

Family Law



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Excerpt from *Women and the Law: A Legal Rights Handbook*, Online Edition, © 2007 by the West Virginia Women's Commission (www.wvdhhr.org/women/) and the Women Lawyers Committee of the West Virginia State Bar (www.wvbar.org/).

PLEASE NOTE: This book provides general information about the law and a background about legal matters. It is not intended to be used in lieu of legal advice on any individual problem and is not intended to create lawyer-client advice as to any individual problem. If you have a legal problem, you should contact a lawyer to provide advice on the particular laws that apply to your circumstance.



Marriage

How old must I be to get married?

Persons 18 years of age or older may marry in West Virginia. If you are younger than 18, you must get the written consent of your parent or legal guardian to marry. No one under 16 may marry without a circuit court order.

What must I do before I can get married?

To be married in West Virginia, you must get a license from the clerk of the county commission of the county where either you or your fiancé usually lives. If you are under 18, there is a three-day waiting period between the time you apply for the license and the time the license is issued.

You and your fiancé must solemnize the marriage through a ceremony no more than 60 days after the marriage license is issued. Otherwise, the marriage is not valid.

What is a premarital contract?

A premarital contract (or prenuptial agreement) is a contract that a couple makes before their marriage that will come into effect at the time of their marriage. The contract often deals with rights to property and financial obligations. For example, you may want to make a premarital contract with your fiancé to make clear what property each of you will have a right to take if you decide to end your marriage at any later time. You also could make a premarital contract to set out you and your fiancé's financial rights and obligations after marriage or to make sure that your children from a previous marriage will receive fair financial treatment in your new marriage.

Written premarital contracts are considered legal in West Virginia, as long as they are prepared properly. To be valid, a contract must be fair and clear. It is advisable for you and your

fiancé to each be represented by your own attorney when you draw up the contract, particularly if the premarital contract is dealing with large amounts of property. A premarital contract is void if either party is a minor.

When I am married, do my rights to own property change?

In West Virginia, when you marry you have the same rights to all real and personal property you own as you would if you were a single woman. Your individual property is not subject to the debts or control of your husband if you do not consent to having your property used in this way.

Whether you are married or not, you have the same rights as a man to enter contracts, and the contracts are similarly enforceable. You may enter into a contract with your husband, but this contract **must** be in writing and signed to be enforceable.

Can I be made to pay my spouse's debts?

You are not responsible for the debts that your spouse created before the marriage. Nor are you responsible for debts he has created since the marriage while the marriage is ongoing. Similarly, you do not become responsible for paying your husband's debts or bills just because you are married to him. You must specifically agree to do so with his creditor before you can be held responsible. If you and your husband are both signers on a credit card, loan or installment purchase agreement, however, you both are responsible for these debts.

If you separate from your spouse, you should immediately close any joint accounts and apply for credit in your name. Both you and your spouse remain responsible for any money that is still owed on a joint account, even after the account is closed. If the marriage ends in divorce, annulment or separate maintenance, debts that either spouse incurred during the marriage may be treated as marital debts. If debts are viewed as marital, then both parties may be required to divide those debts and pay their share.

Does my husband have a right to my property?

While the marriage is ongoing, if you hold your own property, such as a checking account, your husband has no automatic control over it. You have the right to have checking and savings accounts, bonds, safe deposit boxes, certificates of deposit, stocks and the like in your own name, and your husband has no control over these things unless you give him legal access to them (for instance, if you put your checking account in his name as well as your own). If the marriage ends in divorce, annulment or separate maintenance, property acquired during the marriage may be viewed as marital and subject to equitable distribution. (See Equitable Distribution section below.)

How are my rights to sue affected by marriage?

In West Virginia, you can sue your own husband for intentional and negligent wrongs that he has committed. If your husband is injured by another person or corporation, you may sue the wrongdoer for **loss of consortium**, or loss of your husband's companionship and services. Similarly, if you are injured, your husband may sue for loss of consortium.

What is a common law marriage? Is it legal in West Virginia?

When a couple lives together without getting a marriage license and without participating in a civil ceremony performed by a judge or recognized member of the clergy, it is sometimes called a "common law marriage." The courts and the State of West Virginia will not recognize a common law marriage as legally valid, even if the couple considers themselves married. This can have serious results if one partner dies or the couple separates. West Virginia does recognize a common law marriage as valid if it was created in a state that considers such marriages valid. For example, Ohio recognizes common law marriages. A couple who has lived together in Ohio and held themselves out as married can move to West Virginia, and the West Virginia courts will consider them legally married.

A few courts in West Virginia that have heard cases involving common law marriage have begun to bend the traditional rule. In an isolated case, the West Virginia Supreme Court has permitted a division of property between unmarried people who lived together for a number of years and held themselves out as husband and wife. In determining such a division of property, the court considered the purpose, duration and stability of the relationship and the expectations of the persons involved. In such a situation the court will not allow any division of property to harm the rights of any spouse to whom one of the parties is validly married nor to harm the rights of the children of a valid marriage to another person.

How should I handle money matters with an unmarried mate?

If you are buying property with an unmarried mate, you should make sure that your name is listed on the deed. In other words, you and your mate should participate in any major purchase as though you were independent business partners. You also should keep a car titled in your name and keep a certain amount of your property **separate** (titled in your name alone). You and your partner should each have a separate checking account, using a third, joint account for household expenses. This way, if the relationship ends, you will still clearly own your own property, no matter whether the courts recognize your former relationship as valid or not. Bringing a lawsuit against your ex-partner or partner's estate to recover what you believe to be your property has virtually no chance of success as long as West Virginia refuses to recognize common law marriages.



Name Changes

How do I change my name?

In West Virginia, you may lawfully change your name by either petitioning the circuit court of the county where you have lived for more than one year or by requesting a name change in an action for divorce. If you wish to change your name as part of your divorce but your divorce decree does not include a name change, you must petition the court as described below.

File a petition with the circuit court requesting a change of name. The petition must state the new name you wish to use and verify that a legal advertisement has been published before the hearing on the name change. This legal advertisement is published in the newspaper and tells the public when and where your name change hearing will take place. Any persons who believe that they are likely to be injured by your name change may come to the hearing and tell the court why they oppose the name change.

If the court finds that proper notice of the hearing was published in the newspaper before the hearing and that no person will be injured by the name change, the court may order that you are permitted to use a new name.

The order changing your name is recorded in the office of the clerk of the county commission. The order will be filed under your old name and new name. When the order changing your name is placed on file with the clerk, you are permitted to use your new name.

How do I change my name when I get divorced?

In a divorce proceeding in West Virginia, it is lawful to request the restoration of your former name as part of the relief in the divorce. If a name change is granted as part of the divorce order, the name change order is recorded in the office of the circuit clerk.

