Understanding Your Domestic Relations Rights in Virginia

2016-2017

The Metropolitan Richmond Women's Bar Association has published this booklet to help you understand the general legal circumstances that you may face in resolving domestic relations problems under Virginia law. Each person faces unique circumstances that may not be specifically addressed in a broad overview. This booklet is not intended to provide specific advice to you or to address your specific situation. You should use this document only as an introduction to understanding your legal rights.

The authors, the contributors, and the Metropolitan Richmond Women's Bar Association disclaim any responsibility for the application of this information to individual cases. You should consult with a lawyer for professional advice regarding your particular questions, objectives and intentions.

This booklet is based on laws in effect in Virginia on July 1, 2016. Because laws are always subject to change, you should consult your local court or a lawyer for possible changes.

The Metropolitan Richmond Women's Bar Association gratefully acknowledges the drafting, editing, comments and assistance provided by many judges and attorneys.

For more information about the Metropolitan Richmond Women's Bar Association, please visit our website at www.mrwba.org or contact us at P.O. Box 3945, Richmond, Virginia 23235.

If you would like to request additional copies of this booklet or request information about placing an order for or advertisement in the next booklet, please contact Erin Jackson at (804) 317-3028 or ejmrwba@gmail.com

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COURT PROCEDURES

One of the first steps in handling a legal problem is to determine which court is best suited to handle the matter. Some matters must be taken to a particular court, while others may be taken to a variety of courts. Courts are divided by both subject matter and geographical area. Family law cases are heard in the Circuit Court and the Juvenile and Domestic Relations District Courts.

Juvenile and Domestic Relations Court

The court where you take your case must be authorized to hear cases dealing with that subject and must be in a location that has some connection to the matter at hand. The Juvenile and Domestic Relations District Court, commonly known as Juvenile Court or JDR, may hear cases involving the following matters:

- Delinquent children, children in need of help or supervision, or abused, abandoned or neglected children;
- Certain adult offenses against children;
- Offenses of one family member against another;
- Parents of abused or neglected children, of children in need of help or supervision, and of delinquents if they have contributed to a child's wrongful acts;
- Children who are the subject of entrustment agreements entered into between the parents and a social services agency;
- Commitment of minors to mental health facilities and retardation certifications for minors for admission to a treatment facility;
- Consent to medical and surgical treatment of children whose parents refuse to consent or whose consent is otherwise unobtainable;
- Other judicial consents on behalf of children;
- Desertion and nonsupport matters;
- Parental determination;
- Work permits;
- Spousal abuse and protective orders;
- Traffic infractions and related matters of minors; and
- Emancipation of children 16 years of age or older.

You may start an action in the Juvenile Court on your own, without a lawyer, for certain matters. Each Juvenile Court has a person, known as an intake officer, who can help you file a petition for custody, visitation, child support, and spousal support. Custody and visitation petitions have small filing fees. You may file support petitions for free. Parties who were never married but share a child in common must file in Juvenile and Domestic Relations District Court for custody, visitation, and support purposes. These matters can be appealed to the Circuit Court.

Juvenile or Circuit Court

Either the Juvenile Court or the Circuit Court (under certain circumstances) may hear cases involving the following domestic relations or family matters:

- Custody, visitation and support of a child;
- Termination of residual parental rights;
- Spousal support;
- Protective Orders; and
- Petitions filed on behalf of a child to obtain needed governmental services.

The Circuit Courts are the starting place for virtually every other type of case concerning domestic relationships issues, including:

- Divorce, annulment or affirmation of a marriage;
- Spousal Support;
- Injunctions;
- Equitable distribution of property;
- Appeals of protective orders or custody and visitation determinations from the Juvenile and Domestic Relations District Court; and
- Name changes of an adult or child, from either a divorce or independently.

Circuit Court

The first step to starting a family law action in the Circuit Court is to file a Complaint and pay a filing fee. As with other courts, you must file in the Circuit Court in a location with some connection to the matter. For example, a Circuit Court located in the county where you live likely could handle your divorce case. Once you file a Complaint for Divorce in the Circuit Court, the Circuit Court can take jurisdiction of your custody, visitation and support matters. Although you may file in Circuit Court without the help of a lawyer, the rules of

the Circuit Court are specific and more complicated than those of Juvenile Court. Because the penalties may be serious if you do not follow Circuit Court rules, hiring a lawyer to represent you in Circuit Court is advisable.

When you have determined which type of court should hear your case, you may call the clerk's office at that court for help with forms and filing fees and for other information. The telephone numbers for various clerks' offices are listed in the blue pages of the telephone book and available at http://www.courts.state.va.us.

Filing Fees

For most court actions you must pay a filing fee. The amount of the fee will depend on the type of case and which court will hear it. For example, a Complaint for divorce costs $86 to file. However, if you do not have the money to pay a filing fee, the judge may grant a special request and allow you to proceed with your case without paying the fee. This requires you to petition the Court to proceed *in forma pauperis*.

MARRIAGE

Marriage under Virginia law is the legal union of one individual to another individual. Marriages may be between members of the opposite sex, or members of the same sex. Marriage is governed by certain requirements under Virginia law.

Procedure

You and your intended spouse must appear together in a Virginia Circuit Court clerk's office to fill out an application and receive a marriage license. You will receive the marriage license immediately, and the marriage ceremony must be performed within 60 days of the date the license was issued. The license costs $30 - $33, depending on where you apply for it, and usually must be paid for in cash. You should bring identification and be prepared to present your social security card. If you have been married before, you should bring proof of your divorce. There is no waiting period, no requirement for a blood test or a physical, and no residency requirement.

The following marriages are not permitted:

Who May Marry

- A marriage when one of the parties is still married to someone else;
- A marriage between an ancestor and a descendant

(for example, father/daughter or grandfather/granddaughter);

- A marriage between a brother and sister, or half-brother and half-sister; and
- A marriage between an uncle and niece, or aunt and nephew, including half-blood relationships.

Marriage of Minors

You must be at least 18 years old or be an emancipated minor to marry in Virginia, Intent to marry is a ground for a court to grant emancipation.

Who May Perform Marriage Rites or Ceremonies

The marriage ceremony may be performed by:

- A minister of any religious denomination who is authorized by a judge or clerk of court;
- Any Virginia judge;
- Any federal judge who resides in Virginia;
- Other persons appointed by the Circuit Court; or
- A member of a religious society which has no minister, upon certain terms and conditions.

Effect of Marriage

Entering into a marriage in Virginia may have significant impact on real estate, bank accounts, and other property, which you bring into your marriage. You should talk with a lawyer before your marriage to determine how it will affect your past, present, and future property holdings. Parties may choose to enter into a premarital agreement that addresses issues including spousal support, the rights and obligations of the parties, rights concerning property, the disposition of property upon the occurrence of an event, the making of a will or trust, and the ownership rights in and disposition of the death benefit from a life insurance policy.

