and board does not end your marriage.**

FILING A DIVORCE PETITION

You must file at the circuit court in the county where the parties last cohabitated, where the defendant lives if he or she is a Virginia resident, or in the county where you live if the defendant is a nonresident.

The filing fee is \$84 plus \$12 for service at Arlington Circuit Court and \$86 at Alexandria Circuit Court.

SERVICE

"Service" or "service of process" is making sure the other party gets a copy of the papers you are filing. If you file for divorce, the other party must be properly "served."

Service can be made by sheriff, private process, or an adult. You cannot serve the other party yourself. If service cannot be effected by delivering a copy to the other party in person or at his or her residence, then service can be made by certified mail.

PROPERTY DIVISION

If the parties cannot decide over the distribution of property, the court will determine which property is marital property and the value of the marital property. Marital property does not include property acquired before marriage or property acquired separately. Next, the court will transfer any ownership interest in property and/or grant a monetary award. The court will consider several factors when dividing marital property, including, the contributions of each party, the duration of the marriage, the circumstances which contributed to the dissolution of the marriage, and the economic circumstances of each party.

Marital property includes military retirement pay. If a court awards the non-military spouse a share of military retirement pay, The Military Retirement Pay, Continued Benefits, and the Uniform Services Former Spouses' Protection Act (USFSPA) provides that the parties must have been married at least 10 years while the military member was active duty in order for the former spouse to receive direct payments.

USFSPA permits former spouses to continue receiving commissary, exchange, and health care benefits after a divorce if the parties were married for 20 years while the military member was active duty. If the military member was active duty for 20 years, but the parties were only married for 15 years of the active duty service period, the former spouse is entitled to full military medical benefits for one year following the divorce.

ALIMONY

Factors the court will consider in awarding alimony include:

- The factors contributing to the dissolution of the marriage;
- The earning capacities of the parties;
- The property interests of the parties;
- The parties' established standard of living;
- The duration of marriage;
- The financial resources of each party; and
- The contributions of each party.

CHILD CUSTODY AND VISITATION

If the parents cannot agree over who should have custody, the court will decide custody based on the best interests of the child. Factors the court will consider include:

- The role each parent has played in the child's upbringing;
- The mental and physical fitness of the parties seeking custody;
- The child's preference;
- The propensity of each parent to actively support the child's contact and relationship with the other parent;
- The abilities of the parents to meet the child's needs; and
- The parties residences in relation to the child's family, school, etc.

The court will grant custody either solely to one parent or jointly to both parents. "Sole custody" is made up of legal and physical custody. "Legal custody" is the right and obligation to make long-term decisions regarding a child's education, religious training, discipline, medical care and other significant matters affecting the child's welfare. "Physical custody" is the physical care of the child and the right to make decisions regarding the child's

everyday needs. "Joint custody" can include joint legal custody, shared physical custody, or a combination of both

CHILD SUPPORT

Child support is determined according to Child Support Guidelines which take into consideration such factors as the child's need and each parent's income. Child Support in Virginia is handled by the Virginia Department of Social Services Division of Child Support Enforcement. For more information contact (800) 468-8894.

DO YOU NEED A LAWYER?

Our attorneys can provide you with valuable legal assistance and advice, but cannot represent you in state court. If you have children, significant assets (a home, retirement account, etc), or you and your spouse cannot come to an agreement over an important issue, you will most likely need a lawyer. Our attorneys can advise you on whether or not you should seek legal representation.

For lawyer referrals, contact (703) 548-1105 (Alexandria) or (703) 228-3390 (Arlington). There are consultation fees associated with these lawyer referral services.