

# Virginia Family Law

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# ADOPTION: BASIC FACTS

## What is adoption?

Adoption is defined as taking a child into one's family through legal means and raising that child as one's own. In essence, adopting a child means pledging to raise the child with all the rights and responsibilities you would have with your biological children. The legal result is that the child ceases to be the legal obligation of the natural, or biological, parents, becoming instead the responsibility of the adoptive parents, as though they bore the child.

## How Children May be Placed for Adoption:

Agency Placement: The procedure for adoption used by licensed adoption agencies.

Direct Placement or Independent Adoption: The natural parents place the child directly into the home of the adoptive parents. No agency is used.

Step-Parent Adoption: The step-parent of a child adopts the step-child. The child must have been the biological offspring of the step-parent's spouse prior to marriage.

## Summary of Basic Adoption Procedures:

To adopt a child, you must file a petition with the court. In Virginia, petitions are filed in circuit court. Couples are advised to maintain an off-post attorney to proceed with an adoption. As a general rule, adoption procedures are handled by the local court in the county where the adoption is to take place, and there usually is a filing fee required with the petition.

# LEGAL NAME CHANGES

## VA CODE § 8.01-217

In Virginia, applicants requesting a legal name change must have lived in Virginia for at least 6 months and must file the request for name change with the Circuit Court in the county where the applicant resides. All applications must be notarized or signed in the presence of the clerk of court. Forms are available at <http://www.courts.state.va.us/forms/circuit/civil.html>.

### NAME CHANGE FOR ADULT:

Form CC-1411

### NAME CHANGE FOR MINOR:

Form CC-1427. If the child has two living parents, the parent who does not join the application must be given notice of the change and will have the opportunity to contest the name change application in a court hearing. In such a case, the court will determine whether the name change is in the best interests of the child.

*MARRIAGE*- wives who assume their husbands' last names or hyphenated surnames do not need to file a petition for a name change. It is recommended that husbands who change their names as a result of marriage file a petition for a legal name change.

*DIVORCE*- an ex-spouse who wishes to resume his or her former last name must apply for a legal name change with the court (name changes are no longer included in divorce decrees).

*All name changes should also be reported to the Social Security Administration, the Department of Motor Vehicles, the Department of Tax or Revenue, and any other government agencies with whom you do regular business, to ensure there is no interruption of services or delinquencies in payments.*

# ***PRENUPTIAL AGREEMENTS***

## **1. What is a prenuptial agreement?**

A prenuptial agreement (prenup) is a contract made by a couple, before they marry, setting out the terms of possession of assets should the marriage fail. Some individuals may have special circumstances where a customized prenup might be beneficial.

## **2. Should I get a prenup?**

Certain life factors may make obtaining a prenup more appealing. If any of the factors listed below apply to you, then you may want to consider a prenup:

- You have significant wealth that greatly exceeds that of your soon-to-be-spouse;
- Your soon-to-be spouse has significant debt;
- You are getting married for the second time (especially if you have children from a previous marriage);
- You own your own business; OR
- You have special family heirlooms that you want to keep in the family;

## **3. What are some advantages of a prenuptial agreement?**

- **Property:** A prenup can establish your own rules for property division and avoid future disagreements. Any kind of property, such as a home, vehicle, stocks, checking accounts, business ownerships, and personal property, can be included in the agreement. A prenup can address what assets remain the separate assets of each spouse and what happens to the appreciation in value of the separate assets. This can prevent a court from giving your spouse a portion of your pre-marriage property during or after the marriage.
- **Debt:** Absent a prenup, creditors may be able to come after you for your spouse's debts. A prenup can protect you against creditors from being held responsible for debts (i.e. student loans, credit cards payments, car notes) that your spouse brings into the marriage or incurs him/herself during the marriage.

## **4. What are some disadvantages of a prenuptial agreement?**

- **Exit Strategy:** Your spouse may view the prenup as evidence that you are not willing to fight for your marriage if problems arise. You may be more inclined to get a divorce, rather than work through marital problems, if the terms of the divorce have already been determined in a prenup.
- **Emotional Damage:** Creating a prenup may send a message to your soon-to-be-spouse that there is a real possibility that your marriage will fail. You are, in effect, planning for divorce before your wedding. This could seriously damage

your relationship. Think carefully about this option and have a mature conversation with your soon-to-be-spouse if you are considering a prenup.

