

ADULTERY IN VIRGINIA

Answers to Your Top Questions



CURRAN MOHER WEIS

Attorneys Dedicated to Family Law

Regardless of which side of adultery you find yourself on today, it will be an issue. The best way forward is to position yourself for the best possible outcome. The complexity of adultery means you'll have many questions, the answers to which will help guide your next best steps.

In this document, we've compiled answers to a handful of the top questions we receive from clients about adultery in Virginia. The state of Virginia considers adultery a crime and this can add to the complexity for both sides.

Naturally, the answers we provide here can only go so far. Each case is unique and these answers are provided for information purposes only. We encourage you to speak frankly with any attorney you select and discuss specific questions about your situation.

1. What is adultery in Virginia?

Technically adultery is male/female sexual intercourse only, but a divorce can be granted based on other forms of sexual contact outside marriage, including same-sex acts.

2. I suspect my spouse has been unfaithful—what should I do?

Speak to a lawyer immediately. Depending on the circumstances of your case, there may be many different options. In almost every case, however, you should refrain from any further sexual contact with your spouse, as doing so after you find out about an affair may result in you inadvertently “forgiving” the affair.

3. Can cheating really keep me from getting spousal support (alimony)?

Potentially, yes. However, there are many things to consider. If you've been unfaithful and are seeking spousal support, you may still be eligible to get it, if circumstances warrant. First, your spouse would have to prove the infidelity with clear and convincing evidence, and that may be more difficult than it sounds. Second, there is a “manifest injustice” standard which states that a court may award support in spite of adultery if it would be “manifest injustice” to deny support. Third, if you can prove that your spouse has engaged in similar actions, that may operate to “cancel out” your own actions.

4. How else might adultery affect my case?

Adultery can potentially affect all aspects of your case, including spousal support, division of property, and attorney fees. Adultery does not commonly impact on child custody, unless the affair has had an impact on the parenting of the children.

5. Should I put a GPS tracking unit on my spouse's vehicle?

Before considering use of a GPS tracking unit, consider the purpose. The unit can only tell you where a vehicle is, not what the driver is doing. Under certain circumstances, it may be illegal for you to install a GPS unit on your spouse's vehicle. You also may not be able to testify about it in court. In most cases, if a GPS unit is used, it should be done by a trained professional like a private investigator.

6. Should I hire a private investigator?

Depending on your situation, a private investigator may be able to catch your spouse in the act and allow you to prove that he or she was committing adultery. Many factors go into whether you should hire a private investigator, such as cost, likelihood of success, and the possible effect of adultery in your case. An attorney can advise you whether a PI makes sense.

7. Isn't adultery a crime in Virginia? If so, can I plead the 5th and refuse to answer questions about it?

Maybe. See [here](#) and [here](#) for Grant Moher's original article regarding adultery and the 5th Amendment, and update to that article.





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To protect your future, you need a reliable and experienced Virginia family law attorney to strongly represent your interests. The attorneys and staff at Curran Moher Weis are committed to helping you through life's difficult transitions. We are experienced in all facets of family law and divorce, and our team has a specific strength in complex divorce litigation for cases that require it.

Discuss your situation with an expert.

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