Either spouse may elect to change his or her name upon marriage, without any formal legal proceedings. There is no legal requirement to change your name. However, those who choose to change their name at marriage, but later wish to resume a previous name or select a new name, must petition the Circuit Court where he or she resides.

Common Law Marriage

Twelve states allow informal "common law" marriages arising out of a mutual agreement to be married, living together and holding yourselves out as married people. Virginia is not one of those states.

Palimony

Virginia courts will not recognize an obligation of one person to financially support another, arising from the fact that they have lived together in a non-marital relationship.

DIVORCE

There are two types of divorces in Virginia:

1) a final and absolute divorce which releases you from the bonds of matrimony and allows you to remarry after the divorce is final, and

2) a divorce "from bed and board" which does not allow you to remarry.

Grounds for Divorce

You may file for an absolute divorce on any one of the following grounds:

1. Your spouse has committed one of the following acts with another person: adultery (sexual intercourse); sodomy (oral or anal sex); or buggery (a sex act against nature; the term often is used interchangeably with sodomy). You must begin divorce proceedings within five years of the date your spouse committed the act(s) and you must not have lived together as husband and wife (also known as cohabitation) after you learned of the act(s). There is no specified waiting period before a divorce can be granted.

2. Your spouse has been convicted of a felony during the marriage and has been sentenced to more than one year of confinement (for example, prison), is then confined, and you do not resume cohabitation with your spouse after you learn of the sentence.

3. 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 separation.

4. Your spouse has willfully deserted or abandoned you. Divorce may be granted one year after the date of separation.

5. A separation for six months, without resuming cohabitation, with the intent that the separation be permanent. This provision applies if you and your spouse do not have any children under the age of 18 and have signed a written separation agreement dividing your property and resolving all other issues relating to your marriage, including spousal support.

6. A separation for one year, without resuming cohabitation, with the intent that the separation be permanent. This one-year provision applies if you and your spouse have minor children, even if you have entered into a written separation agreement. This provision also applies if you and

your spouse do not have minor children and have not entered into a written separation agreement.

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

Beginning the Divorce Process

You may file for a final divorce at any time on grounds one (adultery, sodomy, or buggery committed outside of the marriage) and two (spouse's felony conviction). There is no required waiting period for the court to grant an absolute divorce on these grounds.

Even if one year has not passed from the time of your spouse's desertion or acts of cruelty, you can file for a divorce "from bed and board" on grounds three and four. There is no waiting period for the court to grant this type of divorce. Then, after one year has passed from either the date of the acts of cruelty or desertion or the date you and your spouse separated, a bed and board divorce may be legally merged into an absolute (or final) divorce, or the grounds may be amended to obtain a "no-fault" divorce.

Grounds five and six are commonly known as no-fault divorces. You can file for a no-fault divorce as soon as you have lived separate and apart for the required time period.

This separation must be continuous, without interruption, without cohabitation, and with the intent that the separation be permanent. In a no-fault divorce, you do not have to claim that your spouse did something wrong, such as committed adultery or desertion.

Procedure

You begin divorce proceedings by filing a Complaint for divorce in the Circuit Court in the county in which you and your spouse last lived together as husband and wife. To file for divorce in Virginia, you or your spouse must have lived in Virginia for at least six months just prior to filing. However, members of the military who are stationed abroad can meet this requirement as long as they 1) are stationed abroad when the divorce proceedings begin; and 2) lived in Virginia for at least six months prior to being stationed abroad. You may also file in the Circuit Court in the county where your spouse currently lives. The Complaint then must be served on your spouse.

The rules for service are quite complicated and merely giving a copy of the Complaint to your spouse will not meet those requirements. If you are indigent (without proper funds) and the defendant is not a resident or cannot be located, the Complaint must be mailed to the defendant at his last known address and be posted on the

courthouse door.

Once properly served, your spouse can respond by filing an Answer with the court. Your spouse can also include a Counterclaim to assert any additional claims against you. Once your spouse has been served and if he or she does not answer within the time prescribed by law, no further notice has to be given and the court may enter any order or final decree.

After the Answer is filed or the time for an answer to be filed expires, depositions may be taken or affidavits will be submitted. A deposition is oral testimony, under oath, which is recorded before a notary public and put into writing. An affidavit is written testimony under oath, which is endorsed by a notary public. In a no-fault divorce, the depositions and affidavits will contain the facts that support your grounds for divorce. Your must also support your testimony through the testimony of another witness besides your spouse. Your spouse must be given notice of the depositions, unless he/she did not answer or appear, and may be present while you testify. Based on the evidence, the judge will determine what the facts are and whether grounds for divorce exist.

SPOUSAL SUPPORT

Petition

If grounds for divorce exist and are properly supported and the other issues relating to your marriage (such as property settlement and support) have been resolved, your request for a divorce will be granted. If necessary, the judge may grant a divorce before financial issues are resolved under a procedure called bifurcation, which means that financial issues will be settled at a later date. Once the court enters a final decree of divorce, this will be your official document affirming your divorce.

Upon separation and depending upon the circumstances, you or your spouse may be responsible for providing financial support for the other. The court may appoint a vocational expert to conduct an evaluation of a party in cases involving spousal support when the earning capacity, unemployment, or underemployment of a party is in controversy.

If you do not prove grounds for divorce to the Circuit Court, it may still award you spousal support if it was properly pled. You may also petition the Juvenile Court for spousal support. In the Juvenile Court, you can meet with an intake officer and explain your financial situation. You will be given a financial statement to fill out, so have your expenses written down and bring a recent income tax return or pay stub/receipt if you are employed.

If grounds for divorce exist and you or your spouse have filed a Complaint for Divorce, your lawyer may ask the court for an award of temporary spousal support for you. The Circuit Court will hold a hearing to determine your financial need and your spouse's ability to pay support. The Circuit Court can also award you certain types of other temporary relief, such as child support, child custody, exclusive use and possession of the family residence, an order that a party pay debts incurred jointly or by either party, health insurance, and life insurance premiums while your suit for divorce is pending.

Terms of Payment

Once the court awards spousal support, it will enter an order stating the terms of payment. The court may order spousal support to be made in: 1) periodic payments for a specified length of time; 2) periodic payments for an unspecified length of time; 3) a lump sum award; or 4) an award of any combination of the three.

Who Must Pay

In determining whether to award you spousal support and the amount of the payments and/or lump sum award, the court will consider many factors, such as:

- The provisions made by the couple with regard to marital property;
- The age and health of each spouse;
- The length of the marriage;
- The contributions by each spouse to the marriage's well-being and its breakdown; and
- The ability of each spouse to earn an income if the court determines that either is voluntarily unemployed (not working by choice) or underemployed (making a lower salary than the person is capable of earning).

A lawyer can provide you with more detailed information about the factors the court considers.

If your spouse has filed for divorce on the grounds of adultery, the judge may deny you spousal support, unless you can prove that such a denial would be grossly unfair, based on your financial situation and degree of fault for the breakdown of the marriage.

