

Marriage in Virginia

Marriage is the most significant legally recognized and sanctioned human relationship. It carries with it numerous rights and responsibilities. Seldom do people consult a lawyer prior to marriage, probably because a marriage is entered into on the basis of love and faith in each other, not on the basis of skillfully negotiated and drafted legal documents. Marriage does, however, have many legal consequences, as well as benefits, that a couple should consider.

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

- You must have a valid marriage license at the time the ceremony is performed. To obtain one, you and your fiancé must sign an application issued by the Clerk of the Circuit Court of the city or county where either of you usually lives, and pay the applicable license tax at the time the license is issued.
- After you have obtained a valid marriage license, your marriage ceremony must be performed within 60 days of the date your license is issued. A qualified minister, any judge, or a person appointed by the court can perform the ceremony.
- You cannot legally marry a relative closer to you than a cousin, even if the relationship is by half-blood. You cannot marry your step- or adopted brother, sister, child or parent, even if the adoption or step-relationship is by a previous marriage.
- If you have been married before, you must first obtain a valid divorce in the previous marriage to marry again.
- Virginia does not allow legal same-sex marriage or give any official status to such relationships. Marriages between persons of the same sex are prohibited by statute in Virginia, and such marriages or partnerships, even if recognized in another state, are deemed null and void in Virginia, and any rights created by or in that state, even if by contract, are unenforceable in Virginia.
- You and your fiancé should disclose all relevant information to each other now that may be grounds for voiding your marriage later, such as impotency, felony conviction, religious orders, whether one of you is already the parent of some else's child, or other relevant information as provided for by Virginia law.

2. How old must you be to get married?

The consent of your parent or guardian is needed if you are a minor (under 18) unless you have been married before. The minimum age at which you can marry, even with parental consent, is 16 (except in the case of pregnancy, verified by a doctor's certificate). A minor who has been judicially emancipated does not need consent of a parent or guardian to marry.

If you are a minor and you misrepresent your age and marry without the consent of your parent or guardian, then your parent or guardian may ask a court to annul the marriage. The judge then will decide whether, considering all the circumstances, it is in your best interest to annul the marriage or to declare it valid.

3. Does Virginia have "Common Law Marriages?"

No. A common law marriage is one by agreement of two people who consider themselves married without any formal ceremony or license and hold themselves out as married. Such arrangements are not marriages in Virginia, but they will be recognized here if they were valid in the state where they took place and if they were between people who would have been eligible to marry under Virginia law.

4. What are the legal considerations in marriage?

A. Name Change

Upon marriage, the wife has the option of assuming the husband's last name and traditionally does so, but she is not legally required to change her name. She may keep her name as it was at the time of the marriage without any formal legal proceedings. However, if she has assumed her husband's surname and wants to resume an earlier name, she must petition the circuit court of the city or county where she lives for a legal name change. (A woman may resume her maiden name or prior married name as part of a divorce proceeding.)

Similarly, a wife can assume a combined or hyphenated surname upon marriage without any formal legal proceeding. If the husband wants to do so it is probably best if he petitions for a legal name change.

In order to keep records straight, 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 change in name and marital status.

B. Property Considerations

Marriage does not automatically put the spouses' property in both of their names. However, most property and pensions acquired during the marriage (except for inheritances, personal injury awards, property owned separately before the marriage and gifts from other people) are treated as both spouses' property in the event of a divorce. State and federal laws give married people many different rights in each other's property, pensions and insurance in the event of divorce or death. If you choose to put property solely in your spouse's name, however, or to title your pre-marital property in both names, that may diminish your legal right to it upon divorce. Virginia generally applies the concept of equitable distribution to all property acquired by the parties from the date of marriage regardless of how the title to that property is held.

It is possible for the spouses to change or give up the rights they obtain in each other's property by reason of their marriage through a written agreement, such as a prenuptial (or premarital) agreement. (See "Premarital Agreements" below.) Such agreements are 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 one spouse responsible for the individual debts of the other if the spouses did not co-sign the loans or credit card applications. However, a spouse may become liable to a third person for the cost of any basic necessities provided to the other spouse by the third person. If you and your spouse incur debts together, the creditor can usually sue either one of you for the entire amount. In a divorce, the judge will divide the debts between the spouses, not always equally. Sometimes this will include some debts that are only in one spouse's name.

D. Insurance

All insurance companies that may be affected by your change in status should be notified immediately. In addition, consider changing the beneficiaries of your life insurance policies. Automobile insurance rates may change favorably for you, and both spouses can be named as insured on the same policy. Combining hospitalization coverage can also save money, especially if one of you is covered by a group policy. An insurance agent can be helpful in advising you about what should be done with existing coverage and what additional coverage, if any, should be obtained.

E. Powers of Attorney

You may desire to give your 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 for the 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 your attorney to determine whether a power of attorney would be appropriate in your case, and if so, what the scope of such power should be.

F. Support Obligations

In marriage, spouses are mutually responsible for the support of each other. Circumstances may arise in which one of you might become obligated to support the other. Both of you should be aware of this as you establish your respective roles in the marital relationship. Usually the question of this support obligation only arises upon separation or divorce, and at that time the court will look to the history of the marriage as well to who was at fault in its breakdown. Although alimony is no longer awarded to the wife as commonly as it once was, if either of you has been placed in a financially dependent position by the marriage, the partner with the earning power or financial means may be ordered to contribute to the support of the financially dependent partner. Therefore, even though a marriage must be built on faith, both husband and wife should closely examine the plans for each of their respective roles in the marriage and the possible consequences of this arrangement in the event of separation or divorce.

