POCKET GUIDE *to* Divorce *in* West Virginia

G. Wayne Van Bibber

- Child Support & Custody
- Alimony & Spousal Support
- Division of Assets & Debts

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G. Wayne Van Bibber & Associates PLLC

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Introduction

I have spent the last 20 years helping people through one of the most painful experiences known to mankind. Divorce.

During that time I have handled thousands of divorces and witnessed the pain and fear that everyone experiences during the process. As a person who has experienced the death of a loved one and a divorce, I believe divorce is often more painful. When a loved one dies, your friends and family gather around you and offer support. The healing process is natural and the pain is somewhat reduced with each day that passes.

In a divorce, the loyalty of friends and family is often divided and we lose crucial members of our support network. In addition, during a divorce your spouse can continue to inflict emotional pain on you for several months while the divorce drags on, essentially ripping the scab off each time you start to heal. This process causes grief-stricken clients to make bad decisions.

In the beginning, when I was a young attorney, I used to ask myself when I would get some "normal" clients. After going through my own painful divorce I finally understood. It is impossible to act normal when you feel like you are being ripped apart.

I have dedicated my career to helping my clients survive and thrive after divorce. Although divorce can be emotionally and financially devastating, a competent and caring attorney can get you through the process and make sure your legal rights are protected.

The following is a brief summary of West Virginia Divorce law and my observations over the years. It is not intended as a substitute for legal counsel and I urge you to consult with an experienced lawyer before proceeding with a divorce.

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Who May File In West Virginia?

If the parties were married in West Virginia, they may file for divorce in the state as long as one of the parties lives in the state at the time suit is filed. There is no requirement that the parties live in West Virginia for one year prior to filing. If the parties were not married in West Virginia, one of the parties must be a bona fide resident of the state for one year immediately preceding the filing of the action.

If the ground for divorce is adultery, one of the parties must be a bona fide resident at the commencement of the action. However, if the *Respondent* (non-filing party) is a nonresident and cannot be personally served within West Virginia, the *Petitioner* (filing party) must have been an actual bona fide resident for at least one year immediately preceding the commencement of the action.

In What County Do I File?

Either party to a marriage may initiate an action for divorce. According to West Virginia law the court should not consider who filed first and the issue is not relevant to any of the decisions the court must make.

If the *Respondent* is a resident of the state, the *Petitioner* has an option to file a *petition for divorce* in the county where the parties last cohabited or in the county where the *Respondent* resides. If the *Respondent* is not a resident, the *Petitioner* has the option to bring the action in the county in which the parties last cohabited or in the county where the *Petitioner* resides.

Should I Change My Name?

Upon entry of the divorce a party may request to keep their current married name, maiden name or previous married name. The other spouse has no say in this decision. There is no wrong choice. It is completely up to you. If you wish to change your name you must submit a copy of your birth certificate and social security card to the court before entry of the final order.

What Grounds For Divorce Should I Use?

In West Virginia, the available grounds for divorce are:

1. Irreconcilable differences;
2. Voluntary separation, where the parties have lived separate and apart in separate places of abode without any cohabitation and without interruption for one year;
3. Cruel or inhuman treatment by either party against the other, including reasonable apprehension of bodily harm, false accusation of adultery or homosexuality, or conduct or treatment which destroys or tends to destroy the mental or physical well-being, happiness and welfare of the other and render continued cohabitation unsafe or unendurable;
4. Adultery;

5. Either of the parties, subsequent to the marriage, has been convicted of a felony and the conviction is final;
6. Permanent and incurable insanity, if the party has been confined in a mental hospital or other similar institution for a period of not less than three consecutive years immediately preceding the filing of the complaint and the court has heard competent medical testimony that the insanity is permanently incurable;
7. Habitual drunkenness of either party subsequent to the marriage;
8. The addiction of either party, subsequent to the marriage, to the habitual use of any narcotic or dangerous drug;
9. Willful abandonment or desertion for six months; or
10. Abuse or neglect of a child of the parties or one of the parties, meaning any physical or mental injury inflicted on the child and/or willful failure to provide, by party who has legal responsibility for the child, the necessary support, education as required by law, or medical, surgical or other care necessary for the well-being of the child.

