

**GOING TO
FAMILY COURT
IN
WEST VIRGINIA**



DIVORCE

FILING FOR DIVORCE

To file for divorce in West Virginia, at least one of the parties must be an actual resident of the state and must have lived in West Virginia for at least one year immediately before the case is filed. There are two exceptions to this rule - one year residency is not required if the parties were married in West Virginia or if the grounds for divorce are adultery.

DIVORCE CASE

Petition for divorce is prepared and filed with the court. (This pleading contains information about the parties, the reason for the divorce and the relief that is being requested.)

Respondent is served with a summons and a copy of the petition. Respondent normally has 20 days to file an answer (written response filed with the circuit clerk's office) to the petition.

If either party is seeking temporary relief during the pendency of the action, a temporary hearing can be scheduled before the family court judge.

If there are minor children, the parties are to attend a parent education class. (This must be completed prior to the final hearing.) In addition, the parties are to file with the court a parenting plan which details how they will share parenting (both custodial time and decision-making responsibility) after the divorce. If unable to agree on a parenting plan, the parties will be referred

to mediation, unless “screened out” during pre-mediation screening due to domestic violence or other circumstances that may prevent the parties from successfully completing a mediation session. (Mediation is a structured problem-solving process in which the parents, assisted by a trained neutral third party, are provided an opportunity to reach an agreement on how to share parenting of their children after the divorce.) If the parties are unable to reach an agreement on their own, or with the help of a mediator, the court will decide for them.

Both parties are to complete a financial statement, which lists property and debts, as well as income. This form, available in the circuit clerk’s office, must be filed within 40 days after the petition for divorce is served on the respondent, but no less than 5 days before the hearing. Copies of the financial statement must also be served on the other spouse.

Prior to the trial, attorneys are to make a good faith effort toward settlement of the issues in dispute. Negotiations can occur between lawyers or at a pre-trial conference with the attorneys and the parties present.

Once the time period to file an answer has expired, negotiations have been attempted, and parent education and mediation (where required) have been completed, the case is ready for a final hearing on the family court judge’s docket. The case will be set as either an uncontested hearing (all issues have been resolved by agreement of the parties) or as a contested hearing (some or all issues are still in dispute and the court will need to decide those matters.)

Following the hearing, the family court judge will make findings of fact and issue a final order. If either party objects to the final order, they may appeal to the Circuit Court within 30 days of the entry of the final order OR to the West Virginia Supreme Court of Appeals (this appeal can be done only if both parties agree and must be done within 14 days of the entry of the final order.) The appeal process is not a new trial. Instead the circuit judge or justice reviews the findings, conclusions and order to determine if they are in compliance with the law and are supported by the evidence.

If no appeal is filed, the final order will be entered in the divorce case. Your divorce is not final until it is entered in the court records.

DIVORCE OR ANNULMENT?

A divorce is a determination by the court that your marriage is over. An annulment is a determination by the court that your marriage is void - for some reason, it was never legally valid (for example, you married someone who was still legally married to someone else.)

GROUND FOR DIVORCE

Irreconcilable differences, also called a no-fault divorce, mean the parties are not able to get along and cannot resolve their differences. To get a divorce on this basis, the petitioner must allege irreconcilable differences in the petition for divorce and the respondent must file a written answer admitting irreconcilable differences exist. Other grounds, such as living separate and apart for over 1 year, cruelty (mental or physical), adultery, habitual drunkenness or drug addiction, child abuse, conviction of a felony, insanity with confinement in a mental institution at least 3 years, or abandonment of at least 6 months, require a witness or other corroborating evidence.

DO I NEED A LAWYER?

You may get a divorce in West Virginia without an attorney, but your custody, property, and support rights may be better protected with the help of an attorney. Staff in the circuit clerk and the family court offices cannot give you legal advice.

PRE-MEDIATION SCREENING

WHAT IS PRE-MEDIATION SCREENING?

Pre-mediation screening is a process to determine whether there are issues such as domestic violence, substance abuse, or mental illness that may prevent the parties from working toward a voluntary agreement and talking openly about their concerns.

All cases referred to mediation by the family court must be screened by a trained screener.

WHAT IS MEDIATION?

Mediation is a process of working out differences between two or more parties by using the help of a third party called a mediator.

West Virginia Code §48-9-202(D)(3) provides that if the parents are unable to resolve issues and agree to a parenting plan, the court shall require mediation, unless the parties are “screened out” during the pre-mediation screening process due to domestic violence or other circumstances that may prevent the parties from successfully completing a mediation session.

THE SCREENING PROCESS

- Both parties will have separate appointments with the screener.
- The appointment will last approximately 30 to 45 minutes.
- Everything said in the screening appointment is confidential. All information is kept in a locked file cabinet and is never revealed to the Family Court Judge, the other parent, or either attorney, if represented.

- The screener will ask several questions to determine whether the case is appropriate for mediation.
- The screener's decision whether or not to send the parties to mediation will not be revealed until both screenings are completed.