Support by Agreement

You and your spouse may also voluntarily agree in writing to spousal support terms. If you are receiving spousal support by such an agreement, the court cannot alter your agreement. The agreement you reach with your spouse regarding spousal support may be incorporated into a court order.

If a court enters a spousal support order, the amount can be increased, decreased, or terminated by that court if either spouse's circumstances materially change. Failure to abide by a court order is punishable by contempt of court, which can result in a fine or incarceration.

Time Limitations

If you do not need spousal support at the time of your separation, you may reserve your right to request it in the future. Note that there are some time limitations regarding your right to request spousal support, so consult with a lawyer if you are in this situation.

Spousal support automatically ends if either spouse dies or the spouse receiving support marries again, unless an agreement states otherwise. Also, unless otherwise agreed on, the court may decrease or end spousal support if you are receiving support and have cohabited for one year or more with another person in a relationship that is similar to marriage, regardless of the date of your support order. If you remarry, then divorce again, you cannot resume your spousal support from your first spouse unless the second marriage was invalid or void from the start. **A monetary award of spousal support is enforceable in the same manner as any other money judgment.**

CHILD SUPPORT

Basis for Support

Each parent has a duty to support his or her children. The duty to support a child is separate from the right of a parent to visit the child. Therefore, visitation cannot be withheld from a parent just because that parent has not made child support payments. Likewise, a parent cannot withhold child support payments just because visitation is being denied.

Child support is determined according to the Virginia Schedule of Monthly Basic Child Support Obligations set out in the Code of Virginia. Under this schedule, the gross monthly incomes of both parents, the cost of child care to enable a parent to work, and the cost of health insurance for the child are factored into a formula that determines an amount of support for each child. If each parent has the child for more than 90 days of the year, the parents are considered to have shared custody, which reduces the support amount.

The amount of child support under the guidelines is presumed to be the correct amount. Each parent is responsible for his or her proportionate share of support based on his or her percentage of the total income. If a parent is voluntarily unemployed (not working by choice) or is voluntarily underemployed (making a lower salary than the parent is capable of earning), the court may assign an appropriate amount of income to him or her for the purpose of calculating

child support. The assigned, or "imputed," income will be what the person is capable of earning. In evaluating the unemployment or underemployment, the court will consider the "good faith and reasonableness" of the employment decisions made by the party as well as the impact a parent's decision to attend and complete an educational or vocational program may have on his/her earning capacity.

In determining gross income, the court may consider reasonable business expenses and half of the self-employment tax for self-employed parents. Spousal support received will be included in the gross income of the receiving spouse and spousal support paid will be deducted from the gross income of the payor. Additionally, a court will not consider as part of gross income child support obligations concerning children who are not subjects of the current proceeding.

Child support may be increased or decreased whenever there is a material change in circumstances. These changes may include an increase or decrease in income, unavoidable unemployment or changes in the needs of a child. For example, increases in the cost of food, clothing, shelter and schooling may be reasons to ask for an increase in child support. Should you become incarcerated for 12 months or more while owing child support, the court must inform you of the right to have your support obligation adjusted during this period. If, while incarcerated, you pay your support obligations on time, you may receive credit for past arrearages. While incarcerated, you may also receive preference in work programs because of your child support obligations.

Increasing or Decreasing Child Support

The amount of child support can be changed, but you cannot receive back payments before you petition the court for a change in child support, unless those payments were previously ordered by the court. Child support orders may be modified retroactively only to the date that you file a petition for modification with the court.

You may file a petition for child support in the Juvenile Court and request a hearing to establish child support obligations under these conditions: 1) if you and your spouse separate or 2) you are not living with the child's other parent and he or she fails to pay child support voluntarily. You will need to provide the court with the other parent's current home or work address in order for that parent to receive notice of the hearing.

If you or your spouse has filed a divorce petition in the Circuit Court, the child support issue may be decided in the Circuit Court in connection with the divorce. Following entry of a final decree of divorce, the Circuit Court may send the case to the Juvenile Court for any future matters regarding child support. A court may appoint a vocational expert to conduct

an evaluation of a party in cases involving child support when the earning capacity, unemployment or underemployment of a party is in controversy.

Who Must Pay

Only a natural or adoptive parent must pay child support. A step-parent who has not legally adopted the child has no duty to pay child support, and the step-parent's income is not considered in setting child support. You do not need to have been married to the other parent to request an order of support for your child.

Health Insurance and Medical Expenses

You may ask the court to order the other parent to provide health or medical insurance coverage for the child. The parent who can best provide insurance will probably be required to do so. Health insurance costs for the child and extraordinary uninsured medical or dental expenses are normally divided between the parents proportionate to their incomes.

Every initial child support order entered after July 1, 1995, shall be by wage, income or payroll withholding unless the parties agree to another payment arrangement. The paying parent or his or her employer pays the child support to the Division of Child Support Enforcement (DCSE), which, in turn, sends a check to the parent receiving child support. Child support payments made through DCSE are processed within five to ten business days. However, a delay of three to four weeks should be expected for out-of-state checks. (Note: if a support order was entered before July 1, 2990, and the payment was required to be made through the Department of Social Services, the parent may be making payments to the Treasurer of Virginia.)

Delinquent Child Support

A parent who is more than 30 days behind (delinquent) in child support payments may be subject to a wage assignment through the Department of Social Services. This means that the amount of child support will be deducted automatically from his or her paycheck. If a parent is delinquent for 90 days or more, or for $5,000 or more, the court may suspend any license, certificate or registration issued by the Commonwealth to engage in a business, trade, profession or occupation. Each parent must provide the court with information regarding any such licenses, certificates or registrations. The Department of Motor Vehicles has the authority to suspend or refuse to renew a driver's license for a person who is delinquent in paying child support.

In cases of delinquent child support, the Court will order the payment of the delinquent amount plus judgment rate of interest (presently 6%), and in cases where the parent is delinquent 90 days or more, the court may also include attorney's fees.

If you have difficulty receiving child support, you may want to request assistance from DCSE, which has substantial powers to enforce payment of child support. DCSE can issue criminal warrants for not paying support. To register for assistance, call your local DCSE office. You will find the telephone number in the blue pages of the telephone book, under the listing for the Department of Social Services.

Termination of Child Support

Child support is normally available until the age of 18. If a child is still a full-time student in high school and resides with the custodial parent (the parent with custody), support will continue until the child is 19 years old or graduates from high school, whichever occurs first. The duty of a parent to support a child will end if the child marries, enlists in the military or can otherwise provide for himself or herself and is declared emancipated by the court. If any arrearages exist at the time the youngest child included in the order emancipates, the full payments will continue until all arrearages are paid.

CUSTODY AND VISITATION

Joint or Sole Custody

Generally, custody and visitation are decided initially by the court in the locality where the child and at least one parent live. While most custody and visitation cases are between the child's parents, anyone with a legitimate interest (such as grandparents) may seek custody or visitation. Normally, once a court enters a custody or visitation order, that court retains jurisdiction over the case until the case is transferred to another jurisdiction.