How do I prove that my name has been changed?

If you change your name in either proceeding, you should request a certified copy of your name change order to prove the name change to agencies issuing identification cards, drivers' licenses and other identifying documents.

Do I have to change my name if I get married?

You do not have to take your spouse's last name when you get married. You may simply continue to use your legal name as it was before marriage. If you do wish to take your spouse's last name when you marry, you do not need to petition the circuit court to do so. However, you must change your various forms of identification. In either case, a copy of your marriage certificate is enough to prove that you are the lawful spouse of your marriage partner.



Separation

What is a legal separation?

Separate maintenance is the correct name for what is commonly called a legal separation. In this type of action spouses divide property and decide custody, visitation and child support issues and perhaps alimony but remain legally married.

Why would I file a separate maintenance action instead of getting a divorce?

There are two reasons why you might choose to file a separate maintenance action instead of a divorce. Some people have religious prohibitions about getting a divorce. If you wish to live separately from your spouse but do not wish to divorce, you may file a separate maintenance action.

The second reason for filing a separate maintenance action instead of divorcing is usually financial. It may be desirable to maintain a marriage, because of inheritance, pension or other joint financial arrangements. In that case, an action for separate maintenance may be more desirable than a divorce.

How do I begin a separate maintenance action?

A separate maintenance action is very similar to a divorce. You begin by filing a petition in the office of the circuit clerk. Your petition must include all the necessary jurisdictional

requirements, such as the county or counties where you and your spouse live, the date and place of your marriage, the date and place of your separation and the names, ages and places of residence of your children, if any. It also must include a statement of your grounds for having separate maintenance awarded. The grounds for separate maintenance actions in West Virginia are as follows:

1. Abandonment;
2. Failure to provide suitable support for spouse;
3. Adultery;
4. Desertion for six months;
5. Cruelty;
6. Habitual drunkenness or drug use;
7. Living separate and apart for one year;
8. Permanent and incurable insanity for three years;
9. Abuse or neglect of a child;
10. Conviction of a felony after marriage; or
11. Irreconcilable differences.

You will be the petitioner when you file this action and your spouse will be the respondent. If the respondent is a resident of the State of West Virginia, separate maintenance actions are filed in the county where the respondent lives or in the county where you and your spouse last lived together as husband and wife. If the respondent is not a resident of West Virginia, the action should be filed in the county where you and your spouse last lived together as husband and wife or in the county where you live.

What happens at the hearing on the separate maintenance action?

At the hearing, testimony must be given concerning the jurisdictional matters and the grounds for the separate maintenance. The ground of **irreconcilable differences** means that you and your spouse have agreed that your marriage has ended and there is no chance that your differences can be overcome. **However, to get a separate maintenance decree on the grounds of irreconcilable differences your spouse must sign an answer before a notary public stating that he also believes that irreconcilable differences exist.** If this answer is not filed with the court, then you must go to one of the other grounds in your petition, and all other grounds **must** be proven. This means that you must have a witness, in addition to yourself, who can testify to the court about the grounds you have alleged. Also, you should be prepared to testify at the hearing concerning your income, your spouse's income, your expenses and the value of any property that you and your spouse own. You should have a list of any debts that you owe, as well as a list of your assets.

The court has the same powers available to it in a separate maintenance action that it has in a divorce action. The court may award alimony, child custody and child support and may equitably divide pensions, cars, trucks, bank accounts and any other property that you and your spouse may have acquired.

Separate maintenance actions are heard by the family court judge. The final separate maintenance order is effective until it is modified or until the court grants a divorce to you or

your spouse. A divorce order can include the same terms covered in a separate maintenance order, but it may also change those terms.

Can I keep my spouse from getting a divorce by filing a separate maintenance action instead?

No. If you are eligible to have a divorce granted but choose to file a separate maintenance action instead, the court will be required to grant a divorce if your spouse requests that one be granted and proves that grounds for a divorce exist. For example, if you file for separate maintenance but your husband files for a divorce, you were married in West Virginia and are still residents here and your husband's grounds for divorce are proven to be true, then the court will grant a divorce.

How can I learn more about separate maintenance?

If you need more information about, or are unsure about, separate maintenance, the court system or the relief that may be available to you in such an action, consult with a lawyer. If you fail to ask for something in the separate maintenance action, such as distribution of a pension or a portion of your spouse's business, you may be prohibited from ever returning to court to ask for this in the future. It is much better to have accurate information before you go into court. You will be at a disadvantage if your spouse has a lawyer and you do not. Your spouse's lawyer does not represent you. (For more information, see the other Family Law sections.) The circuit clerk's office has forms that you may use in an action for separate maintenance. The West Virginia Supreme Court of Appeals Web site (www.state.wv.us/wvsca) also has these forms.



Divorce

How do I begin divorce proceedings?

A divorce, like other civil cases, is begun by filing a **petition** in the circuit clerk's office asking the court to grant the person or **party** a divorce from the other party. Besides requesting the divorce, in this petition you or your spouse also may ask for alimony (an allowance to support a former spouse), child custody and support, visitation, a division of the property, a restraining order to keep the other person away, the costs of the attorney fees, and the use of the marital home and other property. When the petition has been filed, the other spouse is served the

petition and a summons. Once served with those papers, he or she has 20 days to file an answer. You can get divorce petition and answer forms issued by the West Virginia Supreme Court of Appeals from any circuit clerk's office or on the supreme court Web site (www.state.wv.us/wvsca).

What are grounds for divorce?

There are several grounds for divorce based on the **fault** of the other person. These grounds include physical or mental cruelty, a six-month desertion, conviction of a felony, alcoholism, drug addiction, insanity, adultery and child abuse. To prove a fault ground, or to prove the alternative, no-fault ground of living separate and apart for one year, you or your spouse must bring a witness to the hearing to testify in your or his behalf. A divorce also can be granted based on **irreconcilable differences**. This type of divorce does not require that fault be proven by either of you. A divorce can be granted for irreconcilable differences only when it is listed in the petition as a basis for the divorce and the other spouse has filed an answer agreeing that irreconcilable differences exist. In these cases no witness testimony is needed.

How is a hearing date set?

Any time after 20 days from the filing of the petition, either party can seek a hearing before the family court judge. If no party moves for such a hearing, the family court judge will set an initial scheduling hearing within 90 days of the filing of the petition. At that scheduling hearing, the family court judge will enter an order setting forth the schedule for the rest of the case.

Both parties must file financial disclosures with each other and the court five days before the initial scheduling hearing. Forms for these disclosures can be found at the circuit clerk's office or on the West Virginia Supreme Court of Appeals Web site. In cases involving child or spousal support, the parties must file additional financial information, including wage stubs; two years worth of tax returns; and financial statements, for self-employed parties. In addition, they must file receipts showing any extraordinary medical expenses for their children.

