



DIVORCE INFO BOOKLET

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INTRODUCTION

This information is intended as general information ONLY. It is NOT legal advice. You should consult with an attorney if you have a specific question about your case. In addition, reading this packet does NOT create an attorney-client relation between the reader and AMABLE and/or any of its agents.

AMABLE has put together this packet in an effort to explain difficult legal concepts regarding divorce and all issues that flow therein. This is just a general information booklet and in no way should be understood as an all-encompassing guide to divorce. The issues of divorce are very complex and cannot be fully explained in an information booklet. The way AMABLE has approached this booklet is in a Question and Answer form. The questions chosen are among the most common among individuals going through a divorce.

VOCABULARY

Abandonment: also known as desertion. It occurs when one spouse breaks off the marital relationship without proper justification and with the intent to leave the marriage. Note that abandonment does not necessarily mean to physically leave the marital home, although that could also amount to abandonment/desertion. Abandonment or desertion could also take place when one spouse has failed to maintain his or her marital duties during the marriage without justification.

Adultery: It occurs when one spouse has sexual intercourse with someone other than his or her spouse (also known as paramour). Adultery is a ground for divorce but the party alleging the adultery must be able to prove that such act(s) occurred by clear and convincing evidence.

The standard to prove adultery is actually higher than the standard more generally burden of proof in civil cases which is known as preponderance of the evidence. Therefore, concrete and undisputable evidence must be available if divorce is to be alleged in a complaint for divorce.

A party who has been found guilty of adultery will NOT be eligible to receive alimony unless the party can by clear and convincing evidence that a denial of support and maintenance would constitute a manifest injustice

Affidavit: a written declaration upon swearing an oath of truthfulness made before an authorized official.

Alimony: spousal support that one pay to the other spouse for a certain period of time. Typically alimony is awarded to the party who has little or no financial resources.

Answer: The legal document used by a respondent/defendant when responding to a Complaint filed by the Complainant/Plaintiff. Typically, an answer contains statements by the responding party admitting or denying the assertions in the Complaint. It also sets forth any defenses available to the responding party, if any.

In the Commonwealth of Virginia, unless for good cause or upon approval from the court, an answer must be filed within 21 days from the time the Complaint is served on the Defendant.

Appeal: The process by which a litigant requests an order or decision from a court to be revised or reversed by a superior court due to an error(s) committed by the lower court.

Child support: money paid by the non-custodial parent to the custodial party for the care and upbringing of the child. Such obligation typically lasts until the child reaches the age of 18, graduates from high school, or becomes emancipated, whichever occurs last.

Circuit Court: For divorce purposes, it is the Court where you file to obtain your divorce. The Circuit Court has the power to revise and overturn any orders from the Juvenile and Domestic Relations Court upon a successful appeal. It will review all orders from the J&DR *de novo*, meaning all over again, as J&DR courts are courts of no record. If you are not satisfied with the Circuit Court's ruling and you believe it committed an error, you have the right to file an appeal to the Court of Appeals of Virginia.

Complaint: a formal legal document filed with the court where a particular relief or legal remedy is requested, i.e. a complaint for divorce.

Complainant: also known as petitioner or plaintiff. The individual who files the initial complaint with the court requesting a legal remedy.

Contempt: it occurs when a party willfully disobeys a court order i.e. not paying child support or spousal support timely. Contempt, even though civil, can carry serious consequences such as fines and even jail time.

Contested divorce: a divorce where the parties cannot agree on distribution of marital property, divorce grounds, or custody of the children. A contested divorce means litigation is necessary which encompass depositions, discovery, and several court hearings.

A contested divorce is time consuming, expensive, and very stressful. It can take several years before it is finalized.

Corroborating witness: Someone other than your spouse at least 18 years old whom can testify as to the veracity of the separation between you and your spouse.

Cruelty: It occurs when one spouse causes physical abuse to the other. Mental abuse generally does not amount to cruelty. Cruelty is recognized as grounds for divorce in Virginia.

Custody: it refers to a description of the legal relationship between a parent (or guardian) and child. There are two types of custody: legal custody and physical custody.

Defendant: also known as respondent. In a divorce case, the defendant is the person whom the divorce has been filed against.