Effective July 1, 2004, if you have a family member's child living in your home, you may be eligible to receive assistance through the Virginia Department of Social Services. This subsidized custody program is designed to benefit children who are in the care of a relative when the parents are unable to care for them.

"Joint custody" means that 1) both parents have responsibility for the care and control of the child and the authority to make decisions concerning the child, 2) both parents share physical custody of the child, or 3) any combination of the above.

"Sole custody" means that one person has responsibility for the care and control of the child and has primary decision-making authority.

Each parent must provide the court with the following information:

- The name and date of birth of each child;
- If known, the name, date of birth and Social Security number of each parent of the child and any other person responsible for support of that child; and
- Each parent or responsible person's residential and mailing addresses, residential and employer telephone numbers, driver's license number and the name and address of his or her employer.

This information will not be included in the custody order if a protective order is issued (see page 23) or the court otherwise finds reason to believe that a parent or child is at risk of physical or emotional harm from the other parent. Only the name of the person at risk will be included and other identifying information will be omitted.

Basis for Custody or Visitation

Courts in Virginia look at many factors in determining custody and visitation. The court's decision ultimately will be based on the "best interests of the child." The court's aim is to ensure children have frequent and continuing contact with both parents. The factors that the court will consider in determining custody or visitation arrangements include:

- The age and physical and mental condition of the child, as well as the child's changing developmental needs;
- The age and physical and mental condition of each parent;
- The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, and the parent's ability to accurately assess and meet the emotional, intellectual and physical needs of the child;
- The needs of the child, including important relationships of the child, such as those with siblings, peers and extended family members;
- The role that each parent has played, and will play in the future, in the upbringing and care of the child;
- The tendency 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;
- 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;

- 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;
- Any history of family abuse or sexual abuse. If the court finds such a history, the court may disregard the tendency of the parents to actively support the child's contact and relationship with each other; and
- Other factors the court determines are important. Except in cases of consent orders, the judge must set forth, either orally or in writing, specific findings on the relevant factors that determine his or her decision.

Procedure

To begin the custody or visitation process, you may file a petition with the Juvenile Court. With the court's assistance, you can petition for a hearing in the Juvenile Court without a lawyer and advise the court of the facts you believe it should consider in determining what is in the best interests of the child. Any relevant information, including school records and medical records, as well as witnesses, should be brought to court to help the judge in deciding whose custody is in the best interest of the child. In some cases, the judge may order a home study report to provide more information before making a decision or, in an unusual case, the judge may temporarily place the child with a neutral third party, usually a relative with whom the child is comfortable and familiar. The court also may appoint a guardian ad litem, who is either paid by the court or the parties. A guardian ad litem is usually a lawyer who will make sure that the interests of the child are represented.

Alternatively, if a divorce has been filed in Circuit Court, the questions of custody and visitation can be determined by the Circuit Court judge as a part of the divorce case. If the Circuit Court has heard custody, visitation and support matters, then the Juvenile Court no longer has jurisdiction to hear those same custody, visitation and support matters.

If a parent has been convicted of the sexual assault or murder of a child of that parent or a child who lived with either parent, and it is in the best interest of the child, the other parent or legal guardian may petition the court to prevent the offending parent from obtaining custody or visitation for up to ten years. When this occurs, the court must appoint a guardian ad litem for the child.

Visitation

The issue of visitation for the noncustodial parent (parent without custody) can also be heard in the Juvenile or Circuit Court and also will be decided based on the best interest of the child. Courts prefer that parents agree on visitation but, if necessary, will order specific

dates and times for visitation with a noncustodial parent. Under the award, the noncustodial parent may receive limited visitation, supervised visitation or extended visitation, depending on the circumstances of the particular case.

If either parent decides to move, he or she must notify the court and the other parent in writing at least 30 days in advance and provide his or her new address.

Modification and Appeal

Custody and visitation orders can always be changed by a court with proper jurisdiction when there is a material change of circumstances. Either parent may petition the court to change custody or visitation at any time until the child reaches the age of 18. In addition, any order from a Juvenile Court can be appealed to the Circuit Court in the same jurisdiction, and the parties will receive a new trial. The appeal must be noted in the clerk's office within 10 days of the date the Juvenile Court order is entered. If you wish to appeal both a custody and visitation order, only one petition and one filing fee is required.

Cooperation

Failure to cooperate in visitation and other matters affecting a child can be a factor in a court's consideration of a change of custody. If a visitation order is in place and either of the parents is deployed on military duty, the non-deployed parent has the responsibility to reasonably accommodate the deployed parent's leave schedule and facilitate opportunities for telephone and email contact with the child.

Withholding a child from visitation or withholding a child from the child's custodial parent can be a criminal act if the court finds it was done wrongfully and intentionally in significant violation of a court order.

Access to Child's Records

Unless a court orders otherwise, neither parent can be denied access to the child's academic, medical, hospital or other health records, regardless of who has custody of the child. Unless a court orders otherwise, upon request, a noncustodial parent must be listed as an emergency contact for a child enrolled in public school or daycare.

PROPERTY SETTLEMENT

You and your spouse may voluntarily agree to divide

Equitable Distribution

your property and the court will respect this agreement once it is in writing, signed and notarized. In some instances, marital agreements need not be in writing and are considered signed by the parties if the terms of the agreement are contained in a court order or the parties or a court reporter recorded and transcribed the terms of the agreement and the parties personally affirmed the terms on the record. If you cannot agree, either spouse may ask the court to divide the marital property and/or make a monetary award in a procedure referred to as "equitable distribution."

Virginia's equitable distribution law recognizes marriage as an economic partnership and attempts to divide the wealth accumulated during that partnership based on the following factors:

- The contributions, monetary and nonmonetary, of each spouse to the well-being of the family and acquisition of marital assets;
- The duration of the marriage;
- The ages and physical and mental condition of each spouse;
- The reasons for the breakdown of the marriage, including any grounds for divorce;
- How and when specific items of marital property were acquired;
- The debts and liabilities of each spouse, the basis for such debts and liabilities and the property which may serve as security for such debts and liabilities;
- Whether the property is readily convertible into cash;
- The tax consequences to each spouse;
- The use or expenditure of marital property in anticipation of divorce or after the last separation; and
- Other factors the court determines are important to consider.

Either the judge of the Circuit Court or a court-appointed Commissioner in Chancery will hear the evidence in your case. In some instances, the judge may direct that most or all of the evidence be taken by depositions at one of the attorneys' offices. A Commissioner in Chancery is an attorney, highly experienced in this particular area of the law, who will hear the evidence and provide a written report to the judge. The Commissioner may also recommend that assets be divided in a certain way.