What are the costs of a divorce and can they be waived?

Normally, a filing fee of more than \$100 must be paid to the circuit clerk for the filing of the petition. If you have children, a parent education fee must be paid as well. Further, if you want to have the sheriff serve your petition on your spouse, there will be an additional fee. If you have children, you may also need to pay a fee to the mediator who works with you concerning child custody.

If you are unable to pay these fees, you may file an affidavit of indigency, setting forth your financial situation and requesting waiver of the fee. The clerk has forms for this purpose and will use a formula to determine whether you are eligible for waiver.

If you have no income but your spouse does, you may be entitled to have your costs paid by your spouse. These costs can include attorneys' fees. You should consult a lawyer about whether you are eligible to have your spouse pay your costs.

What if my spouse has filed a complaint?

Once you are served with a divorce complaint by the sheriff or other person, you have 20 days in which to file an answer.

Do I need a lawyer?

It is always a good idea to have a lawyer if you are involved in legal action. If you do not have a lawyer during a divorce, you may not be able to defend your rights. This is particularly important if your spouse has a lawyer. If you cannot afford a lawyer but your spouse can, your lawyer can petition the court to order your spouse to pay the legal fees. Your spouse's lawyer does not and cannot represent you. If your spouse has a lawyer and you do not, you are at a severe disadvantage.

Even though many people seek a divorce without an attorney, if there are children or property involved in the marriage, a lawyer is critical to defending your position.

How should I prepare for the hearing?

In cases where there are children, the parties must attend parent education class at the beginning of the case. The circuit clerk will provide a schedule of classes. You will need to file with the court proof that you have attended such a class. In addition, where children are involved, you will be required to have an interview with the personnel of the family court to determine whether you should engage in mediation. If there is domestic violence in the relationship or some other reason why mediation would not be appropriate, you should tell the court personnel.

If you are ordered to participate in mediation, you'll be given directions on how to contact the mediator. This required mediation covers only child custody. If mediation has been ordered, the court must receive a report from the mediator indicating that mediation occurred before the final hearing. If you have reached an agreement with your spouse concerning child custody, that agreement should be set forth in an agreed parenting plan. If you have not reached agreement, then you need to have a separate parenting plan to present to the judge. Bring the agreed plan or your separate plan to the final hearing.

Before the final hearing, you must also update your financial disclosures to reflect your current situation. If you have reached an agreement with your spouse concerning financial issues, (property settlement agreement) you should bring a copy of that agreement to the hearing as well.

All grounds for divorce, other than irreconcilable differences, require the presence of a third-party witness at the final hearing. You should determine who can support the claims that you made in your petition and have that person come with you to court.

You should also bring with you any documents or other evidence that will be necessary to explain your situation to the family court.

Unless there has been a specific order, children under 14 should not come with you to the family court. Other friends or family may come with you to court, but they will not be able to watch the proceedings. All hearings before the family court are confidential.

What happens at the final hearing?

At the final hearing, the judge listens to the testimony of both spouses. If you and your spouse present a property settlement agreement and an agreed parenting plan, the judge will review them. If the court approves either or both agreements, they will become part of the final order. If there is no agreement, both you and your spouse will get a chance to state why you want custody, child support, alimony and property. You will also be entitled to call witnesses and ask questions of those witnesses. After hearing the evidence, the family court judge will rule on these issues and prepare an order.

If you do not agree with the order of the family court, you may appeal, either to the circuit court or to the West Virginia Supreme Court of Appeals.

Do both spouses have to be present at the final hearing?

Only one spouse has to be present at the hearing, but it is better if both spouses attend. If it is a divorce based on irreconcilable differences, one spouse can go to the hearing and can get the final divorce without bringing any witnesses. If the divorce is filed on fault grounds, the spouse who goes to the hearing will have to bring a witness with him or her to testify about the grounds for the divorce.

How long does it take to complete the divorce?

The length of time it takes to get divorced depends on how many issues are contested, how busy the family court judge is and how quickly the attorneys prepare their cases for hearing and return orders to the court. Generally it takes several months, even if there is an agreement between the parties.

Is there any kind of emergency help available through the divorce process?

Yes. If you feel that you have filed for a divorce and are in physical danger from your spouse, or if your spouse has threatened to take minor children out of state or has threatened to sell or give away marital property, then you can request an emergency hearing before the family court judge without giving notice to the other party. If you have not filed for a divorce or if the emergency relief that you seek is protection against violence directed toward you or your children, you can bring a separate action for a family protection order. Such actions are normally

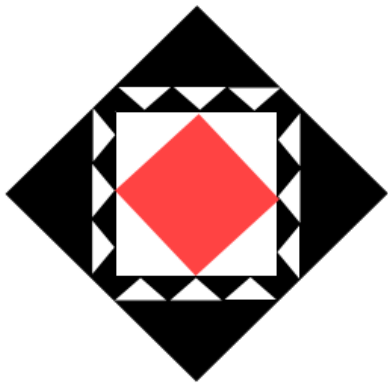
brought in magistrate court. The magistrate can award a temporary family protection order. After the temporary order is issued, the case will be referred to the family court judge.

What if my spouse threatens me with accusations of adultery?

Generally, even if your spouse can prove adultery against you (which is hard to do), it only affects alimony. If your spouse proves adultery, it should not affect custody of your children or any marital property.

Is alimony automatically awarded in divorces?

No. You must show the court the reasons you should get alimony. These reasons have to do with the length of the marriage; the age, education and work history of the parties; the care and education required for minor children of the parties; the income-earning abilities of the parties; the parties' physical and mental health; the parties' financial needs; etc. Courts can award **rehabilitative alimony**, which is a fixed sum of money paid for a limited amount of time to help a former spouse improve his or her job skills. **Permanent alimony** can be awarded in cases involving a long marriage, where the spouse has limited capacity to become self-sufficient because of age, health or lack of skills.



Property Settlement Agreements and Parenting Plans

What is a property settlement agreement?

A property settlement agreement is a contract between divorcing spouses. When approved by the court, the agreement becomes a part of the divorce order and is enforceable by the court. The agreement may address many issues, including alimony, personal property rights, child support, and all other financial and property rights arising out of the marriage. What issues your agreement will address will depend on your individual circumstances.

How should I go about preparing a property settlement agreement?

Before preparing the property settlement agreement, you and your spouse should sit down and make a list of all your marital assets and liabilities. You should list everything that has been purchased during the marriage and all the debts that remain to be paid. It is also important to have a good understanding of your spouse's employment income and employment benefits, including pensions and employee savings plans. Information about the pension and savings plans should be available from your spouse's employer. Each spouse must complete a financial statement on court forms available from any circuit clerk's office or on the supreme court Web site (www.state.wv.us/wvsca). The completed form must be given to your spouse and the family court judge before the final hearing can be held.

