

SEPARATION AND DIVORCE

There are two types of divorce in Virginia:

1. A **final** or **absolute** divorce, which releases you from the bonds of matrimony and allows you to remarry after the divorce is final.
2. A divorce **“from bed and board,”** which does not allow you to remarry.

You may file for an absolute divorce on any one of the following 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, for 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.

3. **Conviction of a felony:** The conviction must have resulted in confinement in a state or federal penitentiary for more than one year. There must be no subsequent cohabitation.

4. **Desertion:** Your spouse has willfully deserted or abandoned you. Divorce may be granted one year after the date of such act.

5. **Cruelty:** your spouse has committed acts of cruelty against you and you fear for your

life, safety or health. Divorce may be granted one year after the date of such act(s).

6. **Separate and Apart for six months:** This ground can be used only if there are no children of the marriage under 18 and the parties have entered into a written separation agreement.

Grounds 1 and 6 are commonly called “no fault” grounds for divorce. Legal Aid provides assistance to parties with these types for divorces, where there is no property in dispute, and the parties have already resolved their child custody, visitation and support matters through the Juvenile and Domestic Relations District Court.

Physical separation between you and your spouse is required before beginning the divorce process. The ground for divorce that you choose will determine how long it will take to obtain a final divorce decree.

You may file for a final divorce at any time for divorce based upon adultery or spouse’s conviction of a felony. There is no required waiting period.

You may file for divorce “from bed and board” based upon desertion or cruelty even though one year has not passed. After one year of separation, you can request that this non-final divorce be made final.

Legal Aid does not typically provide representation in types of divorces other than “no fault” divorces. For these divorces, you would need to call the Virginia Lawyer’s Referral Service (800) 552-7977.

LEGAL SEPARATION

There is no such thing as a legal separation in Virginia. Separation is simply living separate and apart. You do not need to file any papers to live separate and apart from your spouse.

FILING FOR DIVORCE

To file for a divorce in Virginia, you or your spouse must have lived in Virginia for at least six months prior to filing. You must be at least 18 years old. A divorce is filed in the Circuit Court. A divorce is usually filed where you last lived together, or where your spouse lives.

Your spouse does not need to sign any papers for you to get a divorce, and does not have to agree to the divorce. You will need to prove to the Court that you have the required grounds for divorce, depending upon the type of divorce that you are seeking.

Generally, there are five steps for getting a divorce:

1. Divorce papers, called a **Complaint**, are filed in Circuit Court. The Court also issues a Summons.

2. The divorce papers are served on your spouse (also called the defendant) in one of the following ways: a) personal delivery on the defendant, usually by the Sheriff, b) delivery to a household member, c) posting on the door, or d) mailing, if your spouse will sign for and accept the papers. If your spouse cannot be found, the papers can be served by publication in a newspaper.

3. Evidence is taken. This may be done by **deposition**. A deposition is testimony that is taken under oath, not in court, but usually in a lawyer's office. The deposition is recorded and printed and filed with the Court. Sometimes evidence is taken before the Judge at an oral hearing.

4. The depositions and proposed final decree are sent to the Judge for review.

5. If everything is in order, the Judge will sign the Final Decree of Divorce.

You will 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) who is 18 or older and knows the basic facts about your marriage and separation.

OTHER ISSUES A DIVORCE CAN DECIDE

A divorce can also decide issues concerning child custody, visitation, child support, spousal support (alimony), protective order and equitable distribution (fair division of marital property). All of these issues, except equitable distribution of property, can also be decided in the Juvenile and Domestic Relations District Court independent of a divorce.

A **separation agreement** (also called a Property Settlement Agreement) is a written agreement between you and your spouse on how matters related to your marriage will be

resolved. The agreement might discuss how you will divide property, who will pay which bills, spousal support, custody, visitation, etc. A separation agreement is only valid if you and your spouse both sign it. No one can be forced to sign a separation agreement. If the parties do reach an agreement, this agreement can be filed with the divorce action, and can resolve many issues in the divorce.

This pamphlet contains general information about your rights. If you have a specific question consult:

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LEGAL SERVICES OF NORTHERN VIRGINIA, INC.

Separation and Divorce



KNOW YOUR RIGHTS