

*A Comparison of the Domestic Relations Laws
Maryland, Washington, D.C. and Virginia*

by

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This outline is a reference tool only and is intended to point the reader in the direction of applicable case law. It does not purport to be a comprehensive listing of current cases in the relevant jurisdictions. The statutes and cases cited herein are believed to be correct through October, 2009; however, the reader should independently verify any information upon which they intend to rely.

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ANTENUPTIAL AGREEMENTS			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
STATUTE	Uniform Premarital Agreement Act of 1995, DC Code §§46-501 et seq., enacted 1996.	None.	VA Premarital Agreement Act Va. Code §§ 20-147 <u>et. seq.</u>
LEADING CASE LAW	<u>Burtoff v. Burtoff</u> , 418 A.2d 1085 (D.C. 1980); <u>Brice v. Brice</u> , 411 A.2d 340 (D.C. 1980); <u>Critchell v. Critchell</u> , 746 A.2d 282 (D.C. 2000).	<u>Frey v. Frey</u> , 471 A.2d 705 (Md. 1984) (waiver of alimony in antenuptial agreement not void per se); <u>Herget v. Herget</u> , 573 A.2d 798 (Md. 1990); <u>Golden v. Golden</u> , 695 A.2d 1231 (Md. App. 1997); <u>Harbom v. Harbom</u> , 760 A.2d 272 (Md. App. 2000).	<u>Smith v. Smith</u> , 597 S.E.2d 250 (Va. Ct. App. 2004); <u>Rogers v. Yourshaw</u> , 448 S.E. 2d 884 (Va. App. 1994); <u>Carpenter v. Carpenter</u> , 449 S.E.2d 502 (Va. App. 1994); <u>Batleman v. Rubin</u> , 98 S.E.2d 519 (Va. 1957); <u>Cumming v. Cumming</u> , 102 S.E. 572 (Va. 1920); <u>Suthor v. Gooch</u> , 244 F. 361 (4th Cir. Va. 1917).
VALID UPON DEATH	Yes-DC Code § 19-113 (f).	Yes- <u>Hartz v. Hartz</u> , 234 A.2d 865 (Md. 1967).	Yes-Va. Code § 20-150.
VALID UPON DIVORCE	Yes- <u>Burtoff v. Burtoff</u> , <u>supra</u> .	Yes- <u>Frey v. Frey</u> , <u>supra</u> .	Yes-Va. Code § 20-150.

ANTENUPTIAL AGREEMENTS

REQUIREMENTS FOR VALIDITY

(1) In writing and signed by both parties; DC Code §46-502.
 (2) Voluntarily executed by the parties; DC Code §46-506 (a) (1).
 (3) Not unconscionable when executed and before execution (A) fair and reasonable disclosure of the property or financial obligations of the other party given, and (B) voluntary and express waiver, in writing, of right to disclosure beyond that provided, and (C) adequate knowledge of the property or financial obligations of the other party; DC Code §46-506 (a) (2).
 (4) Valid marriage or domestic partnership (if void marriage or domestic partnership, enforceable only to the extent to avoid an inequitable result – unless the agreement expressly provides it is enforceable in event marriage or domestic partnership later determined void). DC Code §46-507.

(1) Strict requirement that they are fair and equitable in procurement and result;
 (2) Frank, full and truthful disclosure of all assets;
 (3) Must be entered into voluntarily, freely and with full knowledge of meaning and effect.
 (4) Independent legal advice;
 (5) Confidential relationship between the parties.
Cannon v. Cannon 384 Md. 537, 865 A.2d 563 (Md. 2005).
 Antenuptial agreements are evaluated upon the factors indicated in Hartz, supra.

(1) In writing and signed by both parties; enforceable without consideration and effective upon marriage. Va. Code § 20-149.
 (2) Voluntary execution; Va. Code § 20-151(A) (1).
 (3) Conscionable when executed and fair and reasonable disclosure of property and financial obligations or voluntary and express written waiver of disclosure. Va. Code § 20-151(A)(2).
 (4) Valid marriage (if void marriage, enforceable only to the extent to avoid an inequitable result) Va. Code § 20-151(C).



MARRIAGE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
LICENSE REQUIRED	Yes- DC Code §§ 46-410, 46-412, 46-416 DC Code §46-418 controls waiver of license requirement.	Yes- Md. Fam. Law Code §§ 2-401, 2-402, 2-403, 2-404, 2-405	Yes - Va. Code §§ 20-13, et seq.
WAITING PERIOD	DC Code §46-409. A license to marry shall not be issued until 3 days have elapsed after application.	Md. Fam. Law Code § 2-405(d).	None. §20-14.1 (license authorizes solemnization of marriage for a period of 60 days from the date of issuance)
CEREMONY	Yes- DC Code §46-406. Performed by a minister authorized by Superior Court judge; any judge or justice of court of record; the Clerk of the Superior Court or such deputies designated in writing by the Clerk and approved by the Chief Judge.	Yes- Md. Fam. Law Code § 2-406. Performed by any official of a religious order or body authorized; any clerk; any deputy clerk authorized.	Yes - Va. Code §§ 20-13 and 20-23 through 20-26. Performed by minister; person as authorized by courts; judge or justice.
BLOOD TEST, SYPHILIS TEST, AIDS TEST	Yes- DC Code §46-417. Blood tests for syphilis.	No.	No. Information regarding availability of AIDS testing to be furnished to applicants. Va. Code §§ 20-1 through 20-12: Premarital Syphilis Tests and Examinations Repealed by Act 1984.
CHILDREN OF VOID OR VOIDABLE MARRIAGES	No specific statutory provision.	Children of a void marriage shall be legitimized in a court decree of criminal or civil annulment, or when a court decrees an absolute divorce on grounds making the marriage void ab initio. Md. Fam. Law Code § 5-202.	Legitimate by statute. Va. Code § 20-31.1.

MARRIAGE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
<p>PROHIBITED MARRIAGES</p> <p>(see also Grounds for Annulment, <u>infra</u>)</p>	<p>Yes- DC Code §46-401; § 16-904(d).</p> <p><u>Void Ab Initio</u> DC Code §46-401. Marriage where pre-existing marriage not terminated by death or divorce; Marriage of man and woman who are on a detailed list of relations by blood and marriage, as set forth in § 46-401(1) & (2).</p> <p><u>Voidable</u> DC Code §46-403. (1) Marriage of an idiot or lunatic; (2) Where consent is procured by force or fraud; (3) Where either party is incapable, from physical causes, from entering into the married state; (4) Where either party is under the age of 16.</p> <p><u>Dean v. District of Columbia</u>, 653 A.2d 307 (DC 1995) (intent that "marriage" is limited to unions between persons of opposite sexes).</p>	<p>Yes- Md. Fam. Law Code §§ 2-201, 2-202, 2-301</p> <p><u>Void Ab Initio</u> Pre-Existing marriage; Same sex marriages; Marriages within three degrees of direct lineal consanguinity or within first degree of collateral consanguinity; one or both parties lacked mental capacity to marry.</p> <p><u>Voidable</u> Impotence; Fraud, coercion or duress; False statement on marriage certificate; Certain relationships by blood or marriage; Either party 15 and lacked both parental consent and physician's certificate; Either party 16 or 17 and lacked either parental consent or physician's certificate. Either party under 15 may not marry.</p> <p><u>Between a man and a woman</u> § 2-201 provides that marriage only between a man and a woman is valid in this state, and this does not abridge fundamental right to marriage, discriminate based upon sex, or otherwise implicate a suspect or quasi suspect class. <u>Conaway v. Deane</u>, 401 Md. 219 (2007)</p>	<p>Yes- Va. Code §§ 20-38.1, 20-45.1, 20-45.2, 20-45.3.</p> <p><u>Void Ab Initio</u> Marriage where pre-existing marriage; Marriage between an ancestor and decedent, brother and sister, whether by half blood, whole blood, or adoption, uncle and niece, aunt and nephew, whether by half blood or by whole blood; Marriage where parties are under age 18 and no consent; Same sex marriage; Marriage where there is a lack of consent due to mental incapacity or infirmity; same sex civil unions.</p> <p><u>Voidable</u> Va. Code § 20-89.1 Spouse physically or incompetent (impotent); Fraudulent marriage; Marriage under duress; Marriage to felon or prostitute; Pregnant with someone else's child at the time of the marriage.</p>
<p>MINIMUM AGE WITHOUT CONSENT/ WITH CONSENT</p>	<p>18 - DC Code §46-411. 16 - DC Code §46-403.</p>	<p>18 - Md. Fam. Law Code § 2-301. 16 - Md. Fam. Law Code § 2-301. <u>Picarella v. Picarella</u>, 20 Md. App. 499, 316 A.2d 826 (1974) (neither void nor voidable).</p>	<p>18 - Va. Code § 20-49. 16 - Va. Code § 20-48.</p>

MARRIAGE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
COMMON LAW MARRIAGE RECOGNIZED	Yes- <u>Matthews v. Britton</u> , 303 F.2d 408 (DC Cir. 1962).	No- except that common law marriages created elsewhere will be recognized. <u>Henderson v. Henderson</u> , 87 A.2d 403 (Md. 1952).	No- except that common law marriage created elsewhere will be recognized if consummated in a state where valid and between parties not forbidden to marry under Virginia law. <u>Metropolitan Life Ins. Co. v Holding</u> , 293 F. Supp. 854 (E.D. Va 1968); <u>Kelderhaus v. Kelderhaus</u> , 467 S.E. 2d 303 (Va. Ct. App. 1996).



MARRIAGE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
JURISDICTION VENUE	<p>DC Code § 11-1101 (a) (5)-(7): Family Court of the District of Columbia: Family Court of the Superior Court has original jurisdiction over actions for annulment, or to declare a marriage either void or valid.</p> <p><u>Venue</u> Venue not an issue as only one local court within jurisdiction.</p>	<p>Md. Fam. Law Code § 1-201: Md. circuit courts have jurisdiction to annul the marriage of a resident and to annul any marriage performed in the State. <u>Dean v. Dean</u>, 146 A.2d 861 (Md. 1958).</p> <p><u>Venue</u> General civil rules apply regarding venue, CJP § 6-201.</p>	<p>Va. Code § 20-96: The circuit court has jurisdiction to annul or affirm marriage and for divorces and claims for separate maintenance.</p> <p><u>Venue</u> Va. Code § 8.01-261(19): Preferred venue: (1) where parties last cohabited; or (2) at option of plaintiff, county or city where defendant resides; (3) if defendant is not a resident, in county or city where plaintiff resides.</p> <p>Venue in divorce cases is no longer jurisdictional. <u>Decker v. Decker</u>, 405 S.E.2d 12 (Va. App. 1991).</p>
DOMICILE/ RESIDENCY REQUIREMENTS	<p>DC Code § 16-902: Annulment of marriage performed outside of DC – one party must be a bona fide resident of DC at the commencement of the action.</p> <p>Legal separation and divorce require 6 mos. residency of one of the parties</p> <p>Residence of the parties to action for annulment of a marriage performed in DC shall not be considered in determining whether such action shall be maintainable.</p> <p>Member of armed services residing in DC for a continuous period of 6 mos. during his or her period of military service shall be deemed to reside in DC for this purpose only.</p>	<p>No express statutory provision.</p>	<p>Va. Code § 20-97: One party must be domiciled in and an actual bona fide resident of VA for at least six months preceding the commencement of the suit.</p> <p>A member of the Armed Forces is deemed to be domiciled and a bona fide resident of VA if: (1) he/she has been stationed in VA and lived with spouse six or more months next preceding the commencement of the suit; or (2) if he/she is stationed in a territory or foreign country at the time the suit is commenced and was domiciled in VA for the six month period immediately preceding his/her being stationed in that territory or country.</p>

MARRIAGE

	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
 GROUNDS FOR ANNULMENT	<p>DC Code § 16-904(d) (1-5):</p> <p>(1) Where either party has a former spouse living and the marriage has not been dissolved;</p> <p>(2) Where marriage was contracted during the insanity of either party (unless voluntary cohabitation after discovery of the insanity);</p> <p>(3) Where the marriage was procured by fraud or coercion;</p> <p>(4) Where either party was matrimonially incapacitated at time of marriage without the knowledge of the other and has continued to be so incapacitated; or</p> <p>(5) Where either party had not attained age of legal consent (unless there has been voluntary cohabitation after attaining age of legal consent) – but only at suit of underage party.</p>	<p>See Prohibited Marriages <u>supra</u>.</p>	<p>Va. Code § 20-89.1:</p> <p>(a) When marriage is alleged void or voidable for any cause specified in Va. Code § 20-13, 20-38.1 or 20-45.1, or by fraud or duress;</p> <p>[See Prohibited Marriages, <u>supra</u>]</p> <p>(b) Natural or incurable impotency of body existing at time of marriage;</p> <p>One party convicted of felony prior to marriage without the knowledge of other;</p> <p>Wife pregnant by someone else at time of marriage without husband’s knowledge;</p> <p>Husband fathered child born to another woman born 10 months after marriage without wife’s knowledge;</p> <p>Where either party has been a prostitute before marriage without other’s knowledge.</p>

