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## **DIVORCE IN VIRGINIA**

Ending a marriage may involve property rights and financial arrangements which can cause serious legal problems. The problems can be even more severe when children are involved. Legal Services of Northern Virginia has prepared this handout to give answers to basic questions about divorce and separation under the laws of Virginia.

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### **1. WHAT ARE THE GROUNDS FOR DIVORCE IN VIRGINIA?**

A final or absolute divorce, also known as Divorce from the Bonds of Matrimony ("Divorce a Vinculo Matrimonii"), may be based on any of the following six grounds:

1) SEPARATE AND APART FOR ONE YEAR: This is the most common ground for divorce. It is often referred to as a "no fault" divorce. It means that the wife and husband have been continuously living apart, without cohabitation at any time for at least one year.

- 2) **ADULTERY:** The adultery must have occurred within the past five years. You must not have continued to live with your spouse after you found out about the adultery. Adultery is difficult to prove in court.
- 3) **CONVICTION OF A FELONY:** The conviction must have resulted in confinement in a state or federal penitentiary for more than one year.
- 4) **DESERTION PLUS ONE YEAR SEPARATION:** One spouse left the home without a good reason and did not intend to return, and the husband and wife have been separated for at least one year. Leaving a marriage because of abuse does not constitute desertion.
- 5) **CRUELTY PLUS ONE-YEAR SEPARATION:** One party abused the other physically, emotionally, or mentally and the husband and wife have not lived together for at least one year.
- 6) **SEPARATE AND APART FOR SIX MONTHS:** This ground can only be used if there are no children of the marriage under 18 and the parties have entered into a written property settlement agreement.
- \* For any of these grounds, you or your spouse must have lived in Virginia for six months before you can file for a divorce in Virginia.

## **2. WHAT IS A LEGAL SEPARATION?**

There is a lot of confusion about the term "legal separation." Many people think that you must go through some process to get a legal separation before you can get a divorce. This is not true. In Virginia, to be considered "separated" for purposes of obtaining a divorce, the parties simply must not be living together as husband and wife.

There is a qualified divorce called Divorce from Bed and Board ("Divorce a Mensa et Thoro") that is rarely used. A Bed and Board Divorce means that the husband and wife are officially separated and neither can marry another person.

It also means that if either spouse cohabits with another person, during the period of separation, he/she can be charged with adultery.

There are two grounds for a Bed and Board Divorce Decree:

a) Desertion or abandonment; or

b) Cruelty and reasonable expectation of bodily harm.

You do not need a Bed and Board Divorce to get a final or absolute divorce, but if there is a Bed and Board Decree, either party may ask the Court to have that decree changed into an absolute divorce one year after the separation occurred. Even if your spouse deserts you, you still have to wait a year before the Court can grant you a final divorce.

### **3. DOES MY SPOUSE HAVE TO AGREE TO THE DIVORCE?**

No. You may obtain a divorce regardless of how your spouse feels about it, as long as you, and at least one witness, can testify to the facts, such as the one year separation, which are necessary to establish grounds for divorce.

### **4. CAN I GET A DIVORCE IF I DON'T KNOW WHERE MY SPOUSE LIVES OR IF HE OR SHE LIVES OUTSIDE VIRGINIA?**

Yes. In this situation, however, a notice of your divorce is published in a local newspaper.

### **5. HOW ARE THE PROPERTY RIGHTS DECIDED IN A DIVORCE?**

A law went into effect on July 1, 1982, establishing what is known as "equitable distribution." If the parties cannot come to an agreement, the Court can order a distribution of the parties' property and/or debt as part of the divorce proceeding itself. Equitable distribution does not mean a 50\_50 split.

It is a division of property which the Court considers fair under all the circumstances of the marriage.

### **6. UNDER WHAT CONDITIONS IS ONE PARTY IN A DIVORCE ORDERED TO PAY SUPPORT TO THE OTHER?**

This payment is known as spousal support or alimony. Whether support will be awarded to the husband or the wife in a divorce will depend on the ages of the two people, what each person owns, the earning ability of each person, and the length and history of the marriage, among other factors. Support may be either in the form of regular payments or a lump sum settlement or a combination of the two.

### **7. HOW IS THE CUSTODY OF CHILDREN DECIDED?**

The Court looks to the best interests of the children. Each case is different. The factors the Court considers are each parent's ability to:

- a. care for the child, (as evidenced by who has been the primary caretaker in the past and his/her ability to be the primary caretaker in the present and future);
- b. control and direct the child, and use good judgment when making decisions affecting the child;
- c. the home environment and, occasionally,
- d. the child's wishes if the child is mature enough to make a decision.

Custody may be given to a third party, and custody may be changed if the conditions of either party or the child change and if a change of custody is in the best interest of the child.

The parent who does not have custody usually has visitation rights, which will be set by the court if the parents cannot agree on a satisfactory visitation schedule.

## **8. HOW DO I GET A DIVORCE?**

If you seek a divorce and you have a separation agreement that resolves issues of custody, visitation, support, and property or none of those issues are present in your case and you have been separated for the appropriate amount of time, you can obtain an uncontested no\_fault divorce. Legal Services of Northern Virginia, LSNV, can handle no\_fault divorces for some low income people. You may call the LSNV branch in the county or city in which you live to see if you qualify for service. You may have to pay court costs even if you are represented by LSNV.

If your case involves contested issues of custody, visitation, support and/or property, you should consult with an attorney. While the divorce laws do not require that you have an attorney, it is difficult for a person to handle a contested divorce in Virginia without expert counseling. The lawyer will advise you whether you have grounds for divorce and whether he/she would be willing to handle your case. Be sure to discuss the lawyer's fees before you decide to have him/her take your case. The same attorney cannot represent both sides in a divorce case. In some situations, one spouse may be required to pay all or part of the attorney fees and court costs for the other spouse.

If you do not know an attorney, you can call the Virginia State Lawyer Referral Services at: 800-552-7977 toll free OR you can contact the local bar association's Lawyer Referral Service. You will be given the name of a local attorney who handles divorces.

LSNV may be able to advise you in a divorce if you have been served with divorce papers. Please call to apply for an appointment.

You and your spouse may have decided some issues already or you may wish to speak with a mediator to settle any issues between you and your spouse. A mediator is a neutral third party with whom you and your spouse meet to try to work out a binding agreement on the issues you can resolve.

## **9. IS IT NECESSARY TO FILE FOR A DIVORCE TO GET CUSTODY AND CHILD SUPPORT?**

No. When the issue is custody and/or support, you can file a petition with the Juvenile and Domestic Relations Court in the county where the child or children live. When the issue is child or spousal support, you can file a petition where either party resides. The Court's intake staff will explain the procedures. You do not have to have an attorney, although you may retain one if you wish.

If you only want child support, or if you need to enforce an already existing support order, an alternative to going to Court is available through the Virginia Division of Child

**10. MY SPOUSE IS ABUSING ME. DO I HAVE TO FILE FOR DIVORCE TO GET A COURT ORDER TO MAKE MY SPOUSE STOP THE ABUSE?**

**IMPORTANT**