Desertion: See abandonment definition.

Deposition: it is oral testimony given out of the courtroom by a party in a case which is provided to the court in writing for discovery purposes.

Discovery: the process by which litigating parties obtain information about each other's position. Discovery is lengthy, expensive, and burdensome. Depending on the complexity

of the case, discovery can encompass answering interrogatories, producing documents and answering requests for admissions. The Supreme Court of Virginia Rules of Civil Procedure requires discovery to be supplied to the requesting party within a certain amount of time upon being served.

Divorce A Mensa Et Thoro: It is Latin for a divorce from table and bed. It is the period of time from the time of separation up to the time the divorce is granted whereby both spouses are allowed by the court to live separate and apart but not remarry.

Divorce A Vinculo Matrimonii: It is Latin for from the bond of marriage. This amounts to an absolute divorce dissolving all matrimonial bonds between the parties and permits them to remarry.

Equitable distribution: the legal process by which the court divides the parties' marital property during the divorce process. There is no 50/50 division required by the Virginia Code. Rather, the court will determine the respective interests of the parties by looking at several factors such as monetary and non-monetary contributions of the parties during the marriage.

The parties may avoid equitable distribution by entering into a property settlement agreement.

Juvenile & Domestic Relations Court: a court where all cases involving custody, visitation and child support are filed. The J&DR court may also handle some issues pertaining to a divorce such as alimony once the divorce is finalized in the Circuit Court and sent to the J&DR for future issues.

Lawsuit: A civil action brought in court by a plaintiff/petitioner asking the court for a particular remedy under the law, i.e. Divorce.

Legal custody: Legal custody of a child means having the right and the obligation to make decisions about a child's life and upbringing. A parent with legal custody can make decisions about the child's medical care, schooling, religious practices, etc.

Pendente lite hearing: During a *pendente lite* hearing, the court normally establishes temporary: custody, visitation, support, alimony, which party will temporarily live in the marital residence, injunctions against wasting of assets, and any other issues that need immediate attention from the court pending the finalization of the divorce.

Pendente lite support: It is a temporary support pending the outcome of the final divorce. And the *pendente lite* ruling or order can often time be in effect for a year or two before the divorce is finalized.

Physical custody: It means that a parent has the right to have the child live with him or her most of the time. The parent that has physical custody is called the custodial parent. The non-custodial parent generally will get visitation of the child.

Separation: It means living physically separate and apart from your spouse and you intent to remain separate and apart from your spouse without possibility of reconciliation.

Sole custody: It means when one of the parents has legal and physical custody of the child. Typically this happens when the non-custodial parent has abandoned the child or is deemed unfit to be a parent.

Subpoena: It is a legal tool used to compel an individual or entity to produce physical evidence or to be present during a legal proceeding in order to proffer testimony or be subjected to contempt.

Uncontested divorce: a divorce where all legal issues related to the divorce have been addressed and resolved by the parties prior to filing of divorce. In other words, a divorce where both parties are in accord as to how their marital issues are to be resolved, typically this is done through a separation agreement or property settlement agreement.

SEPARATION

What constitutes separation?

There is no legal separation defined in the Virginia Code. Separation simply means married but living apart and having the intention to remain separate without possibility of reconciliation.

Living under the same roof but separate

Known as constructive separation. It happens when the parties remain living under the same roof but having cut off marital cohabitation (i.e. the parties don't eat together, they are financially independent from each other, they do not visit relatives, they are no longer intimate, basically they no longer act as husband and wife but rather as roommates).

It is important to note that in order to be "separated" one must live apart and have the intention to remain separate without possibility of reconciliation. Thus, it is possible for a couple to meet that standard even though they are living under the same roof.

What are the grounds to obtain a divorce in Virginia?

Grounds for divorce are categorized by fault or no fault. Fault based divorce allows a party to file for divorce immediately. On the other hand, no fault divorce strictly require that the parties be separated for the respective period of time before filing for divorce.

Fault based grounds

Adultery

Abandonment or desertion

Cruelty

Felony committed by spouse and confined in prison to more than one year

No Fault based

1 year separation if:

- You have no property settlement agreement or
- You have minor children

6 month separation if:

- You have a property settlement agreement and
- You have no minor children

What are the repercussions if I pack up my things and leave the marital home?

