

FAQ FOR FAMILY LAW

ARE YOU SURE YOU WANT A DIVORCE?

Most couples seem absolutely convinced on their wedding day that they are doing the right thing. Why, then, do half of first marriages end up in divorce? Although the reasons for splitting are diverse, many couples simply end up losing sight of the reasons they married in the first place. Have you done everything you can to preserve or to save your marriage? Have you tried marriage counseling, frank discussions with each other, or having problem solving sessions with trusted advisors? Marriage is hard work and its success often requires two determined people who are willing to partner with each other to share the burdens as well as the benefits of marriage. If at least one of you is not interested in working on the marriage, then there may be little that can be done to fix the relationship.

IS IT POSSIBLE TO DO A DIVORCE WITHOUT LAWYERS?

The short answer is “yes.” However, a do-it-yourself (DIY) divorce will probably require testimony in open court by a party and a corroborating witness regarding the facts of the case. Not only that, but there are rights and responsibilities that may be overlooked by divorcing parties trying to save a few bucks. The divorce process can be held up for weeks when the wrong paperwork is filed and needs correcting. The clerks in the local Circuit Court Clerk’s Offices cannot offer legal advice and can only point you to an attorney when legal advice is required by the DIY’er.

HOW DO I SAVE MONEY ON MY DIVORCE?

The best way to save money is to agree with your spouse not to fight. **FIGHTING IS EXPENSIVE!!** Fighting requires hiring lawyers who love the hefty fees required to wage war. If spouses agree that the marriage is over and there is no chance of reconciliation, then there is no reason why the couple should not agree to a “no-fault” divorce, which then becomes a matter of filing the documents required to receive a decree of divorce.

WHAT ABOUT THE KIDS?

A divorce is traumatizing to children. An ugly divorce is even more so. A child’s sense of well-being is often reinforced by the strength of the bond between mommy and daddy. The dissolution of the marriage means the end of the family to the young mind, which may negatively impact the child in both the short term and the long term.

When it comes to children of divorcing parents, it is in their best interests that they know that although mommy and daddy will no longer be living together, they will still have a mommy and daddy who will be there for school plays, graduations, marriages, and to be the grandparents of grandchildren. The ongoing relationship between divorcing parents is important to their children, and parents should work to develop, at a minimum, a cordial or “business-like” relationship with their interactions and communications with their ex-partners.

WHO WILL PAY CHILD SUPPORT?

Virginia law recognizes and enforces a duty of support for children. The amount of support is determined by a number of factors, including: gross income earned by both parents; the number of children; contributions to health insurance; special needs of the child, etc. Child support is calculated according to guidelines provided by statute. If divorcing parents agree to the statutory guidelines, then there is no need for litigating the child support element of the divorce. Although both parents owe a duty of support, the custodial parent is usually the one who receives support from the non-custodial parent.

WHO WILL HAVE CUSTODY OF THE CHILDREN?

Virginia courts attempt to decide cases based primarily “on the best interests of the children.” There are many factors that a judge looks at when determining physical or legal custody, including: the age and stage of development of the child; the relationship between the children and each parent; the needs of the child; the propensity for each parent to promote the relationship with the other parent, etc. However, the basis for making the final custody decision will be the best interests of the child.

Parents should earnestly discuss the needs of their children and the role each will play in the child’s upbringing. In most cases, if there is disagreement to the extent that a custody battle ensues, then the combatants will be very embittered toward one another, so custody litigation should be avoided when possible. If parents cannot agree with each other about custody and/or visitation issues, then a mediator should be employed by them to work toward a written agreement.

HOW DO WE DIVIDE OUR PROPERTY?

For couples who accumulate substantial property during the marriage, the division of such property by the court is called “equitable distribution.” The term suggests an “equal” distribution of the property, and that is often what the courts will attempt to accomplish. However, for a party who believes that he or she should be awarded a much larger portion of marital property, they often end up in litigation that can cost the family thousands of dollars in attorneys’ fees and experts’ fees. Just as in the case of custody or visitation disagreements, costly litigation may be avoided by using a mediator to help the couple arrive at a compromise related to the division of property, again resulting in saving thousands of dollars in resources better spent on the family.

HOW LONG DOES IT TAKE TO FINALIZE THE DIVORCE?

As most lawyers like to say, “it depends.” For no fault divorce, there is a one-year waiting period from the date of physical separation before the divorce can be filed. For couples without minor children, they can file after six months of separation **IF THEY HAVE A WRITTEN AND SIGNED SEPARATION AND PROPERTY SETTLEMENT AGREEMENT.**

Once the suit for divorce has been filed, the court prepares paperwork that must be received by the defendant (the non-filing spouse). If the defendant spouse agrees to cooperate, the time between filing and delivery is usually between one to two weeks. If both parties are cooperating, the final divorce decree can be achieved within four to six

weeks, so long as there are no filing errors requiring correction. This is where a lawyer comes in handy (so long as the attorney's practice includes no-fault divorces). A knowledgeable lawyer will speed the process along.

WHAT DOES A NO-FAULT DIVORCE COST?

Fees may vary among lawyers, generally ranging from \$500.00 to well over \$1500.00. You must ask an attorney what the full cost will be. Sometimes only the legal fee is quoted and there may be other hidden fees such as document preparation and the like. I charge a flat fee for a no-fault divorce according to how much time it will take. For a no-fault divorce between two parties who will cooperate with each other, and there are no children, I can charge as low a fee as \$499.00. If a separation and property settlement agreement is required, the separate fee for preparing that document starts at \$350.00, but may be higher depending on the time and complexity required.