Once the Commissioner files a report with the court, you will have 10 days to file exceptions (objections). After reviewing

the report, exceptions filed by the parties and deposition transcripts, the judge will divide the property and/or make a monetary award. Each spouse then has an automatic right to appeal the Circuit Court's equitable distribution award to the Virginia Court of Appeals within the applicable time period. The Circuit Court retains jurisdiction until both parties move out of that city or county, at which time jurisdiction for future matters can be transferred to the city or county where either party resides.

Types of Property

In making an equitable distribution award, the Circuit Court must classify each item of property owned by the couple as "separate," "marital" or "hybrid" (part separate and part marital) property.

Examples of "separate" property include:

- Property acquired before marriage;
- Property acquired during the marriage by inheritance from a source other than your spouse; and
- Property acquired after the date of separation.

Examples of "marital" property include:

- Property titled in the name of both parties (except possibly retitled property); and
- Property acquired during the marriage which is not separate property as defined above.

Examples of "hybrid" property (i.e., part-marital and part-separate) include:

- Property owned before the marriage that has increased significantly in value during the marriage due to the efforts of either party or the addition of marital property (for example, if you owned a house before you married and made mortgage payments or improvements with marital funds); and
- Property acquired by one spouse during the marriage by gift or inheritance that has been commingled with marital property (for example, using an inheritance to pay off the mortgage on the marital residence).

When separate property has been commingled (or combined to acquire new property), the court will reimburse each party in proportion to the amount he or she contributed only if the property can be clearly traced back to the individual parties. If a spouse has physical possession of your separate property, a court can order him or her to return it.

Once the court has classified all of a couple's property, including debts, as either marital, separate or hybrid, it will value the marital assets. The court will then divide

the assets between the spouses. The court is not required to divide the marital assets equally between the spouses.

After the assets are divided, the court will compare the value of the marital property held by each spouse to the percentage of the marital property the court believes each spouse should have. Based on the difference between these two amounts, the court may order one spouse to pay money (a monetary award) to the other spouse rather than order the return or distribution of specific items of property. This method ensures that each spouse receives his or her share of the marital property.

A monetary award may be a single payment or several payments over time. Spousal support or child support is not a factor in the decision to give one spouse a monetary award. Unless the parties agree otherwise, the court can order the transfer of jointly titled property only to satisfy an equitable distribution award.

Special Benefits

Special treatment is given to pension, profit-sharing or deferred compensation plans and retirement benefits. Generally, that portion of pension and retirement benefits which results from work done during the marriage (the marital share) can be divided between the spouses based on a percentage established by the court. The spouse who actually earned the pension or retirement benefit will receive at least 50% of that pension or retirement benefit earned during the marriage. Retirement benefits which have been divided between the spouses may be payable only when the pension or retirement benefit is actually paid, whether in a lump sum or in several payments over a period of time. It is possible to secure an equitable distribution award of a retirement benefit and not actually receive any money from it until you or your spouse reach retirement age. The appropriate Domestic Relations Order (QDRO/DRO) must be entered by the court and approved by the plan administrator for these benefits to be divided and distributed to the recipient.

The rules regarding payment of military benefits are based on federal law. Whether military benefits may be divided between the spouses depends on the specific benefit, the length of the marriage and the length of military service.

Personal injury and workers' compensation settlements or awards are subject to equitable distribution. However, equitable distribution applies only to the funds that compensated a spouse for lost wages or medical expenses during the marriage, before the couple separated. It does not apply to money received after separation.

Distribution by Agreement

You can avoid the equitable distribution process in court if you and your spouse agree on how your property should be divided, either before or after you

marry. Such an agreement should be in writing and given to the court. The court will usually make this agreement part of your final divorce decree. In general, it is faster and less expensive to reach an agreement with your spouse than to request the court to divide and distribute the property and/or make a monetary award. The courts look favorably on such agreements and often refer parties to mediation for this purpose (see page 32).

ANNULMENT

An annulment is a declaration by the Circuit Court that a marriage is void. An annulment differs from a divorce in that divorce dissolves a legally valid marriage, while an annulment is a legal declaration that a marriage never existed.

The following marriages are void, or not legally recognized from the start, and will qualify for annulment: 1) a marriage to someone who is already married; and (2) a marriage to a close relative.

Although either party may still petition the court for a formal annulment, a marriage under those circumstances is never recognized as a valid marriage

Voidable Marriages

A voidable marriage is legally valid unless one of the spouses files for an annulment. The court will consider an annulment if, at the time of the marriage, one of the spouses:

- Was physically or mentally incompetent;
- Consented to the marriage under condition of fraud or duress;
- Was a felon or prostitute without the other's knowledge;
- Was impotent;
- Was pregnant by another man without the other spouse's knowledge; or
- Fathered a child by another woman within 10 months of the marriage.

Time Limitations

The court will not grant an annulment of a voidable marriage if the spouses continue to cohabit (live together as husband and wife) after any of the above circumstances are discovered.

There is no minimum waiting period for an annulment. However, you will not be able to receive an annulment for a voidable marriage; instead you will be required to file for a divorce if you have lived with your spouse for two years or

more before filing a petition for annulment.

Effect of Annulment

Whether a court grants a divorce or an annulment can significantly affect your property and support rights. Pending an annulment proceeding, a court may make a temporary order for spousal support and attorneys' fees. However, in an annulment, the courts have no authority to make an equitable distribution or spousal support award. However, the court may rule on child custody and child support in an annulment proceeding, even after the marriage is decreed void.

FAMILY VIOLENCE

Assault and Battery Against a Family or Household Member

It is a crime to commit assault and battery against anyone including a family or household member. The term "family or household member" includes most family members regardless of residence including: a spouse, former spouse, person with whom an individual has a child in common, and any person with whom an individual cohabited within the previous 12 months. The term also includes a person's parent, step-parent, children, step-children, brother, sister, grandparent and grandchild whether that person lives in the same household or not. Also, it includes cohabitants and in-laws residing in the same household.

A person found guilty for the first time of simple assault or assault and battery against a family or household member must be put on probation or complete court ordered treatment, and may be sentenced to up to one year in jail. A third or subsequent conviction within a 20-year period is a felony and is punishable by up to five years in a state penitentiary.

Marital Sexual Assault and Marital Rape

Forced sexual contact is a crime even if committed by a spouse. A person may be found guilty of rape, forcible sodomy or object sexual penetration if: 1) he or she engages in sex, oral sex, anal sex or inanimate object penetration with his or her spouse; and 2) the sexual act is accomplished against the spouse's will by intimidation, threat of force or use of force.

Marital sexual assault, marital rape, forcible sodomy and object sexual penetration are felonies and may be punishable by a sentence in a state prison. A person found guilty of marital sexual assault may be sentenced

to up to 20 years, while a person convicted of marital rape, forcible sodomy and object sexual penetration may be sentenced to life in prison. The judge may suspend the sentence if the convicted spouse successfully completes counseling or therapy. Also, at the defendant's request, with the consent of the Commonwealth's Attorney and the victim, the judge may defer a finding of guilt on the same condition.