You could be committing abandonment and/or desertion. It is strongly advisable that you consult with an attorney before you make such decision.

UNCONTESTED DIVORCE

What is an uncontested divorce?

A divorce where all legal issues related to the divorce have been addressed and resolved by the parties prior to filing of divorce. In other words, a divorce where both parties are in accord as to how their marital issues are to be resolved, typically this is done through a separation agreement or property settlement agreement.

Illustration 1: you have been separated from your spouse for several years. You have no marital assets together, no children and neither of the parties is seeking alimony. This is a case where, potentially, the only remaining issue is obtaining the divorce only.

Illustration 2: A divorce can also be uncontested even without one of the parties' consent or presence. You haven't seen your spouse in several years. In fact, you don't even know his or her whereabouts. You can still obtain an uncontested divorce as long as you meet the proper notice requirements required by the Commonwealth of Virginia. Consult with an attorney for further explanation.

How much does an uncontested divorce cost?

The total cost for an uncontested divorce is \$800.00. This includes my fees as well as all court fees. This is a flat fee.

Please note, this price assumes that the divorce is truly uncontested and that the spouse will sign all necessary paperwork. The price for the divorce could increase if the spouse's whereabouts are unknown or if the proceeding turns into a contested matter.

How do I know if I qualify for an uncontested divorce?

If you and your spouse have agreed on all issues regarding divorce then you can file an uncontested divorce and obtain your final decree of divorce fairly quickly. If you are unsure, the attorney will determine whether your divorce will be uncontested or not.

Do I need to have a property settlement agreement to qualify for an uncontested divorce?

No. However, it is always advisable that the parties have a property settlement agreement whenever there are assets to be distributed. However, it is not necessary. If you and your spouse have no assets to divide or have already divided all assets as well as agreed on all issues regarding children, if any, you can obtain an uncontested divorce without a property settlement agreement.

Do I have to go to court in order to obtain an uncontested divorce?

No. The entire process will take place in our office.

Do I need to have a corroborating witness in order to obtain an uncontested divorce?

Yes. You will need to have a witness; someone over the age of 18 years of age other than your spouse than can testify that you have lived separated and apart from your spouse for the required period of time.

How long does an uncontested divorce take?

Generally, it takes about 5 weeks to obtain an uncontested divorce. In some cases, where the other party refuses to sign the divorce papers or has unknown whereabouts, the process can take two to three months.

I don't know the whereabouts of my spouse. Can I still obtain an uncontested divorce?

Yes. But you will have to pay for publication. Publication means you have to put a notice on a local newspaper for 4 consecutive weeks. A publication fee can cost between \$300.00 and \$350.00 depending on the newspaper used. The publication fee is paid to the newspaper. We do NOT keep any portion of the publication fee.

Note the publication fee is in addition to the \$800.00 divorce fee.

How long will I have to wait to obtain my divorce if I have to do publication?

An uncontested divorce that is done via publication will generally take about two to three months.

My spouse is outside of the United States. Can I obtain an uncontested divorce?

Yes. As long as your spouse is willing to sign all necessary paperwork, it will be done relatively fast and easy.

Is there a chance that my uncontested divorced can turn into a contested divorce?

Yes. If the other party believes that there are issues that need to be resolved by the court that were not resolved prior to the filing of the divorce, your proceeding could potentially turn into a contested matter. If this happens, I will inform you immediately of your options.

What is the process of an uncontested divorce?

You will first meet with an attorney and a Complaint for divorce will be drafted at the appointment. Subsequently, the complaint will be filed in the respective circuit court. The court will generate a summons of civil action. Upon receipt of the summons, Amable will mail a copy of all pleadings filed with the court and the summons to you as well as to your spouse. Your spouse will also receive a waiver of notice. This document needs to be signed and notarized by your spouse in order to allow you to proceed with your divorce. Once the waiver is completed, it should be mailed to our office. Upon receipt of the waiver, you will receive a call from our office to set up an appointment for you and your witness to come in to sign your divorce affidavits. The waiver and the affidavits will be sent to the court with a proposed final divorce decree for signature by the judge. You and your spouse will receive a copy of the final divorce decree shortly after the judge signs

your final divorce decree.