SEPARATION AGREEMENTS			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
PUBLIC POLICY	<p>Settlement agreements are encouraged to settle the financial arrangements of parties. <u>Lanahan v. Nevius</u>, 317 A.2d 521 (DC 1974); <u>Davis v. Davis</u>, 268 A.2d 515 (DC 1970); <u>Le Bert-Francis v. Le Bert-Francis</u>, 194 A.2d 662 (DC 1963).</p> <p>Agreements regarding custody of children are another matter entirely. <u>Spires v. Spires</u>, 743 A.2d 186 (DC 1999).</p> <p>But see § 16-914 (h): “The Court shall enter an order for any custody arrangement that is agreed to by both parents unless clear and convincing evidence indicates that the arrangement is not in the best interest of the minor child.”</p>	<p>Md. Fam. Law Code § 8-101 provides that deeds or agreements relating to alimony, support, property and personal rights are valid and enforceable.</p>	<p><u>Historically Disfavored</u> Separation agreements used as devices to facilitate divorce are illegal and void. See <u>Pillow v. Pillow</u>, 410 S.E.2d 407 (Va. App. 1991); <u>Arrington v. Arrington</u>, 82 S.E.2d 548 (Va. 1954); <u>Ryan v. Griffin</u>, 103 S.E.2d 240 (Va. 1958)</p> <p><u>Modern View</u> See Va. Code § 20-155. Voluntary agreements which promote prompt resolution of disputes are favored by public policy. <u>Morris v. Morris</u>, 219 S.E.2d 864 (Va. 1975); <u>Cooley v. Cooley</u>, 263 S.E.2d 49 (Va. 1980); <u>Shoup v. Shoup</u> 556 S.E.2d 783 (Va. Ct. App. 2001); <u>Pillow v. Pillow</u>, <i>supra</i>.</p>
STATUTE	<p>DC Code § 16-910: Court has power to divide property and debt “in the absence of a valid...post-nuptial agreement...” resolving all property issues.</p>	<p>Md. Fam. Law Code §8-101, <i>et seq.</i></p>	<p>Va. Code § 20-109.1 and 20-155.</p>

SEPARATION AGREEMENTS			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
REQUIREMENTS FOR VALIDITY	<p>Good faith; Mutuality; Voluntariness; No fraud, duress, concealment or overreaching. <u>Cooper v. Cooper</u>, 472 A.2d 878 (DC 1984); <u>Davis v. Davis</u>, <i>supra</i>; <u>Rosenbaum v. Rosenbaum</u>, 210 A.2d 5 (DC 1965).</p> <p>Where separation agreement is fair and reasonable and is intended as a final disposition regarding property rights or support, parties will be bound. <u>Swift v. Swift</u>, 566 A.2d 1045 (DC 1989).</p> <p>An oral agreement which conforms to the general requirements of contract law is enforceable, and if involving real property, may be outside of the statute of frauds where certain rights are relinquished during the course of legal proceedings, such as the abandonment of appeal rights or withdrawal of countersuit. <u>Brown v. Brown</u>, 343 A.2d 59 (DC 1975).</p>	<p>Separation agreements are contracts subject to the same general rules governing creation, termination and revision as other contracts. <u>Eckstein v. Eckstein</u>, 379 A.2d 757 (Md. App. 1978).</p> <p>Duress, fraud and undue influence basis to avoid agreement. <u>Saggese v. Saggese</u>, 290 A.2d 794 (Md. App. 1972).</p> <p>Agreement may be set aside if so inequitable as to shock the conscience. <u>Eaton v. Eaton</u>, 366 A.2d 121 (Md. App. 1976).</p> <p>Oral agreements may be valid but terms must be specific. <u>Golden v. Golden</u>, 695 A.2d 1231, cert. denied, 702 A.2d 290 (Md. 1997).</p>	<p>Separation agreements are valid upon execution. Va. Code § 20-155.</p> <p>Separation agreements for the purposes of settling the rights and obligations of the spouses need not be in writing and are considered signed by the parties if the terms of the agreement are (i) contained in a court order endorsed by counsel or the parties or (ii) recorded and transcribed by a court reporter and affirmed personally by the parties on the record. Va. Code § 20-155.</p> <p>Requirement of basic fairness. <u>Henebry v. Henebry</u>, 38 S.E.2d 320 (Va. 1946).</p> <p>Must meet general requirements for any contract's validity including valid consideration. <u>Upton v. Ames & Webb, Inc.</u>, 18 S.E.2d 290 (Va. 1942); <u>Smith v. Smith</u>, 351 S.E. 2d 593 (Va. App. 1986); <u>Bergman v. Bergman</u>, 487 SE.2d 264 (Va. App. 1997).</p> <p>Mutuality. <u>Capps v. Capps</u>, 219 S.E.2d 901 (Va. 1975).</p> <p>When bargaining at arm's length, no requirement to disclose infidelity. <u>Barnes v. Barnes</u>, 340 S.E.2d 803 (Va. 1986).</p>
EFFECT OF LEGAL REPRESENTATION	<p>In absence of fraud, duress or concealment, a separation agreement is valid no matter how ill advised a party may have been in executing it. <u>Reynolds v. Reynolds</u>, 415 A.2d 535 (DC 1980).</p>	<p>Legal representation only one factor to be considered. <u>McClellan v. McClellan</u>, 451 A.2d 334 (Md. App. 1982).</p>	<p>Receipt of independent legal advice is one factor to consider. See, e.g., <u>Morris</u>, <i>supra</i>.</p> <p><u>Derby v. Derby</u>, 378 S.E.2d 74 (Va. App. 1989) (holding that when husband and wife separate and employ attorneys to negotiate an agreement in settlement of property rights they become adversaries and their former or confidential relationship ends).</p>

SEPARATION AGREEMENTS			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
EFFECT OF RECONCILIATION	Subsequent cohabitation of parties to an agreement has effect of voiding the agreement only if the intent to do so is manifested. <u>Wood v. Wood</u> , 309 A.2d 103 (DC 1973).	As to provisions dealing with the disposition of property, a reconciliation and resumption of cohabitation will not automatically terminate those provisions. <u>Mach v. Baranowski</u> , 136 A. 34 (Md. 1927); <u>Frana v. Frana</u> , 278 A.2d 94 (Md. App. 1971), reaffirmed in <u>Kaouris v. Kaouris</u> , 603 A.2d 1350 (Md. App. 1992).	§ 20-155 A reconciliation of the parties after the signing of a separation or property settlement agreement shall abrogate such agreement unless otherwise expressly set forth in the agreement.
RELATIONSHIP TO DECREE AND POWER OF COURT	<p>Court can incorporate a separation agreement into decree. Any breach thereof is not a breach of contract but a violation of the decree and subject to the contempt powers of the court. <u>Mohler v. Mohler</u>, 302 A.2d 737 (D.C. 1973).</p> <p>However, in D.C., it is unclear if incorporation without merger preserves the integrity of the contract. A few cases suggest that incorporation of an agreement into a decree does not keep the agreement as an independent contract. See <u>Brown v. Dyer</u>, 489 A.2d 1081, 1083, fn. 1 (DC 1985); <u>Grand v. Grand</u>, 163 A.2d 556, 557 (DC 1960).</p>	Customarily, Md. agreements are approved at the divorce hearing and are “incorporated without merger.” Such an agreement survives as an independent contract between the parties. <u>Boucher v. Shomber</u> , 501 A.2d 97 (Md. App. 1985); <u>Hamilos v. Hamilos</u> , 450 A.2d 1316 (Md. App. 1982).	<p>Va. Code § 20-109.1</p> <p>Court can “affirm, ratify, and incorporate by reference.” agreement into decree of divorce. <u>Rodriguez v. Rodriguez</u>, 334 S.E.2d 595 (Va. App. 1985). <u>Shoup v. Shoup</u>, <i>supra</i>.</p> <p>Incorporation does not automatically merge agreement. <u>Parra v. Parra</u>, 336 S.E.2d 157, 163 (Va. App. 1985). However, court may enforce the parties’ incorporated agreement with contempt power. <u>Lindsay v. Lindsay</u>, 238 S.E.2d 817 (Va. 1977).</p> <p>Court can simply approve, ratify and confirm a separation agreement so that the agreement remains an independent contract. <u>Shoosmith v. Scott</u>, 232 S.E.2d 787 (Va. 1977); <u>Rodriguez v. Rodriguez</u>, <i>supra</i>.</p>

SEPARATION AGREEMENTS

	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
MODIFICATION OF PAYMENTS PER UN-INCORPORATED PROPERTY SETTLEMENT AGREEMENT	<p><u>Alimony</u> Court cannot modify amount of alimony provided for in agreement unless the agreement provides for modification.</p> <p><u>Child Support</u> Child support established by a valid agreement is modifiable if movant shows (1) that there is a change in circumstances which was unforeseen at the time the agreement was entered into, and (2) that change is both substantial and material to the welfare and best interest of the child. <u>Cooper v. Cooper</u>, 472 A.2d 878 (DC 1984); <i>see also</i> <u>Lanahan v. Nevius</u>, 317 A.2d 521 (DC 1974) (court may increase but not decrease support set forth in an agreement). If merged into the court order, the binding force of the amount of child support is not based on the contractual obligation of agreement, but on authority of court’s order, guided by guidelines. <u>Duffy v. Duffy</u>, 881 A2d 630 (DC 2005).</p> <p>A separation agreement which is not merged in the final judgment of divorce is governed by the law of contracts. Under contract law, a written contract may be orally modified or rescinded by a subsequent oral agreement, even where the contract contains express language prohibiting oral modification. <u>Clark v. Clark</u>, 535 A.2d 872 (DC 1987).</p>	<p><u>Alimony</u> The court may modify agreement with respect to spousal support unless there is a provision that specifically states that the provisions with respect to spousal support are not subject to court modification or if there is a waiver of alimony which waiver is expressly non-modifiable under the agreement. Md. Fam. Law Code § 8-103(b) and (c); <u>Shapiro v. Shapiro</u>, 697 A.2d 1342 (Md. 1997)(parties’ agreement to modify alimony under limited circumstances is enforceable). The Court may modify alimony retroactive to the date preceding filing of request for modification, <u>Langston v. Langston</u>, 784 A2d 1086 (Md. 2001); <u>Fantle v. Fantle</u>, 782 A.2d 377 (Md. App. 2001).</p> <p><u>Child Support</u> Md. Fam. Law Code § 8-103(a): The court may modify any provision in an agreement with respect to the care, custody, education, or support of any minor child if the modification would be in the best interest of the child. <u>Kovacs v. Kovacs</u>, 633 A.2d 425 (Md. App. 1993); <u>Corry v. O’Neill</u>, 658 A.2d 1155 (Md. App. 1995); <u>Stancill v. Stancill</u>, 408 A.2d 1030 (Md. 1979) (even if court may not modify support provision of an incorporated agreement, it may still enforce the agreement by contempt proceedings); <u>McClure v. McClure</u>, 289 A.2d 610 (Md. App. 1972); <u>Stern v. Horner</u>, 324 A.2d 134 (Md. App. 1974). <i>See also</i> <u>Ruppert v. Fish</u>, 582 A2d 828 (Md App 1990) Absent some defect that would make the agreement invalid or unenforceable, the agreement should be given effect because parents would not ordinarily agree in writing to act in a manner detrimental to their children.</p>	<p><u>Alimony</u> Va. Code § 20-109: Court order must be in accordance with agreement between the parties if filed with court. <u>Pendleton v. Pendleton</u>, 471 S.E.2d 783 (Va. Ct. App. 1996).</p> <p>Upon petition of either party the court may increase, decrease or terminate the amount or duration of any spousal support and maintenance as the circumstances make proper. Upon clear and convincing evidence that the spouse receiving support has been habitually cohabitating with another person in a relationship analogous to marriage for 1 year or more commencing on or after July 1, 1997, the court <u>shall</u> terminate support unless: (i) otherwise provided by contract, or (ii) termination of support is unconscionable.</p> <p><u>Child Support</u> The court may modify an agreement the parties reach regarding minor children “from time to time. . . as the circumstance of the parents and the benefit of the children may require.” <u>Kaplan v. Kaplan</u>, 466 S.E.2d 111 (Va. App. 1996); “The parties may not, by agreement prevent the court from exercising its power to change, modify, or enforce its decree concerning the custody and maintenance of minor children” <u>Shoup v. Shoup</u>, <i>supra</i>; the parties’ agreement is a factor to be considered by the court. Va. Code § 20-108.1.</p>

DIVORCE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
JURISDICTION VENUE	<p>DC Code § 11-1101 (a) (1) The Family Court of the District of Columbia: Family Court of Superior Court, has original jurisdiction over actions for divorce and separation.</p> <p>Venue – Venue not an issue as only one local court within jurisdiction.</p>	<p>Md. Fam. Law Code § 1-201: Equity court has jurisdiction over divorce.</p> <p>Bill of divorce filed in county where plaintiff resides, CJP §6-202-1 or where defendant resides, is regularly employed or has place of business. CJP § 6-201 for a Maryland Court to have jurisdiction for a divorce action, at least one of the parties must have been a bona fide resident of Maryland when the complaint was filed, <u>Fletcher v. Fletcher</u>, 95 Md. App. 114, 619 A2.d 561 (1993).</p>	<p><u>Jurisdiction</u> Va. Code § 20-96: Jurisdiction lies in the circuit court.</p> <p><u>Venue</u> Va. Code § 8.01-261(19): Preferred venue: (1) where parties last cohabitated; or (2) at option of plaintiff, county or city where defendant resides; (3) if defendant is not a resident, in county or city where plaintiff resides.</p> <p>Venue in divorce cases is no longer jurisdictional. <u>Decker v. Decker</u>, 405 S.E.2d 12 (Va. App. 1991).</p>
DOMICILE AND RESIDENCE REQUIREMENTS	<p>DC Code § 16-902: Legal separation and divorce require 6 mos. residency of one of the parties</p> <p>Member of armed services residing in DC for a continuous period of 6 mos. during his or her period of military service shall be deemed to reside in DC for this purpose only.</p>	<p>Md. Fam. Law Code §7-101(a): If grounds occurred outside of Maryland, one year residency requirement of either party.</p>	<p>Va. Code § 20-97: One party must be domiciled in and an actual bona fide resident of Virginia for at least 6 months preceding commencement of suit.</p> <p>A member of the Armed Forces is deemed to be domiciled and a bona fide resident of VA if: (1) he/she has been stationed in VA and lived with spouse six or more months next preceding the commencement of the suit; or (2) if he/she is stationed in a territory or foreign country at the time the suit is commenced and was domiciled in VA for the six month period immediately preceding his/her being stationed in that territory or country.</p>
SUBJECT MATTER JURISDICTION	<p>DC Code § 11-1101 (a) (1) The Family Court of the District of Columbia: Family Court of Superior Court, has original jurisdiction over actions for divorce and separation.</p>	<p>Long arm personal jurisdiction over non-resident defendant in child support and alimony cases. Md. Cts. and Jud. Proc. Code § 6-103.1</p>	<p>The circuit court has jurisdiction over actions for divorce. Va. Code § 20-96.</p>