In writing the agreement, you should make sure that it is as detailed as possible. Except for matters about child support and alimony, you will not be allowed to ask the court to make changes to the agreement after the final divorce order incorporating the agreement has been entered. For instance, if you forget about a bill, you cannot ask the court to make your spouse responsible for that bill after the final order has been entered. Likewise, if you find out after the divorce that your spouse has a lot of money in his credit union account, you cannot ask the court for a portion of that money after the divorce order has been entered.

If you have been married a short time and have no children, no real estate and little personal property, preparing the agreement should be fairly simple. On the other hand, if you have been married a number of years and have minor children, real estate, a house full of furniture or significant debts, preparing the agreement becomes complicated.

It is always best to consult a lawyer; the money spent may well save you significant future trouble. The court might order your spouse to pay all or part of your lawyer's fees if you do not have much money to pay the lawyer yourself. If you do not have much money, ask your lawyer to request that her fees be paid by your ex-spouse.

What should the agreement say about child support?

If the property settlement agreement covers child support, you should be aware of the child support guidelines issued by the State of West Virginia. These guidelines set forth the minimum contribution from both parents necessary to raise a child. If you present an agreement to the judge that does not follow these guidelines, the judge may compute what the guidelines would require and tell both parties that amount. It is rarely appropriate to settle for less than the amount computed from the guidelines.

Child support will normally be given until the child reaches the age of 18. If the child is under 20 and is still a full-time student in secondary or vocational school and is making substantial progress in her studies, child support may be extended until graduation. If the child is over 18 and disabled, child support may be extended as well. There is no legal requirement that either parent pay for college. Parents may, of course, agree to do so either as part of a separation agreement or independently. If such a provision is in the separation agreement, the courts will enforce it.

This section of the agreement may also address the way payments will be made. The law assumes that the amount of the payment for child support will be taken automatically from the

payor's paycheck. Only if the party making the payments does not have a regular paycheck should other payment arrangements be agreed.

Please remember that the issue of child support remains subject to the court's continuing jurisdiction and is therefore always subject to change. (For more information, see the Child-Support Establishment and Enforcement section below.)

The section of the agreement dealing with medical coverage indicates who is going to provide medical insurance and who is going to pay for the children's medical expenses that are not covered by insurance. The law requires that if either parent has access to group health insurance that will cover the child, that parent must enroll the child in that program. For medical bills not covered by insurance, the court will divide the cost between the parents. A property settlement agreement may make other arrangements for the insurance for the children but may not agree to leave the children uninsured, unless neither parent has access to insurance.

What should the agreement say about alimony?

The alimony section of the agreement states whether alimony is going to be paid by either you or your spouse. If both you and your spouse agree there will not be any alimony, that fact needs to be stated. If one of you is going to pay alimony to the other, the amount, the payment periods and the length of time alimony will be paid need to be stated. The alimony obligation could continue until the person receiving it dies or remarries, or it could continue for a specific number of months or years. Again, as with child support, the method of payment and beginning date needs to be indicated. Alimony remains subject to the court's continuing jurisdiction, unless you and your spouse specifically state it cannot be changed.

What do property settlement agreements say about division of property?

The vehicles section of the agreement states who is going to receive which vehicle. In addition, this section should note who is going to pay off the loans on each vehicle and whether the certificate of title to each vehicle will be transferred so one of you will become the only owner.

The real estate section states you and your spouse's agreement about who will use and own any real estate that has been accumulated during the marriage. In addition, it should show who is going to be responsible for paying the mortgage and taxes on the real estate, whether the property is to be sold, when it is to be sold or vacated and how the profits will be divided if the real estate is sold.

Another section of the agreement lists marital debts (the debts that you and your spouse have accumulated together during the marriage) and who is going to be responsible for which marital debts. Because the debts associated with the cars and real estate are dealt with in other sections, those addressed in this section will normally include such things as existing credit cards, utility bills, credit union payments, outstanding medical/hospital bills and other unsecured debts.

Another section will deal with personal effects and furnishings. This section states the division of items of personal effects, such as clothing and jewelry, as well as the household

furnishings, including appliances and furniture. If you have already divided the property, this section can simply state that everything has been divided to your mutual satisfaction.

Your property settlement agreement also should deal with pensions. If either you or your spouse has a pension or savings plan at your places of employment, the other party is entitled to 50 percent of the value of that plan as it accumulated during the marriage. Whether to insist on receiving that 50 percent share is a matter of choice between you and your spouse. If one of you decides not to seek the 50 percent share, it should be stated in this section. If the pension is to be divided, this section should note how payment of that interest will be made. Dealing with pensions and how and when the money will be received and the tax issues that relate to pensions is extremely complicated. If there is a significant pension, you should consult a lawyer.

You need to be aware of any other financial assets that your spouse may have. These include bank accounts, stocks and bonds, interests in a business, and all other financial instruments. If you or your spouse have significant assets of this kind, it is important that you seek legal advice to properly value these assets before you enter into a property settlement agreement.

Will all the property be divided equally?

Although you and your spouse can agree otherwise, the general principle in divorce law is that the marital estate is to be divided equally. In other words, if you add up everything you are getting and subtract from that what debts you are assuming, and do the same for your spouse, the two figures should be equal. If they are not, the person getting more owes the other person money. A section in your agreement will deal with equitable distribution and either should state that you and your spouse acknowledge that equitable distribution has been accomplished or should state how much money is going to be paid by one of you to the other to achieve equitable distribution. (For more information, see the Equitable Distribution section below.)

Are there any other things I should be sure my agreement includes?

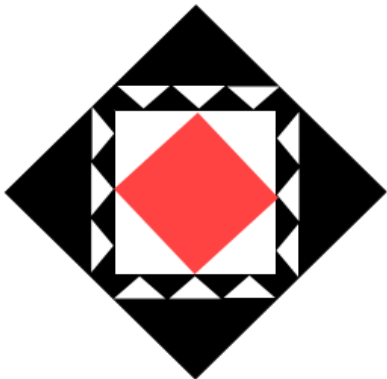
Yes. Some general contractual statements should be included in the property settlement agreement. The agreement should include a statement that it is effective and binding on you and your spouse at the time of its execution. This provision makes the agreement enforceable as a contract between you both, even before the final divorce order is entered. It is not uncommon for a property settlement agreement to take effect before the divorce order is entered.

A property settlement agreement usually also states that you and your husband shall live separate and apart and free from marital control, restraint or interference from each other, as if each of you were unmarried. You also usually agree that you will not molest each other, nor force each other to live with each other, nor disturb or unnecessarily annoy each other. Finally, the agreement should state that it will be incorporated into the divorce order and that both of you intend to be legally bound by it.