You may allege more than one ground for divorce and often times multiple grounds are alleged in a petition. A divorce may not be granted on the grounds of adultery if the offense occurred more than three years earlier. It is a defense to adultery if the innocent party forgave the offender and resumed cohabitation and sexual relations after full knowledge of the offense, so long as the guilty party does not commit further adulterous acts. It is also a defense if the complaining party has also engaged in adulterous conduct.

In West Virginia the overwhelming majority of divorces are granted on the grounds of irreconcilable differences. This is West Virginia's version of a no fault divorce. Choosing to proceed on irreconcilable difference does not mean you are agreeing on anything other than the reason for the divorce. The parties are still free to contest all issues and present their evidence.

By agreeing to irreconcilable differences, the parties speed up the process and save time and money. Often times the parties are pressured by the courts to agree to irreconcilable differences. However, you need to remember that the grounds are merely the technical legal authority for the granting of the divorce and this choice does not limit your ability to bring evidence of bad conduct on the part of your spouse. For example, the divorce could be granted on the grounds of irreconcilable differences and the parties could still present evidence of adultery or cruelty to increase or decrease an alimony award or justify an award of attorney fees.

In the end, the choice is yours and no one can force you to proceed under any particular grounds. Often times when people choose to proceed on fault grounds such as adultery, the choice is based on factors outside the case, such as religious beliefs.

What Is An Annulment?

In certain cases, the court may grant an annulment and declare the marriage null and void. This is not a divorce and is essentially saying the parties were never legally married. There are several grounds for annulment.

If a party to a marriage is under the age of consent (18) and he/she has not obtained the necessary legal consent from a parent, guardian or court, the marriage is voidable, but it is valid until the

marriage is actually annulled. Alternatively, the marriage may be ratified and may become completely valid and binding when the underage party reaches the age of consent. An action to annul or affirm a marriage may not be brought unless one of the parties is a resident of the state at the time the action is commenced. However, if neither party is a resident of the state, the action to annul may still be brought provided the marriage was performed in West Virginia and the parties have not established a matrimonial domicile elsewhere.

If the *Respondent* to an action for annulment or affirmation is a resident of the state, the *Petitioner* may bring the action in either the county where the parties last cohabited or in the county where the *Respondent* resides.

If the *Respondent* is not a resident, the *Petitioner* may bring the action in either the county where the parties last cohabited or in the county where the *Petitioner* resides.

If neither party is a resident of the state, the action must be brought in the county where the marriage was performed.

The following are voidable marriages and are void from the time they are so declared by a judgment order of nullity:

- Bigamy;
- Marriages prohibited by law due to blood relation or affinity between the parties;
- Either party to the marriage was an insane person, idiot or imbecile;
- Either party to the marriage was afflicted with a venereal disease;
- Either party was incapable, because of natural or incurable impotency of the body, of entering into the marriage state;
- Either party was under the age of consent, and had not obtained the necessary consent;
- Either party had been, prior to the marriage and without the knowledge of the other party, convicted of an infamous offense;
- A marriage solemnized when, at the time of the marriage, the wife, without the knowledge of the husband was with child by some person other than the husband;
- The wife had been, prior to the marriage, notoriously a prostitute and the husband was not aware of this; or
- A marriage solemnized when, prior to the marriage, the husband, without the knowledge of the wife, had been notoriously a licentious person.
- An action for annulment may not be brought in the following cases:
- Either party was naturally or incurably impotent of the body, but the other party had knowledge of the incapacity at the time of the marriage;
- If the cause is fraud, force or coercion, but the injured party, after knowledge of the facts has by acts or conduct confirmed the marriage;
- If the cause is affliction with a venereal disease existing at the time of marriage, the person may not bring the action if he/she has since been cured, and the non-

afflicted person may not bring the action if after his/her spouse was cured, he/she has by acts or conduct confirmed the marriage;