This entire process generally takes about 5 weeks. Keep in mind the time frame depends largely on how fast we get the waiver back from your spouse. If your spouse does not sign the waiver or refuses to sign the waiver, we will have to serve your spouse via sheriff. Upon service of process completed, you would have to wait 21 days. If no answer is filed by your spouse within the 21 days, you may proceed with your divorce affidavits.

Do I need to pay extra for sheriff service?

No. It is included in the \$800.00 flat fee.

CONTESTED DIVORCE

What is a contested divorce?

A divorce where the parties are not able to agree on all issues relating to the distribution of property, alimony, grounds of divorce, custody, visitation or child support.

Do I have to go to court for a contested divorce?

Yes. There could be several hearings depending on the complexity of your case.

How long does a contested divorce take?

It depends on the complexity of the case and the specific circumstances. It could take 12 months to a couple of years before your divorce is finalized.

How much does a contested divorce cost?

It depends on the circumstances and complexity of each case. A \$3,000.00 retainer is required to start the process. On average a contested divorce costs between \$10,000.00 and \$20,000.00.

The overall cost of your divorce depends on several factors. Talk to our attorney about it in order to get a more accurate idea.

What is the process in a contested divorce?

Generally, first a complaint for divorce is filed by plaintiff in the Circuit Court. Upon receipt of the complaint, the defendant has 21 days to file an answer. The defendant can also file a cross-complaint. Discovery generally follows the filing of the initial pleadings. Discovery is typically the most time consuming and expensive part of litigation but it's extremely important. It involves the detailed exchange of information regarding each party's position in the case. Discovery generally involves answering interrogatories, production of documents and requests for admissions.

Depending on the circumstances some cases may require a *pendente lite* hearing. A *pendente lite* hearing is a hearing prior to the final divorce trial where the court awards temporary relief pending the final divorce trial to the parties. Some of the issues that are generally addressed at the *pendente lite* hearing are: child support, spousal support, temporary use and possession of the marital residence, injunctions against wasting of assets, no harassment by any party, no overnight visitors of the opposite sex while the children are in the party's care, etc.

After the *pendente lite* hearing, trial preparation will be necessary. The attorney will meet with you and your witnesses a couple of days before the final trial to explain what will happen during trial and to prepare you thoroughly.

At trial you will have a chance to testify as well as your witnesses. In addition your spouse is allowed to testify and his or her witnesses also. The judge will hear evidence and review all evidence presented to the court and produce a ruling within a couple of days after the trial.

How long will my divorce trial take?

It depends on the complexity of the case and on whether any of the issues were resolved by the parties prior to the trial. Thus, a divorce trial can take anywhere from two hours to all day. You will present all of your evidence at trial including testimony from your witnesses.

In most cases, the judge will not rule immediately upon culmination of the trial but will take 7-10 business days to enter a ruling. Your attorney will contact you as soon as the final divorce decree is entered to go over the result.

I'm not happy with the judge's ruling. What can I do?

There is a difference between being unhappy with the court's ruling and having reason to believe that the court committed a reversible error. Simply being dissatisfied with the judge's ruling is not grounds for appeal.

There are two things that you can do if you believe the court erred in your divorce. First, you can file a motion to reconsider within 21 days from the entry of the final divorce decree. This is file in the same court. It basically is a request to the judge to reconsider his ruling. Second, you can appeal the court's ruling to the Court of Appeals of Virginia. It is extremely important that you consult with an attorney as soon as entry of the divorce decree as the appeal process has several deadlines that must be met if the ruling is to be appealed.

Would it cost me more money to appeal the judge's ruling?

Yes. The fees to file a motion to reconsider or to file an appeal are outside the original scope of the representation.

ALIMONY

How is alimony determined?

Alimony can be agreed between the spouses or if the parties cannot agree on an amount, the judge will decide.

What are the factors that the court consider in determining alimony?