Documenting Your Injuries

If you have been the victim of any type of family violence, you may need immediate medical attention. In cases of sexual abuse, it is very important that you do not take a shower before you seek medical attention so that any available physical evidence can be collected. Facilities providing domestic or sexual violence services are required to keep your records confidential. If you wish to prosecute, you should immediately report the attack to the police and/or the Commonwealth's Attorney. If you have suffered visible physical injuries, you should have photographs of them taken for use in court. In addition, local police departments are required to take pictures or video evidence of any suspected case of adult abuse.

Assistance

If you have been abused by a family or household member, you may ask the investigating police officer to take you to a hospital or safe shelter. To find the names and telephone numbers of shelters and other resources in your community, call the Virginia Family Violence and Sexual Assault Statewide Hotline at 1-800-838-8238. Many jurisdictions also have Victim/Witness Assistance programs that you may contact for a court Companion, help in applying for Crime Victim Compensation funds, and for further information about referrals for counseling and shelter.

The Domestic Violence and Prevention Services Unit within the Department of Social Services. This Unit works with the Statewide Domestic Violence Coalition to preserve the confidentiality of all domestic violence records, to operate the 24-hour toll-free Hotline (1-800-838-8238) and to maintain the statewide Domestic Violence database (VA data), as well as provide domestic violence services.

PROTECTIVE ORDERS AND INJUNCTIONS

A protective order gives a victim of family abuse the protection of the court against an allegedly abusive family or

household member without bringing a criminal action against the abuser. If family abuse has occurred recently or continues to occur, a victim may request a protective order.

Family abuse is any act of violence, force or threat, including forceful detention, which results in an offensive touching, physical injury or places you, a family member or household member in reasonable apprehension of bodily injury. If you are a victim of family abuse, you may request a protective order against members of your family or household, former spouse or persons with whom you have a child in common.

There are three types of protective orders that may be issued to a victim of family abuse: Emergency, Preliminary and Permanent.

Emergency Protective Orders (EPO)

A police officer or victim of family abuse may request an Emergency Protective Order from a judge or magistrate when:

- A warrant for assault and battery against a family or household member has been issued and there is probable danger of further acts of family abuse; or
- Reasonable grounds exist to believe that the abuser has committed family abuse and there is probable danger of another offense against a family or household member.

The judge or magistrate may impose one or more of the following conditions on the abuser under an Emergency Protective Order:

- Prohibit acts of family abuse;
- Prohibit further contact by the abuser with family or household members; and
- Grant the victim exclusive possession of the residence, though this will not affect title to the real estate.

An emergency protective order issued expires at 11:59 p.m. on the third day following issuance. If the expiration occurs on a day that the court is not in session, the emergency protective order is extended until 11:59 p.m. on the next day that the court which issued the order is in session. To continue the protection of an Emergency Protective Order, you must seek a Preliminary Protective Order.

Preliminary Protective Orders (PPO)

To get a Preliminary Protective Order (PPO) you must file a petition with the Juvenile Court. There is no filing fee, but you must sign an affidavit or state in sworn testimony that there is an immediate and present danger of family abuse or that family abuse has recently

occurred. The PPO is not effective until it is personally served on the abuser. Once the abuser has been served, the PPO may be valid for up to 15 days. The PPO will specify a date for a full hearing which will be held within 15 days and may result in the issuance of a Permanent Protective Order. An extension may be granted if the abuser fails to appear at the hearing.

The judge or magistrate may impose one or more of the following conditions on the abuser:

- Prohibit further acts of family abuse;
- Restrict further contact by the abuser with family or household members;
- Grant the victim exclusive possession of the residence, though this will not affect title to the real estate;
- Grant the victim temporary exclusive use or possession of a jointly titled motor vehicle, though this will not affect title to the vehicle;
    - Grant the victim possession of any companion animal;
    - Prevent the abuser from terminating utilities at the parties' shared residence; and
- Order the abuser to provide suitable alternative housing for the victim and, if appropriate, any other family or household member.

Permanent Protective Orders (PO)

A Permanent Protective Order may be issued by a Juvenile Court after a full adversary hearing in which both the victim and the abuser are present. The victim must show evidence that he or she has been subjected to family abuse by a family or household member. A Permanent Protective Order may be issued for a specific period, not to exceed two years. The court may assess costs and attorney's fees against either party regardless of whether a Permanent Protective Order has been issued. Extensions of the Permanent Protective Order may be requested.

The judge or magistrate may impose one or more of the following conditions on the abuser:

- Prohibit further acts of family abuse;
- Restrict further contact by the abuser with family or household members;
- Grant the victim exclusive possession of the residence, though this will not affect title to the real estate;

- Grant the victim temporary exclusive use or possession of a jointly titled motor vehicle, though this will not affect title to the vehicle;
- Grant the victim possession of any companion animal;
- Prevent the abuser from terminating utilities at the parties' shared residence;
- Order the abuser to provide suitable alternative housing for the victim and, if appropriate, any other family or household member;
- Order the abuser to participate in treatment, counseling or other program; and
- Order any other relief necessary to protect the victim and household members, including a provision for temporary custody or visitation of a minor child.

Violation of a protective order, including physical harm or stalking, is a crime punishable by up to one year in jail. In addition, upon conviction, the court shall extend any existing protective order for a period not to exceed two years, or in the case of a stalking protective order, for two years. A person against whom a protective order is issued may not purchase or transport a firearm (except within 24 hours of being served with the protective order for the sole purpose of selling or transferring the firearm) and must surrender any concealed weapon permit to the court issuing the protective order. The abuser may request a continuance of the PPO hearing, but the PPO will remain in effect during that time.

At any time, either party may file a motion with the court requesting a hearing to dissolve or change the order. The hearing on the motion is given precedence on the court docket.

Injunctions

An injunction is a court order that either requires or prohibits a specific action by another party. In proceedings for divorce, annulment, spousal support and child custody, visitation and support where there has been a showing of family abuse and a reasonable apprehension of physical harm, a Circuit Court may issue an injunction as a pendente lite (during the pending action) order against the abusing family or household member. The victim must testify about specific instances of past abuse, or present threatened abuse, along with evidence of some immediate danger of harm. The injunction may order that the abuser be excluded from the jointly owned or jointly rented family dwelling. If the injunction is issued ex parte (that is, the abuser is not present at the hearing), the order cannot last more than 15 days from the date it is served on the abuser. However, the order may

provide for an extension of time beyond the 15 days to become effective immediately. The court may extend the injunction for a longer period of time when appropriate.

If after receiving a protective order or injunction, you are concerned for your safety or the safety of your family, you should ask the police for help. You should keep a certified copy of the protective order or the injunction with you to present to the police officer, if necessary. You should also consider providing a certified copy of the protective order or injunction to your employer and child(ren)'s daycare or school.

