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Divorce

What are the reasons for a divorce?

In Virginia, you can get a divorce for six reasons. Two reasons don't need a waiting period.

- Adultery.
- Your spouse's conviction of a felony and sentence to more than one year in prison.

Four reasons need a waiting period of one year.

- Physical cruelty. There is no mental cruelty divorce in Virginia.
- Desertion. This means your spouse left without a good reason.
- Constructive desertion. This means your spouse forced you to leave.
- An uncontested "no fault" divorce based on one year's separation.

A limited exception to the one year "no fault" divorce allows a divorce after six months separation. Under this exception, you must have no minor children of the marriage. You also must have a signed separation agreement.

What is a legal separation?

There is no such thing as a "legal separation" or "legal separation proceedings" in Virginia. Separation is simply not living together. You don't need any papers to live separate and apart from your spouse.

Who can file for a divorce in Virginia?

To file for a divorce, you or your spouse must live in Virginia for at least six months before the divorce is filed. You must be at least 18 years old to get a divorce. A divorce is filed in the Circuit Court. The divorce usually is filed where you last lived together or where the defendant lives. The defendant is the person against whom the divorce is filed.

What are the steps to get a divorce?

Generally, there are five steps in a divorce.

First, divorce papers are filed with the court. These papers are called a Complaint. The court also issues a Summons.

Second, the divorce papers are served (legally delivered) on the defendant. This may be done three different ways.

- Given to the defendant in person, usually by a Deputy Sheriff.
- Given to a member of the defendant's household, usually by a Deputy Sheriff. The household member must be 16 or older. The person serving the papers must explain them.
- Posted on the defendant's front door and mailed to the defendant by first class mail.

Divorce papers also may be served by mail, if the defendant will sign for and accept them. If the defendant can't be found, the papers can be served by publishing in the newspaper. This usually costs about \$300.00.

Third, evidence is taken, usually in a lawyer's office. This is called a deposition. The deposition is recorded and typed or printed out. Sometimes evidence is taken before the Judge in an oral hearing. In an uncontested no-fault divorce, evidence may be submitted by affidavits.

Fourth, the deposition or affidavits, a proposed Final Decree of Divorce, and other papers are sent to the Judge for review.

Fifth, if everything is in order, the Judge signs the Final Decree of Divorce.

Does someone have to come with me to the depositions or provide an affidavit?

Yes. You need to bring one witness who can back up, or support, everything you say. This person can be a friend, neighbor, or relative (other than your spouse), as long as the person is 18 or older and knows the basic facts about your marriage and separation.

Does my spouse have to sign for me to get a divorce?

No. As long as the divorce papers have been properly filed and served (legally delivered) to your spouse, the divorce can be granted. Your spouse doesn't have to sign anything for you to get a divorce.

What do divorce papers from Circuit Court say?

Divorce papers from Circuit Court will not give you a date, time, or place of a court hearing. Instead, the papers say you have 21 days after getting them to file a written answer with the Circuit Court. The Answer must reply to each numbered paragraph of the Complaint. The Answer must admit or deny each numbered paragraph. Although you can file your own Answer in Circuit Court, you probably will need a lawyer to help with the case. Procedures in Circuit Court are complicated.

What else can a divorce decide?

A divorce also can hear and decide other issues about the marriage. These issues include the following things.

- Child custody.
- Child visitation.
- Child support.
- Spousal support (alimony).
- Protective order.
- Equitable distribution (fair division) of marital property.

Except for equitable distribution and the divorce, all of these issues also can be heard and decided in the Juvenile and Domestic Relations (J&DR) Court.

Are there sometimes extra steps to get a divorce?

If the defendant is jailed, under the age of 18, in a mental hospital, or legally not competent, another step is needed. The divorce can't be granted unless the Circuit Court appoints an attorney for the defendant. This attorney is called a Guardian *ad litem*. This usually costs the plaintiff, the person filing the divorce, \$300.00 or more. If the defendant is jailed, the Court will pay for the Guardian *ad litem* if all these things are true.

- The defendant was convicted and sentenced for more than one year because of a crime.
- The crime occurred after the date for which the divorce is sought.
- The crime involved physical injury, sexual assault or sexual abuse against the spouse, child, or step-child.

When my spouse gets a divorce, do I need one also?

No. One divorce covers both you and your spouse. It takes only one marriage to marry two people. It takes only one divorce case to divorce two people.

Can I file for a divorce without a lawyer?

You may be able to do this, but unless it is an uncontested no-fault divorce, this is not recommended. Divorce is difficult. You may lose your children, income, property, or other rights if you don't know the law. You probably will need a lawyer to file your divorce. Procedures in the Circuit Court are complicated.

How long does a divorce take?

If there are no problems, it usually takes at least three months from the time the divorce is filed until it is granted. If contested, a divorce can last much longer, sometimes several years.

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