DIVORCE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
CORROBORATION OF GROUNDS REQUIREMENT	Not required. However, pursuant to DC Code §16-919, a decree for divorce or annulment may not be rendered on default without proof, and an admission contained in the answer of the defendant may not be taken as proof of the facts, but shall be proved by other evidence.	<p>Md. Fam. Law Code § 7-101(b): Plaintiff's testimony must be corroborated.</p> <p>Yes. Divorce by agreement of the parties is not permitted. <u>Leary v. Leary</u>, 627 A.2d 30 (Md. App. 1993).</p> <p>When basis is voluntary separation agreement, an agreement under oath before application for divorce is filed serves as full corroboration of the plaintiff's testimony that separation was voluntary. Md. Fam. Law Code § 8-104.</p>	<p>Yes. Va. Code § 20-99(1). No divorce shall be granted on the uncorroborated testimony of the parties or either of them. <u>Collier v. Collier</u>, 341 S.E.2d 827 (Va. App. 1986) (holding where it is apparent that there is no collusion, corroboration needs only be slight).</p> <p>(Every element or charge does not need to be corroborated. Corroboration has to give sufficient strength to the complainant's testimony for it to be believed.) <u>Bchara v. Bchara</u>, 563 S.E.2d 398 (Va. Ct. App. 2002).</p>
GROUNDS FOR ABSOLUTE DIVORCE	<p>DC Code § 16-904 (a): <u>No Fault Grounds</u> (1) Both parties have mutually and voluntarily lived separate and apart without cohabitation for a period of six months preceding commencement of the action. (2) Both parties have lived separate and apart without cohabitation for a period of one year preceding commencement of the action.</p>	<p>Md. Fam. Law Code § 7-103: The grounds must exist at the time the suit is filed.</p> <p><u>Fault Grounds</u> Adultery; Desertion for 12 months (actual or constructive); 12 month imprisonment under conviction of felony or misdemeanor; Insanity if insane spouse is confined for three years; Cruelty of treatment; Excessively vicious conduct.</p> <p><u>No Fault Grounds</u> (1) Statutory separation - H & W live separate and apart without cohabitation and without interruption for 2 years; or (2) Voluntary separation for 12 months with shared intent to end the marriage.</p>	<p>Va. Code 20-91: <u>Fault Grounds</u> Adultery; Sodomy or buggery committed outside of marriage; Conviction of felony with more than one year imprisonment; cruelty; reasonable apprehension of bodily harm; or desertion (after a period of one year).</p> <p><u>Glaze v. Glaze</u>, 46 Va. Cir. 333 (Va. Cir. Ct. 1998) (holding married woman cannot commit adultery by engaging in sexual relationship, particularly sodomy, with another woman).</p> <p><u>No Fault Grounds</u> On application where parties have lived separate and apart for one year without interruption. If separation agreement exists and no minor children, upon application after the parties have lived separate and apart for 6 months.</p>

DIVORCE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
SEPARATE LIVES DOCTRINE	Yes, DC Code § 16-904 (a), (b) and (c). Parties who have pursued separate lives sharing neither bed nor board shall be deemed to have lived separate and apart even though they reside under the same roof; or the separation is pursuant to an order of a court.	No. Parties cannot live together under same roof in a voluntary separation. <u>Mount v. Mount</u> , 476 A.2d 1175 (Md. App. 1984) (upholding evidentiary finding of separation despite claims of cohabitation).	Under certain circumstances, parties who continue to reside under the same roof can be found to be living separate and apart. <u>Bchara v. Bchara</u> , 38 Va. App. 302, 563 S.E.2d 398 (Va. Ct. App. 2002) (upheld the grant of a divorce based on a one year separation where the parties still lived in the same marital residence). But see <u>Catalano v. Catalano</u> 68 Va. Cir. 80 (Va. Cir. Ct. 2005) (parties found not living separate and apart when living under the same roof in separate bedrooms with no sexual relations but attending social functions together, taking some meals together, wife continued to do the house chores for both and husband continued to financially support all the family activities).
DEFENSES TO GROUNDS FOR ABSOLUTE DIVORCE	Voluntary separation must be voluntary on the part of both parties. <u>Henderson v. Henderson</u> , 206 A.2d 267 (DC 1965).	Voluntary separation must be with the shared intent of ending the marriage. <u>Aronson v. Aronson</u> , 691 A.2d 785, cert. denied, 697 A.2d 111 (Md. 1997). Md. Fam. Law Code §7-103(b) and (d): Factors to be considered: Condonation – not an absolute bar, but is a factor. Recrimination – not a bar but is a factor for an adultery case. <u>See Besche v. Besche</u> , 121 A.2d 708 (Md. 1956).	Recrimination - <u>Davis v. Davis</u> 277 S.E.2d 640 (Va. Ct. App. 1989). Condonation & Cohabitation – <u>Hollis v. Hollis</u> 427 S.E.2d 233 (Va. Ct. App. 1993). Connivance – <u>Hollis v. Hollis</u> , <u>supra</u> . Justification – <u>Kerr v. Kerr</u> 371 S.E.2d 30 (Va. Ct. App. 1988). Va. Code § 20-94 – voluntary cohabitation after knowledge of the adultery, sodomy or buggery, or that it occurred more than 5 years before institution of the suit, or that it was committed by the procurement or connivance of the party alleging the act.

DIVORCE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
GROUND FOR LIMITED DIVORCE OR LEGAL SEPARATION	<p><u>Legal Separation:</u> DC Code § 16-904 (b):</p> <p><u>No Fault Grounds:</u> (1) Both parties have mutually and voluntarily lived separate and apart without cohabitation. (2) Both parties have lived separate and apart without cohabitation for a period of one year preceding commencement of the action.</p>	<p><u>Limited Divorce:</u></p> <p>Md. Fam. Law Code § 7-102: Limited divorce can be obtained even when the parties live under the same roof if the lack of marital relations is involuntary and amounts to constructive desertion. <u>Ricketts v. Ricketts</u>, 393 Md. 479 (2006).</p> <p>Cruelty towards wife or minor child;</p> <p>Excessively vicious conduct;</p> <p>Desertion (constructive or actual);</p> <p>Voluntary separation.</p>	<p>Va. Code § 20-95:</p> <p>Cruelty;</p> <p>Reasonable apprehension of bodily hurt;</p> <p>Willful desertion or abandonment (may be constructive).</p>
DEFENSES TO GROUND FOR LIMITED DIVORCE OR LEGAL SEPARATION			<p>Va. Code § 20-95 cruelty, reasonable apprehension of bodily hurt, willful desertion or abandonment.</p> <p>Va. Code § 20-117: Divorce from bed and board not a bar to obtaining absolute divorce unless the cause for an absolute divorce was existing and known to the party applying for the absolute divorce before the bed and board divorce was entered.</p> <p><u>See Petachenko v. Petachenko</u>, 350 S.E.2d 600 (Va. 1986) (a single act of sexual intercourse following desertion would not constitute “matrimonial cohabitation” sufficient to defeat charge of desertion).</p>
WHEN DIVORCE DECREE FINAL	<p>DC Code § 16-920: When time for appeal has run (30 days from docketing of judgment) or upon final disposition of any appeal noted. If application for a stay is denied, judgment becomes final upon entry of order denying stay. Parties may file joint waiver of the right to appeal.</p>	<p>Upon entry on docket. <u>See, e.g., Sullivan v. Commissioner of Internal Revenue</u>, 256 F.2d 664 (4th Cir. 1958)(decree of divorce not stayed pending appeal challenging validity of divorce).</p>	<p>Upon entry of Decree, but Court can modify for 21 days after entry.</p> <p>Va. Sup. Ct. R. 1:1</p> <p><u>Decker v. Decker</u>, 471 S.E.2d 775 (Va. Ct. App. 1996).</p>

DIVORCE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
MERGER OR ENLARGEMENT OF LIMITED DIVORCE OR LEGAL SEPARATION	DC Code § 16-905 (b): Upon application by the party who was granted a legal separation the court may enlarge its decree to an absolute divorce by submission of affidavits showing no reconciliation has taken place or is probable, and six month's continued voluntary and uninterrupted separation after legal separation decree is issued, or one year's separation without interruption after legal separation is issued.	Md. Fam. Law Code §7-103(e): Limited divorce based on desertion may be enlarged when 12 months expires.	Va. Code § 20-121: Merger allowed one year after date of separation. However, if no minor children and parties have entered into separation agreement then merger possible after 6 months if separated without interruption and no reconciliation probable.
REVOCAION OF LIMITED DIVORCE OR LEGAL SEPARATION	DC Code § 16-905 (a): The court may revoke its decree of legal separation at any time, upon joint application of the parties.	Md. Fam. Law Code § 7-102(d): The court may revoke the decree at any time upon joint application of the parties.	Va. Code §20-120: Decree shall be revoked upon submission of an order endorsed by both parties or counsel.
CHANGE OF NAME	DC Code § 16-915: Upon request of party who assumed a new name on marriage, court shall state in its decree the birth-given or previous name desired to be used.	Md. Fam. Law Code §7-105: Upon request, court shall change name if party took a new name on marriage and no longer wishes to use it.	Va. Code § 20-121.4: Original name shall be restored upon motion of party changing name as part of final decree or by separate order.

SPOUSAL SUPPORT, ALIMONY AND/OR MAINTENANCE

	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
<p>FACTORS CONSIDERED IN ARRIVING AT THE AMOUNT OF AWARD</p> <p>(continued next page)</p>	<p>Alimony, when divorce or legal separation is granted or when a termination of a domestic partnership becomes effective. DC Code §16-913: All relevant factors necessary for a fair and equitable award, including, but not limited to:</p> <ol style="list-style-type: none"> 1. Ability of the party seeking alimony to be wholly or partly self-supporting; 2. time necessary for the party seeking alimony to gain sufficient education or training to enable that party to secure suitable employment; 3. marital or domestic partnership standard of living, giving consideration to the fact that there are now 2 households to maintain; 4. duration of the marriage or domestic partnership; 5. circumstances which contributed to the estrangement of the parties; 6. age of each party; 7. physical and mental condition of each party; 8. ability of alimony payor to meet his/her needs while meeting the payee’s needs; 9. financial needs and resources of each party, including: income, income from marital, domestic partnership and non-marital assets; potential income which may be imputed to non-income producing assets; previous award of child support in this case, financial obligations of each party; right of a party to receive retirement benefits; and taxability or non-taxability of income. <p>Maintenance of spouse and minor children. See DC Code §16-916. Needy spouse, genuine need. (cont.)</p>	<p>Md. Fam. Law Code § 11 101(c): Agreement of the parties.</p> <p>Md. Fam. Law Code § 11-106(b): Required Considerations:</p> <ol style="list-style-type: none"> 1. Ability of seeking party to be wholly or partly self-supporting. 2. Time necessary to gain sufficient education or training to enable party to find suitable employment. 3. Standard of living during the marriage. 4. Duration of marriage. 5. The contributions, monetary and non-monetary, of each party to the well-being of the family. 6. Circumstances that contributed to the estrangement of the parties. 7. Age of each party. 8. Physical and mental condition of each party. 9. The ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony. 10. Any agreement between the parties. 11. Financial needs and resources of each party... Money for expenses from a “marriage-type” relationship is to be considered <u>Whittington v. Whittington</u>, 172 Md. App 317 (2007) 12. Whether the award would cause a spouse ...to become eligible for medical assistance. An unjustified rejection of a bona fide offer of reconciliation may be accepted as evidence of fault which is relevant in regard to any claim for alimony even in cases where a divorce is granted on a nonculpable ground. (cont.) 	<p>A spouse is barred from receiving support if that spouse is guilty of adultery (unless manifest injustice); the court shall also consider any marital fault in determining whether to award spousal support. Va. Code § 20-107.1.</p> <p>The court looks to:</p> <ol style="list-style-type: none"> 1. The obligations, needs and financial resources of the parties . . . ; 2. Standard of living established during the marriage; 3. Duration of the marriage; 4. Age and physical and mental condition of the parties; 5. Special circumstances of a child of the parties making it appropriate that a party not seek employment outside the home; 6. Monetary and non-monetary contributions of each party to the well-being of the family; 7. Property interests of the parties, real and personal, tangible and intangible; 8. Provisions made for marital property (under § 20-107.3); 9. Earning capacity, including the skills, education and training of the parties and the present employment opportunities . . . ; 10. Opportunity for, ability of, and the time and costs involved for a party to acquire . . . skills needed to enhance his or her earning ability; 11. Decisions regarding employment, career, economics, education and parenting arrangements during the marriage and their effect of present and future earning potential, including the length of time . . . absent from the job market; (cont.)

