

It Matters Where Marriage Ends

Maryland, Virginia, and the District differ on divorce basics.

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Although they're kissing cousins geographically, Maryland, Virginia, and the District of Columbia offer significantly different law to divorcing couples. On the most basic issues of residency requirements, grounds for divorce, division of property, and child custody, the three jurisdictions sometimes agree and sometimes do not. Where a marriage ends can substantially affect how the marriage ends.

RESIDENCY

For any court to exercise jurisdiction over a divorce case, the parties must meet the appropriate residency requirements. And residency requirements are often affected by the grounds for the divorce.

Let's begin with Maryland. If the grounds for divorce occurred outside the state of Maryland, either party to the action needs to have been a resident of Maryland for at least one year immediately preceding the filing of the complaint. If the grounds for divorce occurred within the state, Maryland must be the permanent domicile of one party to the action. For example, if one spouse committed adultery, but that adultery actually took place outside Maryland, there is a one-year residency requirement.

The District and Virginia have a six-month residency requirement. One party must be domiciled in and a bona fide resident of the jurisdiction. Indicia of domiciliary and bona fide residence are the filing of local or state taxes, voting, and obtaining a local driver's license.

GROUND FOR DIVORCE

Once the residency requirement is met, of course, a spouse still must have grounds for divorce before he or she may file a complaint.

Maryland has fault and no-fault grounds for divorce. The no-fault grounds are as follows: mutual and voluntary separation for at least 12 consecutive months where there is no reasonable expectation of a reconciliation; or separation, even though not voluntary, for two years. The separation must be continuous, without interruption, and without cohabitation. Additionally, the parties must actually live in separate residences to meet the "separate and apart" requirement. Unlike other jurisdictions, the divorcing couple in Maryland may not remain under the same roof.

Maryland has the following fault grounds for divorce: adultery, desertion, conviction of a felony or misdemeanor, insanity, cruelty of treatment, and excessively vicious conduct. Desertion may be actual or constructive, and is generally

defined as one party leaving the marriage without justification with the intention of terminating the relationship. The desertion must be continuous for at least 12 consecutive months preceding the filing of the complaint for divorce. It must also be deliberate and final.

In the District, only two grounds exist for a divorce: mutual and voluntary separation for six consecutive months where there is no reasonable expectation of a reconciliation; or separation, even though not mutual and voluntary, for one year. In either case, the separation must be continuous, without interruption, and without cohabitation.

However, unlike Maryland, a husband and wife in the District may live under the same roof and yet be considered living "separate and apart" under the statute. To meet the separate-and-apart requirement while living in the same house, the parties must live and pursue separate lives. There is no hard-and-fast definition of "separate lives," but there are many indicia that the court considers in determining whether this requirement has been met, such as whether the parties continue to sleep in the same bed, whether they eat meals together, whether they go out socially as husband and wife, and whether their finances are intertwined.

Virginia also has fault and no-fault grounds for divorce. Separation for one year, without interruption and without cohabitation, constitutes the no-fault grounds. If the parties have entered into a settlement agreement resolving all issues arising out of the marriage and there are no minor children, the parties may apply for a divorce after six months of consecutive separation. In certain instances, Virginia may also recognize the concept of living separate and apart while remaining under the same roof. But this concept is not provided for by statute; it is a creature of case law.

The fault grounds for divorce in Virginia are adultery, sodomy or buggery committed outside the marriage, conviction of a felony, cruelty with separation that continues for 12 months, reasonable apprehension of bodily harm, and desertion for 12 months.

In addition, Maryland, the District, and Virginia all provide for other forms of separation, including a "limited divorce" (Maryland), "legal separation" (District), and "divorce from bed and board" (Virginia). The requirements for these are different than the requirements for absolute divorce. While obtaining one of these limited forms of legal separation does not sever the ties of marriage, it may allow the court to obtain jurisdiction over and rule on certain issues such as child custody, child support, and spousal support.

DISTRIBUTION OF PROPERTY

In all three jurisdictions, the court has the authority to equitably distribute marital property. Generally, marital property is defined as all property owned by the husband and wife other than property acquired prior to the marriage; property excluded by valid prenuptial or postnuptial agreement; property acquired by

valid gift; property acquired by "bequest, devise, or descent"; or property acquired in exchange for other such nonmarital or separate property.

In Maryland and Virginia, any property directly traceable to separate property sources is also nonmarital property. If marital and separate property have been commingled, but a party can still directly trace the separate property used to acquire the asset, a portion of that asset may be considered separate property. For example, if a spouse purchased a boat by paying half of the cost with an inheritance and half with marital funds, the boat may be partly marital and partly nonmarital.

In Maryland and the District, marital property continues to accumulate until the date of divorce. In Virginia, there is a statutory presumption that marital property ceases to accumulate on the date of the last separation between the parties, if at least one of the parties intended that the separation be permanent. This difference in the law among the three jurisdictions often results in significant disparities in the size of the marital estate.

In distributing marital property, courts in Maryland do not have the power to change title to particular assets (except with respect to retirement and deferred compensation plans). Therefore, property solely titled in one spouse's name cannot be disturbed by a court.

In Virginia, courts may award jointly titled property to one or both spouses, or may order it sold. Property titled in one spouse's name will, as in Maryland, remain that party's property.

In distributing the marital property, courts in all three jurisdictions may enter a monetary award as an adjustment of the equities. The monetary award will usually require one spouse to make cash payments to the other spouse in a manner and amount that the court deems just and equitable. Thus, while courts in Maryland and Virginia will not force a party to sell prop-

erty titled solely in his or her own name, a party may have to sell that property to satisfy the requirements of the monetary award.

Courts in the District have the power to change title to marital property, irrespective of whether it is titled solely in one party's name or jointly between the parties. Therefore, D.C. courts may simply choose to retitle property in an equitable manner.

CHILD CUSTODY

In determining the custody of a minor child or children, courts in all three jurisdictions have wide latitude to fashion an appropriate custodial arrangement. A court may award legal custody, which is the right to make decisions regarding the child's health, education, and general welfare; and the court may award physical custody, which determines where the child will live.

In making these determinations, the courts look to the "best interest of the child." This standard is universal.

Factors that the court uses to determine the care and custody of a child include, but are not limited to, the wishes of the parents; the wishes of the child (where the child is of an appropriate age and maturity); the relationship of the child with the parents, siblings, and any other person who may emotionally or psychologically affect the child; the child's adjustment to home, school, and community; the mental and physical health of all involved; any evidence of an intrafamily offense; the capacity of the parents to communicate and reach shared decisions; the prior involvement of each parent in the child's life; the demands of parental employment; and the parents' ability to financially support a joint custody arrangement.



The major difference between the law in the District and the law in Maryland and Virginia is that there is a presumption under D.C. law that joint custody is in the best interest of the child. What exactly constitutes joint custody varies from case to case. But if one parent believes that sole custody is in the child's best interest, in the District he or she must first rebut the joint custody presumption.

In short, the location of a couple's residence may have a very significant effect on the outcome of a divorce case. Whether divorce is being pursued in Maryland, Virginia, or the District can determine how fast a final separation is reached, how the couple must live in the intervening months, what kinds of issues can be raised as grounds for the divorce, who keeps what property, and how minor children will be raised. Perhaps the first and best advice, then, is to consult with an experienced family lawyer to guide one through these troubling decisions.

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