- If the cause is the nonage of either party, the underage party may not bring the action if he/she has by acts or conduct, confirmed the marriage after attaining the age of consent;
- If the cause is the lack of consent by either party, the party who did consent or bring about the marriage may not bring the action;
- If the cause is that either party has been convicted of an infamous offense prior to the marriage, if the injured party cohabited with the spouse after learning of the offense, he/she may not bring the action;
- If the cause is that the wife was pregnant by someone other than the husband, or had been a prostitute, if the husband has cohabited with the wife after learning of the fact, he may not bring the action; or
- If the cause is that the husband was notoriously a licentious person prior to the marriage, if the wife has cohabited with the husband after learning of the fact, she may not bring the action.

How Will The Court Divide The Assets And Debts?

This process is called equitable distribution. The court first classifies assets as either marital or separate. Marital assets are those assets obtained during the marriage. These include purchases made and income earned during the marriage. Whose name appears on a title is generally irrelevant. Assets owned prior to the marriage or acquired during the marriage by gift or inheritance are considered separate assets.

Separate assets are not subject to division and remain the property of the original owner. A separate asset may be separate but may have a marital component. For example, if one spouse owns a house prior to the marriage and makes payments with marital funds during the marriage, the reduction in the principal amount of the debt may be a marital asset even though the house remains a separate asset. An asset can also be converted to marital; for example, if a spouse's name is added to a deed or title.

Another example is depositing separate funds into a marital bank account. An increase in the value of a separately owned business that is caused by the efforts of a spouse during the marriage could create a marital interest in the amount of the increase. Court awards for pain and suffering in an injury case are also separate property. However, awards for lost wages are generally marital as they are a replacement for lost income that would have been marital. The assets of the parties are presumed to all be marital and a party claiming an asset is separate must prove it.

Once the court has classified the assets and debts, it must distribute them. In the absence of an agreement to the contrary or unusual circumstances, the court will divide the marital assets and debts equally.

If the parties have a separation agreement, the court will divide the marital property in accordance with this agreement unless the court finds the following:

- That the agreement was obtained by fraud, duress or other unconscionable conduct by one of the parties;
- That the parties, in the separation agreement, have not expressed themselves in terms which, if incorporated into a judicial order, would be enforceable by a court in future proceedings; or
- That the agreement is so inequitable as to defeat the purpose of equitable and fair property distribution, and this agreement was inequitable at the time it was executed.

Although it is extremely rare, the court may make an unequal division of marital assets considering the following:

- The extent to which each party has contributed to the acquisition, preservation and maintenance, or increase in value of marital property by monetary contributions, including employment income and other earnings and funds which are separate property;
- The extent to which each party has contributed to the acquisition, preservation and maintenance or increase in value of marital property by nonmonetary contributions, including homemaker services, child care services, labor performed without compensation or inadequate compensation in a family business or other business entity where the parties have an interest, labor performed in the actual maintenance or improvement of tangible marital property, labor performed in the management or investment of assets which are marital property;
- The extent to which each party, during the marriage, may have conducted himself/herself so as to dissipate or depreciate the value of the marital property of the parties. This is known as waste, and a good example would be where one party spends marital funds on gambling or an affair. In that instance a judge may award a guilty party less than fifty percent of the marital assets.

I have practiced in West Virginia for 20 years and have been involved in thousands of divorces. It is very rare for the court to deviate from a fifty-fifty split. After considering all of the foregoing the court will proceed to:

- Determine the net value of all marital property of the parties;
- Designate the property which constitutes marital property, and define the interest in this property to which each party is entitled, as well as the value of their respective interest in said property;
- Designate the property which constitutes separate property of the respective parties or the separate property of their children;
- Determine the extent to which marital property is susceptible to division in accordance with the findings of the court as to the respective interests of the parties;

- In the case of any property which is not susceptible to division, ascertain the projected results of a sale of such property;
- Ascertain the projected effect of a division or transfer of ownership of income-producing property, in terms of the possible pecuniary loss to the parties or other persons which may result from an impairment of the property's capacity to generate earnings; and
- Transfer title to the component parts of the marital property that may be necessary to achieve an equitable distribution of the marital property.

