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Spousal Support and Equitable Distribution

If you are married but living separate and apart from your spouse, you may be able to get spousal support. This also is called alimony. You may file a Petition for Spousal Support with the Court Services Unit of the Juvenile and Domestic Relations (J&DR) Court. You can do this by yourself, without an attorney, and without a filing fee. The Petition must be filed in the County or City where your spouse lives. Your Petition usually will be heard within a few weeks.

What happens at a spousal support hearing?

The judge hears evidence about your income and expenses, and about your spouse's income and expenses. The judge may issue a Spousal Support Order. Unlike child support, spousal support is not automatically owed. It depends on many factors.

How does the judge decide who gets spousal support and the amount?

Judges look at many factors in deciding spousal support. One important factor is how long your marriage has lasted. Another is the contributions (both monetary and non-monetary) of each of you to your marriage. Whether either of you was placed at an economic loss because of your marriage also is important. The judge also will look at the following things.

- The debts, needs, income and resources of you and your spouse.
- The standard of living of your marriage.
- Your ages and your physical and mental conditions.
- The earning ability, skills, education, and work history of you and your spouse.
- How much each of you helped the other during the marriage.
- How the marital property was divided.

What else does the judge look at when deciding spousal support?

When deciding spousal support as part of a divorce, the judge also will look at the reasons your marriage ended. Almost always, you can't get spousal support if the divorce was based on your fault. Virginia has five reasons for a fault based divorce.

- Adultery.
- Conviction of a felony and sentence to more than one year in prison.
- Physical cruelty.
- Desertion. This means leaving your spouse without a good reason.

- Constructive desertion. This means forcing your spouse to leave.

Do I need a legal separation to get spousal support?

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. You don’t need a “legal separation” to get spousal support.

How long does spousal support last?

Spousal support usually is ordered for an indefinite length of time, until the person being paid remarries or dies. Spousal support may be ordered for a set length of time. The court can order spousal support to stop if the person being paid lives with someone of the opposite sex for a year the way married people do. Spousal support may be ordered to be paid in one lump sum.

Can spousal support be changed?

Once spousal support has been set, it can’t be changed unless there has been a material change in circumstances since the last Spousal Support Order.

What if I can’t pay my spousal support?

You must pay spousal support debts. These debts won’t go away and you can’t bankrupt them. Unlike most other debts, you can be jailed if you intentionally fail to pay spousal support.

Can I get spousal support if I’m not married but have lived with someone?

Virginia is not a “Palimony” state. Unmarried people who live with each other, even for many years, don’t owe each other any duty of support when they separate.

How does property owned by married people get divided?

Unlike child custody, child visitation, child support, spousal support, and protective order, which can be done in either the J&DR Court or the Circuit Court, division of marital property can be done only in Circuit Court as part of a divorce.

What is marital property?

Property owned by married people is either separate property or marital property. Separate property includes these things.

- Property owned by you or your spouse before your marriage.
- Property you or your spouse got during the marriage by inheritance or by gift from someone other than the other spouse.
- Property you or your spouse got during the marriage that can be directly traced to separate property for which it was exchanged.

- Property you or your spouse got during the marriage but after you separated.

Marital property is all other property you or your spouse got during the marriage and before you separated. It doesn't matter whose the name is on the deed or title. It doesn't matter who paid for the property. This includes real property (house and land), mobile homes, motor vehicles, household goods, savings, pensions, and other assets.

How is marital property divided in a divorce?

During a divorce, either of you may ask for equitable distribution of marital property. This means a fair division. If neither of you asks for equitable distribution in a divorce, then after the divorce, each of you will own a ½ interest in marital property.

How does the judge decide how to divide marital property?

Judges look at many factors in deciding how to divide marital property. One important factor is the contributions (both monetary and non-monetary) of each of you to your marriage. Another important factor is how long your marriage has lasted. Another is the reasons your marriage ended. The judge also will look at the following things.

- How you and your spouse used the marital property after you separated.
- Your ages and your physical and mental conditions.
- How and when you got specific items of marital property.
- The debts, needs, income and resources of you and your spouse.

The Judge will decide the fairest way to divide the marital property. This may be 100% to the wife, or 100% to the husband, or anything in between. Virginia law does not assume marital property should be divided 50-50. However, often it is divided that way.

How do I get my share of marital property if I don't file for divorce?

You can file a Petition for Spousal Support in the J&DR Court. When deciding who gets spousal support and the amount, the judge can look at who has items of marital property. If your spouse has the marital home or car, the judge can order a higher amount of spousal support. If you have the marital home or car, the judge can order lower (or no) spousal support.

How do I get my separate property if I don't file for divorce?

You can file a Warrant in Detinue in the General District Court. This is only for property which belongs to you alone. The court will not divide marital property in a Warrant in Detinue. To file, you must bring a complete list of your belongings, and proof that each item is your separate property, to the General District Court Clerk's office and pay a filing fee. If you win, your spouse must return your property and repay you the filing fee.

What about property my spouse and I are buying together and haven't paid for yet?

Equitable distribution of marital property only affects the rights between you and your spouse. It doesn't affect rights between married people and a third party, such as a mortgage or finance company. The court can order your spouse to pay your share of a joint debt. The court can't relieve you of your duty to pay your share of a joint debt. If your spouse (or ex-spouse) disobeys a court order to pay your share of a joint debt, you still have to pay your share. You then would have to ask the court to order your spouse (or ex-spouse) to pay you back.

What about property owned with someone I'm not married to but have lived with?

Unmarried people who live with each other, even for many years, don't have the rights of married people when they separate. Unless the deed or title says otherwise, when you own property with someone you're not married to, usually each of you owns a ½ interest.