Law enforcement officers are required to arrest and take into custody the person he or she has probable cause to believe, based upon the totality of the circumstances, was the predominant physical aggressor (unless there are special circumstances that would require a course of action other than arrest). The standards for determining who was the predominant physical aggressor include: (1) who was the first aggressor, (2) the protection of the health and safety of family and household members, (3) prior complaints of family abuse by the allegedly abusing person involving family or household members, (4) the relative severity of the injuries inflicted upon persons involved in the incident, (5) whether the injuries were inflicted in self-defense, (6) witness statements and (7) other observations.

STALKING

Stalking is to follow or pursue someone to the point that the person fears death, sexual assault or bodily injury. To qualify as stalking, the conduct must be repeated and the stalker must know or should have known that his actions make his victim fearful. Continued stalking after being told not to satisfies this requirement.

With a first conviction, a stalker may be sentenced to up to one year in jail. A second or subsequent conviction for stalking within a five-year period is a felony and is puni by up to five years in a state penitentiary.

Stalking victims are entitled to receive, upon written request, notice of the release, probation, parole or escap of the person convicted of the offense. Any person designated by the victim may also receive notice. Any information about the people receiving notice remains confidential and is not made available to the person convicted.

Protective Orders

You can petition for a stalking protective order, regardless of whether or not the stalker is a family or household member of yours, if a criminal warrant is issued for stalking. You can petition for an emergency stalking protective order at the local magistrate's office. You can also bring a civil action for compensatory damages against an individual alleged to have engaged in stalking.

NAME CHANGE

Petition for Name Change

In Virginia, you can change your name by filing a petition with the Circuit Court of the county or city where you live.

The information to be included in a petition for a name change must be made under oath (that is, in the form of a sworn affidavit) and include:

- Current name and place of residence;
- Names of both parents, including mother's maiden name;
- Date and place of birth;
- Felony conviction record, if any;
- Whether the applicant is currently in jail or on probation;
- Whether the applicant has previously changed his or her name;
- Former names;
- Proposed name;
- Reasons for change of name;
- Parental consent to change name of minor;
- Statement that no fraudulent or unlawful purpose is intended by the request; and
- Request for change of name.

Procedures

The court has discretion either to grant or deny the petition, but will usually grant it unless the request is for a fraudulent or deceptive purpose, or would otherwise infringe upon the rights of others. The procedures are relatively simple and assistance from a lawyer is not required.

If your petition is granted, the court will order the clerk to record both your old and new names in the current deed book and send a certified copy to the State Registrar of Vital Records and the Central Criminal

Records Exchange. Then, upon making a request to the State Registrar of Vital Records and paying the appropriate fee, you may obtain a copy of a birth certificate containing your new name.

Your former name or maiden name can be restored as part of your final divorce decree. You may obtain forms for a name change from the clerk of the Circuit Court.

If you are in jail or on probation, the court will not allow a name change unless it finds good cause exists. You must apply for a name change with the Circuit Court where you are incarcerated.

Name Change for Minors

In order to change the name of a minor, an application must be made by the child's "next friend" (usually a parent) and notice must be given to any other living parent. This notice may be waived if the court determines that it would present a serious threat to the child. If one of the natural parents objects to the change of a name, the court will hear evidence on the matter. The court will order the name change only if the evidence proves that the change is in the best interest of the child.

ADOPTION

Types of Adoption

In Virginia, there are several different types of adoption including private placement adoptions, agency adoption, step-parent adoptions, relative adoptions, adult adoptions and foster care placements. In private placement adoptions, the placing parent(s) generally place the child directly with the adoptive parents of their choice. In an agency adoption, the placing parents generally place the child with an agency that then places the child with the adoptive parents who may be chosen by the placing parents or by the agency. A step-parent adoption usually occurs when parents have divorced or one parent has died, disappeared or abandoned the child and the new spouse seeks to adopt the step-child. Step-parent adoptions also take place when one same-sex spouse adopts the child of the other spouse. A close relative adoption typically involves a grandparent or relative adopting the child. Adult adoption involves the adoptions of persons over age 18. Finally foster care adoptions involve the adoption of children in foster care.

Other Adoptions

Parental Placement Procedures

Parental placement adoptions typically begin with the filing of a petition in the Juvenile Court. While the placing father can sign an out of court consent either before or after the birth, the placing mother must give her consent in court after the child is at least three days old. A guardian ad

litem is appointed to represent the child's best interests and the adoptive parents must submit a home study report to court. The Juvenile Court then appoints the prospective parents as guardians of the child. The actual petition for adoption is then filed in the Circuit Court. The Circuit Court judge will then enter an Interlocutory order, which declares that, subject to three home visits by the home study or investigating agency, conducted with 90 days between the first and third visit, the child will be the child of the adoptive parent(s). The home study or investigative agency then files its report and the Circuit Court then enters a final order of adoption.

Step Parent Adoption Procedures

A step-parent adoption can be reasonably simple if the noncustodial parent (parent without custody) consents in writing, is unknown or is deceased. The step-parent and legal parent jointly file the petition to adopt in Circuit Court filing the Petition under oath. If uncontested, no hearing will be required. However, the Court has the discretion to enter an Order of Reference requiring the local department of social services to visit the home and furnish a report of investigation within 60 days. Former step-parents also are permitted to adopt, in some cases, as if they were still the step-parent of the child even though now divorced from the legal parent.

Relative Adoption Procedures

For close relative adoptions, there is a distinction made for when the child has been in the adoptive parent's home for three or more years or under three years. If under three years, then the adoptive parents must have a home study conducted and begin the proceedings in juvenile court. While there are certain short-cuts (placing mothercan sign out of court consent, no guardian ad litem need be appointed and no hearing required), the relative adoption proceedings for under three years generally follow the proceedings for parental placements.

Other Adoptions

Private agency adoptions and foster care (public agency) adoptions have somewhat different procedures requiring the private or public agencies to handle the termination of parental rights on either a voluntary or involuntary basis starting in Juvenile Court. Adult adoptions are filed directly in Circuit Court and require the consents of the adoptee and adoptive parents but not the legal parents.

Rights and Obligations

If you are interested in pursuing adoption, it is very important to speak with a lawyer who is familiar with this area of the law, which can be very complicated. He or she can fully explain the procedures, rights and obligations involved in adopting a child which are designed to protect the rights of the placing parents and ensure that the

proposed placement is in the best interests of the child. Any deviation from the proper procedure may delay the adoption or cause serious problems in the future. Also, once a child is adopted, the duty to provide financial support for the adopted child begins. The duties, responsibilities and rights of the birth parents are completely severed after the adoption, and the birth parents are considered "legal strangers" to the child. A step-parent who adopts his or her spouse's child may have to provide child support should the husband and wife later separate and/or divorce.

PATERNITY

Paternity, unless acknowledged by the father at the time of a child's birth, is established by the court. A mother will need to prove paternity if she wants the father to pay child support or if she expects the child to inherit property from the father's estate.

