

Divorce in Virginia

*prepared
by the Family Law Section of the
VIRGINIA STATE BAR*

Given the increase in marital breakdown in our society, almost everyone has been or could be affected in some way by a separation or divorce. Dissolving a marriage often involves property rights and financial matters and can raise complicated legal problems, especially when children are involved.

The Family Law Section of the Virginia State Bar prepared this pamphlet to provide the public with basic answers to some of the fundamental questions concerning divorce and separation under the laws of the Commonwealth of Virginia. It is our hope that this information will assist individuals in understanding some of the complications that often arise in this area of the law so that potential pitfalls may be prevented, minimized, or solved through a lawyer's counsel and services.

1. What are the Grounds for Divorce?

Virginia law recognizes two types of divorce: divorce from bed and board (a mensa et thoro) and a divorce from the bond of matrimony (a vinculo matrimonii). A divorce from bed and board is a partial or qualified divorce under which a husband and wife are legally separated from each other but are not permitted to remarry. A divorce from the bond of matrimony is a complete and absolute divorce. Any person granted a divorce from bed and board may ask the court to "merge" the decree into a divorce from the bond of matrimony after at least one year has passed from the date the parties originally separated.

The law requires that "grounds" (valid reasons for divorce prescribed by law) for divorce must exist and be proven to the court even if the husband and wife agree that a marriage should end. These grounds are briefly described below.

Divorce from Bed and Board

a. Willful desertion or abandonment

Desertion or abandonment requires both the breaking off of cohabitation and an intent to desert in the mind of the offender. A mere separation by mutual consent will not be considered desertion by either spouse. Further, if one spouse leaves because the other has committed

acts that legally amount to cruelty, then the spouse who leaves is not guilty of desertion. In fact, the spouse who leaves may be awarded a divorce on the ground of cruelty or constructive desertion.

If desertion grounds exist, a suit for a divorce from bed and board may be filed with the court immediately after the separation. If the desertion continues for more than one year from the date the parties originally separated, then the desertion is sufficient to constitute a ground for divorce from the bond of matrimony.

b. Cruelty and reasonable apprehension of bodily harm

Cruelty authorizing divorce requires acts that tend to cause bodily harm and render the spouses' living together unsafe. Mental cruelty alone is not normally a ground for divorce in Virginia. However, if the conduct is such that it affects and endangers the mental or physical health of the divorce-seeking spouse, it may be sufficient to establish grounds for divorce.

Cruelty constitutes the basis for a divorce from bed and board and can be filed immediately after the parties separate. After one year has elapsed from the time the act(s) of cruelty were committed, grounds will exist for a divorce from the bond of matrimony.

Divorce from the Bond of Matrimony

a. Separation divorce—the “No Fault” divorce

While grounds for divorce traditionally implied misconduct by one or the other spouse, modern divorce laws do not require “fault” grounds for a divorce to be granted. A “no fault” divorce from the bond of matrimony may be awarded upon a showing that for more than one year the husband and wife both intended to and have continuously lived separate and apart without any cohabitation. If the husband and wife have entered into a Property Settlement or Separation Agreement and there are no minor children, the time period is reduced from one year to six months.

Although separation provides a “faultless” ground for divorce, fault may still be an issue when spousal support (alimony) is being sought. Further, a judge is free to award a divorce on fault grounds even though “no fault” separation grounds exist.

b. Adultery, sodomy, or buggery