What About A Marital Business Or Professional Practice?

Generally a marital business is awarded to the spouse who has been more involved in operating the business. Marital businesses are to be classified as marital or separate property and distributed according to the same principles as other assets. However, it is often necessary to hire a specialized CPA called a Certified Evaluation Analyst (CVA) to establish a value for the business. These cases are very complicated and it is crucial to hire the best attorney and expert available in your area.

The two most popular ways to value a business are the book value method and excess earnings approach. Generally, the book value method is very unfavorable to the non-owner spouse and is basically the liquidated value of the business. It is in essence a hypothetical closing of the business and is the value of business assets minus business debts. This obviously results in the lowest possible value and is only appropriate in cases where a business is upside down or failing.

The most popular and appropriate method employed to value a profitable ongoing business is the excess income approach. Here the CVA examines the books of the business to determine things such as accounts receivable and the income stream of the business over a period of years. One component of this approach that is often overlooked by pro-se (self-represented) litigants or inexperienced attorneys is the capitalization rate.

The CVA chooses a percentage that they believe correlates to the risk of failure for the business. The higher the number the greater the risk of failure. A CVA can cause the value of a business to plummet simply by choosing a higher capitalization rate. These experts are afforded a lot of discretion and values can vary wildly depending on the interest of the party who hired the expert. It is important to scrutinize this number and challenge it when necessary.

Another hotly contested issue in business valuation cases utilizing the excess earnings approach involves personal good will. An ongoing business can have enterprise good will and personal good will.

Personal good will is the value of the business that is attributable to the personal reputation or skill of the owner and may not be transferable to a buyer. For example, a skilled heart surgeon cannot transfer his or her skilled hands to a willing buyer. This is known as professional good will. The existence of professional good will is based on the fact that clients come to the individual, as opposed to the firm. This may be based on the individual's skills, knowledge, reputation, personality, and other factors. The implied assumption is that if this individual moved to another firm, the clients would go with him or her.

Personal good will is not a marital asset. Accordingly, the owner/manager spouse may tend to exaggerate the impact of their personal good will. However, it is important to remember that almost all businesses have some level of enterprise good will which is a marital asset.

A good example of enterprise good will would be a highly recognized franchise like McDonald's. When we see a sign for McDonald's we are not concerned with who owns that location, but are instead attracted by the franchise reputation. The owner of a McDonald's would have a hard time arguing that the value should be discounted because of the personal good will of the owner.

All you need to remember about personal good will is this: the non-owner will argue that there is little to no personal good will while the owner or manager will argue that almost all of the value is personal good will. In most cases the truth is somewhere in the middle. The issue of valuing a marital business is very complex and must be approached with a great deal of caution. If your lawyer is not familiar with valuing businesses it could cost you hundreds of thousands of dollars.

Like other assets, a business can be marital or separate property, or a hybrid consisting of both separate and marital components. Take, for example, a scenario where husband owns a car lot that was a gift from his father. As a gift, it would be husband's separate property. Now, suppose husband actively works in the business during the marriage and through his marital efforts increases the value of the business.

Marital efforts that cause an increase in value create a marital component to the separately-owned business. This is called an active increase. Conversely, a passive increase would be where the business increases in value due to market forces beyond the parties' control. For example, if wife had a separately owned restaurant that was hers before the marriage and a manufacturing plant was built in the neighborhood. This may dramatically increase the lunch crowd and value of the business. However, this increase was not caused by the post marriage efforts of the wife and was a simply a fortunate market event. This would be classified as a passive increase and any increase in value would remain her separate property.

What Should I Do To Get Ready For A Divorce?

