

# ***Divorce and Separation in Virginia***

The requirements for filing for divorce are controlled by state law. Each state has its own residency and jurisdictional requirements that must be met before a party can file for divorce. To obtain a divorce in Virginia, one of the parties must have lived in the state for at least six months prior to filing for divorce. The divorce action must be filed in Circuit Court in the county where one of the parties lives. Although not absolutely required, it is highly recommended that you hire an attorney to represent you in any divorce action.

Although Virginia does recognize several different grounds for divorce (adultery, abandonment, etc.), the most commonly used ground for divorce is voluntary separation. The general rule for a divorce based on separation, also known as a “no fault” divorce, is that the parties must be separated for **12 consecutive months** before a divorce will be granted. However, if the couple has no minor 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 Client Services 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 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.