

Table of Contents

PART I. INCIDENTS OF MARRIAGE

CHAPTER 1. MARRIAGE

- § 1:1 Introduction
- § 1:2 Statutory marriage requirements
- § 1:3 Common law marriage
- § 1:4 Putative marriage
- § 1:5 Marriage by proxy
- § 1:6 De facto “marriage”
- § 1:7 “Marriage” by estoppel
- § 1:8 The last-in-time marriage presumption
- § 1:9 Proof of marriage
- § 1:10 State vs. federal regulation of marriage
- § 1:11 Nonmarital cohabitation

CHAPTER 2. MARITAL IMPEDIMENTS AND ANNULMENT OF MARRIAGE

- § 2:1 Introduction
- § 2:2 Jurisdiction
- § 2:3 Annulment: In general
- § 2:4 Void vs. voidable marriages
- § 2:5 Same sex marriage
- § 2:6 Bigamous marriage
- § 2:7 Incestuous marriage
- § 2:8 Underage marriage
- § 2:9 Mental and physical incompetence
- § 2:10 Marriage to a felon or prostitute or having a child by another person
- § 2:11 Fraudulent marriage
- § 2:12 Marriage under duress
- § 2:13 Sham marriage
- § 2:14 Marriage in jest
- § 2:15 Support and property rights on annulment
- § 2:16 Defenses to annulment
- § 2:17 Affirmation of marriage

CHAPTER 3. NONMARITAL, PREMARITAL, AND POSTMARITAL AGREEMENTS

- § 3:1 Breach of promise to marry actions and fraud actions

- § 3:2 Gifts and contracts conditioned on marriage
- § 3:3 Nonmarital or “cohabitation” agreements
- § 3:4 Premarital agreements
- § 3:5 Postmarital and separation agreements
- § 3:6 Reconciliation agreements
- § 3:7 Judicial recognition of religious contracts

CHAPTER 4. PROPERTY AND SUPPORT RIGHTS DURING MARRIAGE

- § 4:1 Marriage as an “economic partnership”
- § 4:2 Tenancy by the entirety
- § 4:3 Property rights after death of one spouse: The augmented estate system
- § 4:4 Community property issues
- § 4:5 Interspousal contracts and creditors’ rights
- § 4:6 The doctrine of necessities
- § 4:7 Common law separate maintenance
- § 4:8 Loss of consortium
- § 4:9 Relative responsibility statutes
- § 4:10 Support enforcement remedies

CHAPTER 5. UNIQUE FAMILY LAW ISSUES

- § 5:1 Introduction
- § 5:2 Intrafamily tort immunity and liability
- § 5:3 Parental discipline of the child
- § 5:4 Parental liability for the child’s acts
- § 5:5 Medical care for the child and spouse
- § 5:6 Wrongful death, wrongful life, and wrongful birth
- § 5:7 Regulation of a child’s education
- § 5:8 Domestic and Intimate Partner Violence
- § 5:9 Testimony by the spouses
- § 5:10 Children in need of supervision
- § 5:11 Contraception
- § 5:12 Abortion
- § 5:13 Voluntary and involuntary sterilization
- § 5:14 Artificial insemination
- § 5:15 Surrogate motherhood
- § 5:16 In vitro fertilization
- § 5:17 Special immigrant juvenile status

PART II. DIVORCE

CHAPTER 6. JURISDICTION AND VENUE

- § 6:1 Introduction

TABLE OF CONTENTS

- § 6:2 Jurisdiction for divorce
- § 6:3 Venue
- § 6:4 Service on the defendant
- § 6:5 Collateral attack on a void divorce

CHAPTER 7. BED AND BOARD DIVORCE (DIVORCE A MENSA ET THORO)

- § 7:1 Introduction
- § 7:2 Difference from an absolute divorce
- § 7:3 Grounds for a bed and board divorce
- § 7:4 Economic effects of a bed and board divorce
- § 7:5 Defenses to a bed and board divorce
- § 7:6 Effect of reconciliation
- § 7:7 Merger into an absolute divorce

CHAPTER 8. ABSOLUTE DIVORCE (DIVORCE A VINCULO MATRIMONII)

- § 8:1 Introduction
- § 8:2 Difference from a bed and board divorce
- § 8:3 Grounds for absolute divorce
- § 8:4 Defenses to absolute divorce
- § 8:5 Divorce practice and procedure
- § 8:6 Ethical issues on divorce
- § 8:7 Alternative dispute resolution