### **5. What issues can be addressed in a prenuptial agreement?**

The topics listed below highlight some of issues that can be addressed in a prenup. This is not a complete list.

- How will property be divided upon divorce;
- Who will own the marital residence;
- Who will be responsible for premarital debts;
- Who will be financially responsible for certain obligations during the marriage;
- Which state laws will govern the prenup (otherwise it will be the state of the divorce, and not the marriage);
- Who will pay alimony/ spousal support, and the amount that will be paid (in most states);
- How will disputes about the prenup be resolved (i.e. mediation or arbitration); and
- Will the prenup expire (i.e. sunset clause).

### **6. What cannot be included in a prenuptial agreement?**

Below is a list of provisions that most states will not uphold in prenuptial agreements:

- Provisions detailing anything illegal;
- Unconscionable or grossly unfair provisions;
- Provisions concerning child custody and child support;
- Provisions encouraging divorce;
- Frivolous personal demands in a prenup (i.e. requiring a spouse to clean the bathroom and take out the garbage three times a week); and
- Provisions dealing with sex schedules; (You cannot force anyone, not even your spouse, to have sex just because you put it in a contract. Such a provision will not be enforceable).

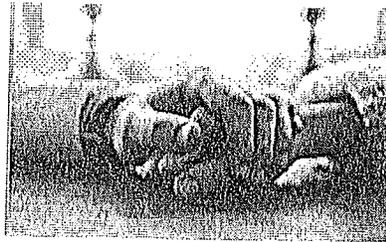
### **7. When is the best time to discuss a prenuptial agreement with my fiancé or fiancée?**

It is recommended that you have a mature discussion with your soon-to-be spouse as early on in the relationship as possible. Waiting a few days, or even a few months before the wedding to introduce a prenup to your wife or husband-to-be can lead to serious problems. Not only could waiting last minute to discuss a prenup ruin wedding plans; a judge may be more likely to invalidate a “last minute” prenup if it appears to have been signed under duress or coercion.

**8. What steps can I take to ensure that my prenuptial agreement will be valid?**

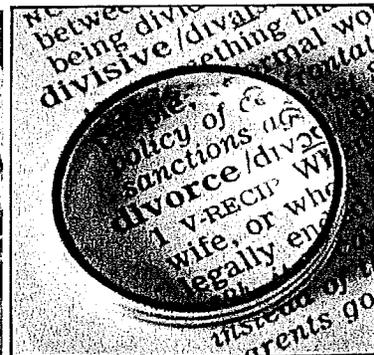
If you are considering getting a prenup, it is recommended that you hire an attorney. The attorney can ensure that the prenup is written well, fair, and legally binding.

You can also take certain precautions to ensure that the provisions of a prenup agreement will be upheld as valid. Be honest with your spouse. Be sure to fully disclose your assets. Do not wait last minute to ask your soon-to-be-spouse to sign a prenup. If a judge finds that your spouse was coerced into signing a prenup or forced to sign a prenup under duress two days before the wedding, the prenup will not be upheld as valid.



## Divorce and Virginia Law

Under Virginia law the general rule is that parties must be separated for *12 consecutive months* before a divorce will be granted. However, if the couple has no children born of the marriage or to them as a couple, and if they executed a settlement (separation) agreement, a divorce may be granted after *6 months* of consecutive separation.



## Separation Agreements

In Virginia there is no "legal separation" or "separation papers" to be filed with state or local authorities. Husband and Wife become legally separated *only* when one of the parties to the marriage physically moves out of the marital home.

A married client that has separated from their spouse may obtain a Separation Agreement from the Legal Assistance Division. A Separation Agreement is a legally binding contract between Husband and Wife that sets forth how the parties have agreed to share custody of their children and child and spousal support, as well as divide their property and assets. An Agreement becomes effective only when signed and notarized by both parties. Therefore, Husband and Wife must arrive at a fairly complete understanding and agreement on what they are both willing to do in terms of custody, property, and financial issues before a Separation Agreement can be properly drafted.

The key thing to keep in mind is that neither party controls the content of the agreement, as the other spouse may simply refuse to sign if they feel the terms of the agreement are unfair. Neither party is likely to get everything that they want nor is there reason to draft an agreement that skews all or most of the benefits to one party. Thus eligible persons desiring to enter into a Separation Agreement are highly encouraged to have a frank and complete discussion of all relevant family and financial issues prior to seeking legal assistance in drafting a Separation Agreement.



