



GENERAL COUNSEL PC  
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**GUIDE TO**

# **Divorce**



## Guide to Divorce

The idea of filing for divorce may be overwhelming. Naturally, people may worry about finances, children, and where to live. On top of that, the actual process of filing for divorce may seem daunting. The process itself doesn't always need to be complicated.

Additionally, consulting a family law attorney may also help prepare individuals for how the process will go and what to expect. Below, is a quick primer on things an individual should consider before filing for divorce and while going through the process.

### *Property Division*

If a couple has a [marital agreement](#), such as a prenuptial or postnuptial agreement, establishing how assets and debts will be divided in the event of a divorce, then this matter may not require much additional consideration.

However, if an agreement is not in place, [property division](#) will be one of the most important aspects of a divorce. If spouses are able to agree on property division, they can enter into a separation agreement confirming the division.



Spouses should take stock of assets, as well as debts, and consider which assets they most want to keep and those they are willing to part with. Considering these things beforehand will help ensure you're prepared going into negotiations and set yourself up for the best outcome.

If spouses are not able to agree on property division, the court will decide. Virginia courts follow the "equitable distribution" method of property division. Under this method, the court will attempt to divide marital assets and debts between the spouses fairly, but not necessarily equally.

The court will consider various factors when making its determination. However, only marital property is subject to equitable distribution. Marital property is jointly-owned property and other property (other than separate property) obtained from the date of marriage through separation.

Separate property is all property acquired by one spouse prior to marriage and property obtained during marriage by inheritance or gift (other than a gift by a spouse). Separate property does not get divided by the court and instead remains with the spouse that acquired it.

To prepare for the equitable distribution process it's important to collect documentation regarding ownership of assets. For example, documentation showing property was purchased by one spouse prior to marriage is important to establish that asset is separate property.

Additionally, financial information establishing the value of assets and debts is important to allow the court to make an equitable distribution.

## Co-Parenting

If a couple has children, issues related to those children will be one of the largest considerations during a divorce. Spouses preparing for divorce should consider how they will co-parent.

Who will have legal custody of children? Who will have physical custody? Will one spouse seek sole custody or will the spouses agree on a joint custody arrangement?

Where will the children live? Will they need to switch schools? Parents should attempt to agree on these matters early on to make the divorce process as smooth as possible for children



Physical [custody](#) refers to where a child spends the majority of his or her time. Legal custody refers to the right to make important health, education, and welfare decisions for a child. A parent may have sole custody of a child or share joint custody between both parents. With sole legal custody, one person retains responsibility for the care and control of a child and has primary authority to make decisions concerning the child.

Sole physical custody means the child resides with the custodial parent. The non-custodial parent may have visitation rights. Joint legal custody means both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child. Joint physical custody means both parents share physical custody of the child, although not necessarily share equally. In Virginia, joint custody is awarded more commonly.

Custody and visitation matters can be settled through negotiation or mediation between the parties. However, if the parents are unable to agree, they may petition the court to decide these issues.

## Child and Spousal Support

Similar to property division, if a couple has a marital agreement in place, the issue of [spousal support](#) may already be established. Spouses are also free to enter into separation agreements establishing spousal and child support, if the parties are able to agree.

If the parents are unable to agree, they may petition the court to decide these issues. Even if the parties enter into an agreement establishing child support, the court must approve the agreement to ensure it's in the best interests of the child.



The [Virginia Code](#) sets out the guidelines used for determining [child support](#) obligations. The guidelines consider the number of children that need support and the parents' combined monthly gross income, as well as custody arrangements. Courts typically follow the guidelines set out in the Virginia Code when determining a child support obligation.

However, a parent can request a deviation from the guidelines and ask the court to raise or lower that amount. The court will make a decision after considering various factors. Courts will also consider various factors when making a determination of spousal support, if there isn't an agreement establishing support.

### *Filing for Divorce in Virginia*

An individual must be a legal resident in Virginia for at least 6 months before filing for divorce. Virginia allows both [fault and no-fault divorce](#). The fault grounds authorized in Virginia include adultery, felony, cruelty, and desertion.

Alternatively, a spouse may file for “no-fault divorce” after separation. If the couple has minor children, they must be separated for one year before filing for divorce.

If the couple doesn’t have children, they can file for divorce after living separately for 6 months, if both spouses enter into a separation agreement establishing how property will be divided.

Filing for divorce in Virginia generally consists of filing certain forms with your local circuit court. Each county has their own rules and may have different forms so it’s best to get the required forms from your local courthouse in person or from their website, or consult with an attorney who will prepare the documents for you. Filing these forms starts the divorce process.

After an individual files the divorce forms, their spouse needs to be “served.” This means that the spouse receives copies of the divorce papers filed so they have proper notice of the divorce request, referred to as “service of process.”

The divorce process doesn’t look the same for all couples. Generally, the level of contention between spouses will dictate how the process goes. More amicable spouses may be able to proceed with a more informal [alternative dispute resolution divorce](#). If spouses are able to agree on every aspect divorce matters, they may file for an [uncontested divorce](#).

Alternatively, if the divorce is contentious and a [marital agreement isn’t](#) in place, the couple will need the court to make relevant determinations. An uncontested divorce or divorce handled through alternative dispute resolution will typically be resolved quicker and less expensive than a traditional litigated divorce.

This is not an exhaustive list of all of the matters to be considered before filing for divorce. Divorces are complex and it’s best to consult with an experienced family law attorney to help guide you through the process. *Family law attorneys at General Counsel, P.C. are experienced in all aspects of divorce and can help you navigate the process. Call us today and see how we can help you.*