CHAPTER 9. SPOUSAL SUPPORT AND MAINTENANCE

- § 9:1 In general
- § 9:2 Jurisdiction, pleading and practice
- § 9:3 Pendente lite spousal support
- § 9:4 Fault as affecting entitlement to support
- § 9:5 Determining amount of spousal support award
- § 9:6 Lump sum vs. periodic payment award
- § 9:7 Rehabilitative alimony
- § 9:8 Application of statutory criteria to award
- § 9:9 Consideration of equitable distribution award as factor
in determining amount of spousal support
- § 9:10 Reservation of right to spousal support
- § 9:11 Duration of award: In general
- § 9:12 Effect of post-divorce cohabitation of dependent spouse
- § 9:13 Effect of death of either party
- § 9:14 Effect of remarriage of dependent spouse
- § 9:15 Interpretation and effect of incorporation of terms of
separation agreement in final decree

- § 9:16 Modification of award
- § 9:17 Enforcement of award and arrearages
- § 9:18 Contempt
- § 9:19 Revised Uniform Reciprocal Enforcement of Support Act
- § 9:20 Full faith and credit of foreign support award
- § 9:21 Attorney's fees
- § 9:22 Effects of bankruptcy on spousal support orders
- § 9:23 Appeals
- § 9:24 Life insurance as security for a spousal support award

CHAPTER 10. CHILD SUPPORT AND MAINTENANCE

- § 10:1 In general
- § 10:2 Jurisdiction, pleading and practice
- § 10:3 Parent's responsibility to pay
- § 10:4 Pendente lite child support
- § 10:5 Amount of support: In general
- § 10:6 Child support guidelines
- § 10:7 Computation of gross income
- § 10:8 Effect of spousal support order on computation of gross income
- § 10:9 Deviations from support guidelines: In general
- § 10:10 Effect of split custody, joint custody, or other variations in custodial arrangements
- § 10:11 Effects of prior child support order or new child in the home
- § 10:12 Effect of support for new or other family members
- § 10:13 Other statutory factors in deviating from support guidelines
- § 10:14 Duration of child support: In general
- § 10:15 Duration of child support: Post-emancipation obligation for disabled child
- § 10:16 Emancipation of child: Agreements to extend support
- § 10:17 Emancipation of child: Other grounds
- § 10:18 Death of payor
- § 10:19 Effect of and compliance with order
- § 10:20 Effect of unitary award or order of support
- § 10:21 Effect and interpretation of written agreements of parties
- § 10:22 Modification of child support: Jurisdiction
- § 10:23 Modification of child support: Application of child support guidelines
- § 10:24 Modification of child support: Standard and proof
- § 10:25 Enforcement of child support orders: In general

TABLE OF CONTENTS

- § 10:26 Garnishments, wage assignments, and payroll deduction orders
- § 10:27 Administrative support liens on property
- § 10:28 Administrative enforcement mechanisms
- § 10:29 Fraudulent conveyances
- § 10:30 Contempt: In general
- § 10:31 Contempt: Defenses
- § 10:32 Revised Uniform Reciprocal Enforcement of Support Act
- § 10:33 Uniform Interstate Family Support Act
- § 10:34 Full faith and credit of foreign support award
- § 10:35 Attorney's fees
- § 10:36 Effects of bankruptcy on child support orders
- § 10:37 Appeals

CHAPTER 11. EQUITABLE DISTRIBUTION OF MARITAL PROPERTY

- § 11:1 History: In general
- § 11:2 Jurisdiction, pleading and practice
- § 11:3 General statutory requirements for equitable distribution of property
- § 11:4 Classification of property: Marital property
- § 11:5 Classification of property: Separate property
- § 11:6 Classification of property: Hybrid property
- § 11:7 Presumption of gift by joint titling or commingling into joint account
- § 11:8 Increase in value of premarital business: Evidence and burden of proof
- § 11:9 Doctrine of transmutation and the unitary theory of property classification
- § 11:10 Time of classification
- § 11:11 Presumptions on classification
- § 11:12 Gifts, bequests, and inheritances
- § 11:13 Increases in value of separate property
- § 11:14 Income from separate property
- § 11:15 Property acquired in exchange for separate property
- § 11:16 Pensions and deferred compensation benefits
- § 11:17 Disability benefits
- § 11:18 Personal injury and workers' compensation awards
- § 11:19 Professional goodwill
- § 11:20 Licenses and degrees
- § 11:21 Agreement of the parties
- § 11:22 Third party claims in property
- § 11:23 Valuation of property: In general