## Commonwealth of Virginia Law on Annulment

By Captain Florence Cornish, Esq.

Have you been married for less than one year? Are you considering filing for an annulment because marriage is not what you thought it would be or because you simply married the wrong person? First, what is an annulment? An annulment is a judicial determination that the marriage is void. In other words, it establishes that the marriage never existed in law. This article will discuss the grounds for an annulment in accordance with the law in the Commonwealth of Virginia.

So often, individuals think because they have been married for less than a year then they qualify to file for an annulment in the Commonwealth of Virginia. This is not the case. The length of time you have been married does not make you eligible to file for an annulment. In order to qualify for an annulment in the Commonwealth of Virginia, you must have a ground to annul the marriage. Thus, just because you have been married for less than one year does not give you a ground to file for an annulment.

What are the grounds for a voidable marriage? A court will grant you an annulment in

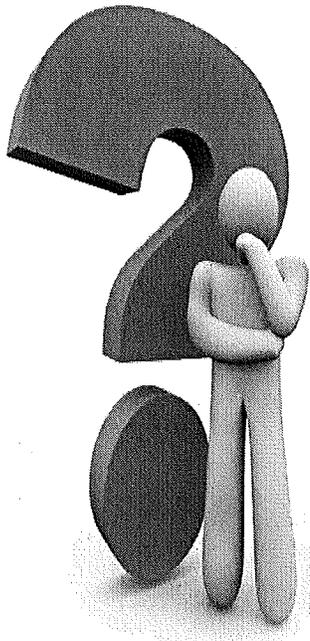
one of the following cases (Code of Virginia, Title 20, Chapter 89.1):

1. Fraud;
2. Duress;
3. A marriage between an ancestor and descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood or by adoption;
4. A marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood;
5. If either party is under the age of eighteen (18) or lacks the capacity to consent to the marriage
6. Bigamy: The act of marrying one person while legally married to another person;
7. Impotency at the time of marriage (must be incurable): Unable to perform sexual intercourse, usually because erection of the penis cannot be achieved or sustained;
8. Conviction of a felony prior to marriage, but not discovered until after the marriage;

9. The wife is pregnant at the time of the marriage with someone else's child and this fact is unknown to her husband;
10. The husband's siring of a child by another woman within ten months after the marriage; or
11. The party's having been (without the knowledge of the other) a prostitute before the marriage.

If you satisfy one of the grounds listed above then you may qualify for an annulment.

It is important to remember courts rarely grant annulments. However, if you do not satisfy one of the grounds listed above then all hope is not lost and this means that you will have to file for a divorce once you meet the Commonwealth of Virginia statutory requirements. In conclusion, it is easy to marry but harder to divorce. So before you say "I do" make sure you truly want to marry that individual because it will take you six (6) months to a year to be able to file for a divorce from that individual. If you have any questions about annulments or divorces, please contact the Legal Assistance Office and schedule an appointment so an attorney can assist you.



## **ADULT GUARDIANSHIP FAQ'S**

### **Do I need guardianship?**

If you are the primary caretaker or decision maker of an adult child or other family member who is unable to meet his own basic needs for food, shelter, medical care, or other daily living responsibilities, you might.

### **What exactly is a guardian?**

A person with both the ability and legal responsibility to make daily living decisions for the incapacitated person. This includes arranging doctors appointments, monitoring medicine, and paying bills.

### **Who can be guardian?**

Any person with a legitimate interest can be appointed. All immediate family must be notified. The court may appoint a public guardian if there is no suitable family or friend.

### **What is the process?**

You must file a petition. The person who you wish to care for will receive a court appointed lawyer known as a Guardian ad Litem. You will need a letter from a medical provider certifying that the person needs a guardian. You must appear in court. The court will hear the case and decide whether a guardian should be appointed and whether you are the appropriate person. Once appointed you will take an oath and be required to do an annual report to the local Department of Social Services. The process is complicated. You should seek legal representation to ensure that you get it right.

### **Are there any alternatives?**

Sometimes. If your loved one is able to understand the meaning of a power of attorney and desires for you to assist him, then a general durable power of attorney coupled with a special medical power of attorney may be a good alternative. If the family member just needs help managing his bills and other finances, then becoming a joint signer on banking accounts may be enough. Speaking with a lawyer will help you assess all alternatives.