WHAT HAPPENS AFTER SCREENING?

After screening, a status report will be sent to the parties and/or their counsel and the Family Court Judge disclosing only whether the case is appropriate.

If the case is referred to mediation, the parties and/or counsel will then receive a mediation order with further information from the family court.

If the case is not appropriate for mediation, the case will return to court for a contested hearing.

WHO IS THE SCREENER?

- The screener is a trained individual who has an understanding of the mediation process, domestic violence and substance abuse.
- The screener is usually the Family Case Coordinator in the Family Court office.
- The screener is not a lawyer; therefore, a screener will not give you legal advice.
- The screener is not a judge; therefore, a screener will not make any decisions other than whether or not the parties are appropriate for mediation.

FAMILY COURT MEDIATION

WHAT IS MEDIATION?

Mediation is a process of working out differences between two or more parties by using the help of a third party called a mediator.

HOW MEDIATION WORKS

Each party has the opportunity to talk and to be heard uninterrupted.

The parties talk directly to the mediator, and not to each other.

Parties will meet in a private setting.

Each session lasts approximately two hours. Sometimes more than one session is needed.

The mediator will work with the parties to develop a parenting agreement.

To participate, parties must agree to these ground rules:

Everyone will be treated with respect.

There will be full disclosure of information.

Everything said will be confidential.

Parties will make every effort to work toward a solution to their conflict.

WHO IS THE MEDIATOR?

The mediator is a trained, impartial person who will assist the parties in coming to an agreement that is mutually acceptable to those parties. The mediator will help identify issues, generate options, and design a resolution to the issues in dispute.

The mediator is not a judge; therefore, the mediator will make no decisions. All decisions are made by the parties.

The mediator is not a therapist; therefore, a mediator will not make efforts to mend the marriage.

The mediator is not a lawyer; therefore, a mediator will not give you legal advice.

The family court maintains a list of trained mediators. Cases are referred to a mediator on the list on a rotating basis.

Family court mediators must complete the following requirements:

- Bachelor's degree
- Forty hour course in divorce mediation training, including four hours of West Virginia family law and four hours of domestic violence instruction
- Observation of two divorce mediations
- Co-mediation of three mediations with an experienced mediator
- Liability insurance coverage

COURT ORDERED MEDIATION

West Virginia Code §48-9-202(a) (D)(3) provides that if the parents are unable to resolve issues and agree to a parenting plan, the court shall require mediation, unless the parties are “screened out” during the pre-mediation screening process due to domestic violence or other circumstances that may prevent the parties from successfully completing a mediation session.

The court orders mediation to help parents achieve an agreement on sharing custodial responsibility and decision-making responsibility for their children. This is your opportunity to reach an agreement that is best for you and your children; otherwise, the court will resolve the matter for you.

Court ordered mediation ONLY covers parenting issues. If you wish to use a mediator to resolve other issues, such as equitable distribution, you will need to make separate arrangements with the mediator. You may contact the Family Court office for a list of trained family mediators.

MEDIATION SCREENING

All cases referred to mediation by the family court must be screened by a domestic violence screener.

Both parties will have separate appointments with the screener. This appointment will last approximately 30 minutes.

After screening, a status report will be sent to the parties and/or their counsel. If the case is referred to mediation, the parties and/or counsel will then receive a mediation order with further information from the family court.

MEDIATED AGREEMENTS

If you are able to reach an agreement, the mediator will reduce it to writing.

You will have an opportunity to discuss the agreement with your attorney, before it is presented to the court.

An agreed parenting plan will be made a part of the court order, if the agreement has been reached knowingly, voluntarily and is not harmful to the child.

COSTS

Each party is assessed a portion of the mediation costs.

Fees are to be paid to the mediator at the time of the mediation session.

SHARED PARENTING (PREPARING A PARENTING PLAN)

When parents do not live together it becomes necessary to have a PARENTING PLAN that includes the allocation of custodial responsibility and significant decision-making responsibility, as well as provisions for resolution of subsequent disputes between the parents. The parents may be able to agree on a parenting plan on their own or with the help of mediation. If the parents are unable to agree on a parenting plan, the court will decide for them.

CUSTODIAL RESPONSIBILITY is the physical guardianship and supervision of the child. No longer does one parent have custody and the other visitation. Instead, both parents have periods of custodial responsibility; during those periods, the parent exercises residential or overnight responsibility with the child. Custodial responsibility is allocated in the parenting plan.

Solely for the purpose of all other federal and state statutes which require a DESIGNATION OF CUSTODY, a parenting plan shall designate the parent with whom the child is scheduled to reside the majority of the time as the custodian of the child. This designation does not effect either parent's rights and responsibilities under a parenting plan.

DECISION-MAKING RESPONSIBILITY is the authority to make significant life decisions on behalf of the child, such as the child's education, spiritual guidance and health care. The parenting plan may designate one parent or two parents jointly to make significant life decisions for the child.

Day-to-day decision-making, including emergency medical care, can be exercised solely by the parent with custodial responsibility for the child at the time.