If you are contemplating a divorce, it is crucial to get your hands on as many documents as you can. This is especially important for accounts that are not in your name. Copy all important documents involving financial accounts and assets and keep them in a safe place beyond the reach of your spouse. Do not hide them in the house. Keep them in a safe deposit box, at the office or at a friend's house. Photograph or video the entire contents of your home. Open cabinets, pull out drawers and photograph or video the contents. Photograph the contents of the garage, the tool box and gun safe. Things have a way of disappearing once a divorce starts.

How Does The Court Determine Spousal Support/Alimony?

These terms are used interchangeably. Alimony may be paid as a lump sum, as periodic installments, or both, for the maintenance of the other party. It is important to note that West Virginia has no alimony formula and the duration and amount of an alimony award can vary drastically from county to county and based upon the personal beliefs of a particular judge. This is unfortunate and causes divorces to take longer and cost more because the parties have no real

guidance as to a fair and reasonable award. This reduces the likelihood of a settlement on the issue of alimony.

Spousal support is divided into the following four classes:

1. Permanent spousal support which lasts until the recipient dies or remarries;
2. Temporary spousal support which lasts for a short period of time;
3. Rehabilitative spousal support which lasts for a specified time and is designed to help the recipient become self-sufficient; and
4. Spousal support in gross which is a specified one-time payment.

Rehabilitative spousal support is to be awarded for a limited period of time to allow the recipient spouse to become gainfully employed, when she/he demonstrates the potential for self-support that could be developed through rehabilitation, training or academic study.

In determining whether spousal support is to be awarded, and if so, the amount, the court shall consider and compare the fault or misconduct of either or both of the parties and the effect of the fault or misconduct as a contributing factor to the deterioration of the marital relationship.

The court shall consider the following factors in determining the amount of spousal support:

- The length of the marriage;
- The period of time during the marriage when the parties actually lived together as husband and wife;
- The present employment income and other recurring earnings of each party from any source;
- The income-earning abilities of each of the parties, based upon such factors as educational background, training, employment skills, work experience, length of absence from the job market and custodial responsibilities for children;
- The distribution of marital property to be made under the terms of the separation agreement or by the court, with regards to how the distribution affects or will affect the earnings of the parties and their ability to pay or their need to receive spousal support, child support or separate maintenance;
- The ages and the physical, mental and emotional condition of each party;
- The educational qualifications of each party;
- Whether either party has foregone or postponed economic, education or employment opportunities during the course of the marriage;
- The standard of living established during the marriage;
- The likelihood that the party seeking spousal support, child support or separate maintenance can substantially increase his/her income-earning abilities within a reasonable time by acquiring additional education or training;
- Any financial or other contribution made by either party to the education, training, vocational skills, career or earning capacity of the other party;

- The anticipated expense of obtaining the education and training described above to increase the spouse's income-earning abilities;
- The costs of educating minor children;
- The costs of providing health care for each of the parties and their minor children;
- The tax consequences to each party;
- The extent to which it would be inappropriate for a party, because that party will be the custodian of a minor child or children, to seek employment outside the home;
- The financial need of each party;
- The legal obligations of each party to support himself/herself and to support any other person;
- Costs and care associated with a minor or adult child's physical or mental disabilities; and
- Any other factors that the court deems necessary or appropriate to consider in order to arrive at a fair and equitable grant of spousal support, child support or separate maintenance.

Although the court is required to consider all of the foregoing factors, the author has been told by many judges that after they have determined that alimony should be awarded, the primary focus is on the payor's ability to pay and the payee's financial need. In other words, hinting that the financial reality of the parties may overshadow issues such as fault.

How Does The Court Determine Child Custody?

The word custody has become politically incorrect in West Virginia and has been replaced with shared parenting. In the past one parent had custody and all legal decision-making authority for a child. The other parent had visitation and minimal rights.

Under the current scheme, both parents generally have shared decision-making authority and must agree on major decisions such as medical care, religion and education. It is important to note that shared parenting does not necessarily mean the child will spend an equal amount of time with both parents. The number of nights a child spends with a parent is supposed to reflect the level of involvement and time the parent spent with the child when the parties were together as a family unit.

The best interest of children is the court's primary concern in allocating custodial and decision-making responsibilities between parents who do not live together.

