

Grounds for a Divorce

Virginia law codifies two types of “divorce.” The first, a “divorce from the bond of matrimony”, is what people commonly consider a final divorce. The divorce decree dissolves the marital relationship and allocates the rights each party has with respect to each other, their property and any children. In addition, the Virginia Code permits a “divorce from bed and board” “for cruelty, reasonable apprehension of bodily hurt, willful desertion or abandonment.” This type of divorce is what people commonly refer to as a “separation” or “temporary decree of divorce”, as any property obtained subsequent to the decree belongs to the acquiring party and neither party may remarry. A divorce from bed and board may lead to a divorce from bond of the matrimony.

For the remainder of this discussion, a “divorce” refers to a divorce from the bond of matrimony. The Virginia Code limits the grounds for such a divorce to 1) adultery; 2) when a spouse is convicted of a felony subsequent to the marriage, is incarcerated and the parties do not resume cohabitation after the convicted spouse is released; 3) the same grounds that justify a divorce from bed and board “after a period of one year from the date of such act”; and 4) physical separation for one year. Physical separation is the most common ground for divorce and requires additional explication. It is not enough that the parties do not cohabit for one year. In this context, “separation” occurs when the parties cease cohabiting and they do not intend to resume cohabitation. The separation period begins on the date that one or both of the separated parties intend to “discontinue the marital relationship.” When the parties enter into a separation agreement, discussed below, and there are no minor children involved, a divorce is available after six months.

Separation Agreement

A separation agreement, also called a property settlement agreement, is an important document that can provide financial certainty and guarantee important rights with respect to child visitation, health insurance, and support payments. Since a separation agreement can include provisions for the continued marriage of the parties, it is useful even for the person who has not yet decided whether to seek a divorce. Separation agreements parcel out the couple’s property and debt and seek to position the parties as if they were single. Since these agreements generally are designed to survive the divorce, the parties can be certain that the rights guaranteed to them under the separation agreement will continue to be effective beyond the initial separation period.

Contested Divorces

When parties are unable, or unwilling, to enter into a separation agreement, litigation is necessary. Divorce litigation is fact-specific, but considerations common to most divorce cases include child and spousal support, child custody and visitation, and the distribution of marital property.

The Virginia Code provides a formula for determining the size of child support awards. This formula factors in the incomes of the respective spouses and the number of children for whom support is granted. It is possible to deviate above or below the statutory child support award, but there is a presumption that the Code’s award amount is correct.

Courts are entitled to hear “all evidence relevant” to the issue of spousal support. This broad authorization means that spousal support litigation involves significant subjective information, such as the role each party had in the cause of the divorce, as well as non-monetary contributions a spouse made during the marriage. Despite the latitude provided to litigants, one should be careful to present a clear case concerning his or her spousal support position. As is true for all litigation, taking a “kitchen sink” approach can result in a disorganized presentation and detract from the truly strong aspects of one’s case.

Custody and visitation litigation permit the same broad array of evidence, and present the same pitfalls to the litigant. Contested divorce cases are by their nature emotional and bitter, and there can be a constant temptation to attack the other party in order to gain an advantage. That is not a smart tactic. Judges do not have the same emotional involvement in the case, and a party that is overly concerned with assailing the other party’s character will damage his or her case. It is important to present one’s case in a vigorous, comprehensive fashion, but litigants must restrain any animosity toward the other party. Failure to do so may result in a loss of credibility with the court, and can be particularly damaging with respect to child support and visitation.

Finally, if the parties do not apportion their property themselves, courts will hold hearings for that purpose. Courts consider a variety of factors, ranging from the parties’ conduct during the marriage to their financial status and employment decisions. This process is called “equitable distribution”, but Virginia courts have stated that “equitable distribution” does not mean “equal distribution”. Courts have broad discretion to determine what is “equitable” after considering all the evidence. Parties litigating the apportionment of marital property must present a thorough analysis of the relevant financial considerations while avoiding the hazards of disorganization and character attacks described above.

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