SPOUSAL SUPPORT, ALIMONY AND/OR MAINTENANCE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
<p>continued from above</p> <p>FACTORS CONSIDERED IN ARRIVING AT THE AMOUNT OF AWARD</p>	<p>...</p> <p><i>Alimony Pendente Lite</i> DC Code §16-911 (a) (1) refers to factors set forth in §16-913 (d).</p>	<p>...</p> <p><u>Rhoad v. Rhoad</u>, 330 A.2d 192 (Md. 1975); <u>Roginsky v. Blake-Roginsky</u>, 129 Md. App. 132, 740 A.2d 125 (Md. App. 1999). Court must consider all factors plus those not expressly listed. <u>Solomon v. Solomon</u>, 383 Md. 176 (2004).</p>	<p>...</p> <p>12. Extent to which either party has contributed to the attainment of education, training, career position or profession of the other party . . . ; 13. Other factors, including the tax consequences, . . . to consider the equities of the parties.</p>
<p>TYPES OF ALIMONY AWARDS AND AVAILABILITY</p> <p>continued next page</p>	<p><i>Pendente Lite</i> - DC Code §16-911 (a) (1): refers to factors set forth in §16-913 (d).</p> <p>Upon granting a divorce, separation or termination of domestic partnership - DC Code §16-913 (a) – (c).</p> <p>The alimony award may be indefinite or term-limited and structured as appropriate to the facts. Must be in the form of periodic payments; lump sum alimony is not authorized in DC. See also § 16-916...the Court may order, pendente lite or permanently, that one spouse “shall pay reasonable sums periodically for the support of such needy spouse, domestic partner may be retroactive to date of filing”. DC Code § 16-913 (c).</p>	<p><i>Pendente Lite</i> – Md. Fam. Law Code § 11-102.</p> <p>Md. Fam. Law Code § 11-106:</p> <p>Allows rehabilitative alimony and indefinite alimony but no alimony in gross. <u>McAlear v. McAlear</u>, 469 A.2d 1256 (Md. 1984).</p> <p>However, the trial court can make an award of <u>compound alimony</u> - simultaneous awards of rehabilitative and indefinite alimony. <u>Coviello v. Coviello</u>, 605 A.2d 661 (Md. App. 1992); <u>Franz v. Franz</u> 157 Md. App. 676 (2004).</p> <p>Md. Fam. Law Code §11-106(c): Indefinite alimony awarded where: (1) the party seeking alimony, by reason of age, illness, infirmity, or disability, cannot reasonably be expected to make substantial progress toward becoming self sufficient; or (2) unconscionably disparate standard of living. <u>Tracey v. Tracey</u>, 614 A.2d 590 (Md. 1992-); <u>Long v. Long</u>, 743 A2d 281 (Md App. 2000); <u>Innerbichler v. Innerbichler</u>, 749 A2d 251 (Md. App. 2000).</p>	<p><i>Pendente Lite</i> – Va. Code § 20-103.</p> <p>Va. Code § 20-107.1(C):</p> <p>The court, in its discretion, may decree that maintenance and support of a spouse be made in periodic payments for a defined duration, or in periodic payments for an undefined duration, or in a lump sum award, or in any combination thereof.</p> <p>§ 20-107.1(G): ... “[D]efined duration” means a period of time (i) with a specific beginning and ending date or (ii) specified in relation to the occurrence or cessation of an event or condition other than death or remarriage.</p> <p>§ 20-107.1(D): In addition to or in lieu of an award . . . the court may reserve the right of a party to receive support in the future. . . . [T]here shall be a rebuttal presumption that the reservation will continue for a period equal to 50% of the length of time between the date of marriage and the date of separation. (cont.)</p>

SPOUSAL SUPPORT, ALIMONY AND/OR MAINTENANCE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
<p>continued from above</p> <p>TYPES OF ALIMONY AWARDS AND AVAILABILITY</p>			<p>...</p> <p>In determining whether to award spousal support, a court shall also consider felony conviction and confinement, cruelty, willful desertion, or abandonment, and reasonable apprehension of bodily hurt. Va. Code § 20-107.1(E). No permanent support or maintenance to a spouse if that spouse is guilty of adultery, sodomy or buggery committed outside of the marriage, unless the court determines from clear and convincing evidence that it would be a manifest injustice to deny support to that party taking into consideration the respective degrees of fault during the marriage and relative economic circumstances of the parties. Va. Code § 20-107.1(B).</p>
<p>TERMINATION See Internal Revenue Code as well.</p> <p>continued next page</p>		<p>Md. Fam. Law Code §11-108: Unless parties agree otherwise, alimony terminates: on death of either party, remarriage of recipient, or where court finds it necessary to avoid harsh or inequitable result.</p> <p>Where parties agree that alimony terminates upon cohabitation, “cohabitation” is defined to require more than joint living arrangements. <u>Gordon v. Gordon</u>, 675 A.2d 540 (Md. 1996), <u>Whittington v. Whittington</u>, 172 Md. App. 317 (2007).</p> <p>Separation Agreement may require continued payment of support after remarriage of recipient <u>Campitelli v. Johnson</u>, 761 A2d 369, cert. denied, 768 A2d 54 (Md. 2001).</p>	<p>Cessation upon cohabitation, death and remarriage. Court may increase, decrease or terminate the amount or duration of support upon clear and convincing evidence of habitual cohabitation with another person in a relationship analogous to a marriage for one year or more, commencing on or after July 1, 1997, unless 1) otherwise provided by stipulation or contract or 2) the spouse receiving support proves by a preponderance of the evidence that termination of such support would be unconscionable. Va. Code § 20-109.</p> <p><u>Bergman v. Bergman</u>, 25 Va. App. 204, 487 S.E.2d 264 Va. Ct. App. (1997) (unlike the word “reside,” “cohabit” encompasses a personal relationship between the individuals). . . (cont.)</p>

SPOUSAL SUPPORT, ALIMONY AND/OR MAINTENANCE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
<p>continued from above</p> <p>TERMINATION</p>			<p>...</p> <p>See <u>Rubio v. Rubio</u>, 36 Va. App. 248, 549, S.E.2d 610 (2001) (discussing application of § 20-109(A)).</p> <p>See <u>Hardesty v. Hardesty</u>, 581 S.E.2d 213 (Va. Ct. App. 2003) affirming that the provisions of § 20-109(D) control, and absent a specific and express provision in an Agreement that the support would continue after remarriage, the obligation would be terminated upon remarriage of the wife.</p>
<p>MODIFICATION OF COURT-ORDERED ALIMONY</p> <p>Continued next page</p>	<p>DC Code § 16-914.01: Court retains jurisdiction to modify or terminate, to the extent the retention of jurisdiction does not contravene other statutory provisions.</p>	<p>Md. Code § 11-107: Court can extend period of alimony and may modify the amount of alimony, upon petition of either party, as circumstances and justice requires. <u>Odunukwe v. Odunukwe</u>, 633 A.2d 418 (Md. App. 1993); <u>Ridgeway v. Ridgeway</u>, 171 Md. App. 373 (2006),</p> <p>Court may increase rehabilitative alimony to indefinite. <u>Blaine v. Blaine</u>, 646 A.2d 413 (Md. 1994).</p> <p>Indefinite alimony is not “permanent” alimony and court can reduce or terminate. <u>Long v. Long</u>, 743 A.2d 281 (Md. App. 2000).</p>	<p>Va. Code § 20-109(A): Upon petition of either party, the court may increase, decrease, or cause to cease, any support and maintenance for the spouse and maintenance for the spouse that may thereafter accrue...as the circumstances may make proper...</p> <p>Court may decrease or terminate upon clear and convincing evidence of habitual cohabitation with another person in a relationship analogous to a marriage for one year or more commencing on or after July 1, 1997, unless 1) otherwise provided by stipulation or contract or 2) the spouse receiving support previously or preponderance of the evidence that termination of such support would be unconscionable Va. Code § 20-109(B): The court may consider modification of spousal support for a defined duration upon petition of either party if filed within the time covered by the duration of the award. Upon consideration of the factors . . . the court may increase, decrease or terminate the amount or duration of the award upon finding that . . . (cont.)</p>

SPOUSAL SUPPORT, ALIMONY AND/OR MAINTENANCE

	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
<p>continued from above</p> <p>MODIFICATION OF COURT-ORDERED ALIMONY</p>			<p>...</p> <p>(i) there has been a material change in the circumstances of the parties, not reasonably in the contemplation of the parties when the award was made or (ii) an event which the court anticipated would occur during the duration of the award and which was significant in the making of the award, does not in fact occur through no fault of the party seeking modification.</p> <p>Va. Code § 20-107.1(D): Reservation – Once granted, the duration of such a reservation shall not be subject to modification.</p> <p><u>Moreno v. Moreno</u>, 480 S.E. 2d 792 (Va. Ct. App. 1997) (petitioner must show a material change in circumstances that warrant a modification of support.)</p>



SPOUSAL SUPPORT, ALIMONY AND/OR MAINTENANCE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
ALIMONY <i>PENDENTE LITE</i>	<p>DC Code § 16-911(a) (1): During the pendency of an action for divorce, termination of a domestic partnership or an action to declare the marriage null and void, where the nullity is denied by the other spouse, the court may require the spouse or domestic partner to pay <i>pendente lite</i> alimony to the other spouse or domestic partner for the maintenance of himself or herself including counsel fees, to enable such other spouse to conduct the case and enforce any order relating thereto by attachment, garnishment and/or imprisonment for disobedience.</p> <p>The Court shall consider the factors set forth in §16-913(d), the factors considered in making an award upon granting a divorce or separation.</p> <p>An award of <i>pendente lite</i> support is not a collateral order from which an interlocutory appeal can be taken. <u>Bowie v. Nicholson</u>, 705 A. 2d 290 (DC 1998).</p>	<p>Md. Fam. Law Code § 11-102: In proceeding for divorce, alimony or annulment of marriage, the court may award alimony <i>pendente lite</i> to either party.</p> <p><u>Guarino v. Guarino</u>, 684 A.2d 23 (Md. App. 1996) (merits not considered at <i>pendente lite</i> hearing). The purpose of <i>pendente lite</i> alimony is to maintain the status quo and provide funds to pursue claim. <u>James v. James</u>, 625 A.2d 381 (Md. 1993).</p>	<p>Va. Code § 20-103 provides that the trial court may make orders in its discretion for the support and maintenance of petitioning spouse in a suit for divorce.</p> <p>The petitioning spouse should also be granted allowances for reasonable attorneys' fees and the costs of litigation of these sums necessary to permit the petitioner to carry on or defend suit. <u>Rowlee v. Rowlee</u>, 179 S.E.2d 461 (Va. 1971) (holding such an award is discretionary).</p>
SEPARATE MAINTENANCE NOT AN INCIDENT OF DIVORCE	Yes, DC Code § 16-916.	Yes, Md. Fam. Law Code § 11-101(a)(l).	Yes, Va. Code § 20-107.1.
UNIFORM INTERSTATE FAMILY SUPPORT ACT	Yes, DC Code 46-301.01 <u>et. seq.</u>	Yes, Md. Fam. Law Code § 10-301 <u>et seq.</u> Md. Fam. Law Code § 10-1A-01 <u>et seq.</u> Md. Fam. Law Code § 10-302 added "Administration" as one of the "tribunals" of the state.	Yes, Va. Code § 20-88.32 to 20-88.82.

DISTRIBUTION OF MARITAL PROPERTY			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
JURISDICTION	<p>DC Code § 11-1101 (a) (1), (5), (6), (7) and (8). The Family Court of the District of Columbia: Family Court of Superior Court, has original jurisdiction.</p> <p>Court rules on property rights upon the entry of a final decree of annulment, divorce, legal separation or termination of a domestic partnership in the absence of a valid antenuptial or post-nuptial agreement disposing the property rights of the spouses. DC Code § 16-910.</p>	<p>By-product of power of divorce or annulment – jurisdiction of equity court.</p>	<p>Court has the authority to decree equitable distribution of property upon decreeing the dissolution of marriage; upon decreeing a divorce from the bond of matrimony; or upon the filing of a foreign divorce decree.</p> <p>Personal jurisdiction over respondent required for court to enter order affecting marital property of such a spouse.</p> <p>Such relief must be at the specific request of either party. Va. Code § 20-107.3(A).</p>
PROCEDURE	<p>DC Code § 16-910: the Court shall (a) assign to each party his or her sole and separate property; and (b) value and distribute all other property and debt accumulated during the marriage or domestic partnership...in a manner that is equitable, just and reasonable after consideration of all relevant factors (factors set forth in DC Code §16-910 (b)). See also <u>Young-Jones v. Bell</u>, 905 A.2d 275 (DC 2006).</p>	<p>Md. Fam. Law Code §§ 8-202 - 8-213:</p> <ol style="list-style-type: none"> 1. Court determines ownership of personal and real property. 2. Court determines what is marital property. 3. Court determines value of all marital property. 4. Court may grant monetary award as an adjustment of the equities and rights of the parties concerning marital property. <p>Court may transfer title to real property if all criteria in Md. Fam. Law Code § 8-205(a)(2)(iii) are met.</p>	<p>Va. Code § 20-107.3:</p> <ol style="list-style-type: none"> 1. Court shall determine the legal title as between parties; 2. Court shall determine ownership and value of all property, real or personal, tangible or intangible; 3. Court shall consider which of such property is marital and which is separate, and which is part separate and part marital in accordance with A3. 4. Court shall determine the value of any such property as of the date of the evidentiary hearing on the evaluation issue. 5. Based upon the equities and rights and interests of each party in the marital property, the court may grant a monetary award payable either in a lump sum or over a period of time in fixed amounts, to either party.

