

# THE ADVOCATE

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## SPECIALIZING IN:

- Medical malpractice
- Family law
- Personal injury
- Wrongful death
- Nursing home litigation

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## Fault vs. no-fault divorce in Virginia

In Virginia, a judge may not distribute a separated couple's property, award permanent spousal support, or finally determine child-related matters until one spouse has proved a ground for divorce. The grounds fall into two categories: **fault** and **no-fault**.

### *Fault*

Fault grounds are used most when the parties cannot settle their issues, especially when spousal support is a concern. Willful desertion and abandonment, cruelty, and adultery are the most litigated fault grounds. On the willful desertion and cruelty ground, a judge cannot enter a final divorce decree until one year has passed since the last act of desertion or cruelty. There is no one-year waiting period required for an adultery-based divorce, in part because the burden of proof is higher than for all other grounds. If one spouse can prove the other committed adultery, the law may prevent the at-fault spouse from receiving support, unless he or she can show that denial of support creates an obvious financial injustice.

A divorce may also be granted when one spouse proves that during the marriage the other spouse was convicted of a felony, was confined for more than one year for that crime, and the spouses did not live together after the confinement.

Virginia judges can consider the evidence for a fault divorce when distributing property, determining spousal support, and allocating attorney's fees and costs. Because pursuing a fault-based divorce can add considerably to a client's costs, it should be pursued only where there is an obvious monetary benefit to the client in resolving these issues.

### *No-fault*

The vast majority of divorces are concluded on the no-fault ground, which is based solely on the spouses' continuous, uninterrupted physical separation. The waiting period is typically 12 months. If the parties have signed a post-nuptial agreement and they don't have children under 18, the waiting period is only 6 months. Most judges use the date of one spouse's actual physical departure from the marital home to compute the waiting period. In rare cases, spouses may be considered living separately while under the same roof. Parties can use no-fault grounds when they reach an agreement on their issues, which happens in about 90 percent of cases.

The circumstances causing a couple's separation and contemplated divorce must be closely analyzed in every case. Please contact our office at **982-2900** or **[info@mundryrogers.com](mailto:info@mundryrogers.com)** if you have questions about any separation or divorce issues.



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## FOR YOUR SAFETY

### Recalled product roundup

Here are some recently recalled products you may have in your home or at work:

- ✓ **Maytag Corporation** recalled 2.3 million Maytag® and Jenn-Air®-brand dishwashers in which liquid can leak from a dispenser, short-circuit wiring, and catch fire.
- ✓ **Old Williamsburgh Candle Corporation** has voluntarily recalled 3.7 million 3.5–5.0-ounce Old Williamsburgh Mason Jar Candles. Wicks can shift and crack glass, which can cut or burn users.
- ✓ **Arcraft and Foremost, Inc.**, has asked buyers to return 43,500 Sippy/Tumbler Cups, which can break when dropped and cut children.
- ✓ **American Honda Motor Corporation** recalled 11,000 Honda Model Year 2006 TRX450ER/R ATVs. Contaminated front-suspension-arm ball joints may wear and separate prematurely, injuring riders.
- ✓ **Detour Corp., doing business as Version-X**, has recalled 18,000 Travel’N Baby Mini Hair Dryers unequipped with industry-required immersion protection to prevent electric shock or electrocution if dropped into water.

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## Wrongful death

The death of a beloved is heart-breaking. Relatives will no longer share the deceased’s companionship, encouragement, or love.

Although compensation never truly makes up for the loss, our civil justice system permits next of kin and relatives to request fair monetary damages when the death of a loved one is caused by another’s negligence.

### A student’s death

While climbing cliffs on a required field trip to a national seashore, a student fell, suffering fatal head injuries. His family sued the university for wrongful death, claiming it failed in its duty of care to monitor their son’s climbing. The case went to mediation, and the parties settled.

## Hospital medication errors



The Institute of Medicine (IOM) of the National Academy of Science recently reported that 1.5 million Americans are injured or killed by medication errors annually. Studies indicate that approximately 400,000 preventable drug-related injuries occur each year in hospitals. Another 800,000 occur in long-term-care settings, and roughly 530,000 occur among Medicare recipients in outpatient clinics.

In 2005, a 16-year-old died during induced labor when a nurse infused her IV with an epidural anesthetic instead of penicillin at a Wisconsin hospital.

Although bar-code technology and other tracking and monitoring strategies are being put into place, poor handwriting, human error, and carelessness cause many medication mistakes to continue to occur.

### What can patients do to protect themselves?

- Know that you have a right to question anyone who is involved with your care.
- Make yourself or family members a part of your care team.
- Learn about your condition.
- Make sure your doctor knows all the medications you are given.
- Be sure to tell of allergies or reactions.
- Ask hospital staff to wash their hands before giving medications to you.
- Ask staff to confirm that they’re providing you the right drug, the correct dosage, at the right time.

