PENDER & COWARD
ATTORNEYS AND COUNSELLORS AT LAW

PRACTICE AREA

SEPARATION & DIVORCE

Why Seek Divorce Legal Advice?

Many people in this situation do not know what to do or where to turn. Good legal advice in the early stages of separation and divorce can greatly reduce problems down the road in addition to alleviating anxiety and uncertainty. The difference between a good, long-lasting solution and a lengthy battle can be how soon you seek competent legal advice from a qualified divorce attorney. Your well-meaning relatives, neighbors, or friends may provide incorrect information that can lead to damaging strategic mistakes in your plan to move to the next phase of your life, so consulting a good divorce attorney with excellent credentials is a must. As you consider going down this path, here are some tips on how to prepare for a meeting with a divorce attorney.

Avoid Costly Hearings and Litigation: Uncontested Divorce

In Virginia, one option is an uncontested divorce, in which the parties have already resolved all appropriate issues through a written agreement prior to either party filing for divorce. In this scenario, the Court can enter a final order, or Divorce Decree, without costly hearings or litigation. It is wise to have an experienced attorney to prepare the agreement, as internet forms often lack critical provisions.

Using Your Point of View for Resolution: Contested Divorce

If the divorce issues are not settled, the couple typically engages in a contested divorce procedure, which includes one party filing a complaint alleging the issues, with the other party answering from his or her own point of view. This procedure often results in litigation and multiple hearings before the matter can be tried and finally resolved by Final Decree.

Navigate Financial Impact & Division of Assets

The financial ramifications of contested litigation can also be disastrous. In the vast majority of cases, major changes and adjustments to the household budget will be required in order to pay for two separate households. The parties will have to divide their assets as well as the debts accumulated during the marriage. Finally, couples with minor children will have to address the issues of child custody, visitation/parenting time, and child support, which can be highly contentious and emotionally draining.

At Pender & Coward, we strive to remove as much of the guesswork and stress as we can, and we provide the highest quality of legal representation at all stages, with the ultimate goal of keeping our clients calm, in control, and in the best possible situation to maximize their outcomes.

VIRGINIA BEACH
222 Central Park Ave. Suite 400
Virginia Beach, VA 23462

CHESAPEAKE
709 Greenbrier Parkway
Chesapeake, VA 23320

SUFFOLK
117 Market Street
Suffolk, VA 23434

Legal Separation in Virginia

People often refer to "filing for separation or having a "legal separation." In Virginia, separation is defined as a physical separation of the parties but does not become legally valid unless at least one party intends the separation to be permanent.

If the parties cannot or will not move into separate residences, the separation can begin while both spouses are living within the marital residence, but Virginia requires additional evidence of a full separation, which requires more than simply having separate bedrooms.

Minor Children & Separation

In Virginia, when the parties share minor children, they typically must remain separated for one year or more before their divorce can be finalized. If there are no minor children, the waiting period is shorter

The process of separation and divorce can be extremely stressful and emotional and can have a negative impact not only on the parties, but on the children and their extended family members.

Divorce Process in Virginia

In Virginia, a party may seek a divorce a mensa et thoro (from bed and board), which allows one party to physically separate from the other when the situation is intolerable or when one party has been unfaithful or abusive. Although this temporary form of divorce is commonly requested in a divorce proceeding, it is rarely granted and does not constitute a final divorce.

The final and more common type of divorce in Virginia is the divorce a vinculo matrimonii (from the bonds of marriage) which requires the conclusion of the required separation period. The divorce a vinculo matrimonii officially ends the marital relationship through the entered divorce decree. Once this is documented, the parties are officially divorced.

Filing of a Complaint for Divorce

The Virginia divorce process commences with the filing of a complaint for divorce with the Circuit Court in the jurisdiction in which one or both of the spouses reside or the city/county that the parties last resided together before separation.

Written Separation Agreement

As discussed above, divorces can be either "contested" or "uncontested." In an "uncontested" case, the parties will already have entered into a written separation agreement specifying the terms of their agreement in detail. For example, the agreement terms will include spousal support (also known as alimony) and equitable distribution (Virginia's method for dividing marital assets and marital debts). An uncontested divorce cannot be filed until after the required separation period has run (either six months if no minor children or otherwise, one year). At any time during a contested divorce, if the parties resolve the matter, it can become uncontested.

Contested cases may be filed before the parties have separated for one year if there are grounds for a "fault based" divorce. These grounds include allegations of cruelty, and willful desertion or abandonment. In such a case, the filing party will request a divorce a mensa et thoro (from bed and board) in order to get before the Court to request immediate, temporary relief (called pendente lite reliefs).

Litigation and Full Trial

If the parties never agree on issues, a full trial will be necessary, which includes many preliminary steps including discovery, hearings, pretrial orders, and other procedures required by the Court. This process is exceedingly difficult to navigate without a qualified attorney, and the lack of proper representation can lead to devastating errors. It is unwise to enter into a contested divorce without an attorney. Many contested matters become uncontested once competent counsel has been retained.

Custody and Child Support in Virginia

In most cases, unless there is a compelling reason to deviate from them, Virginia Courts use statutory child support guidelines to compute child support obligations. The guidelines use a mathematical formula to determine the child support amount, using the parties' gross monthly incomes and other required information to calculate the appropriate amount.

Child Support Enforcement

The parties can seek support for their children in Court, or through The Department of Child Support Enforcement (DCSE), which is a state agency that can assist with the process, as well as enacting direct payroll deductions for the payor. At Pender & Coward, we are well versed in the process of setting and advocating for the appropriate support amount regardless of whether the process occurs in court or administratively through DCSE, as we work well with DCSE and are familiar with their procedures.

In fact, DCSE has requested that our family law department head create and present an educational program for their staff attorneys on the matter of legal ethics. With Pender & Coward, you can be assured that you will receive the most up to date and knowledgeable advice available in the area.

Virginia Divorce Property Division

Virginia divorce property division is referred to as equitable distribution. Equitable distribution is a process by which the Court seeks to equitably (fairly) divide marital property between the parties. Contrary to popular belief, there is not always an equal 50/50 division of assets division.

There are three different classifications of property – separate property, marital property, and hybrid property. Retirement assets (IRA, 401(k), 403(b), etc.), funds in investment and financial accounts, automobiles or other vehicles, equity in real estate/real property, and any other assets acquired may be divided with any percentage being considered marital or separate, depending on the facts.

Determining Property Classification

At Pender & Coward, we help determine the classification of property and preserve separate property as the law allows, despite the common and incorrect perception that all property must be split equally. An attorney who is unskilled in equitable distribution calculations often costs clients thousands of dollars with incorrect advice regarding hybrid or separate property.

We have extensive experience with complex marital estates, having served clients with marital business interests ranging from small business owners to government employees with pension plans, to multi-million-dollar corporations. Each type of asset has a unique nature, and we can advise each client regarding how to maximize his or her outcome, regardless of the nature of the assets.

Prenuptial Agreements

As most people are aware, pre-nuptial agreements (prenups) can also have a major impact on the parties when the marriage breaks down. We at Pender & Coward also have extensive experience in preparing complex pre-nuptial agreements and advising clients on the impact of premarital agreements (prenups), post-nuptial agreements, or other factors that may impact the division of assets or the process.