DISTRIBUTION OF MARITAL PROPERTY			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
DEFINITION OF SEPARATE OR NON-MARITAL PROPERTY	<p>Property excluded by valid antenuptial or postnuptial agreement. DC Code § 16-910.</p> <p>DC Code § 16-910(a): Property acquired prior to the marriage or domestic partnership, and acquired during the marriage or domestic partnership by gift, bequest, devise, or descent, and any increase thereof, or property acquired in exchange therefor.</p>	<p>Md. Fam. Law Code § 8-201(e)(3): Property acquired before marriage, property acquired by inheritance or gift from a third party, property excluded by valid agreement or directly traceable to any of these sources.</p>	<p>Va. Code § 20-107.3 (A)(1): Separate property is: (i) all property, real and personal acquired by either party before the marriage; (ii) all property acquired during the marriage by bequest, devise, descent, survivorship or gift from a source other than the other party; (iii) all property acquired during the marriage in exchange for or from proceeds of sale of separate property, provided that such property acquired during the marriage is maintained as separate property; (iv) that part of property classified as separate pursuant to Va.'s dual classification amendments.</p>
INCOME FROM OR INCREASE IN VALUE OF SEPARATE PROPERTY	<p>Increases in value of separate property may also be separate. See DC Code § 16-910(a) and <u>McDiarmid v. McDiarmid</u>, 649 A.2d 810 (D.C. 1994).</p>	<p>Active vs. passive approach. Where the efforts of a spouse during the marriage contribute to the increase, that increase in value for even a nonmarital asset is marital property. <u>Brodak v. Brodak</u>, 447 A.2d 847 (Md. 1982); <u>Innerbichler v. Innerbichler</u>, 752 A2d 291 (Md. App. 2000) Passive income from separate property is not marital property. <u>McNaughton v. McNaughton</u>, 538 A.2d 1193 (Md. App. 1988); <u>Merriken v. Merriken</u>, 590 A.2d 566 (Md. App. 1991).</p>	<p>Income from or increase in value of separate property during the marriage is separate property; it is only marital property to the extent that significant personal efforts resulted in such income or increase. Va. Code § 20-107.3(A)(3)(a).</p> <p><u>Martin v. Martin</u>, 501 S.E.2d 450 (Va. Ct. App. 1998) (holding where separate property can be retraced from commingled property, the increased value in separate property is presumed to be separate unless the non-owning spouse can prove that contributions of marital property or personal effort caused such increase in value). See also <u>Moran v. Moran</u>, 512 S.E.2d 834 (Va. Ct. App. 1999) (when determining if an asset is hybrid property it is important to consider whether <u>value</u> was generated by the expenditure of significant personal effort, not solely on amount of funds or effort expended).</p>

DISTRIBUTION OF MARITAL PROPERTY			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
DEFINITION OF MARITAL PROPERTY	<p>DC Code § 16-910(b): All property and debt accumulated during the marriage or domestic partnership (other than defined separate property) that has not been addressed in a valid antenuptial or postnuptial agreement or a decree of separation, regardless of whether title is held individually or by the parties in a form of joint tenancy or tenancy by the entirety.</p> <p>Jointly titled property is marital property even though a percentage of the jointly titled property was purchased with proceeds attributable to separate property. <u>Turpin v. Turpin</u>, 403 A.2d 1144 (DC App. 1979).</p> <p>Court can consider all expenditures made during the marriage in dividing marital property existing at time of divorce. <u>Bowser v. Bowser</u>, 515 A.2d 1128 (DC 1986); <u>Turner v. Turner</u>, 471 A.2d 1010 (DC 1984).</p>	<p>Md. Code § 8-201(e)(1): Property, however titled, acquired by one or both parties during the marriage (except defined separate property).</p> <p><u>Actions filed after 9/3/94</u> Real property deeded as tenants by the entirety is marital property unless excluded by valid agreement.</p> <p>Dissipated property treated as existing marital property. <u>Jeffcoat v. Jeffcoat</u>, 649 A.2d 1137 (Md. 1994), <u>Simonds v. Simonds</u>, 165 Md. App. 591 (2005)</p>	<p>Va. Code § 20-107.3(A)(2): Marital property is: (i) all property titled in the names of both parties, whether as joint tenants, tenants by the entirety, or otherwise; (ii) all other property acquired during the marriage which is not separate property as defined above. (iii) part of any property classified as marital pursuant to (A)(3).</p> <p>Statutory presumption that all property acquired by either spouse during the marriage and before the last separation of the parties where at least one party intends the separation to be permanent is marital property. Va. Code § 20-107.3(A)(2). Presumption is rebuttable. <u>Dietz v. Dietz</u>, 17 Va. App. 203, 436 S.E.2d 463 (Va. Ct. App. 1993).</p> <p>Income generated from marital property and property purchased with such funds is marital property. <u>Stroop v. Stroop</u>, 394 S.E.2d 861 (Va. Ct. App. 1990). Va. Code § 20-107.3(A)(3).</p>

DISTRIBUTION OF MARITAL PROPERTY			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
DEFINITION OF “FAMILY-USE” PROPERTY	None.	<p>Md. Fam. Law Code § 8-201(c)-(d):</p> <p>Family home in Maryland that was used as principal family residence, owned or leased by one or both parties at time of proceeding, and is or will be used as principal residence by one or both parties and a minor child.</p> <p>Family use personal property acquired during marriage, owned by one or both parties, used primarily for family purposes. But payment of mortgage is marital acquisition. <u>Hughes v. Hughes</u>, 560 A.2d 1145 (Md. 1989).</p> <p>Md. Fam. Law Code § 8-210(c): When a provision concerning family home or family use personal property terminates, if the property is marital property, the court shall adjust the equities and rights of the parties according to the provisions of § 8-205.</p>	None.

DISTRIBUTION OF MARITAL PROPERTY			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
USE AND POSSESSION OF MARITAL HOME	<p>No express authority to award use and possession. <u>But see</u>, DC Code § 16-1001 <u>et. seq.</u> permitting use and possession pursuant to a civil order of protection order.</p> <p>DC Code §§ 16-1005(c)(4) and (5)). The Court may issue a protective order “(4) directing a respondent to refrain from entering or to vacate the dwelling unit of the complainant when the dwelling is (A) marital property of the parties; or (B) jointly owned, leased, or rented and occupied by both parties; provided, that joint occupancy shall not be required if a party is forced by the respondent to relinquish occupancy; or (C) owned, leased, or rented by the complainant individually; or (D) jointly owned, leased, or rented by the complainant and a person other than the respondent, (5) directing the respondent to relinquish possession or use of certain personal property owned jointly by the parties or by the complainant individually...”</p>	<p>Yes, court may award use and possession for a maximum period up to three years from date of court order at pendente lite stage and then again from date of divorce. Md. Fam. Law Code § 8-210.</p> <p>Factors considered in awarding family home in Md. Fam. Law Code § 8-208.</p> <p>The spouse seeking pendente lite use and possession need not establish a ground for divorce but must allege one in the complaint. <u>Pitsenberger v. Pitsenberger</u>, 410 A.2d 1052 (Md. 1980).</p> <p>Court’s power to award use and possession of family home for 3 years in absolute divorce decree is not limited by prior pendente lite order of use and possession. <u>John O. v. Jane O.</u>, 601 A.2d 149 (Md. App. 1992).</p>	<p>No –Virginia has specifically rejected the court’s authority to consider the future housing needs of a spouse or children in fashioning its equitable distribution award. <u>Fitchett v. Fitchett</u>, 370 S.E.2d 318 (Va. Ct. App. 1988).</p> <p>However, in order to preserve the marital residence pursuant to Va. Code § 20-103 and upon a showing of reasonable apprehension of physical harm to party by spouse, court may exclude spouse from jointly owned or rented family dwelling pending resolution. See <u>Pinkard v. Pinkard</u>, 407 S.E.2d 339 (Va. Ct. App. 1991).</p>

DISTRIBUTION OF MARITAL PROPERTY			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
TRANSMUTATION	There may be ‘transformation’ of sole and separate property into marital property upon significant contribution by non-owner spouse to that sole and separate property. <u>Darling v. Darling</u> , 444 A.2d 20 (DC 1982); <u>Brice v. Brice</u> , 411 A.2d 340 (DC 1980).	Only when spouse commingles marital and non-marital funds to the point where direct tracing is impossible does his or her property lose its nonmarital status. <u>Melrod v. Melrod</u> , 574 A.2d 1 (Md. App. 1990); <u>Merriken v. Merriken</u> , 590 A.2d 566 (Md. App. 1991). Inability to trace property acquired during the marriage directly to a non-marital source means that all property acquired was marital. <u>Long v. Long</u> , 743 A.2d 281 (Md. App. 2000).	<p><u>Cases filed before July 1, 1990</u> Property is either all marital or all separate. <u>Smoot v. Smoot</u>, 357 S.E.2d 728 (Va. 1987).</p> <p><u>Cases filed after July 1, 1990</u> Dual classification permitted. See Va. Code § 20-107.3(A)(3). Commingling an asset will transmute it unless it is retraceable by preponderance of evidence to its original classification. <u>Robinson v. Robinson</u>, 621 S.E.2d 147 (Va. Ct. App. 2005).</p> <p>Separate property may be transmuted into marital property by the manner in which it is maintained but marital may become separate only by an express agreement of the parties or as provided in § 20-107.3(A)(3)(d) regarding commingling. <u>McDavid v. McDavid</u>, 451 S.E.2d 713 (Va. Ct. App. 1994).</p>
WAGES OR SALARY EARNED BY SPOUSE	Wages or salaries earned by a spouse during the marriage are marital property.	Wages or salary earned by spouse during marriage is marital property.	Wages or salary earned by spouse during marriage is marital property. <u>Taylor v. Taylor</u> , 387 S.E.2d 797 (Va. App. 1990).

DISTRIBUTION OF MARITAL PROPERTY			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
PENSIONS	<p>Pension benefits to the extent that they were acquired during the marriage, should be deemed marital property. <u>Barbour v. Barbour</u>, 464 A.2d 915 (D.C. 1983); <u>Sanders v. Sanders</u>, 602 A.2d 663 (DC 1992).</p> <p>Dissipated pension can be awarded. <u>Herron v. Johnson</u>, 714 A.2d 783 (1998).</p> <p>DC Code §16-910 (c): “The Court is not required to value a pension or annuity if it enters an order distributing future periodic payments.”</p>	<p>Portion of pension (also, disability plan) accruing during marriage is marital property, <u>Conteh v. Conteh</u>, 392 Md. 436 (2006); <u>Lockingbill v. Lockingbill</u>, 483 A.2d 1 (1984); <u>Hoffman v. Hoffman</u>, 614 A.2d 988 (Md. App. 1992); <u>Allen v. Allen</u>, 2008 Md. App. Lexis 10.</p> <p>“If, as and when” valuation. <u>Bangs v. Bangs</u>, 475 A.2d 1214 (Md. App. 1984); <u>Ohm v. Ohm</u>, 431 A.2d 1371 (Md. App. 1981); <u>Imagnu v. Wodajo</u>, 582 A.2d 590 (Md. App. 1990).</p>	<p>Pensions are personal property subject to equitable distribution. See Va. Code § 20-107.3(G); <u>Sawyer v. Sawyer</u>, 335 S.E.2d 277 (Va. App. 1985); <u>Mann v. Mann</u>, 470 S.E.2d 605 (Va. App. 1996).</p> <p>Va. Code §§ 20-107.3(A)(2) Pensions, profit sharing or deferred compensation or retirement plans acquired during the marriage are presumed to be marital property Va. Code § 20-107.3(G). The court may direct payment of a percentage of any pension, profit-sharing or deferred compensation or retirement plan, either vested or not vested, that is marital property, but the court shall only direct that payment be made as such time the benefits are payable.</p>



DISTRIBUTION OF MARITAL PROPERTY			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
STOCK OPTIONS AND DEFERRED COMPENSATION BENEFITS*	Has yet to be addressed.	<p>Deferred compensation is marital property. <u>Klingenberg v. Klingenberg</u>, 675 A.2d 551 (Md. 1996).</p> <p>Stock options acquired during marriage are marital property. <u>Green v. Green</u>, 494 A.2d 721 (Md. App. 1985).</p> <p>However, a pre-emptive right to purchase stock which is acquired during marriage, but not exercised prior to the termination of the marriage, is not marital property subject to equitable distribution.</p> <p><u>Ross v. Ross</u>, 600 A.2d 891 (Md. App. 1992). This opinion was vacated by 607 A.2d 933 (Md. 1992) for technical reasons.</p> <p>Unexercised and unvested stock options can constitute marital property. <u>Otley v. Otley</u>, 810 A2d 1 (Md. App. 2002).</p>	<p>Stock options granted during the marriage as deferred compensation are treated as marital property under the provisions of Va. Code § 107.3(G) even where the options have not been exercised during the marriage. The marital portion of the unvested options granted during the marriage but maturing after the date of separation is a fraction, the numerator of which is the number of months the owner of the option was covered by the identified plan during the marriage to the date of separation, and the denominator of which is the total number of months the option owner is covered by the plan. <u>Dietz v. Dietz</u>, 17 Va. App. 203, 436 S.E.2d 463 Va. Ct. App. (1993). The husband failed to prove to the court that the grant of stock options he received after the last separation was not for services performed prior to the separation. <u>Ott v. Ott</u>, 2001 Va. App. LEXIS 10, 2001 WL 32675, (Va. Ct. App. Jan. 16, 2001). The full value of employee stock options should be treated as marital property if, during the marriage, the spouse earned the options and became fully vested of the unconditional right to exercise the options. <u>Donohue v. Donohue</u>, No. 2675-96-2, 1997 Va. App. Lexis 450 (Va. Ct. App. July 8, 1997).</p>

* See related article “Divorce—The Valuation and Division of Stock Options” by Sanford K. Ain, Esquire and Darryl A. Feldman, Esquire at www.ainbanklaw.com. and www.aaml.org.