The courts generally believe a child's best interest will be served by assuring that the minor children have frequent and continuing contact with parents who have shown the ability to act in the best interest of their children. The courts endeavor to educate parents on their rights and responsibilities and the effect their separation may have on children, to encourage mediation of disputes and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or divorced.

The primary objectives for the best interests of the child are served by facilitating the following:

- Stability of the child;
- Parental planning and agreement about the child's custodial arrangements and upbringing;
- Continuity of existing parent-child attachments;
- Meaningful contact between a child and each parent;
- Caretaking relationships by adults who love the child, know how to provide for the child's needs, and who place a high priority on doing so;
- Security from exposure to physical or emotional harm; and
- Expeditious, predictable decision-making and avoidance of prolonged uncertainty respecting arrangements for the child's care and control.

Achieving fairness between the parents is a recognized secondary objective.

Unless otherwise resolved by agreement of the parents, or harmful to the child, the court shall allocate custodial responsibility so that the proportion of custodial time the child spends with each parent approximates the proportion of time each parent spent performing caretaking functions for the child prior to the parents' separation.

The form provided by the West Virginia Supreme Court regarding allocation of parenting time focuses on the two-year period prior to the parents' separation and requires the parents to disclose the percentage of time they performed various caregiving functions for the children. The court then attempts to craft a parenting plan that resembles the past allocation of time and responsibly as closely as possible.

In other words, if the parents were equally involved in the rearing of the children prior to separation, an equal division of parenting time is more likely after the divorce. If one parent performed eighty percent of the caretaking functions, that parent should have eighty percent of the time with the children after the divorce. However, each case is unique and must be evaluated in light of the best interest of the child. If either parent is unfit or unable to co-parent, shared parenting is not likely as it requires a high level of cooperation and communication.

The allocation of time can affect child support. If the parent paying child support has the child for more than 127 overnights per year they receive the extended shared parenting discount on their child support obligation. The higher the number of overnights the larger the discount. A parent receiving 182 overnights would receive a larger discount than the parent who had 128 overnights. A parent with 127 overnights or less would receive no discount.

The idea behind the discount is that a parent having extended time with a child is directly paying part of the child's expenses such as food and shelter. While this seems logical, it can lead to problems. A residential parent may not be as flexible for fear of losing child support. On the other hand, a parent who has traditionally not shown much interest in a child may push for a fifty-fifty plan in hopes of paying reduced child support. This is an ongoing problem that has not yet been solved by the courts.

What Is A Parenting Plan?

A parenting plan is simply a form that describes the parenting rights and responsibilities of each parent. Parents seeking an order for custodial responsibility or decision-making responsibility must file a proposed parenting plan with the court. Your proposed plan spells out what you want with regard to a residential schedule, holidays, vacations and other issues related to the child. Parents may file a joint plan if they are in agreement. The plan should include the following, to the extent known or reasonably able to be determined:

- Name, address and length of residence of any adults with whom the child has lived for one year or more, or for an infant under one year, any adults with whom the baby has lived since the baby's birth;
- Name and address of each of the child's parents and any other individuals with standing to participate in the action;
- A description of the allocation of caretaking and other parenting responsibilities performed by each person named above during the 24 months preceding the filing of a divorce action;
- A description of the work and child-care schedules of any persons seeking an allocation of custodial responsibility, and any expected changes to these schedules in the near future;
- A description of the child's school and extracurricular activities;
- A description of any existing limiting factors, including any restraining orders against either parent to prevent domestic or family violence, by case number and jurisdiction.

What Are Parent Education Classes?

Parent education classes are not intended to teach you to be a parent. The court assumes you are already well schooled in that regard. The purpose is to educate parents on how to co-parent effectively and reduce the stress put on children by their divorcing parents.

Topics such as communication and cooperation are explored. Another big topic is how to avoid putting children in the middle. The family court will require parties to an action for divorce involving a minor child to attend parent education classes. The court may establish sanctions for failure to attend. Each party must pay a small fee to attend the class. However, if a party is determined to be indigent and unable to pay, the court may waive the payment of the fee.