Procedure

To establish paternity in Virginia, a child, a parent, the person with legal custody of the child or an appropriate state representative files a sworn petition with the Juvenile or Circuit Court, typically where the child lives. Because of the parents' conflict of interest, neither parent may represent the child as guardian or otherwise. The court, therefore, may appoint a guardian ad litem (attorney paid by the court) to represent a child under 18 years of age.

The following are presumed to establish paternity, if there is no evidence to the contrary:

- A written statement of parenthood acknowledged by the father under oath in front of a notary public;
- Genetic blood testing that shows at least a 98% probability that a man is the child's father (the court can order that the alleged father and child submit to a blood test);
- Proof of a lawful adoption; or
- The child was born to a man and woman married to each other.

Other actions by the alleged father also may be sufficient for a court to determine paternity. These actions include openly living with the mother at the time of conception, the father's public statement to others that he is the father of the child, allowing the child to use his last name, financially supporting the child or claiming the child as a dependent for public assistance or tax

purposes. Additionally, the court's paternity decision only applies to persons who are parties to the court proceeding.

MEDIATION

Process

In appropriate cases, mediation can be used as an alternative to litigation. Mediation is a cooperative alternative dispute resolution process in which opposing parties tell their stories and work together to develop their own agreement.

Effectiveness

Mediation can be effective in child custody, visitation and support matters because the parties have an ongoing relationship as parents, even though their personal relationship has ended. Mediation can provide a way for couples to create a positive parenting relationship even though they are no longer married. Mediation can also be used to resolve issues of spousal support and equitable distribution of assets and liabilities.

The mediator is a neutral third party. Mediators do not give advice, make judgments or settle disputes but instead help opposing parties work out their own solutions. A mediator is someone who can help you go through a step-by-step process to resolve your own dispute.

Court Referral

The courts have the power to refer you for a free mediation orientation and evaluation to determine whether mediation could be a useful tool for you and your former partner. If there is a history of family abuse, you may ask the court not to make such a referral, as mediation generally is not appropriate in cases of domestic violence.

You are not required to have a court referral in order to participate in mediation; you may select a mediator privately and participate in voluntary mediation to work out a settlement agreement.

NEED FOR LEGAL ASSISTANCE

Proceeding Without a Lawyer

Because of the cost involved in hiring a lawyer, many people appear without a lawyer in Juvenile and Domestic Relations Court. For example, you may decide to represent yourself in an uncontested custody matter, to request an increase in child support or to seek an emergency protective order. If you choose to proceed without a lawyer, the Juvenile and Domestic Relations Court Clerk's office can give you information about filing and procedures. You can find

contact information for all Juvenile and Domestic Relations Courts at www.courts.state.va.us.

Finding a Lawyer

You may decide that hiring a lawyer is necessary to protect your interests if, for example, your case involves complex financial issues or if the opposing party has a lawyer. If you would like to hire a lawyer but do not know one who could represent you, you may contact the Virginia Lawyer Referral Service for help. If you are calling in Virginia, you may reach the Lawyer Referral Service toll-free at 1-800-552-7977.

If you cannot afford to hire a lawyer, legal aid offices around the state offer free legal services if you meet certain financial eligibility guidelines. To find out if you are eligible, or for more information on Virginia Legal Aid and their offices throughout the Commonwealth, please see their website www.VALegalaid.org or call at 1-866-LEGLAID (1-866-534-5243).

COLLABORATIVE LAW

The Collaborative Family Law Process is a relatively new process for a couple to work as a team with specially trained attorneys and mental health and other professionals to resolve disputes respectfully without going to court. The parties sign a contract that instructs their attorneys to assist them in reaching a settlement without threatening litigation or filing in court. The process involves a series of four-way conferences in which the parties identify their needs, interests and goals. Through good faith sharing of all relevant information and open honest discussions, the parties then seek resolution of all their issues. The goal is to reach a durable agreement that addresses each party's needs and interests and the family's best interest and not to settle the case just to avoid the uncertainty, cost and emotional turmoil of going to court. Every step of the way, each party has the support, protection and guidance of his or her own attorney as well as other collaborative team members.

Collaborative Law is distinguished from traditional litigation by its core elements, which are:

- Negotiate a mutually acceptable settlement without using court to decide any issue for the parties;
- Withdrawal of the attorneys and professionals if either party decides to go to court (this is an element

unique to the Collaborative Process);

- Engage in open communication, full disclosure and information sharing; and
- Create shared solutions that take into account the highest priorities of both parties and their children.

When custody is an issue, if needed, the parties can jointly hire a neutral child specialist to bring the voice of the children to the process. If finances are an issue, the parties can jointly hire a neutral financial specialist (typically a CPA or a Certified Financial Planner) to assist with budgeting for support purposes, collection and analysis of financial documents, valuation of assets and the projection of the future growth of financial settlements. Such specialists are trained in the Collaborative Process and are members of the collaborative team.

There are Collaborative Practice Groups across the state. If this approach is an option you wish to consider, contact a trained collaborative family lawyer for more information and find out more at: http://www.vacollaborativepractice.com/ or http://www.collaborativepractice.com/.

GLOSSARY

Adoption:	The legal process pursuant to state statutes in which a child's legal rights and duties toward his natural parents are terminated and similar rights and duties toward his adoptive parents are substituted.
Annulment:	To nullify, abolish, or otherwise establish that a marriage never existed.
Assault and Battery:	Any unlawful touching of another without justification or excuse. Battery requires physical contact of some sort, whereas assault is committed without physical contact.
Delinquent Child:	An infant of not more than a certain age (usually 18) who has violated criminal laws or engages in disobedient, indecent or immoral conduct, and is in need of treatment, rehabilitation, or supervision.
Emancipation:	Principally used in reference to the emancipation of a minor child by its parents, which involves an entire surrender of the right to the care, custody and earnings of such child as well as a renunciation of parental duties. This usually occurs upon the child reaching majority (age 18).
Equitable Distribution:	Upon divorce, the distribution of all property legally and beneficially acquired during marriage by husband and wife, or either of them, whether legal title is in their joint or individual names.

Injunction:	A court order prohibiting someone from doing some act or commanding someone to undo some wrong or injury. Some injunctions are temporary, and some are permanent.
Joint custody:	Joint custody means both parents retain joint responsibility for the care and control of a child and both parents have joint authority to make decisions concerning the child even though the child's primary residence may be only with one parent.
Marital property:	All assets acquired by either spouse during the marriage except those that can be shown to be separate.
Paternity:	The state or condition of father; the relationship of a father.
Protective Order:	Any order or decree of a court whose purpose is to protect a person from further harassment or abuse of service of process or discovery.
Separate property:	Those assets owned by either spouse prior to the marriage and those acquired afterward by gift, devise, or exchange for other separate property.
Sole custody:	One person retains responsibility for the care and control of a child and has primary authority to make decisions concerning the child.

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