Some of the elements the court will consider are:

- Obligations, needs and financial resources of the spouses
- Standard of living established during the marriage
- Duration of the marriage
- Age and physical and mental condition of the spouses, and any special family circumstances
- Each spouse's contributions, monetary and nonmonetary, to the well-being of the family
- Each spouse's financial assets
- Provisions made with regard to distribution of the marital property
- Extent to which age, condition of special circumstances of any child of the spouses would make it appropriate for one spouse to stay home
- The extent to which either spouse contributed to the other's education, training, career position or profession
- The spouses' earning capacity and the current employment opportunities for people with that earning capacity
- Opportunity for and ability of the spouses to get education and training to enhance earning ability
- decisions regarding work and parenting that the spouses made during the marriage, and their effect on earning potential, including the length of time either spouse has been out of the job market
- Provisions made with regard to distribution of the marital property, and
- Any other factors, including the tax consequences to each spouse, necessary to arrive at a fair result.

Can alimony be barred?

Yes. A party who has been found guilty of adultery will NOT be eligible to receive alimony unless the party can show by clear and convincing evidence that a denial of support and maintenance would constitute a manifest injustice.

How long is the obligation of alimony for?

It depends on various factors. In cases where alimony is proper, a general rule of thumb is to ask for half of the length of the marriage. There are some cases where permanent support may be appropriate such as when the parties have been married for a long time or where one of the parties is not able to become financially self-supportive because of disability or age.

Imputed income

There are cases where sometimes one of the spouses would purposefully stop working or decide to work less hours in order to avoid paying spousal support or even child support. The court has the discretion of imputing income if it believes that such person does not have a legitimate reason for working less hours.

Illustration: Husband makes \$100,000.00 per year. After consulting with his divorce attorney, he finds out that he will most likely have to pay a substantial amount of alimony to his wife. He decides to quit his job and finds another job where he earns \$50,000.00 per year.

The court will impute an additional \$50,000.00 dollars per year of income to Husband because he has no valid reason for suddenly quitting his good paying job and obtaining one making half of what he was making before. Thus, when calculating spousal support or child support, the court could assume that husband makes \$100,000.00 per year and not \$50,000.00.

EQUITABLE DISTRIBUTION

What is equitable distribution?

The process by which a court divides the parties' property in a divorce. Equitable distribution only takes place if the parties cannot come to an agreement as to how to divide their assets.

How is property characterized?

Marital property

(i) all property titled in the names of both parties, whether as joint tenants, tenants by the entirety or otherwise or (ii) all other property acquired by each party during the marriage which is not separate property as defined above.

Separate property

(i) all property, real and personal, acquired by either party before the marriage; (ii) all property acquired during the marriage by bequest, devise, descent, survivorship or gift from a source other than the other party; (iii) all property acquired during the marriage in exchange for or from the proceeds of sale of separate property, provided that such property acquired during the marriage is maintained as separate property

Hybrid property

Property that is part separate and part marital.

Illustration: you purchased a home prior to the marriage for \$100,000.00. Subsequently, you get married. At the time of the marriage the home was paid off and it had \$100,000.00 of equity. During the marriage your spouse fixed the home, made it nicer, added units, etc. Later on in life you both decide to obtain a divorce. At the time of the divorce the home has a value of \$150,000.00. It is determined that the increase in value came from the additional work done by your spouse.

Your real estate is considered hybrid property. The equity in the home at the time of the marriage, \$100,000.00 is your separate property, and the appreciation of the home from the time of the marriage to the date of separation, \$50,000.00 is considered hybrid property because it originated from the efforts of the spouses during the marriage, specifically, your spouse. Thus, you would receive \$100,000.00 outright as separate property and a portion of the \$50,000.00 as part of your marital property.

Obviously, this is a very simple illustration. Most real estate is encumbered by a mortgage which complicates the process of determining the parties' interests. The courts in Virginia generally use one of two different formulas to calculate the parties' respective interests in hybrid property. Some of them are the Brandenburg formula and the Keeling formula.

