

What are the reasons for a divorce?

In Virginia, you can get a divorce for eight reasons. Four of these reasons don't require a waiting period:

-adultery, sodomy, or buggery:

These are very difficult to prove and cannot be used as grounds for divorce if you continue to live with your spouse after the act is committed.

-your spouse's **conviction of a felony and sentence to more than one year in prison**. This can only be used as grounds for divorce if you do not live with your spouse after they are released.

Four reasons require 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. **Separation** is simply not living together.

Virginia also has a procedure called a "**divorce from bed and board**" which means the parties remain legally married but all their other rights including custody and child support and equitable distribution of property are settled. Most of the time this is filed when one party wants to initiate a divorce proceeding but the parties have not been separated for a year yet.

Who can file for divorce in Virginia?

To file for a divorce your or your spouse must live in Virginia for at least six months before the divorce is filed.

A divorce is filed in the Circuit Court, usually in the county or city in which you and your spouse last lived together, or where the defendant currently lives. The defendant is the person against whom the divorce is filed.

Can my spouse prevent me from getting a divorce?

Your spouse cannot prevent you from getting a divorce in the state of Virginia. Your spouse can, however, delay the divorce by disputing the grounds for the marriage, property issues, custody, child support, alimony, or marital debts.

If these things are disputed, you may need a hearing in front of a Circuit Court judge. If there is nothing to dispute, then your divorce can be finalized without having to go to court.

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 there are contested issues, the divorce process can last much longer, sometimes for several years.

What is an annulment?

An annulment is a legal decree that a marriage is void. An annulment proceeding can settle the same issues of custody, child support, and alimony as a divorce. Annulments are only granted if:

-either party was **physically or mentally incompetent**

-either party consented to the marriage under condition of **fraud or duress**

-either party was a **felon or prostitute** without the other's knowledge

-**impotence**
-the wife was **pregnant by another man** without the husband's knowledge

-the husband, without knowledge of the wife, **fathered a child born to another woman** within 10 months of the marriage

-**failure to have a marriage license** or to have the **marriage solemnized** according to law

-one of the parties was **married to someone else** at the time of this marriage

-**incest**
-either party was **under the age of 18**.

The court will not grant an annulment of a voidable marriage if the spouses **continue to live together** after any of the above circumstances are discovered.

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 and must be drafted in proper legal format before it will be accepted by the court. The court then issues a **Summons**.

Second, **the divorce papers are served** (legally delivered) on the defendant. The rules of service are complicated and simply giving a copy of the complaint to your spouse does not count.

Third, if the case is uncontested, **evidence is taken** by a deposition, usually in a lawyer's office. The deposition is recorded and typed or printed out. Sometimes evidence in an uncontested divorce is taken before the judge in an oral hearing. If the divorce is contested, generally evidence will be taken in court.

Fourth, **the deposition, a proposed Final Decree of Divorce, and other papers are sent to the judge** for review.

Then, if everything is in order, the **judge signs the Final Decree of Divorce**.

This brochure is intended for information purposes only and is NOT a suitable substitute for legal advice from a certified attorney.

If you have a specific question, please consult Legal Aid WorksSM at:

500 Lafayette Boulevard
Suite 100
Fredericksburg, VA 22401
Telephone: (540) 371-1105
Fax: (540) 371-1114
www.LegalAidWorks.org



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