- § 11:24 Valuation of property: Date of valuation
 - § 11:25 Valuation of property: Proof and evidence
 - § 11:26 Factors in equitable distribution: In general
 - § 11:27 Equal presumption vs. equal starting point
 - § 11:28 Application of specific statutory factors
 - § 11:29 Fault as a factor
 - § 11:30 The catchall factor
 - § 11:31 Consideration of post-separation or post-divorce events
 - § 11:32 Powers of court in ordering monetary award, division or transfer of property
 - § 11:33 Partition of property
 - § 11:34 Division of pension benefits; QDROs
 - § 11:35 Marital debt
 - § 11:36 Dissipation, encumbrances, and waste of assets
 - § 11:37 Use of marital home
 - § 11:38 Judgments and decrees
 - § 11:39 Tax effects of distribution
 - § 11:40 Enforcement of decrees; Contempt power
 - § 11:41 Equitable distribution based upon foreign decree
 - § 11:42 Effects of post-divorce bankruptcy on equitable distribution awards
 - § 11:43 Relationship between equitable distribution decree and spousal/child support awards
 - § 11:44 Appeals
- Appendix 11A. Comments and Analysis of Amendments to Va. Code Ann. § 20-107.3 Relating to Definition of Marital and Separate Property in Equitable Distribution Proceedings

CHAPTER 12. TAX CONSEQUENCES OF DIVORCE

- § 12:1 Introduction
- § 12:2 Alimony or spousal support payments
- § 12:3 Dependency exemptions for children and child tax credit
- § 12:4 Transfer of property
- § 12:5 Deductibility of legal fees
- § 12:6 Other related tax issues

PART III. PATERNITY, ADOPTION, AND CHILD CUSTODY ISSUES

CHAPTER 13. PATERNITY

- § 13:1 Introduction

TABLE OF CONTENTS

- § 13:2 Presumption of paternity
- § 13:3 Children of void or voidable marriages
- § 13:4 Paternity actions for children born out of wedlock:
Jurisdiction
- § 13:5 Paternity actions: Substantive grounds
- § 13:6 Scientific testing in paternity proceedings
- § 13:7 Inheritance rights
- § 13:8 Artificial insemination
- § 13:9 Custody issues
- § 13:10 Claims and defenses in paternity suits

CHAPTER 14. ADOPTION AND TERMINATION OF PARENTAL RIGHTS

- § 14:1 Introduction
 - § 14:2 Voluntary limitation or relinquishment of parental
rights
 - § 14:3 Involuntary limitation or termination of parental
rights
 - § 14:4 Direct placement adoptions
 - § 14:5 Agency adoption
 - § 14:6 Adoption of children with special needs
 - § 14:7 Close Relative Adoption
 - § 14:8 Adult adoption
 - § 14:9 Consent issues
 - § 14:10 Equitable adoption
 - § 14:11 Single parent adoption
 - § 14:12 Homosexual parent adoption
 - § 14:13 Miscellaneous factors considered
 - § 14:14 Foster parents' rights
 - § 14:15 Contact and communication after adoption
 - § 14:16 Inheritance rights
 - § 14:17 Access to adoption records
 - § 14:18 Foreign adoptions
 - § 14:19 Adoption practice and procedure
 - § 14:20 Miscellaneous aspects of appellate practice
- Appendix 14A. Procedure for Termination of Parental Rights

CHAPTER 15. CHILD CUSTODY AND VISITATION

- § 15:1 Introduction
- § 15:2 Virginia's statutory custody and visitation scheme for
minor children
- § 15:3 Pendente lite custody awards

- § 15:4 Habeas corpus actions
- § 15:5 Uniform Child Custody Jurisdiction and Enforcement Act
- § 15:6 Parental Kidnapping Prevention Act of 1980
- § 15:7 State child custody kidnapping statutes and related federal laws
- § 15:8 Factors in determining child custody
- § 15:9 Visitation rights
- § 15:10 Custody modification: Change in circumstances and child's best interests
- § 15:11 Removal of the child to another location
- § 15:12 Change of name
- § 15:13 Enforcement of custody decrees
- § 15:14 Child custody, pleading and practice, and trial considerations
- § 15:15 Virginia Military Parents Equal Protection Act

