

Custody

To determine custody and visitation, the court will consider the *best interests of the child*.

- There are TWO types of custody:
 1. **Physical Custody**
This addresses where the child lives most of the time.
 2. **Legal Custody**
This addresses who makes the big decisions in the child's life and includes decisions about health, education, religion, and international travel.

Most of the time, parents share legal custody and make these decisions together. Parents might not share legal custody where a parent abused the child or severely abused the other parent.

- **How the court determines your child's best interests**
The court will look at a number of factors:
 - The age and physical and mental condition of the child and parent.
 - The relationship between each parent and child.
 - The child's needs.
 - The role each parent has played in the past and currently plays.
 - The willingness of each parent to support the child's relationship with the other parent.
 - The willingness of each parent to maintain a relationship with each child.
 - The reasonable preference of the child (depending on the child's age).
 - Any history of abuse and any other relevant factors.

Visitation

The parent with whom the child does not live with most of the time will often have visitation with the child. The times and schedules for visitation will depend on the family's needs and schedules. Sometimes, if there is a possibility of danger, the court orders the abuser to utilize supervised visitation.

Child Support

Both parents pay for the child based on each parent's income.

- Child support is calculated using guidelines which take into account the child's healthcare, work-related childcare, the child's special health or education needs, and the income of each parent.
- The court uses the parents' income before taxes and expenses.

Spousal Support

Spousal support is not guaranteed.

- Under § 20-107.1 of the Code of Virginia, a spouse asking for spousal support must demonstrate that his/her spouse has a duty to provide spousal support by looking at the length of the marriage, earning capacities of the parties, and the standard of living established during the marriage, among other factors.
- Spousal support can be paid in monthly payments (e.g. \$1000/month for 2 years) or as a lump-sum payment (e.g. one \$2400 payment).
- If you are unable to wait for your court date for spousal support, you can file a motion for temporary support, and the court will use guidelines to determine the amount of support based on your income and your spouse's income.

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Divorce

- **Filing for divorce:** A spouse can file for divorce based on cruelty, adultery, abandonment, a felony conviction with imprisonment of more than one year, one-year of separation, or six months of separation if there are no minor children and husband and wife have entered into a property settlement agreement.
- **What it means to be separated:** There is no legal separation in Virginia. The best way to be considered separated is to live apart and not act as husband and wife.
 - It is very difficult to live together and be separated. To live together and be considered separated, a couple should NOT eat meals together, cook for one another, go out together, have their friends and family believe they are together, sleep in the same bed, have sex, do laundry together, share expenses and other similar activities.
- **Property Settlement Agreements**

This is an agreement meant to resolve all matters in a divorce. The agreement may include custody and visitation, child support, spousal support, and division of property.
- **Equitable Distribution**

This divides property and debt between husband and wife.

 - **What property is included?** Often this is a combination of real property (houses and land), personal property, retirement and investments.
 - **What property is distributed?** There are three types of property: separate, marital, or hybrid.
 - **Marital Property**

This includes most money and property obtained during the marriage, regardless of how it is titled. The court can divide this property between the parties.
 - **Separate Property**

This generally means all property obtained before the marriage or acquired by inheritance or separate gift during the marriage. The court will not divide this property.
 - **Hybrid Property**

This property is part marital and part separate property. The court can decide a fair way to divide the marital portion of the property.

- **How will the property be divided?**

In Virginia, the courts consider the eleven factors of § 20-107.3(e) of the Code of Virginia in deciding which spouse receives what property.
- **Debt:**

The court can order that either party pay off the debt, but cannot change whose name the debt is under.

Enforcement of Orders

You must file an Affidavit and Petition for Entry of a Rule to Show Cause to enforce a court order that is not being followed.

Modification of Orders

To modify a court order, you must prove that there has been a *material change in circumstances* (that something BIG has changed) since the last time you were in court.

Discovery

Discovery is the process by which both parties can learn information about the other's position so there are fewer surprises when you go to trial. You have 21 days to respond to a discovery request. The three most common types of discovery are the following:

- **Interrogatories**

These are specific question you ask the other side to answer.
- **Requests for Production of Documents**

These are requests for specific documents that are relevant.
- **Requests for Admissions**

This is a statement that the party says is true or untrue.

Where to begin your case: The main factor in determining in which court to file is whether you are married to the parent of your child.

- **Married**

You have the option of filing in the Juvenile and Domestic Relations District Court (JDRDC) or addressing the same issues as part of the divorce process in the Circuit Court.
- **Not Married**

You must start your case in JDRDC.