G. Wills and Estate Planning

It is never too early to write a will. Even though you may be young or have few assets, it is wise to consult a lawyer about estate planning. It is not how much you have but where you want your property to pass upon your death that is important. Proper estate planning helps protect your family from unnecessary financial hardships that might occur after your death.

If you die without a will, your entire estate will pass to your spouse under Virginia law unless you have children by a previous marriage. If both you and your spouse die without a will, your underage children's share of your estate could be tied up in guardianship and might not be readily available for support and education.

If you had a will before marriage, it is important that it be reviewed in light of your changed status.

H. Premarital Agreements

In some instances, you and your fiancé may wish to enter into a written prenuptial or premarital agreement. (If such an agreement is made after the wedding, it is called a postnuptial agreement.) This contract, which is legally binding if drafted properly and entered into voluntarily with full disclosure, can set out duties and obligations of the husband and wife and establish the rights each will have in the property of the other and of both of them. It can guarantee a level of support in the event of separation or divorce, or it can specify that there will be no alimony.

Such contracts are especially important in a subsequent marriage, where one spouse may have children from a previous marriage and obligations that will continue after that prior marriage. That person might also want to provide for these children in the sharing of his or her estate and not want the new wife or husband to have all of the rights that might be given by law in the absence of a premarital contract. This is especially true when a man and a woman are remarrying late in life for companionship and do not want all of the legal entanglements that would otherwise be involved in marriage. You should consult a lawyer if you think you might need such an agreement.

I. Taxes

As a married couple you can file a joint income tax return with both the state and federal governments if you were married by the end of the tax year. A joint return can often save you money, but its advantages depend on each couple's individual financial situation. Some married taxpayers are better off filing separate returns. Consult a tax expert on these matters.

J. Buying a Home

Before you buy real estate, have a lawyer draw up or review your sales contract for the house and examine the title to the property. Your sales contract, not your deed, determines your legal obligations in a real estate transaction. Only a lawyer is competent to look out for your interests in this area. The lawyer is in a better position to help you avoid problems if you contact him or her before signing the contract.

If a married couple purchases a home or other real estate together, they usually purchase it as "tenants by the entirety," which means that if one of them dies, the other automatically becomes the owner of the whole property, and it is not subjected to estate taxes or the probate process at that point. If a "tenant by the entirety" becomes individually indebted, and the spouse doesn't co-sign the loan, the property is free from the claims of those creditors.

K. Record Keeping

As soon as you get married, you should begin keeping an accurate record of your financial affairs. If you have a checking account, be sure to retain your canceled checks because they act as valuable receipts for tax purposes and if any question should ever arise about the payment of a bill. Valuable documents such as insurance policies, your marriage certificate, deeds, contracts, your birth certificate and those of your children should be stored in a safe place. In the event of a divorce, both of you will need all these documents.

5. Legal effects of marriage on children

A. Legitimacy and Illegitimacy

Any child born while the mother is married is legitimate, even if conceived before the marriage or by a third party. Also, the child becomes legitimate if the child's parents marry each other after the birth. Children are also legitimate even if born of a marriage that is illegal (such as a bigamous marriage) or a marriage that is dissolved or annulled. In any case, a parent has a legal duty to provide support for his or her children.

B. Adoption

Legally adopted children have the same status as natural children in all aspects of the law, including support obligations and inheritance. 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 natural parent's estate. Adoption is not a step to be taken lightly. All of the legal ramifications as well as the procedures should be discussed with the lawyer handling the adoption.

6. Domestic violence

Spouses used to be only rarely prosecuted and immune from civil lawsuits for most things they did to each other. This is no longer the case, and marriage is not a shelter for poor treatment of each other. Rape (intercourse without consent) is a felony, even if it is with your spouse. Physically attacking your spouse is also a crime and leads to arrest and prosecution.

7. Adultery

When you are married it is 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, it is grounds for divorce, and in many cases it can keep the guilty spouse from receiving alimony.

8. What about living together?

Unmarried couples living together in sexual relationships are no longer uncommon; however, Virginia laws still make this "cohabitation" illegal. No duties arise from cohabitation unless by an express agreement, either informal or written. Because of the public policy against this living arrangement, such agreements are not always legally enforceable. The courts will not enforce a contract that is primarily based on illegal activities. Unmarried couples may enforce these agreements that express an understanding in the relationship regarding support or finances on the basis of contract principles.

An important consideration for people considering living together is the custody of children. If a child's other parent objects to the living situation in the household, he or she may persuade a court to change the child's custody or visitation accordingly. Parents have a duty to act in their child's best interests in all situations. Cohabitation outside of marriage may present inappropriate situations for children. In such cases, a court will act in the best interests of the child in any visitation or custody modification. Courts in Virginia still view marriage as being in the best interests of the children.

Support considerations may change upon cohabitation outside of marriage. A court may modify, terminate or refuse to grant spousal support in such cases. Marriage, on the other hand, legally secures spousal obligations and support.

Conclusion

Laws affecting the rights of married people are continually changing. If there is anything unusual about your marriage, or one or both of you have property that you want to keep separate or preserve for your children, getting a lawyer's advice now may save you great expense, conflict and frustration later. Marriage is the most significant legal human relationship. It carries with it rights, benefits, responsibilities and consequences and is still the basis for families in Virginia.

Prepared by the Family Law Section of the VIRGINIA STATE BAR