How Is Child Support Determined?

West Virginia uses the *Income Shares Model* to calculate child support obligations. The guidelines are structured so that child support will be related to the standard of living that children would enjoy if they were living in a household with both parents present. The state child support guidelines take into consideration the financial contributions of both parents.

A child support order is determined by dividing the total child support obligation between the parents in proportion to their income. The monthly Adjusted Gross Income (AGI) of both parents is used to determine the amount of child support to be ordered.

When determining the total child support obligation, the court shall add any unreimbursed child health care expenses, work-related child care expenses and other extraordinary expenses agreed to by the parents or ordered by the court to the basic child support obligation, and then subtract any extraordinary credits agreed to by the parents or ordered by the court.

The basic child support obligation table is presented in the West Virginia Code, and uses the parents' combined gross monthly income and the number of children for whom child support is being determined. For basic shared parenting cases, the total basic child support obligation is divided between the parents in proportion to their income. From this amount the payor's direct expenditures of any items which were added to the basic child support obligation will be subtracted to arrive at the total child support obligation.

Child support payments may continue past the date the child reaches the age of 18, provided the child is unmarried and residing with a parent, guardian or custodian and is enrolled as a full-time student in high school and making substantial progress towards a diploma, and the child has not reached the age of 20. In other words, when a child has reached 18 and graduated from high school, child support stops. West Virginia parents are not required to contribute to their children's college education.

Physically or mentally disabled children may be entitled to receive child support beyond the age of 18. In every action to establish child support, the court shall ascertain the ability of each parent to provide medical care for the children of the parties.

In any order establishing an award of child support, the court shall address the provision of medical support through one or more of the following methods:

- Determine whether appropriate medical insurance coverage is available to either parent, and if so, shall order the applicable parent to enroll the child in that coverage;
- If the court does not include the cost of the medical insurance in the child support calculation, it may order the other parent to contribute to the cost of the premium through an award of medical support.

If neither parent currently has access to appropriate medical insurance coverage, the court shall take the following actions:

- Order the parties to provide appropriate medical insurance coverage if it becomes available in the future;
- Order the payment of cash medical support by either or both parties, not to exceed 5% of the payor's gross income;
- It may consider the costs of uncovered medical expenses for the child, the relative percentages of the parties' incomes or the cost to the government to provide medical coverage for the child; or
- Set the cash medical support amount at zero if the support obligor's Adjusted Gross Income (AGI) is less than 200% of the federal poverty level.

What Is Legal Separation and Separate Maintenance?

An action for separate maintenance may be brought in the family court of any county where an action for divorce between the parties could be brought. An action for separate is identical to an action for divorce except no divorce is granted. Many couples seek this route for religious reasons or to secure future health insurance. A court can grant all of the same relief that is available in a divorce and the final order looks like a divorce order other than the word divorce is missing.

A property settlement or a separation agreement is a written agreement between the parties to a marriage in which they agree to live separate and apart from each other. A separation agreement may also address the following:

- Property rights of the parties;
- Child support;
- Allocation of custodial responsibility and the determination of decision-making responsibility for the children of the parties;
- Spousal support; and
- Issues arising from the marital rights and obligations of the parties.

In cases where the parties to an action for separation have not executed a separation agreement or the agreement is incomplete, insufficient or not approved by the court, the court shall proceed to resolve the outstanding issues between the parties.

The court shall consider the same factors in determining the amount of separate maintenance, if any, to be ordered, as those considered for awards of spousal support and child support, as a supplement to or in place of a separation agreement.

Conclusion

This book is a brief summary of West Virginia divorce law and does not recite the entire body of law governing divorce in West Virginia. Many of the firms necessary to complete a divorce are available free of charge at www.VanBibberLaw.com.

While it is possible to represent yourself in a divorce, the consequences can be devastating. I would strongly advise you to at least seek a consultation with an experienced attorney. If you feel you need help or have further questions please keep our firm in mind.

We are here for you!

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