PART IV. FORMS

CHAPTER 16. PLEADING AND PRACTICE FORMS

- § 16:1 Introduction

A. MARITAL AGREEMENTS

- § 16:2 Sample nonmarital agreement
- § 16:3 Sample premarital agreement: Long form
- § 16:4 Sample separation agreement checklist and agreements
- § 16:5 Sample reconciliation agreement

B. INTAKE FORMS, WORKSHEETS, AND RETAINER AGREEMENT

- § 16:6 Sample family law intake form
- § 16:7 Sample support form: Income and expense worksheet
- § 16:8 Sample child support guidelines worksheet
- § 16:9 Equitable distribution of marital property: Summary charts and worksheet
- § 16:10 Sample family law retainer agreement

C. COMPLAINTS

- § 16:11 Sample complaint alleging adultery; Demurrer and order

TABLE OF CONTENTS

- § 16:12 Complaint alleging cruelty; Temporary restraining order; Answer and counterclaim
- § 16:13 Complaint alleging separation grounds
- § 16:14 Complaint alleging separation grounds with a nonresident defendant

D. DISCOVERY

- § 16:15 General interrogatories
- § 16:16 Interrogatories for a business or medical practice
- § 16:17 Interrogatories in an adultery/wiretap case
- § 16:18 Request for production of documents
- § 16:19 Motion to compel; Order to compel discovery

E. NOTICES, MOTIONS, AND ORDERS

- § 16:20 Notice of deposition
- § 16:21 Stipulation appointing judge pro tempore pursuant to Va. Code § 17.1-110
- § 16:22 Order appointing judge pro tempore
- § 16:23 Notice of commissioner's hearing
- § 16:24 Notice for taking of depositions for final decree of divorce in lieu of ore tenus or commissioner's hearing
- § 16:25 Affidavit and petition for rule to show cause
- § 16:26 Rule to show cause
- § 16:27 Order of dismissal
- § 16:28 Mutual restraining order
- § 16:29 Protective order
- § 16:30 Ex parte order preventing waste of assets pendente lite
- § 16:31 Motion for different valuation date per Va. Code Ann. § 20-107.3(A)
- § 16:32 Emergency petition for change in custody
- § 16:33 Order of withdrawal
- § 16:34 Spousal and child support order
- § 16:35 Child custody and child support order: Contested case
- § 16:36 Affidavit pursuant to Va. Code Ann. § 20-146.20(A)
- § 16:37 Order of child support only
- § 16:38 Payroll deduction order
- § 16:39 Final decree of divorce
- § 16:40 Final divorce decree: Bifurcation of property
- § 16:41 Final divorce decree: Equitable distribution award with credits for dissipation and waste of assets
- § 16:42 Final divorce decree: Equitable distribution award with transmutation findings

- § 16:43 Final divorce decree: With QDRO provisions
- § 16:44 Qualified domestic relations order
- § 16:45 Qualified medical child support order

F. ADOPTION FORMS

- § 16:46 Petition for adoption: Agency adoption
- § 16:47 Order sealing the court file
- § 16:48 Petition for adoption: Private placement
- § 16:49 Petition for adoption: Stepparent adoption
- § 16:50 Consent to adoption: Birth father
- § 16:51 Consent to adoption: Birth mother
- § 16:52 Consent to adoption: Child placing agency
- § 16:53 Order for hearing pursuant to Va. Code Ann. § 63.2-1202
- § 16:54 Interlocutory adoption order pursuant to Va. Code Ann. § 63.2-1209
- § 16:55 Order of publication pursuant to Va. Code Ann. § 63.2-1203
- § 16:56 Adoption order of reference pursuant to Va. Code Ann. § 63.2-1208
- § 16:57 Final adoption order pursuant to Va. Code Ann. §§ 63.2-1208, 63.2-1243, and 63.2-1244
- § 16:58 Final adoption order pursuant to Va. Code Ann. § 63.2-1210
- § 16:59 Final adoption order pursuant to Va. Code Ann. § 63.2-1213
- § 16:60 Final adoption order pursuant to Va. Code Ann. § 63.2-1241(A)
- § 16:61 Final adoption order pursuant to Va. Code Ann. § 63.2-1241(B)
- § 16:62 Final adoption order pursuant to Va. Code Ann. § 63.2-1241(C)
- § 16:63 Adult Adoption—Final Order of Adoption
- § 16:64 Petition for adoption of adult child
- § 16:65 Consent under oath by adult adoptee

Table of Laws and Rules

Table of Cases

Index