What is included in a parenting plan?

The property settlement agreement should not discuss child custody. Child custody arrangements need to be set out in a parenting plan. You can get a copy of the parenting plan form from your circuit clerk or from the West Virginia Supreme Court of Appeals Web site (www.state.wv.us/wvsca). If you and your spouse cannot agree with respect to child custody, you should present your own parenting plan.

See the section below on Child Custody and Decision Making to understand how to write a parenting plan. Keep in mind that the law presumes that the child should have the same access to her parents after divorce as she had during the marriage. Also keep in mind that the law presumes that parents will share major decision-making duties for the child. If either you or the child are endangered by continued contact with your spouse, provisions may be made in the parenting plan for your protection.



Equitable Distribution

What is equitable distribution?

Equitable distribution is a legal term for the division of property at the time of divorce. Property obtained during a marriage (which can be real estate or personal goods) is to be fairly divided between you and your divorcing spouse. This property is called **marital property**. Property that is yours alone is not to be divided. This is called **separate property**. Marital property is “all property acquired by either spouse during a marriage, except marital property shall not include property defined as separate.” Separate property is “property acquired before the marriage; property acquired during the marriage in exchange for separate property acquired before marriage; property excluded from marital property, by valid agreement of the parties; property acquired during the marriage by gift, bequest, devise, descent or distribution; and any increase in the value of separate property, which is due to inflation or a change in market value resulting from conditions outside the control of the parties.”

The West Virginia Supreme Court of Appeals has stated that when a court is making an equitable distribution of assets, the court must first determine what is separate and what is marital property. You are permitted to keep your separate property and your spouse is permitted to keep his. The marital assets acquired during the marriage remain marital property and are **equally** divided between you and your husband.

For example, you may have inherited dining room furniture from your mother. Your husband may have inherited a gun collection from his father. The remaining pieces of furniture within the household were purchased during your marriage with income earned by you or your husband. In this simple example, when a court determines how the assets should be divided, it will make the following distribution:

1. Wife keeps the dining room furniture given to her by her mother as separate property.
2. Husband keeps the gun collection given to him by his father as separate property.
3. All of the remaining furniture acquired during the marriage is equally divided between husband and wife.

Can separate property ever become marital property?

Yes. According to the West Virginia courts, if you or your husband have separate property and later title it in both of your names, the separate property becomes marital property. In other words, there is a presumption that one spouse intended to “gift” the marital estate with his or her separate property.

For example, suppose your husband had land titled in just his name before marriage, and several years after you marry, he has a new deed written and titles the land in both of your names. Under West Virginia law, the land (although formerly the separate property of your husband) then becomes a marital asset. The land is a marital asset because your husband has “given” the land to the marital estate. As the land is now marital property, in a divorce the land would be equally divided between the two of you and/or the land would be sold and all proceeds would be equally divided between you both.

Equitable distribution is a recognition by the court and the legislature that both husband and wife contribute to a marriage. When the marriage ends, both of you are entitled to keep your separate property. As long as spouses keep separate property separate, there can be no dispute as to ownership. To avoid unnecessary arguments, make sure separate property remains separate and that all marital property is titled in the name of both you and your spouse.

If my husband has been the sole wage earner in the marriage, will he receive more or all of the marital property?

No. Equitable distribution also means that when dividing property the court is to consider the contribution each spouse made to the marriage. A homemaker’s contribution must be balanced against the wage earner’s contribution when deciding how to divide property. In other words, just because one person brought more money into the home than the other does not mean one person gets more property than the other. In West Virginia, the general rule is that the homemaker’s contribution is to be treated as equal in value to that of the wage earner. Therefore, the homemaker is considered an equal owner of the assets.

Must property always be divided equally between spouses?

No. Although equitable distribution is the general rule, this rule can be challenged. If, after evaluating the situation, the court determines that an equal distribution would be unfair, the distribution of property can be adjusted accordingly. In making its adjustment the court evaluates four factors:

1. The extent to which you and your spouse each have contributed monetarily (with money) to the purchase and maintenance of marital property;
2. The extent to which you and your spouse each have contributed nonmonetarily (in ways other than money) to the marriage;
3. The extent to which you limited or decreased your income-earning ability or increased the income-earning ability of your spouse during the marriage, or the extent to which he limited his income-earning ability and increased yours; and
4. The extent to which you or your spouse has caused a decrease in the value of your marital property.



Paternity Establishment

If I was unmarried when I had my child, does her father still have financial and legal obligations to her?

Yes. If the court finds that the man named is the child's father, or if the child's father admits in writing that the child is his (called **acknowledging paternity**) and you agree that this man is the father, the child will then have the same right to be supported by the father as any child born to parents married at the time of birth.

How can the father and I show his paternity?

Paternity also can be established if both you and the father sign a **written, notarized acknowledgment**. The affidavit is a sworn statement that acknowledges the identity of the child's father and legally establishes a child's paternity for all purposes.

Why should I establish paternity?

The most important reason to establish paternity is so that the child will have a legal relationship with her father. Also, once paternity is established, the child will be legally entitled to financial support from her father. The child also will gain a right to inherit property from her father. She may gain access to benefits such as social security benefits, pension benefits and veterans' benefits through her acknowledged relationship with her father. Finally, if you wish to receive Temporary Assistance to Needy Families (TANF) and fail to help in establishing paternity of your child without good reason, your TANF check may be reduced. (See the Department of Health and Human Resources Programs section in the Benefits and Social Welfare Laws chapter for more about TANF and paternity.)

If I establish paternity, will the father have the right to visit or take custody of my child?

Yes. If you and the father cannot agree upon custody between yourselves, either of you may take this issue to court. The court will then decide this issue, as it would any case involving child custody. (See Child Custody and Decision Making section below.)

What if the child's father refuses to admit that the child is his?

If the man whom you believe to be the child's natural father has denied his paternity, you may bring a civil action against him to establish paternity. You must have custody of your child to do this. This action may be brought in the county where you live, the county where the alleged father lives or the county where the child lives. Similarly, if a man claims that he is the child's father (and no other paternity has been established for the child) he may bring a civil action against you if you deny his claim. Such a civil action may be brought by either of you any time before the child's 18th birthday. You may bring such an action even if the alleged father is not in the state.

The court may order blood and tissue tests for you, your child and the alleged father to prove claims of paternity. If you brought the action, you should not have to pay for these tests. If the alleged father does not appear or plead at a scheduled hearing or trial, his paternity will be established by default. If the court finds clear and convincing evidence that the man in question is the father of the child, the court **must** order child support for her.

Can anyone other than the mother or a man claiming to be the father bring an action to establish paternity?