Some patients actually hire private nurses to monitor hospital staff. If you feel you or a relative has been injured as a result of improper hospital medication or hospital staff negligence, talk to your doctor and seek legal counsel.

## You can count on a trial lawyer for help if...

1. You're injured in an auto accident by a drunk driver.
2. A son is harmed by a dangerous over-the-counter medication.
3. A cousin slips on a piece of crushed fruit at a supermarket and breaks a wrist.
4. A neighbor becomes ill after taking a misfilled prescription.
5. Your family's key wage earner is injured on the job.
6. A radiologist misses a spot on a mammogram.
7. A child is injured at an amusement or water park.
8. Your insurer denies a claim for wind damage to your home.
9. A teen daughter is sexually harassed at school or work.
10. A coworker or supervisor discriminates against you at work.
11. An aging father is mistreated at a nursing home.
12. Your community's water supply is poisoned by a local manufacturer.
13. Your child is bitten by a vicious dog.



## Premises liability

Texas apartment-complex residents lived in fear after complaining for months to unresponsive management about broken entrance drive gates.

First-grade teacher Bridget Kelly felt particularly endangered because management refused to install a chain lock on her door, even though it installed locks for others.



**Bridget Kelly**

In June 2002, an armed assailant kicked in Bridget's door, forced her to her car, demanded she withdraw money from her ATM, drove to a vacant field, and raped and shot her in the back three times. Seriously wounded, she pretended to be dead. When the attacker left, she stumbled to a nearby home and collapsed. The owner called EMTs, and surgeons repaired extensive internal damage, saving Bridget's life.

Her attacker was sentenced to life plus 40 years, but Bridget's apartment complex remained unsafe. Two years following her attack, management had still not responded to safety complaints, so Bridget filed a negligence lawsuit against the apartment complex and management company for failure to maintain security. With owners refusing to act responsibly, the civil justice system was Bridget's only resort to hold them accountable for resident safety and her terrible experience.

## AUTO LEMON LAWS

All states and the District of Columbia have consumer-protection lemon laws that establish guidelines for manufacturers to repurchase or replace defective automobiles.

Auto buyers should read eligibility and notice requirements and be aware of available remedies if a dealer cannot meet the warranty after repeated repair attempts. Those who feel they have been unfairly treated by a car dealer should seek the counsel of an attorney familiar with consumer-protection claims involving defective vehicles and auto sales fraud.

### A \$150,000 lemon

A dealership refused to make warranty repairs, blaming the owner for abuse after a high-performance sports-car part assembly broke down for a sixth time. When the owner's attorney sued, a jury found that the vehicle should have handled aggressive driving and awarded double the car's value to the plaintiff. The parties settled during appeal for the full amount of the verdict.



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## Halloween safety

In 2001, Southern California parents noticed a popular lollipop was recalled due to high levels of lead. They approached the Environmental Health Coalition to test a wider range of candies.

Initial results proved positive, and a newspaper's investigative reporter found unsafe lead levels in candies in local community stores. In 2004, the group filed suit against major candy manufacturers, demanding they comply with California's strict food-safety requirements.

The lawsuit—and resultant settlement—showed that regulators knew for more than a decade about contaminated candies linked to lead-poisoned children, but did little to inform the public or recall the products from shelves.

A combination of a strong civil justice system and the state's tough food-safety requirements are to thank for removing unsafe candy from California's shelves. Three defendants have modified their recipes to replace the lead-tainted ingredients.

### A safer Halloween

Help your young ones to have a safe Halloween:

- ◆ Shorten costume hems to prevent trips and falls. Buy only flame-retardant costumes, and spray homemade outfits with flame-retardant products.
- ◆ If you put candles in jack-o'-lanterns, keep them away from curtains and other indoor combustibles. Outside, position them so kids in costume won't get near them.
- ◆ Use facial makeup instead of masks, which can reduce vision.
- ◆ Give each child a flashlight for visibility, and trim costumes with reflective tape so that youngsters are visible to drivers and bicyclists.



## Auto accidents

### Drivers who back up negligently

Each year, thousands of vehicles and pedestrians are struck by negligent drivers backing into parking spaces, leaving driveways, or departing from mall parking lots. For safety, some new cars come equipped with sensors that sound when backing up isn't safe, and onboard cameras and view screens that show drivers what's behind their autos. An attorney experienced with auto accidents can investigate this type of accident to determine how cars were damaged, if there were witnesses, and what speeds were involved to establish liability.

### Jumping a curb

A pedestrian was severely injured by a vehicle that negligently backed into traffic, struck an oncoming car, and then overcorrected from the initial collision, sending the vehicle onto the sidewalk. The parties settled for medical and physical therapy expenses.