

Basic Virginia Divorce Procedures

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The formal requirements to obtain a divorce in Virginia are basically the same for a contested case as for an uncontested case. However, it is certainly easier, quicker and less expensive to go through the procedure when the case is uncontested. The following outline gives a brief description of each of the procedural stages in a divorce case in Fairfax County. Not each stage of these procedures must be done to obtain a divorce in every case, as many of them are only used in contested cases. Be aware that there are alternative methods available to accomplish some of the procedures outlined here. Some are statutory requirements and used statewide, whereas others are a matter of local procedure and may vary from jurisdiction to jurisdiction across the state.

1. Bill of Complaint: When either party has been a resident of the Commonwealth of Virginia for at least six months, Virginia has jurisdiction to entertain a divorce case. The case is initiated by the filing of a Bill of Complaint for divorce. This states the Complainant's grounds for divorce and all needed statutory and jurisdictional requirements for the court to grant a divorce. In a divorce case, the parties are able to get rulings, orders and judgments on many issues other than just the divorce. In a divorce case, the court can grant such relief as:

- (a) A decree of divorce and on what grounds;
- (b) Equitable Distribution of marital property;
- (c) Custody and/or visitation;
- (d) Child Support
- (e) Spousal Support
- (f) Temporary use of the marital home;
- (g) Attorney's Fees.

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2. Grounds of Divorce: The commonly used grounds of divorce are:

- a) Living separate and apart for more than one year;
- b) Living separate and apart for more than six months, and having no minor children, and having a Separation Agreement;
- c) Adultery;
- d) Desertion;
- e) Cruelty.

Although Virginia still maintains “fault” grounds for divorce, appellate court decisions over the past fifteen years have placed far less emphasis on fault in the determination of the financial results. Because of this, fault is now used much less frequently in Virginia than it was in years past. However, the fault of adultery may still be important in a spousal support case. Over seventy percent of the divorce cases filed in Fairfax are filed on no-fault grounds, and in less than five percent of the cases is the divorce actually granted on fault grounds.

3. Service of Process: Proper service of the Bill of Complaint is necessary before the case can proceed. Service may be made on the Defendant by the Sheriff’s Department, by private process server or service can be accepted voluntarily or can be waived by the filing of an Answer in the case.

4. Defendant’s Answer and Cross-Bill: The Defendant party has an opportunity to answer all of the allegations of the complainant and to file a Cross-Bill of Complaint alleging any grounds of divorce against the Complainant and to ask the court to grant whatever relief the defendant desires.

5. *Pendent Lite* Issues: The next stage of the proceeding for many cases is a *Pendente Lite* Hearing. This is a short hearing in open court, limited to fifteen minutes per side, held on a Friday Motion” Day, in which some matters important to the parties in a divorce can be settled with a temporary court order. It is most used for setting temporary child support, spousal support, exclusive use of the residence, attorney” fees and visitation.

6. Discovery: The next stage in a divorce proceeding is usually the discovery stage, which may last for a long time and may be quite complex, in a contested case. The basic means of discovery are Interrogatories, Request for Production of Documents; Depositions and Subpoenas for records.

7. Motions: On any Friday, the Circuit Court will hear motions relating to disputed legal matters, such as discovery or procedure, as well as petitions for temporary support or motions to enforce previously entered court order. Despite the fact that this litigation can be acrimonious, it does often resolve an interim issue that helps the case along to a settlement.

8. Custody Track: Custody issues are generally tried in a separate hearing relating to custody and visitation only. Most all custody cases in Fairfax are sent to mediation prior to trial, in order to allow the parties an opportunity to negotiate an agreeable solution to custody and visitation problems. The custody trial date is set such that the mediation will be able to take place prior to trial. The Northern Virginia Mediation Service (NVMS) reports that almost fifty percent of the cases accepted for mediation are resolved by agreement.

