

Virginia State Bar Informational Brochures

MARRIAGE IN VIRGINIA

Prepared by the Family Law Section

Part of the Family Law Series of Resources

• *Children and Divorce* • *Divorce in Virginia* • *Financial Issues in Divorce* • *Marriage in Virginia* • *Spare the Child* brochure and video

Marriage is the most significant legally recognized and sanctioned human relationship. It grants numerous rights and imposes numerous responsibilities. Seldom do people consult a lawyer prior to marriage, probably because most people get married based on their love and faith in each other, not because of the legal consequences or benefits. However, if you are contemplating marriage, you should know and consider the legal consequences.

This brochure discusses some legal aspects of marriage in Virginia, including name change, debt, property rights, insurance, powers of attorney, and support obligations. It is published by the Virginia State Bar, the official organization of lawyers in Virginia, through its Family Law Section. Its purpose is to provide you with answers to some questions about the law in Virginia with respect to marriage and related areas.

1. What is required for a valid marriage in Virginia?

A marriage license is required before the ceremony is performed. The license is issued upon application with the Clerk of the Circuit Court of any city or county in Virginia, and there is not a residency requirement. There is a nominal fee of \$30 for the license and both people must appear together and in person to apply. The marriage ceremony must be performed within 60 days of the issuance of the license by a civil marriage celebrant or religious celebrant authorized by the Commonwealth of Virginia.

Upon completion of your marriage ceremony and your officiant submitting the proper documents, you will receive a marriage certificate. You should keep your marriage certificate in a safe place with other important documents you may have, such as your birth certificate, social security card, passport, insurance policies, deeds, etc.

Not required but advisable: Before the marriage, you and your betrothed should disclose all relevant information to each other that may be grounds for voiding your marriage later, such as impotency, felony conviction, if you and another person are parents of child, or other relevant information as provided by Virginia law.

2. Who can legally marry?

The minimum age to marry is 18, unless a minor has been emancipated by court order. You must be at least 16 years

old to be considered for emancipation. Upon application for a marriage license, an emancipated minor shall provide a certified copy of the order of emancipation.

If you have been married before, you must obtain a valid divorce of the previous marriage before marrying again.

It is not legal to marry an ancestor, descendant, sibling, aunt, uncle, niece or nephew even if the relationship is by half-blood. Virginia law does not prohibit cousins or step-siblings from marrying.

3. What about living together without getting married? Does Virginia have “Common Law” marriages?

A common law marriage is one by agreement of two people who consider themselves married without any formal ceremony or license and who hold themselves out to the public as married. Virginia does not have common law marriage.

No duties or obligations arise between two adults by living together in the same household unless such duties or obligation are set out by express agreement. In cases where there are agreements concerning the financial obligations to one another or the division of jointly owned property, those agreements are enforced through contract law, as any legal contract would be in Virginia. It does not matter how long you live together, whether you are romantically or sexually intimate with one another, whether you are engaged, etc.

(Note that in certain circumstances, a common law marriage valid in another state may be recognized by Virginia if the people would have been eligible to marry under Virginia law.)

4. What are some legal considerations in marriage?

A. Name Change

Upon marriage, you may change your last name to your spouse's last name or to a hyphenated last name, but you are not required to do so. However, if you change your name and later want to resume your former name, you will be required to petition the circuit court of the city or county where you live for a legal name change or, if you have had no other name changes, you may be able to obtain a name change order in conjunction with a future divorce proceeding.

Any name change should be communicated to all government agencies that might be affected, such as the Social Security Administration and the Department of Motor Vehicles. Further, you should notify your bank, insurance companies, employers, and others of your name change and marital status.

B. Property Considerations

Marriage does not automatically re-title property owned by either spouse into the spouses' names jointly. However, state and federal laws give married people many different rights in their spouses' real and personal property, pensions, and insurance policies in the event of divorce or death. Further, most property acquired during the marriage, including retirement savings and pensions, are treated as marital property in the event of a divorce.

Property you acquire during the marriage—from the date of marriage through the date separation—will likely be considered marital property and subject to equitable distribution upon divorce, regardless of how the asset or property is titled. Exceptions to this classification of marital property include inheritance, certain portions of personal injury awards, and gifts to you from people other than your spouse. "Equitable distribution" does not mean that your assets will be divided equally with you receiving 50 percent and your spouse receiving 50 percent, but rather the assets and property will be divided fairly between you and your spouse dependent on a variety of factors and considerations.

It is possible to modify or waive rights you would otherwise obtain in your spouse's property as a result of your marriage through a written agreement, such as a prenuptial

(or premarital) or marital agreement. (See "Premarital Agreements" below.) Such an agreement is in accordance with public policy to encourage and strengthen marriage. Marriage is a very serious commitment, and couples should communicate property concerns and considerations to each other before marriage.

C. Debts

Marriage does not automatically make you responsible for the individual debts of your spouse if you do not co-sign the loan, note, or credit card application. However, you may become liable to a third person for the cost of any basic necessities provided to your spouse during the marriage. If you and your spouse incur debt jointly, the creditor can usually sue you for the entire amount of the debt, not just 50 percent or the amount you specifically incurred.

Should you divorce in the future, debt is classified and divided similarly to assets and property—debt you incur during the marriage will likely be considered marital debt and subject to equitable division upon divorce, regardless of how the debt is titled. Again, equitably does not mean equally.