The Brandenburg formula

The separate interest is calculated by dividing the separate contribution by the total contribution. And multiplying the result by the total equity in the home.

$$\frac{\text{separate contribution}}{\text{total contribution}} \times \text{total equity} = \text{separate interest}$$

The marital interest is calculated by dividing the marital contribution by the total contribution. And multiplying the result by the total equity in the home.

$$\frac{\text{marital contribution}}{\text{total contribution}} \times \text{total equity} = \text{marital interest}$$

The Keeling formula

This formula focuses on the initial amount of money used to purchase the asset (i.e. down payment) in calculating the separate and marital shares. The separate share is calculated by multiplying the equity in the asset at time of valuation by the ratio of the separate contribution at the time of the original purchase of the asset. The marital share is calculated by subtracting the separate share from the equity of the asset at time of valuation.

Illustration: You purchase a home for \$100,000.00 with a \$10,000.00 down payment which translates to 10% of the total value of the home (this is the ratio of the separate contribution at the time of the original purchase). You obtain a mortgage for \$90,000.00 to cover the remaining amount. Subsequently you get married. Later in life you decide to obtain a divorce. At the time of the divorce the value of the home has appreciated to \$200,000.00 and the outstanding mortgage at the time is only \$50,000.00. Thus, the equity in the home at the time of valuation is \$150,000.00.

In order to calculate your separate share in the home using the Keeling formula you would multiply the equity in the asset at time of valuation (\$150,000.00) by the ratio of the separate contribution at the time of the original purchase (10%)

$$\$150,000.00 \times 10\% = \$15,000.00 \quad \text{Separate share}$$

In order to calculate your marital share you would take the equity in the home (\$150,000.00) and subtract your separate share. (\$15,000.00)

$$\$150,000.00 - \$15,000.00 = \$135,000.00 \text{ Marital property}$$

The court would then divide the \$135,000.00 between the parties to after determining the respective marital shares.

Note that the Keeling formula is only concerned with the share of the purchase price in order to determine the share of the equity which in some cases yields unpredictable and inequitable results to the parties as there are too many variables unaccounted for such as rate of appreciation, mortgage payments, any additional enhancements made to the home by the parties during the marriage.

What are the assets/property subject to equitable distribution?

- Real estate
- Vehicles
- Household furniture
- Pets (yes, pets are considered personal property under the law)
- Bank accounts
- Pensions
- Marital debts
- Tax liabilities

PROPERTY SETTLEMENT AGREEMENT

What is a property settlement agreement?

A property settlement agreement is an agreement entered into by the Husband and the Wife in connection with a divorce that addresses all issues that relate to the divorce such as: divorce grounds, equitable distribution, alimony, custody, visitation, and child support.

When do I enter into a PSA?

Ideally, you want to have the PSA finalized any time prior to the filing of the complaint for divorce. If this is the case, you would simply file for an uncontested divorce. If litigation ensued without a PSA, you can still obtain the PSA at any time prior to the divorce trial and simply ask the judge to incorporate the PSA into the divorce decree. This would mean you wouldn't have to actually have a full trial but rather only an entry of the divorce with your PSA setting forth the resolution of all issues regarding the divorce.

Do I need an attorney to draft a PSA?

An attorney does not have to draft your PSA. However, it is strongly advised that you have an attorney draft the PSA or at least review your PSA before you sign it, especially if it involves complex issues or if there are substantial marital assets.

How much do you charge to draft a PSA?

Our office charges \$500.00 for a PSA as long as you have agreed on ALL terms with your spouse and you just need the attorney to draft your PSA.

If the drafting of the PSA requires negotiation, going back and forth between the parties, you will be charged the attorney's hourly rate instead of a flat fee.

Does the PSA have to be notarized?

It is strongly recommended that the PSA be notarized by both parties. However, a PSA is a valid document even without the notarization and will be incorporated and ratified by the court into your final divorce decree regardless.

I signed a PSA, can I undo my signature or have it nullified?

Most likely not. Only under very limited circumstances you can have a court nullify your PSA such as if you signed it under duress, coercion, mental incapacity, fraud, or unconscionability.

CHILD CUSTODY

What are the types of custody?

Legal custody

Legal custody of a child means having the right and the obligation to make decisions about a child's upbringing. A parent with legal custody can make decisions about the child's schooling, religious upbringing and medical care, for example. In Virginia, courts regularly award joint legal custody, which means that the decision making is shared by both parents.