9. Trial Date: Usually after the initial discovery phase, the parties obtain a court date, which will probably be six to eight months after the request is made.

10. Commissioner in Chancery: If a party seeks a divorce on contested grounds, or if the parties want to put on evidence of *factors and circumstances* contributing to the dissolution of the marriage or *monetary and non-monetary contributions to the marriage*, a Commissioner In Chancery will be appointed, and the Commissioner will hear these complex factual matters and will report to the court as to his or her findings of fact and conclusions of law. The issues of fault in the divorce and *factors-and-circumstances* must be presented at the Commissioner's Hearing and are not heard by the trial judge.

11. Settlement by Agreement: In recent years, there has been increasing emphasis by attorneys and the courts to using Alternative Dispute Resolution (ADR) in settling family law cases. Some of the ADR techniques and procedures used are:

A. Negotiation: Counsel for the parties most always are engaged in continuous attempts at settlement of a divorce case. The court requires the attorneys to sign a statement at the bottom of any motion filed with the court that the attorney has sincerely tried to settle the disputed matter. Each side analyzes the discovery responses of the opposing party to determine the assets and debts in the marital estate. The results of these analyses are exchanged, often in the form of spreadsheets tallying and balancing the equities in the properties and the debts, and presenting the argument for a balancing of the equities in the way desired by each side. Tax implications are dealt with and the partial portion of pension and retirement assets are calculated. Offers and counter-offers are exchanged. These often culminate in a four-way-meeting of both parties and their counsel to resolve last remaining issues. If settlement is achieved, counsel draws a Property Settlement Agreement for execution by the parties. The remaining formal requirements of obtaining the divorce can then be completed quite quickly.

B. Experts: Experts are often used by the parties and their counsel to gain needed information and to analyze discovery with regard to various issues in a contested divorce case. The results of the expert often help to settle difficult areas of dispute. Such experts also may be engaged to give testimony in court in favor of one party's position at trial if the case cannot be settled. For example, an accountant may be hired to analyze business interests; an appraiser may be used to determine the value of real property or antiques; a therapist might be engaged to meet with the parties and the children and make a recommendation for the most appropriate custody and visitation.

C. Neutral Evaluation: In Fairfax, prior to the trial of an equitable distribution case, the case is referred to a Neutral Evaluator, a local expert domestic relations attorney appointed by the court. At the neutral evaluation conference, both of the attorneys and parties appear, and each party's counsel "states" his and her case, but without actual evidence being taken. The neutral evaluator rules as to how he or she believes the court would most likely adjudicate the various issues and

suggest ways that the parties might resolve their differences by agreement. This has proven very useful in settling cases, or at least in narrowing the issues for trial.

12. Final Hearing: All divorce cases require some type of final resolution, at which evidence is given in support of the grounds of divorce. This is required even for uncontested grounds of living separate and apart.

A. Contested Case: In a contested case, the evidence in support of the grounds of divorce and any factors-and-circumstances are presented to the Commissioner, who issues a Commissioner's Report to the Court. At a final hearing in court, the parties present their respective witnesses and evidence to establish the relief they each seek. This can include equitable distribution, child and spousal support, and attorney's fees. At the conclusion of the final hearing the trial judge rules on all of the issues presented. This may be done at the hearing or later by a letter opinion of the court in complex cases, or where a difficult legal issue must be resolved. A Final Decree of divorce is drawn in accordance with the court's rulings and is entered by the court.

B. Uncontested Case: For uncontested cases, where the parties have been able to reach a resolution by agreement, there are easier alternatives for proceeding to a final decree. The moving party can put on the needed evidence to establish the grounds for a *separate-and-apart* divorce by a deposition before a Notary Public or by an uncontested *ore tenus* hearing in open court. In all cases, the grounds of divorce and residency requirements must be proved by credible testimony and must be corroborated by an independent witness. The parties then submit a final decree to the court, incorporating their property settlement agreement, and when the judge signs the decree, the parties are divorced.