DISTRIBUTION OF MARITAL PROPERTY			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
PROFESSIONAL GOODWILL*	<p>Goodwill of a professional practice acquired during a marriage is marital property subject to valuation and distribution. However, under the facts of a given case, a professional practice may have no goodwill value, e.g., if the express terms of a partnership agreement make goodwill nonsalable, and there are no other factors that may make the goodwill valuable. <u>McDiarmid v. McDiarmid</u>, 649 A.2d 810 (DC 1994).</p>	<p>Professional goodwill is marital property if it has a value independent of the continued presence or reputation of a particular individual. <u>Skrabak v. Skrabak</u>, 673 A.2d 732 (Md. App. 1996). <u>Prahinski v. Prahinski</u>, 540 A.2d 833 (Md. App. 1988).</p> <p>A single person law firm has no goodwill. <u>Prahinski v. Prahinski</u>, 582 A.2d 784 (Md. 1990).</p> <p>A dental practice can have goodwill that is separate from the reputation of the dentist, and is, therefore, properly characterized as marital property. <u>Hollander v. Hollander</u>, 597 A.2d 1012 (Md. App. 1991).</p> <p>Goodwill, an intangible asset that may be added to a business entity may be marital property unless uniquely personal. <u>Strauss v. Strauss</u>, 647 A.2d 818 (Md. App. 1994).</p>	<p>Goodwill may be an asset of a professional practice, and if it is, it is subject to valuation for equitable distribution purposes. The value of the marital property is its intrinsic worth to the parties. A property's intrinsic value must be translated into a monetary amount. The item may still have a value even if sale may be restricted or forbidden. <u>Howell v. Howell</u>, 523 S.E.2d 514 (Va. Ct. App. 2000); <u>Hoebelheinrich v. Hoebelheinrich</u>, 600 S.E.2d 152 (Va. Ct. App. 2004).</p>
LICENSES AND DEGREES*	<p>No, See <u>Hill v. Hill</u>, 114 WLR 2209 (Super. Ct. 1986) (husband's law degree obtained primarily through his own efforts and work not subject to equitable distribution).</p>	<p>No, professional degrees and licenses are not marital property. However, court is empowered under Md. Fam. Law Code 11-105 to take into account the spouse's earning capacity when making the award. <u>Archer v. Archer</u>, 493 A.2d 1074 (Md. 1985); <u>Solomon v. Solomon</u>, 383 Md. 176 (2004).</p>	<p>Professional degrees and licenses are not property and not subject to equitable distribution. <u>Palmer v. Palmer</u>, 21 Va. Cir. 112 (Va. Cir. Ct. 1990).</p>

* See related article "Professional, Personal & Celebrity Goodwill Valuation: Forecasting an Uncertain Future" by Sanford K. Ain, Esquire and Anne Marie Jackson, Esquire, American Academy of Matrimonial Lawyers Annual Meeting, November 1998 at www.aaml.org and www.ainbanklaw.com.

DISTRIBUTION OF MARITAL PROPERTY			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
PERSONAL INJURY AWARDS/ WORKER'S COMPENSATION BENEFITS	Personal injury award for injuries sustained after parties separated deemed marital property. <u>Boyce v. Boyce</u> , 541 A.2d 614 (DC 1988).	Personal injury claims are not marital property. <u>Unkle v. Unkle</u> , 505 A.2d 849 (Md. 1986). Liquidated personal injury proceeds can have both marital and nonmarital elements. <u>Blake v. Blake</u> , 670 A.2d 472 (Md. 1996). Worker's compensation benefits for lost wages during marriage are marital property. <u>Lowery v. Lowery</u> , 688 A.2d 65 (Md. App. 1997).	Va. Code § 20-107.3(A)(3)(c) and Va. Code § 20-107-3(H): Court may award percentage of marital share of personal injury awards attributable to lost wages or unreimbursed medical expenses if accrued during marriage and before date of last separation, payable in lump sum or over a period of time. <u>Bennett v. Bennett</u> 1997 Va. App. Lexis 611 (Va. Ct. App. Sept. 23, 1997) (husband's disability retirement benefits received through employment are a marital asset subject to equitable distribution). <u>McLellan v. McLellan</u> , 33 Va. App. 376 (Va. Ct. App. 2000) (when military disability benefits are received in lieu of military retirement pay, the benefits are not subject to division by the state courts; federal preemption under the Uniform Services Former Spouse's Protection Act.)
SPECIAL VALUATION CONSIDERATIONS	Trial court has discretion as to date of valuation. Court can revalue marital assets when they have materially changed in value during substantial period of time that had elapsed between trial and entry of court order and distributing marital property. <u>McDiarmid v. McDiarmid</u> , 649 A.2d 810 (DC 1994).	If value of property is negative, property is valued at zero. See <u>Goldberg v. Goldberg</u> , 626 A.2d 1062 (Md. App. 1993).	In order for the court to make a monetary award, the parties must provide sufficient evidence of the property's value. <u>Hodges v. Hodges</u> , 347 S.E.2d 134 (Va. Ct. App. 1986); <u>Kaufman v. Kaufman</u> , 375 S.E.2d 374 (Va. Ct. App. 1988) (finding that husband's business had negative value and was not subject to monetary award).

DISTRIBUTION OF MARITAL PROPERTY			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
TIME OF CLASSIFICATION (CUT OFF FOR ACCUMULATION OF MARITAL PROPERTY)	DC Code § 16-910: All property acquired from the date of marriage or domestic partnership through the date of divorce, legal separation annulment or termination of domestic partnership.	All property acquired between the time of the commencement of the marriage and its dissolution by death, annulment or issuance of a decree of absolute divorce is marital property. <u>Campolattaro v. Campolattaro</u> , 502 A.2d 1068 (Md. App. 1986); <u>Alston v. Alston</u> , 629 A.2d 70 (Md. 1993); <u>Prahinski v. Prahinski</u> , 540 A.2d 833 (Md. App. 1988).	Va. Code § 20-107.3(A)(2): All property acquired from the date of marriage through the date of the last separation of the parties if at least one of the parties intended the separation to be permanent. <u>Stratton v. Stratton</u> , 16 Va. App. 878, 433 S.E.2d 920 Va. Ct. App. (1993) (holding character of property at date of acquisition governs where the issue is the proper classification of property that has been transmuted from separate property, the date of classification will be the date of the actions causing the transmutation).
POWER OF COURT TO CONVEY PROPERTY	Yes, DC Code § 16-910(b) provides that the court may convey real and personal marital property, irrespective of how it is titled. See <u>Barbour v. Barbour</u> , 464 A.2d 915 (DC 1983).	Yes, Md. Fam. Law Code § 8-202(a)(3) by reference to § 8-205 provides that the court may transfer the ownership of certain personal or real property from one party to the other under certain circumstances. Court may transfer ownership of an interest in a pension retirement, profit sharing or deferred compensation plan from one party to either or both, and Court may also transfer title to real property where the statutory criteria are satisfied (Md. Fam. Law Code § 8-205 (a)(2)(iii)). This new section, 8-205 (a)(2)(iii) only applies prospectively, for annulments or divorces filed on or after 10/1/06. See also, <u>Pleasant v. Pleasant</u> , 632 A.2d 202 (Md. App. 1993).	Pursuant to Va. Code § 20-107.3(C), the court can only order the transfer or division of jointly owned marital property. The statute does not authorize the division or transfer of marital property that is not jointly titled, except court may transfer ownership of an interest in a pension, profit sharing or other retirement plan from one party to the other.

DISTRIBUTION OF MARITAL PROPERTY			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
<p>EQUITABLE DISTRIBUTION FACTORS</p> <p>continues on next page</p>	<p>DC Code § 16-910(b): the Court shall value and distribute all property and debt in a manner that is equitable, just, and reasonable, after considering all relevant factors, including, but not limited to:</p> <ol style="list-style-type: none"> (1) the duration of the marriage or domestic partnership; (2) the age, health, occupation, amount, and sources of income, vocational skills, employability, assets, debts, and needs of each of the parties; (3) provisions for the custody of minor children; (4) whether the distribution is in lieu of or in addition to alimony; (5) each party's obligation from a prior marriage, a prior domestic partnership, or for other children; (6) the opportunity of each party for future acquisition of assets and income; (7) each party's contribution as a homemaker or otherwise to the family unit; (8) each party's contribution to the education of the other party which enhanced the other party's earning ability; (9) each party's increase or decrease in income as a result of the marriage, the domestic partnership or duties of homemaking and child care; (10) each party's contribution to the acquisition, preservation, appreciation, dissipation, or depreciation in value of the assets which are subject to distribution, the taxability of these assets, and whether the asset was acquired or the debt incurred after separation; (11) the effects of taxation on the value of the assets subject to distribution; and (12) the circumstances which contributed to the estrangement of the parties. . . . <p>(cont.)</p>	<p>Md. Fam. Law Code § 8-205(b):</p> <ol style="list-style-type: none"> 1. The contributions, monetary and non-monetary, of each party to the well-being of the family. 2. The value of all property interests of each party. 3. The economic circumstances of each party at the time the award is to be made. 4. The circumstances that contributed to the estrangement of the parties. 5. The duration of the marriage. 6. The age of each party. 7. The physical and mental condition of each party. 8. How and when specific marital property or an interest in pension deferred compensation, etc. was acquired, including the effort expended by each party. 9. Contributions to the acquisition of real property held as tenants by the entirety. 10. Any award of alimony and any award that the court has made as to use and possession of family home or personal property. 11. Any other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer an interest in pension, retirement, profit sharing or deferred compensation. 	<p>Va. Code § 20-107.3(E):</p> <p>The amount of the award and the method of payment shall be determined by the court after consideration of the following factors:</p> <ol style="list-style-type: none"> 1. The contributions, monetary and nonmonetary, to the well-being of the family; 2. The contributions, monetary and nonmonetary of each party in the acquisition and care and maintenance of such marital property of the parties; 3. The duration of the marriage; 4. The ages and physical and mental conditions of the parties; 5. The circumstances which contributed to the dissolution of the marriage, specifically any fault grounds; 6. How and when specific items of such marital property were acquired; 7. The debts and liabilities of each spouse, the basis for such debts and liabilities, and the property which may serve as security for such debts and liabilities; 8. The liquid or nonliquid character of all marital property; 9. The tax consequences to each party; 10. The use or expenditure of marital property for a non-marital separate purpose or the dissipation of funds when done in anticipation of divorce or separation or after the last separation of the parties. 11. Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable monetary award.

DISTRIBUTION OF MARITAL PROPERTY			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
continued from above EQUITABLE DISTRIBUTION FACTORS	. . . No presumption of equal distribution. <u>Burwell v. Burwell</u> , 700 A.2d 219 (1997); <u>Young-Jones v. Bell</u> , 905 A.2d 275 (DC 2006).		



CHILD SUPPORT AND MAINTENANCE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
JURISDICTION VENUE	DC Code § 11-1101 (a) (1) and (3). The Family Court of the District of Columbia: Family Court of Superior Court, has original jurisdiction.	Md. Code § 1-201(a)(9): An equity court has jurisdiction over support of a child. Md. Fam. Law Code Cts. & Jud. Proc. §§ 6-201 and 6-202: Suit must be brought in a county in which defendant lives or works; where father or mother lives or where child lives.	Va. Code §16.1-244 Petitioner in a suit for child support and maintenance has the option to proceed in circuit court or juvenile and domestic relations J&DR Court. However, when a suit for divorce has been filed in circuit court and a hearing is scheduled in circuit court, the J&DR Court will be divested of its jurisdiction on that matter unless both parties agree to a referral to the J&DR Court. Circuit court in a divorce proceeding may upon its own initiative transfer enforcement of support to J&DR Court, or place the entire support matter before the J&DR Court upon motion of the parties (Va. Code § 20-113). If circuit court retains jurisdiction, it can modify support as well. Va. Code § 20-108. Va. Code § 16.1-243 (A)(2): Generally commenced in the city or county where either party resides or where the respondent is present when the proceeding commences.