Anyone with physical or legal custody of the child can bring this action, including a guardian, the State of West Virginia or the Child Support Enforcement Division. The child herself can bring the action if she brings it after she has turned 18 and before she has turned 21. In some cases, a man who does not have custody may bring an action to establish his own paternity.

Who can I contact to help me establish the paternity of my child?

Paternity establishment is one of the Child Support Enforcement Division's primary responsibilities. If you need the paternity of a child established, you should contact the Child Support Enforcement Division office in the county in which you live.



Child Custody And Decision Making

How does the court decide which parent gets custody of the children?

The family court judge must decide two issues with respect to custody. The first is how to divide the caretaking or custodial responsibilities for the child. The second is how to allocate decision-making responsibility for the child.

Under our statutes, caretaking responsibilities, post separation, are to mirror the arrangements the parents made while they were living together. The court looks at who, while the couple was living together, took care of the child. It then seeks to assign caretaking responsibilities in the same way that the parents assigned them while they were living together. If the parents, while they were living together, shared these responsibilities relatively equally, then the court will assigned custody relatively equally. If the parents, while they were living together, assigned the responsibilities primarily to one parent, then that parent will get the majority of the custodial time with the child.

If the parents never lived together, or if one of the parents performed all of the caretaking duties, the court will then look to see whether the other parent made any parenting contribution to the child. (Such contributions are generally monetary but can include home repairs and other maintenance tasks.) If the other parent performed some parenting duties, then that parent will be entitled to access to the child sufficient to maintain a relationship. If the other parent performed no parenting duties, then he or she will not be entitled to any access to the child. (It is very uncommon for a family law judge to find that a parent performed no parenting duties.)

If assigning custodial responsibility to a parent puts the child or the other parent at risk for physical harm, the court may not permit such an arrangement until it makes a finding that the child and the other parent are sufficiently protected. Thus, the court may order various protections, including place of exchange, counseling or treatment necessary to protect the child and the other parent.

The other issue confronting the family court judge is the allocation of decision-making authority. The statute provides that emergency decisions are to be made by the parent who has the child at the time the emergency occurs. It further provides that day-to-day decisions are to be made by the parent who has the child at the time the decision is required. With respect to major decisions such as religious upbringing, healthcare and education, both parents are presumed to have joint decision-making power. Thus, both parents must exchange information about the child and confer about these questions.

Does the court ever award custody to a parent who has not carried out caretaking responsibilities?

There are three exceptions to the rule that custody arrangements are to mirror the care of the child during the relationship:

1. **Child's Preference for a Parent.** Children over the age of 14 who express a clear preference to live with a particular parent will be allowed to live with that parent, as long as that parent is not "totally unfit." Once the child is 14, the court does not need to know why the child wants to live with a particular parent. When a child is younger than 14 years old, a court may consider the child's preference as a factor in its decision about custody, but the court does not have to agree with the child's preference. The court is more likely to be swayed by the testimony of a child who expresses a mature preference to live with a particular parent. Often a court will respect the wishes of a child over 12, if the child appears to be mature and genuinely prefers to live with a certain parent.
2. **Agreement.** The parties may agree to vary the previous caretaking arrangements and to change the statutory decision-making. Such an agreement should be set forth in a joint parenting plan. But the parties should not assign caretaking or decision making responsibilities lightly. These arrangements are very hard to change later and may have significant financial and personal effects on the child. Parenting plans should not be based on hope, but rather on the solid experience of the parties about who has and will actually care for the child.
3. **Statutory Limitations.** If either parent has abused, neglected or abandoned the child; has sexually assaulted or sexually abused the child; has committed domestic violence; has interfered persistently with the other parent's access to the child (except for actions designed to protect the child or parent); or has made repeated fraudulent reports of domestic violence or child abuse, then that parent's access to the child will be limited. The court may not allocate custodial responsibility or decision-making responsibility to a parent without making special written findings that the child and the other parent will be adequately protected from harm by the limitations imposed.

Can I prevent the children's father from seeing the children, or can he prevent me?

Except as provided in **Statutory Limitations** above, neither party may deny the other access to the child as set forth in the court order.

Can a custody order ever be changed?

Yes. Sometimes there are major changes in the situations of one or both parents after the divorce is final. If there are substantial changes in circumstances that were not foreseeable at the time of the final hearing, then either parent can petition the court to change the final order. The court can change its custody or visitation order when the change will “materially promote the best interests of the children.” In this case, the court must be convinced that the change will really help the children or is necessary because of the changes in the situations of the parents and the children. Also, the court can change custody of a child who is over 14 and who tells the court that he or she wants to live with the noncustodial parent.



Child-Support Establishment and Enforcement

What rights do my children have to financial support?

To establish fair child support awards and to make sure that orders for support are enforced, since 1984, the federal government and the state have made some dramatic changes in the child support laws. Every child has the right to share in both parents' standard of living, and each state has established guidelines intended to make child support awards fair to children. In 1992, the West Virginia Legislature made it a crime for a parent to “persistently” fail to support his or her child, in certain circumstances regardless of whether the parent is subject to a court order to pay child support. Failure to provide support as specified in this statute can result in conviction of a misdemeanor, a fine of \$100 to \$1,000 and/or imprisonment in the county jail for not more than one year.

State law also now permits the courts to enforce an obligation to pay support beyond the age of 18 until the age of 20, so long as the child is making substantial progress toward a degree and is enrolled as a full-time student in a secondary or vocational school. The law also allows payments to continue beyond the age of 18 for a disabled child in some circumstances. Please be sure to check with your attorney or the local Child Support Enforcement Division, the state's child support enforcement agency, about all child support provisions.

But an award of support is meaningless unless it can be enforced. There are collection methods available to all creditors that are very useful in collecting child support. In addition, the federal government and the state have also created special collection methods exclusively for

collection of child support. Most of these methods can be used by a private attorney. In West Virginia, however, there are some collection methods that can be used only by the Child Support Enforcement Division.

How is the amount of child support established?

Both you and your children's father have an obligation to support your children according to your ability. West Virginia has established a formula that attempts to insure that a child's primary needs are met and that the child shares in his or her parents' standards of living. The formula must be applied to **every** order or agreement of support with very few exceptions. If your support order was not computed according to the formula, you may want to consider requesting a change. Forms for this purpose are available from the office of your local circuit clerk. The hearing is usually handled by the family court judge in your area.

The incomes of both parents are considered in the child support formula. If either of you is unemployed, the court may still hold the unemployed parent responsible for some income. This means that unless the unemployed parent has a disability or some other valid reason for not working, the court may still order a minimum amount of child support.

Your children are entitled to support calculated according to the formula regardless of the amount of caretaking assigned to you. You may even be entitled to support if you have previously agreed not to request support. Remember, **child support is your child's right**. You cannot agree to give up something that belongs to your child.