A parenting plan must also include provisions for RESOLVING PARENTAL DISPUTES. This may be done by mediation, counseling or other methods of alternative dispute resolution. In the plan, the parties should designate by whom, how the process will be handled, as well as an allocation of costs.

TO PREPARE A PARENTING PLAN, you will need to consider the following:

- A residential schedule (where the child will reside) for both school times and non-school times, as well as holidays and vacations;
- Where exchanges will take place and how transportation will be handled;
- How to handle occasional changes in the parenting plan necessitated by the parent's work schedule and other commitments;
- Telephone contact between parent and child;
- How the parents will communicate with each other regarding parenting issues;
- What are major decisions and will they be made by mother, father or shared; and
- Should there be restrictions on one parent's involvement with the child, and if so, what limitations should be imposed.

A parenting plan form is available in the Family Court Judge's Office.

Your parenting plan may effect the amount of **CHILD SUPPORT** ordered in your case. If the parent paying child support has the child more than 35% of the time (at least 128 overnights per year) a shared physical custody adjustment is used when calculating the child support obligation.

What if a **PARENT WISHES TO RELOCATE?**

Unless otherwise ordered by the court, a parent who has responsibility under a parenting plan who changes, or intends to change, residences for more than ninety days must give a minimum of sixty (60) days advance notice, or the most notice practicable under the circumstances, to any other parent with responsibility under the same parenting plan. Notice shall include:

- The relocation date;
- The address of the intended new residence;
- The specific reasons for the proposed relocation;
- A proposal for how custodial responsibility shall be modified, in light of the intended move; and
- Information for the other parent as to how he or she may respond to the proposed relocation or modification of custodial responsibility.

A PARENTING PLAN MAY BE ENFORCED.

If, upon a parental complaint, the court finds a parent intentionally and without good cause violated a provision of the court-ordered parenting plan, it shall enforce the remedy specified in the plan or, if no remedies are specified or they are clearly inadequate, it shall find the plan has been violated and order an appropriate remedy, which may include:

- In the case of interference with the exercise of custodial responsibility by the other parent, substitute time for that parent to make up for time missed with the child;
- In the case of a missed time by a parent, costs in recognition of lost opportunities by the other parent, in child care costs and other reasonable expenses in connection with the missed time;
- A modification of the plan, if the requirements for a modification are met, including an adjustment of the custodial responsibility of the parents or an allocation of exclusive custodial responsibility to one of them;
- An order that the parent who violated the plan obtain appropriate counseling;

- A civil penalty, in an amount of not more than \$100.00 for a first offense, not more than \$500.00 for a second offense, or not more than \$1,000.00 for a third or subsequent offense, to be paid to the parent education fund;
- Court costs, reasonable attorney's fees, and any other reasonable expenses in enforcing the plan; and
- Any other appropriate remedy.

Circuit	Family Court Judge	Phone
1	Hon. Joyce Chernenko	238-1051
1	Hon. William Sinclair	238-1012
2	Hon. Robert Hicks	843-4112
3	Hon. Annette Fantasia	420-4533
3	Hon. Darren Tallman	420-4533
4	Hon. Larry Whited	927-0973
5	Hon. Deloris Nibert	675-0884
6	Hon. Ronald Anderson	526-8530
6	Hon. Patricia Keller	526-8535
7	Hon. Stephen Lewis	272-5828
8	Hon. Robert Calfee	235-6007
9	Hon. Kelly Codispoti	792-7038
10	Hon. Cynthia Jarrell	369-7357
11	Hon. Jane Charnock Smallridge	558-0497
11	Hon. Mike Kelly	558-5801
11	Hon. Robert Montgomery	558-0554
11	Hon. Mark Snyder	558-0536
12	Hon. Kimber Warner	436-6943
12	Hon. Edwin Wiley	425-0537
13	Hon. Suzanne McGraw	254-2908
13	Hon. Louise Staton	256-6749
14	Hon. Janet Steele	574-3393
15	Hon. Joseph Pomponio	647-7406
16	Hon. Timothy Ruckman	872-9618
17	Hon. Robert Sowa	765-0302
18	Hon. Drew Crislip	627-2148
19	Hon. David Born	367-2760
20	Hon. Jeffrey Culpepper	285-3228
21	Hon. Beth Longo	457-3483
22	Hon. Jaymie Wilfong	637-0212
23	Hon. Charles Parsons	822-7012
24	Hon. Sally Jackson	724-6253
24	Hon. William Wertman	267-0051
25	Hon. David Arrington	799-4084
26	Hon. William Watkins	586-0242

Understanding the law is a complex process and this handout is only meant to be a general guide. If you have any questions, you probably should discuss them with an attorney.



This booklet is being presented by the West Virginia Supreme Court of Appeals with financial assistance from the West Virginia Department of Health and Human Resources, Offices of Family Support.

The Court would like to thank Family Court Judges Patricia Keller and Ronald Anderson for supplying the information in this booklet.