D. Support Obligations

In marriage, spouses are mutually responsible for the support of each other and any children born to the parties. Circumstances may arise in which you are obligated to financially support your spouse. Before marriage, you should openly and frankly discuss your views on working outside the home, both parties working outside the home if/when there are children, incurring debt versus accumulating savings, and your views about finances generally.

If you should separate and/or divorce in the future, you may be obligated to continue supporting your spouse through the payment of spousal support, commonly referred to as alimony. Depending on many factors and circumstances, a spouse with higher income or greater earning potential may be ordered to make a lump sum payment to the other upon divorce or may be ordered to make periodic (monthly) payments to the other for years following the divorce.

Getting advice now may save you great expense, frustration, and conflict later.

E. Children

All children born between two parties are entitled to financial support from both parents regardless of the marital status. A parent has a legal duty to provide support for his or her children, whether married or not married, and even if born of a marriage that is illegal (such as a bigamous marriage) or a marriage that is dissolved or annulled. In Virginia, the husband is legally presumed to be the father of any child born during the marriage.

Legally adopted children have the same status as biological or natural born children in all aspects of the law. The natural parents of the adopted child are no longer considered parents and the legal ties are cut. However, when the child is adopted by a step-parent (i.e. the new spouse of one of the parents), the child so adopted is still entitled to inherit from the estate of the natural parent whose relationship is not terminated as part of the adoption process. Adoption is not a step to be taken lightly.

If you are considering adoption following your marriage, consult with a family law attorney.

F. Taxes

Once married, you can file joint federal and state income tax returns. A joint return can often save you and your spouse money, but there are instances when you may not want to file jointly with your spouse. If you do not file jointly, you will be required to file “married filing separately,” and this filing status is often considered the least advantageous. However, if you are uncertain about your spouse’s assets or income or your new spouse has had tax issues in the past, you may not want to file joint tax returns. Again, open and frank communication about money and finances before the marriage is strongly encouraged.

If you have any questions about how you should file taxes after your marriage, consult a tax attorney.

G. Insurance

- **Healthcare Insurance:** Adding your new spouse to your group or employer-provided medical, dental, and/or vision insurance policies will likely result in savings versus both spouses maintaining separate policies.
- **Life Insurance:** The beneficiary of your life insurance policy does not automatically change upon marriage. If you want to change your beneficiary to your new spouse, you should contact your life insurance provider after you marry.
- **Automobile Insurance:** You may want to check with your automobile insurance provider as your policy rates may decrease if you include both spouses on the same policy.

If you have questions about your insurance needs, contact your insurance agent or employer’s human resources department following your marriage.

H. Wills, Powers of Attorney, and Estate Planning

In most instances, you cannot wholly disinherit your spouse without his or her consent, for example, through a waiver in a premarital agreement. If you are married and die without a will, your entire estate will pass to your spouse under Virginia law unless you have children by a previous marriage.

If you had a will before marriage, it is important that it be reviewed, and likely revised, following your marriage.

You may desire to give your new spouse the power to act on your behalf in the event that you become incapable of handling your own affairs due to accident, sickness, or distant travel. Without a power of attorney, your spouse may be powerless to make decisions on your behalf. A power of attorney can avoid the need to petition the court for the appointment of a guardian, conservator, or both for a disabled spouse.

Powers of attorney can be designed to be effective only when certain specified conditions exist. The person granting a power of attorney can revoke the power at any time, so long as he or she is mentally competent.

You should consult an estate planning attorney to determine which documents are right for you and your new spouse following your marriage. See also the *Wills in Virginia* resource.

I. Adultery

It remains a violation of criminal law to have sexual intercourse voluntarily with anyone but your spouse. This is called “adultery.” Even when adultery is not prosecuted as a crime (which is incredibly rare), it is grounds for divorce. Additionally, in a divorce, if it is proven that you have been involved in an adulterous relationship, you may be barred from receiving spousal support. Adultery may also be considered as a factor when determining the equitable distribution of property during a divorce proceeding.

8. Should I ask for a premarital agreement?

In some instances, you and your betrothed may wish to enter into a written prenuptial or premarital agreement. (If such an agreement is made after the wedding, it is called a marital or postnuptial agreement.) This contract, which is legally binding if drafted properly and entered into voluntarily, can set out duties and obligations of each spouse and establish the rights each will have in joint property or the property of the other. It also can establish the amount of spousal support

in the event of separation or divorce, or it can specify that there will be no spousal support or alimony.

Such contracts are especially important in a second (or third, or fourth) marriage, if one spouse has children from a previous marriage, and/or if one spouse has significant debt or financial obligations to others that will continue into the future.

If you think a premarital agreement may be right for you or your future spouse is asking you to enter into a premarital agreement, consult a family law attorney, and do so months before the scheduled wedding. You do not want to surprise your intended spouse with a premarital agreement a week or few days before the wedding.

Conclusion

As stated at the beginning, marriage is the most significant legally recognized and sanctioned human relationship, and the laws affecting the rights of married people are continually changing. If you are planning to get married and have any concerns, talk to your partner—openly and honestly—problems and concerns are not going to magically go away after the wedding. If you continue to have questions, consult a family law attorney. Getting advice now may save you great expense, frustration, and conflict later.

Public Information Brochures

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