Once the required amount of child support has been established in court, can it ever be changed?

Yes, your existing child support order may be changed. If you or the other parent petitions the court, the court will consider a change. Forms for petitioning the court for this purpose are available from any circuit clerk's office. Again, the income of both parents will be used to apply the child support formula. If the formula calculation is more than 15 percent different from your current support order, a change may be granted. A modification also may be granted in light of other changes in circumstances. The modification can be either more or less than your current support but must be in conformity with the formula.

Can the court order medical insurance for my child?

West Virginia requires the court to consider medical support when awarding child support. Medical support may include a requirement that one or both parents provide health insurance, that parents divide uninsured medical expenses, or both.

Either the Child Support Enforcement Division or your private attorney can help you in establishing or changing a child support order.

Is there any way to force my husband to pay the child support ordered by the court?

Yes. While many parents pay child support as soon as an order is entered by the court, others need some “encouragement.” There are several options you can use to enforce a support order. Some need further court action, but most do not.

The law presumes that all parents required to pay child support will have that support withheld from their paychecks and sent to you by the Bureau of Child Support Enforcement. If your payor's support is not being withheld, you should contact the Bureau of Child Support Enforcement in your county. If your payor does not receive a regular paycheck, you will have to rely on other measures to collect child support.

There are several other methods by which you might collect past-due support. Under certain conditions, the Child Support Enforcement Division can take the obligor's state and federal income tax refund. You, the Child Support Enforcement Division, or your private attorney can pursue other remedies. For instance, by recording a summary of your support order and an **affidavit of arrears** (a sworn statement that the obligor is behind in paying his child support debt) in the office of the county clerk of the county in which the obligor owns property, you can create a **lien** which would affect the title of that property. If the obligor attempts to sell the property, your lien must be paid off before a good title can transfer to a buyer.

If you know where the obligor banks, you can request the circuit clerk to issue a **suggestion** to the bank. A suggestion freezes the obligor's bank account and may result in your receiving the assets in that account. If you have proof that the obligor has the financial ability to pay support but is refusing to do so, you may request the court to find the obligor in contempt, which may result in the obligor going to jail. Some courts are easier to convince to make a finding of contempt than others. Other possible remedies are a **writ of execution** and a **suggestee execution**. Ask a lawyer or the Child Support Enforcement Division about these. The exemptions that apply to general creditors generally do not apply to collection of child support.

In 1992, the West Virginia Legislature passed laws that make it a criminal act to fail to pay child support. To prosecute criminally, you must be able to show that the obligor had the ability to pay child support but decided not to do so. A criminal complaint can be completed in the magistrate's office or by the prosecuting attorney.

The Bureau of Child Support Enforcement also has authority to seek withholding of licenses from those who do not pay child support. Anyone with a professional license, such as lawyers, doctors and others who need such a license to work, can have that license withheld if they fail to pay child support. In addition, driver's and hunting licenses may be withheld pending payment.

Visitation issues should not affect your right to collect support. Your children need both contact with the absent parent and financial support from him. Just because they are deprived of one does not mean that they can be deprived of the other. As a practical matter, however, many courts do look at visitation problems when addressing nonpayment of support.

The Bureau of Child Support Enforcement or your private attorney can help you in determining how best to go about collecting your support.

Can I get child support even though the absent parent is out of state?

Yes. You can still have child support established or enforced. Every state has passed the Uniform Interstate Family Support Act (UIFSA). Contact the Bureau of Child Support Enforcement or your lawyer for assistance in bringing an action under UIFSA.

Are there any other things that I should know about child support?

Yes.

1. Child support is not taxable.
2. Child support cannot be discharged in bankruptcy, and income withholding does not stop when a Chapter 7 bankruptcy is filed.
3. Unpaid child support that is due and owing at the time of death of an obligor may be collected from the assets of the obligor's estate. If there are not enough assets in the obligor's estate to pay all claims made against the estate, unpaid child support is to be given priority and paid out of the available assets of the estate once the costs of estate administration, funeral expenses and any debts owed to the federal government have been paid.
4. The Bureau of Child Support Enforcement can help you in creating and enforcing child support obligations. A private attorney can help you in all divorce matters and child support enforcement methods except income withholding, tax refund interception and license withholding.
5. For further information on the Bureau of Child Support Enforcement, contact your local office of the West Virginia Department of Health and Human Resources and request a Bureau of Child Support Enforcement pamphlet.
6. Most hearings dealing with child support are heard by the family court judge. Criminal procedures are heard by the magistrate or the circuit judge with a jury, unless the obligor waives his right to a jury.

What precautions can I take to make sure my child receives support?

Your child has a right to be supported by both parents after a divorce. Divorce papers should include an order for child support. If you are the parent with custody of the children and are not receiving support, you should use the services of the Bureau of Child Support Enforcement or a private attorney.

You can greatly increase your chances of collecting support if you keep in touch with the other parent. Find out what his social security number is, where he banks and where he is employed. Make sure your children stay in contact with the family of the other parent, who may be helpful if you lose track of him.

Every case has its own specific facts, and the methods that work for one may not necessarily work for yours. Each court has its own ways of doing things and, from time to time, the laws change. While not a guarantee of success, the Bureau of Child Support Enforcement or your private attorney are available to assist you in establishing or enforcing a child support order.

Can I get child support for my child's educational expenses?

State law now permits the courts to enforce an obligation to pay support beyond the age of 18 until the age of 20, so long as the child is making substantial progress toward a degree and is enrolled as a full-time student in a secondary or vocational school. If you and your spouse include a provision in your property settlement agreement for the payment of post-high-school educational expenses, the court can enforce this provision. But the court cannot order a parent to pay for college expenses unless he or she agrees. State law also permits the courts to enforce an obligation to pay support for children over 18 who are totally disabled.



Grandparent Visitation

Do grandparents have any rights to seek visitation of their grandchildren?

Yes. Under certain specific circumstances, grandparents have standing in circuit court or family court to seek the right to exercise visitation with their grandchildren. Whether or not visitation will be granted is up to the discretion of the court. The court considers the evidence in light of the best interests of the child or children. The child's best interest is always the court's paramount consideration.

Under what circumstances can a grandparent ask the court to consider granting him or her visitation?