Physical custody

Physical custody means that a parent has the right to have a child live with him or her. Generally, the primary caregiver will be awarded primary physical custody of the child with visitation granted to the non-custodial parent. However, it is not uncommon for the court to award joint physical custody when the child spends significant amounts of time with both parents. Joint physical custody works best if parents live relatively close to each other, as it lessens the stress on children and allows them to maintain a somewhat normal routine.

Sole Custody

When a parent has sole legal custody and physical custody of a child. Courts generally won't hesitate to award sole physical custody to one parent if the other parent is deemed unfit -- for example, because of alcohol or drug dependency or charges of child abuse or neglect.

Who keeps the children?

This is an extremely complex questions based on several factors. The court will always consider the best interest of the children and will, most of the time, grant custody of the children to the primary caregiver of the children.

In determining the best interest of the children, the court will examine the following factors:

1. The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs;
2. The age and physical and mental condition of each parent;
3. The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual and physical needs of the child;

4. The needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers and extended family members;
5. The role that each parent has played and will play in the future, in the upbringing and care of the child;
6. The propensity of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child;
7. The relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child;
8. The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference;
9. Any history of family abuse as that term is defined in § 16.1-228 or sexual abuse. If the court finds such a history, the court may disregard the factors in subdivision 6; and
10. Such other factors as the court deems necessary and proper to the determination.

Will the children's preference be taken into account?

Generally, the children's reasonable preference is not taken into account unless the child is of age, maturity and intelligence that is adequate to provide a reasonable preference.

CHILD SUPPORT

Who pays child support?

In Virginia, the parent who does not have physical custody of the child has the obligation to pay child support.

How to obtain child support?

There are two ways to obtain child support: through the department of social services, child division, and through the court.

How do I obtain child support through the department of social services?

You have to contact the department of social services in your respective area. They can help you obtain child support and this is free.

You do not need a lawyer in order to obtain child support through social services but this route takes longer.

How do you obtain child support through the court?

The process begins by filing a petition for child support in the Juvenile and Domestic Relations Court. You can do this on your own without an attorney but it is strongly recommended that you have a lawyer in order to protect your child's interests.

Can I appeal an order that requires me to pay child support if I don't agree with the monthly obligation?

Possibly. You can ask a circuit court judge to revise the J&DR ruling if you note your appeal within 10 days of the court's orders.

If appealing the order is no longer an option because you did not note your appeal timely, then you can still modify your child support as long as there has been a material change in circumstances from the time date of the entry of the J&DR order.

How do you calculate child support?

In Virginia child support is calculated using the Virginia Child Support Guidelines which take into account the gross income of both parents, the number of children that require support, special needs of the child, health insurance, and daycare.

What happens if the non-custodial parent is not paying child support as ordered by the court?

You have three options:

- You can file a petition for show cause and contempt in court,
- You can obtain a wage garnishment order from the court,
- You can go through the department of social services and have them force the non-paying party pay child support.

What if I don't want child support for my child?

You do not have to obtain child support unless you are receiving food stamps for your child. If that is the case, the department of social services may ask for child support from the non-custodial parent.

I never see my child. Do I still have to pay child support?

Yes. Visitation and child support are two different things. Just because you don't get to spend time with your child does not mean you are not responsible for child support.

The non-custodial parent does not pay child support. Do I still have to let him or her see the child?

Yes. Visitation and child support are entirely different. Even though the parent is not paying any child support, he or she is entitled to see the child.

How long do I have to pay child support for?

Until the child turns 18 years old unless

The child is still in high school and living with a parent. If that is the case, the child support continues until the child either (i) graduates high school, or (ii) turns 19 years old, whichever occurs first.

What if I can't pay child support? What should I do?

If you can't meet your child support obligation you need to act expeditiously.

You need to ask the court to suspend or terminate your child support obligation.

Obviously, you need to have a good reason for it such as loss of employment or illness.

You should NOT simply stop paying your child support obligation because you are not able to. If you stop paying your obligation without the court's prior approval, you will subject yourself to being held in contempt and possible face jail time.

Can I be sent to jail if I don't pay child support?

Yes. If you are having a hard time making your child support payments, talk to an attorney immediately to learn more about your options.