CHILD SUPPORT AND MAINTENANCE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
AMOUNT OF SUPPORT IN GENERAL	<p>DC Code §16-916.01. Child Support Guidelines.</p> <p>DC Code §16-916.01(h): The child support guideline shall not presumptively apply in cases where parents' combined adjusted gross income exceeds \$240,000 per year. In this case, obligation shall not be less than amount if guideline had been applied to adjusted gross of \$240,000. In judge's discretion to order more based on child's reasonable needs based on actual family experience.</p> <p>DC Code §16-916.01(c) (3): "A parent has the responsibility to meet the child's basic needs as well as to provide additional child support above the basic needs level." See also §16-916.01 (p).</p>	<p>Use of statutory guidelines is mandatory in most circumstances. <u>In re: Katherine C.</u>, 390 Md. 554 (2006)).</p> <p>Court of Appeals has held that it is rarely within the best interest of the child to receive less support than amount specified in guidelines. <u>Shrivastava v. Mates</u>, 612 A.2d 313 (Md. App. 1992).</p> <p>Child's needs control when parent's income exceeds guidelines. See <u>Voishan v. Palma</u>, 609 A.2d 319 (Md. 1992); <u>Lemly v. Lemly</u>, 649 A.2d 1119 (Md. App. 1994); <u>Walker v. Grow</u>, 170 Md. App. 255 (2006).</p>	<p>Va. Code §§ 20-108.1 and 108.2 There is a rebuttal presumption that the support guidelines in § 20-108.2 are correct.</p> <p>General rule that amount of support depends not solely upon the child's needs but also upon the ability of a parent to pay. See <u>Conway v. Conway</u>, 395 S.E.2d 464 (Va. Ct. App. 1990) (child support awards are not based solely on need but on ability to pay).</p>
RETROACTIVE SUPPORT FOR INITIAL SUPPORT ORDER	<p>Court may award child support retroactive for a period not to exceed 24 months preceding filing. DC Code § 16-916.01 (v) (1) to the date of birth of child born out of wedlock. A child's needs begin at birth.</p>	<p>Md. Fam. Law Code § 12-101: Requires courts to award child support retroactively to the time of the initial pleading requesting support.</p> <p><u>Caccamise v. Caccamise</u>, 747 A.2d 221 (Md. App. 2000). Father not entitled to retroactive support because he made considerably more than the mother.</p> <p>Md. Fam. Law Code §12-104(b): Court may not award child support to a point in time prior to date of the filing of the motion for modification. <u>O'Brien v. O'Brien</u>, 766 A2d 211 (Md. App. 2001).</p>	<p>Va. Code § 20-108.1(B) Liability for support shall be determined retroactively for the period measured from the date that the proceeding was commenced by the filing of an action with the court provided the complainant exercised due diligence in the service of the respondent or, if earlier, the date an order of the Department of Social Services entered pursuant to Title 63.2 and directing payment of support was delivered to the sheriff or process server for service on the obligor.</p>
GUIDELINES	<p>Yes, DC Code § 16-916.01 (p). Application of the guidelines is presumptive and shall be applied unless application of the guidelines would be unjust or inappropriate in the circumstances of the particular case.</p>	<p>Yes, Md. Fam. Law Code § 12-201 <u>et. seq.</u> Rebuttable presumption in Maryland, § 12-202 (a)(2)(i) See also, <u>In Re: Katherine C.</u> 390 Md. 554 (2006).</p>	<p>Yes, Va. Code § 20-108.2: Rebuttable presumption in any judicial or administrative proceeding for child support that the amount of the award which would result from the application of the guidelines shall be the correct amount.</p>

CHILD SUPPORT AND MAINTENANCE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
<p>FACTORS CONSIDERED IN DEVIATING FROM THE GUIDELINES</p> <p>continued next page</p>	<p>DC Code § 16-916.01 (p): “The factors that may be considered to overcome the presumption are: (1) The needs of the child are exceptional and require more than average expenditures; (2) The gross income of the parent with a legal duty to pay is substantially less than that of the parent to whom support is owed; (3) A property settlement provides resources readily available for the support of the child in an amount at least equivalent to the guideline amount; (4) Either parent supports a dependent other than a child subject to the support order, including a biological or adoptive child, a step-child, or an elderly relative, and application of the guideline would result in extraordinary hardship; (5) The parent with a legal duty to pay support needs a temporary period of reduced child support payments to permit the repayment of a debt or rearrangement of his or her financial obligations; a temporary reduction may be included in a support order if: . . . (cont.)</p>	<p><u>See</u> Md. Fam. Law Code § 12-202(a)(2)(ii-v).</p>	<p><u>See</u> Va. Code § 20-108.1.</p> <p>Even when parties decide different amount, they still must use statutory factors to determine amount – “allows for agreement . . . to different amount, not different process.” <u>Saleem v. Sameem</u>, 26 Va. App. 384 (Va. Ct. App. 1998).</p>

CHILD SUPPORT AND MAINTENANCE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
<p>continued from above</p> <p>FACTORS CONSIDERED IN DEVIATING FROM THE GUIDELINES</p>	<p>...</p> <p>(A) The debt or obligation is for a necessary expenditure of reasonable cost in light of the parent's family responsibilities;</p> <p>(B) The time of the reduction does not exceed 12 months; and</p> <p>(C) The support order includes the amount that is to be paid at the end of the reduction period and the date that the higher payments are to commence;</p> <p>(6) The parent to whom support is owed receives child support for a child living in this parent's home, other than the child subject to the support order, and the resulting gross income of the household to which support is owed causes the standard of living of that household to be greater than that of the household and the parent with a legal duty to pay support;</p> <p>(7) A child subject to the support order has regular and substantial income that can be used for care of the child without impairment of the child's current or future education;</p> <p>(8) The parent with legal duty to pay support has special needs that increase costs of the parent's subsistence;</p> <p>(9) The parent with legal duty to pay support pays for certain expensive necessities for the child;</p> <p>(10) The parent with legal duty to pay support is 18 years old or younger and a full-time student;</p> <p>(11) The child is a respondent in a neglect proceeding and has been placed outside the home with a goal of reunification with the parent; or</p> <p>(12) Any other exceptional circumstance that would yield a patently unfair result."</p>		

CHILD SUPPORT AND MAINTENANCE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
WHEN CHILD SUPPORT TERMINATES	<p>Child support obligations continue until the age of 21. <u>Butler v. Butler</u>, 496 A.2d 621 (DC 1985).</p> <p>See DC Code § 16-916 (a) “minor children,” and DC Code §46-101.</p>	<p>18, unless the child is still in high school, in which case child support extends to age 19 or graduates from high school Md. Ann. Code Art. 1, §24. It may be older for mentally disabled children, <u>Trembow v. Schonfeld</u>, 393 Md. 327 (2006); <u>Sininger v. Sininger</u>, 479 A.2d 1354 (Md. 1984); Obligations also continue for a destitute child Md. Fam. Law Code § 13-102.</p>	<p>Until 18 or 19 if in high school. Va. Code §§ 16-278.15(A).</p>
MODIFICATION JURISDICTION	<p>DC Code §16-916.01: The Court retains jurisdiction to modify or terminate court-ordered child support to the extent retention of jurisdiction does not contravene other statutory provisions. See also DC Code § 46-204.</p>	<p>Court retains jurisdiction to modify. Md. Fam. Law Code § 1-201(b)(4).</p>	<p>Courts retain authority to modify to correspond with the changing financial circumstances of parties. Va. Code § 20-108.</p> <p><u>Shoup v. Shoup</u>, 37 Va. App. 240, 556 S.E.2d 783 (2001) approved an agreement that was incorporated into a divorce decree, and which provided for self-executing child support modification. See also Va. Code § 20-109.1 - Provisions for future modification of child support in agreements shall be valid and enforceable.</p>

CHILD SUPPORT AND MAINTENANCE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
STANDARDS FOR MODIFICATION OF COURT ORDERED CHILD SUPPORT	<p>Modification by application of the guideline subject to conditions or limitations in DC Code § 16-916.01 (r). DC Code § 46-204.</p> <p>“(a) Any order requiring payment of an amount of child support, regardless of whether the amount of the child support was the subject of a voluntary agreement of the parties, may be modified upon a showing that there has been a substantial and material change in the needs of the child or the ability of the responsible relative to pay since the day on which the order was issued. A showing or proof of a change in circumstances shall not be required to modify a support order that is being reviewed pursuant to § 16-916.01 (r) (3) or (r) (4).</p> <p>Upon occurrence of substantial and material change in circumstances sufficient to warrant modification, judicial officer may modify any provision of an agreement or settlement relating to child support, regardless of whether the agreement or settlement is entered as consent order or is incorporated or merged into order. DC Code § 16-916.01 (t).</p> <p>A change in parents’ financial circumstances alone cannot provide the basis for modifying a contract between parties. <u>Nevarez v. Nevarez</u>, 626 A.2d 867 (DC 1993).</p>	<p>Md. Fam. Law Code § 12-104: Need to show material change in circumstances. <u>Reese v. Huebschman</u>, 440 A.2d 1109 (Md. App. 1982), <u>Tidler v. Tidler</u>, 435 A.2d 489 (Md. App. 1981).</p> <p>The law regarding modification of child support through an agreement is different and too complex to address in this outline.</p> <p>The standard for modification of a <u>pendente lite</u> order is not that there has been a material change in circumstance, but simply that it be in the best interest of the child. <u>Knott v. Knott</u>, 806 A2d 768 (Md. App. 2002).</p>	<p>Party must demonstrate: (1) a material change in circumstances; and (2) the change justifies modification of the amount. <u>See Kaplan v. Kaplan</u>, 466 S.E.2d 111 (Va. Ct. App. 1996).</p> <p>To reduce, petitioning spouse must show that change in financial obligations renders him unable to fulfill financial obligations and that the change is not a result of the payor’s voluntary act or neglect. <u>Hammers v. Hammers</u>, 216 S.E.2d 20 (Va. 1975). <u>See Conway v. Conway</u>, 395 S.E.2d 464 (Va. Ct. App. 1990) (child support awards are not based solely on need but on ability to pay).</p> <p>To increase, must show that increased support will be spent. <u>Young v. Young</u>, 348 S.E. 2d 46 (Va. Ct. App. 1986).</p> <p><u>Riggins v. O’Brien</u>, 559 S.E.2d 673 (Va. 2002) (where the parties’ Agreement allowed that child support shall be renegotiated or submitted to a court for adjudication on the occurrence of a specific and certain event, it meant that upon agreement of the parties, a consent decree could be presented to the court for entry or, it would adjudicate the matter and enter an order reflecting its determination).</p>

CHILD SUPPORT AND MAINTENANCE			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
RETROACTIVE MODIFICATION OF CHILD SUPPORT	DC Code § 46-204. “(c) No modification of an award of alimony, child support, or maintenance may be retroactive, except that a modification may be permitted for the period during which a petition for modification is pending. The modification may then be permitted from the date on which the opposing party was given notice of the petition for modification according to statute or court rule.”	Md. Fam. Law Code § 12-104(b): No retroactive modification except for period when petition is pending and is then discretionary.	Va. Code § 20-74: No retroactive modification except for the period during which there is a pending petition and is then discretionary.
VOLUNTARY IMPOVERISHMENT	A voluntary decrease in income will not justify a reduction in support payments. <u>Guyton v. Guyton</u> , 602 A.2d 1143 (DC 1992).	Md. Fam. Law Code § 12-204(b): A spouse is not allowed to voluntarily impoverish himself to reduce support and is chargeable with provable potential income. <u>Wagner v. Wagner</u> , 674 A.2d 1 (Md. App. 1996); <u>Moore v. Tseronis</u> , 664 A.2d 427 (Md. App. 1995); <u>Reuter v. Reuter</u> , 649 A.2d 24 (Md. App. 1994); <u>Goldberger v. Goldberger</u> , 624 A.2d 1328 (Md. App. 1993); <u>John O. v. Jane O.</u> , 601 A.2d 149 (Md. App. 1992); <u>Gordon v. Gordon</u> , 174 Md. App. 583 (2007).	Va. Code § 20-108.1(B)(3), in considering the appropriate amount of child support to be paid, a trial court is required to input income to a parent who is found to be voluntarily underemployed. <u>Broadhead v. Broadhead</u> , 655 S.E.2d 170 (Va. Ct. App. 2008). The Va. Supreme Court has held that the payor assumes the risk of a voluntary career change which was expected to result in increased income but instead results in a decrease in income. <u>Antonelli v. Antonelli</u> , 409 S.E.2d 117 (Va. 1991).
EFFECT OF SUBSEQUENT CHILDREN	See DC Code § 16-916.01(r) (11).	Usually considered a material change.	Va. Code § 20-108.1(B)(1) Under guidelines, court is required to consider actual monetary support for other children, other family members and former family members.
LIFE OR HEALTH INSURANCE FOR THE BENEFIT OF A CHILD	Yes, as to health insurance.	Md. Fam. Law Code § 12-102: Court can require either parent to include the child in parent’s health insurance through employer.	Va. Code § 20-60.3 and 20-108.1(D): Trial court may order a party to maintain all or part of existing life insurance and/or health insurance for the benefit of a child.