In general, there are two possible fact scenarios that establish when a grandparent may apply to circuit court or family court for visitation. They are as follows:

1. An action for a divorce, custody, legal separation, annulment, or establishment of paternity is pending. Under this scenario, the grandparent is not a party to the case but may be called as a witness by the court. The grandparent shall be granted visitation if the following circumstances apply:
 - a. a majority of the evidence shows that visitation is in the best interest of the child, and

- b. the parent through which the grandparent is related to the minor child has failed to answer or otherwise appear and defend the cause of action, or
 - c. the whereabouts of the parent through whom the grandparent is related to the minor child is unknown to the party bringing the action and to the grandparent who filed the motion.
2. An action for divorce, custody, legal separation, annulment or establishment of paternity is not pending. Under this scenario, a grandparent may petition the circuit court for an order granting visitation with the grandchild, regardless of whether the parents of the child are married, if the parent to whom the grandparent is related does not (1) have custody, (2) share custody or (3) exercise visitation privileges that would allow the grandparent to participate in visitation with the child if the parent so chose. Under this scenario, visitation shall be granted if the evidence is that visitation is in the best interest of the child. There is a presumption in this fact scenario that visitation need not be extended to the grandparent.

What factors does the court consider if a grandparent applies for visitation?

There are many factors that the court will consider, including, but not limited to, the age of the child, the relationship between the child and the grandparent, and the relationship between the parent with whom the child resides and the grandparent. The court will also consider the preference of the parents with regard to the requested visitation. There is no guarantee that visitation will be granted, as each case succeeds or fails on its own facts and on the evidence presented to the court.



Adoption

If I wish to adopt, how may I legally locate a child?

In West Virginia, you may advertise to locate a child for adoption. It is also legal to pay reasonable and customary fees to a licensed child-placing agency to locate an adoptive child on your behalf. Note that West Virginia law prohibits the exchange of money or other value in

connection with placement or adoption of a child, except that the following payments are legal: (1) payments for “reasonable and customary” fees of a licensed or duly authorized child-placing or adoption agency and (2) payments for “reasonable and customary” legal, medical, or other expenses incurred in connection with the pregnancy, birth and adoption proceedings. In all cases, a list of all expenses and payments must be provided to, and approved by, the court.

Who must consent before I can adopt a child?

If you wish to adopt a child, the birth parent or parents (if both are known) must give written consent to the adoption. Sometimes parental rights are terminated by a court order. This procedure is used when the birth parents have abused, neglected or abandoned a child. If their parental rights have already been ended, the birth parents’ consent is not needed.

If a birth mother is married or marries before her child is born, her spouse must give written consent to the adoption, even if he is not the biological father of the child. If the birth mother names the identity of the child’s biological father, he is entitled to notice of the adoption proceeding and also must give written consent to the adoption.

Consent must also be obtained from any person who has been determined to be the father of the child or who has filed an action seeking to be determined to be the father of the child. If the birth father is unknown, then the birth mother must complete a special affidavit to enable the court to make efforts to identify the birth father and to provide notice to him of the adoption proceedings.

Birth parents under the age of 18 years, or **infant parents**, can consent to the adoption of their child. Infant parents who plan to put their child up for adoption are usually provided a court-appointed attorney called a **guardian ad litem**. The guardian ad litem is appointed to protect the rights of the infant parents and to make sure that their consent to the adoption is given voluntarily.

If the child to be adopted is 12 years old or older, then the child must also give his or her consent to the adoption.

If I am the birth mother, how should I formally consent to the adoption of my child?

If you desire to have an adoption agency find a home for your child, then you will be requested to sign a document known as a **relinquishment**. This document will serve to give up your parental rights and grant the adoption agency authority to find an adoptive placement for your child. If you desire to place your child with specific adoptive parents, then you will need to sign a document known as a **consent**. In either event, West Virginia law provides that you may not legally authorize adoption before the child is at least 72 hours old. This means that, if you sign the relinquishment or the consent before the baby is 72 hours old, the document will not be legally valid.

The relinquishment or consent, as applicable, must include *very specific* information required by West Virginia Code Section 48-22-303. In order to make sure that the document complies with West Virginia law, it should be prepared by an attorney. Some (but not all) of the things that the statute requires the document to provide are as follows: that you are signing the

document more than 72 hours after the birth of the child; that you are freely and voluntarily consenting to the transfer of the legal and physical custody of the child to the agency or the adoptive parents (as applicable); that you are authorizing the agency or adoptive parents (as applicable) to consent to the medical treatment of the child pending any adoption proceeding; that you understand that the consent or relinquishment is irrevocable—that is, permanent and cannot be taken back (unless certain instances apply); and that the adoption will forever terminate all of your parental rights, including rights to visit or communicate with the child and any right of inheritance.

Who may adopt children?

In West Virginia both single and married people may adopt children. Prospective adoptive parents may wish to engage a social worker or agency to prepare a document called a **home study**. A home study is a report that details your family situation, income, health status and other pertinent factors. The court is permitted to appoint a suitable person to inquire about your personal history and living situation before granting an order of adoption. Adoptions across state lines usually require a home study from a licensed agency.

Must a child live with me before I can adopt him or her?

The child you wish to adopt must live with you for at least six months before the court hearing for the adoption. You may file a petition to adopt a child before these six months have passed, but the hearing to complete the adoption cannot be held before the end of the six-month period.

What rights do I have before and after adopting a child?

As a prospective adoptive parent you have a right to request medical information, medical records, social histories and family histories from the birth parents. This information is not always available but should be sought. The information identifying the birth parents will not be included in the final adoption order.

Upon the completion of the adoption, you will be in the same legal position as a birth parent of a child, with all the rights, responsibilities and privileges of a birth parent. Court records for adoptions are sealed in West Virginia and are confidential. Birth certificates are changed by the Division of Vital Statistics to reflect the names of the adoptive parent or parents.

How can I find out more about adoption?

For information about adoptions and adoptive families in West Virginia you may wish to contact local adoption agencies in this state. These agencies can provide you with more information about adoption in West Virginia and international adoption. You may also contact the West Virginia Department of Health and Human Resources (DHHR) for information about

adoption or review the DHHR Web site at www.wvdhhr.org. For more information about attorneys who are actively involved in adoption practice you may wish to contact the West Virginia State Bar or consult the *Martindale Hubbell Law Directory*, available at most libraries, or the American Academy of Adoption Attorneys.

Can foster parents adopt children placed in their care?

Yes. In West Virginia, the DHHR recruits and trains individuals and families to care for children whose families are unable to provide the care. These families and individuals serve as **foster parents** and provide **foster care** to children placed with them.

In certain situations, foster parents may be permitted to adopt their foster children. In the past, siblings, or children from the same family, were not always placed together. Legislation has now been passed requiring DHHR to keep siblings together in foster placement if possible.

Foster parents who want to adopt a foster child in their custody, and who have been notified that the parental rights of the child's parents have been terminated, must sign a **Notice of Intent to Adopt**.

Foster parents should tell DHHR of their desire to adopt a child as soon as possible. If siblings are to be permanently separated, a circuit court must enter an order that contains a finding that the separation is in the best interests of the children.