CHILD CUSTODY AND VISITATION			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
JURISDICTION	DC Code § 11-1101 (a) (1) and (4). The Family Court of the District of Columbia: Family Court of Superior Court, has original jurisdiction.	Md. Code § 1-201(a) and (b): Equity court has jurisdiction over custody of child and visitation of child.	Custody proceedings may be brought in either the Circuit Court or the J&DR general district court depending upon the status of the parties and whether custody is ancillary to some other proceeding. Va. Code §§ 16.1-244 and 20-103.
UNIFORM CHILD CUSTODY JURISDICTION ACT	Yes, DC Code § 16-4601.01 <u>et seq.</u>	Yes, Md. Fam. Law Code § 9.5-101 <u>et seq.</u>	Yes, Va. Code § 20-146.1 <i>et seq.</i>
FACTORS TO BE CONSIDERED IN MAKING AN AWARD continued next page	DC Code §16-914 (a) (3): “In determining the care and custody of a child, the best interest of the child shall be the primary consideration. To determine the best interest of the child, the court shall consider all relevant factors, including, but not limited to: (A) the wishes of the child as to his or her custodian, where practicable; (B) the wishes of the child’s parent or parents as to the child’s custody; (C) the interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may emotionally or psychologically affect the child’s best interest; Assistance for Needy Families, or Program on Work, Employment, and Responsibilities, and medical assistance; and (Q) the benefit to the parents.” ... (cont.)	Factors include but are not limited to: (a) fitness of parent; (b) the character and reputation of the parties; (c) the desire of the natural parents and the content of any agreement between them; (d) the potentiality of maintaining natural family relations; (e) the preference of the child; (f) any material opportunities affecting the child; (g) the age, health and sex of the child; (h) the suitability of the residence of the parents; (i) length of separation from parents; (j) the effect of any prior voluntary abandonment or surrender of custody of the child; (k) best interests of the child (l) willingness of each parent to share custody; . . . (cont.)	Va. Code § 20-124.3: Primary consideration is the best interest of the child. Court shall consider: 1) age and physical and mental condition of child...; 2) age and physical and mental condition of each parent; 3) relationship existing between each parent and each child...; 4) needs of child...; 5) the role which each parent has played and will play in the future, in the upbringing and care of the child or children; 6)the propensity of each parent to actively support the child’s contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child...; 7) the relative willingness and demonstrated ability of each parent to cooperate in and <u>resolve disputes</u> re: matters affecting the child; 546 S.E.2d 220 (Va. Ct. App. 2001). . . . (cont.)

CHILD CUSTODY AND VISITATION			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
<p>continued from above</p> <p>FACTORS TO BE CONSIDERED IN MAKING AN AWARD</p>	<p>...</p> <p>(D) the child's adjustment to his or her home, school, and community;</p> <p>(E) the mental and physical health of all individuals involved;</p> <p>(F) evidence of an intrafamily offense as defined in section 16-1001(5);</p> <p>(G) the capacity of the parents to communicate and reach shared decisions affecting the child's welfare;</p> <p>(H) the willingness of the parents to share custody;</p> <p>(I) the prior involvement of each parent in the child's life;</p> <p>(J) the potential disruption of the child's social and school life;</p> <p>(K) the geographic proximity of the parental homes as this relates to the practical considerations of the child's residential schedule;</p> <p>(L) the demands of parental employment;</p> <p>(M) the age and number of children;</p> <p>(N) the sincerity of each parent's request;</p> <p>(O) the parent's ability to financially support a joint custody arrangement;</p> <p>(P) the impact on Temporary</p>	<p>...</p> <p>(m) psychological fitness of each parent;</p> <p>(n) Strength of relationship;</p> <p>(o) potential disruption of child's social life;</p> <p>(p) geographic proximity of parents' homes;</p> <p>(q) demands of parental employment;</p> <p>(r) age and number of children involved;</p> <p>(s) sincerity of parent's request;</p> <p>(t) financial status of parents;</p> <p>(u) Impact on state or federal assistance;</p> <p>(v) Benefit to parents;</p> <p>(w) Other factors.</p> <p>See <u>Best v. Best</u>, 613 A.2d 1043 (Md. App. 1992); <u>Montgomery County v. Sanders</u>, 381 A.2d 1154 (Md. App. 1977); <u>Taylor v. Taylor</u>, 508 A.2d 964 (Md. 1986).</p>	<p>...</p> <p>8) the reasonable preferences of the child;</p> <p>9) history of family abuse;</p> <p>10) such other factors as are necessary.</p> <p>Law presumes that the best interests of a child are served by giving custody to the natural parent. <u>Smith v. Pond</u>, 360 S.E.2d 885 (Va. Ct. App. 1987).</p> <p>Presumption that best interest of the child is in the custody of the parents applies against grandparents. <u>Ferris v. Underwood</u>, 348 S.E.2d 18 (Va. Ct. App. 1986).</p> <p>There is no presumption of custody in favor of a biological parent over an adoptive parent because when an order of adoption becomes final, the adoptive parent obtains all the legal rights and obligations of a natural parent. <u>Carter v. Carter</u>,</p>
<p>JOINT CUSTODY</p> <p>continued next page</p>	<p>DC has a rebuttable presumption of joint custody</p> <p>DC Code §16-914 (a):</p> <p>(1) ... The Court shall make a determination as to the legal custody and the physical custody of a child. A custody order may include:</p> <p>(i) sole legal custody;</p> <p>(ii) sole physical custody;</p> <p>(iii) joint legal custody;</p> <p>(iv) joint physical custody; or</p> <p>(v) any other custody arrangement the Court may determine is in the best interest of the child.</p>	<p>Maryland courts have authority to award joint custody, but only if in child's best interests, even when parties do not request it. <u>Kerns v. Kerns</u>, 474 A.2d 925 (Md. App. 1984); <u>Taylor v. Taylor</u>, 508 A.2d 964 (Md. App. 1986).</p>	<p>Virginia courts have wide discretion and fashioning joint or shared custody arrangements for children if it is in best interests of the children. <u>Crouse v. Crouse</u>, 151 S.E.2d 412 (Va. 1966); <u>Andrews v. Geyer</u>, 104 S.E.2d 747 (Va. 1958).</p> <p>Va. Code § 120-124.2(B), the court shall assure minor children of frequent and continuing contact with both parents, when appropriate, and encourage parents to share in the responsibilities of rearing their children. The court may award joint custody or sole custody.</p>

CHILD CUSTODY AND VISITATION			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
<p>continued from above</p> <p>JOINT CUSTODY</p>	<p>...</p> <p>(B) For the purposes of this paragraph, the term:</p> <p>(i) "Legal custody" means legal responsibility for a child..... (ii) "Physical custody" means a child's living arrangements.</p> <p>.....</p> <p>(2) Unless the court determines that it is not in the best interest of the child, the court may issue an order that provides for frequent and continuing contact between each parent and the minor child or children regardless of marital status. There shall be a rebuttable presumption that joint custody is in the best interest of the child or children, except in instances where a judicial officer has found by a preponderance of the evidence that an intrafamily offense...., an instance of child abuse...., an instance of child neglect....., or where parental kidnapping.....has occurred....”</p>		
<p>VISITATION</p> <p>continued next page</p>	<p>See DC Code §16-914.</p>	<p>Where visitation or custody is sought over the objection of the parent, before the best interests of the child test can come into play, the third party seeking custody or visitation must establish that the legal parent is either unfit or that exceptional circumstances exist. <u>Janice M v. Margaret K</u>, 404 Md 661 (2008). . . (cont.)</p>	<p>Scope of court’s power to award visitation now extends to any person with a legitimate interest including grandparents, stepparents, former stepparents, blood relatives and family members. Va. Code §§ 20-124.1 and 20-124.2(B).</p>

CHILD CUSTODY AND VISITATION			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
Continued from above		<p>... Right to grandparent visitation is codified at Md. Fam. Law Code § 9-102. The grandparent visitation statute requires a <i>prima facie</i> or threshold showing of either parental unfitness or exceptional circumstances indicating that the lack of grandparental visitation has a significant deleterious effect upon the subject child (<u>Koshko v. Haining</u>, 398 Md. 404 (2007)). See generally <u>McDermott v. Dougherty</u> 385 Md. 320 (2005); <u>Troxel v. Granville</u>, 120 S.Ct. 2054 (2000). Court can consider a petition and if it is in the best interest of the child, grant visitation. <u>Fairbanks v. McCarter</u>, 622 A.2d 121 (Md. 1993).</p> <p>Termination of rights as natural parent (adoption) does not preclude grandparents from petitioning for visitation. <u>Beckman</u>, <i>supra</i>.</p>	

CHILD CUSTODY AND VISITATION			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
PARENTAL RELOCATION ISSUES	No reported appellate cases.	<p>See <u>Sewell v. Sewell</u>, 145 A.2d 422 (Md. 1958) (wife's desire to leave state was not controlling but was a factor which, because of the probability that her so doing would cut child off from any association with his father, could properly be considered in awarding custody of child).</p> <p>Relocation is sufficient to consider changing custody. <u>Domingues v. Johnson</u>, 593 A.2d 1133(Md. 1991).</p> <p>Md. Fam. Law Code § 9-106: Court can require advance written notification of intent to relocate.</p>	<p>Va. Code § 20 124.5: <u>Notification of Relocation</u>. A condition of any custody or visitation order is a requirement that 30 days advance written notice be given to court and other party by party intending to relocate.</p> <p>Cases where moves were allowed: <u>Scinaldi v. Scinaldi</u>, 347 S.E.2d 149 (Va. Ct. App. 1986); <u>Gray v. Gray</u>, 324 S.E.2d 677 (Va. 1985); <u>Simmons v. Simmons</u>, 339 S.E.2d 198 (Va. Ct. App. 1986); <u>Sternberg v. Sternberg</u>, Chancery No. 135035, 1996 Va. Cir. LEXIS 558 (Va. Cir. Ct. June 20, 1996).</p> <p>Cases where moves not allowed: <u>Carpenter v. Carpenter</u>, 257 S.E.2d 845 (Va. 1979); <u>Hughes v. Gentry</u>, 443 S.E.2d 448 (Va. Ct. App. 1994); <u>Bostick v. Bostick-Bennett</u> 478 S.E.2d 319 (Va. Ct. App. 1996).</p>

CHILD CUSTODY AND VISITATION			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
CUSTODY MODIFICATION	<p>DC Code § 16-914 (e) (1): “(1) An award of custody may be modified or terminated upon the motion of one or both parents, or on the Court's own motion, upon a determination that there has been a substantial and material change in circumstances and that the modification or termination is in the best interest of the child.” See also DC Code §16-914.01.</p> <p>The judicial standard of review governing the modification of custody arrangements established by agreement of the parties depends on whether the original custody arrangements were determined by: (1) private agreement (not reviewed or ratified by the Court) (standard: best interest of the child, see <u>Owen v. Owen</u>, 427 A.2d 933 (DC 1981) and <u>Spire v. Spire</u>, 743 A.2d 186 (D.C. 1999)); or (2) private agreement that was subsequently reviewed and ratified by the Court (through incorporation or merger) (standard: best interest of the child, changed circumstances not contemplated by the parties at the time of the agreement, and the terms of the agreement are afforded due deference, see <u>Rice v. Rice</u>, 415 A.2d 1378 (DC 1980) and <u>Galbis v. Nadal</u>, 626 A.2d 26 (DC 1993).</p> <p>Modification must conform to requirements of the UCCJEA. DC Code § 16-4602.03.</p>	<p>Court has continuing jurisdiction to modify. <u>Furman v. Glading</u>, 374 A.2d 414 (Md. App. 1977).</p> <p>Where change of circumstances affecting the parties or the children has occurred since the filing of the original decree, the courts have power to modify, but the custody should not be disturbed unless there is some strong reason affecting the welfare of the children. <u>Taylor v. Taylor</u>, 229 A.2d 131 (Md. 1967); <u>Sartoph v. Sartoph</u>, 354 A.2d 467 (Md. App. 1976); <u>McCready v. McCready</u>, 593 A.2d 1128 (Md. 1991).</p>	<p><u>Keel v. Keel</u>, 303 S.E.2d 917 (Va. 1983), established the applicable test:</p> <ol style="list-style-type: none"> 1) Has there been a change in circumstances...; 2) Would change be in the best interests of the child? <p><u>Surles v. Mayer</u>, 628 S.E.2d 563 (Va. Ct. App. 2006).</p>

ATTORNEY'S FEES			
	DISTRICT OF COLUMBIA	MARYLAND	VIRGINIA
WHEN AVAILABLE	<p><i>Pendente lite</i> and permanent alimony and child support, DC Code §16-911 (a) (1) and §16-916 (a) and (c). Custody – attorney for the child: §16-918</p> <p>Proper factors for the court to weigh in determining the amount of attorney's fees awarded are the quality of the services rendered, the skills of counsel, the result of litigation, the difficulty of the case, and the ability of pay attorney's fees, as well as the respective capacity of the parties. <u>Rachal v. Rachal</u>, 489 A.2d 476 (DC 1985).</p>	<p>Court may award attorney's fees and costs. Md. Fam. Law Code §§7-107, 8-214 and 12-103; <u>Bagley v. Bagley</u>, 632 A.2d 229 (Md. App. 1993). "Costs" includes suit money, travel expenses etc. <u>Bracone v. Bracone</u>, 295 A.2d 798 (Md. App. 1972).</p>	<p>Yes. Va. Code § 20-79. Also in contempt proceeding to enforce court order relating to child support. <u>Edwards v. Lowery</u>, 348 S.E.2d 259 (Va. 1986).</p>
PENDENTE LITE AWARDS	<p>DC Code § 16-911(a) (1) allows suit money including counsel fees, <i>pendente lite</i>.</p>	<p>Yes.</p> <p>Md. Fam. Law Code § 11-110 (a)(3) allowing trial court to award reasonable expenses at <u>any</u> point.</p> <p>See also <u>Guarino v. Guarino</u>, 684 A.2d 23 (Md. App. 1996).</p>	<p>Yes. Va. Code § 20-79.</p>