

# NEWSLETTER

VOLUME 1 | ISSUE 1 | SPRING 2009

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## INSIDE THIS ISSUE:

Living separate and apart in the same house	1-2
Fighting Over Fluffy – Custody of Pets	2
Alec Baldwin uses discredited parental alienation syndrome on 20/20 interview	2
Upcoming Events	3
Funding College Education – How Upromise Can Help	3

## LIVING SEPARATE AND APART IN THE SAME HOUSE

By Charles R. Hofheimer

To be “separated” means one of the parties has left the marriage and presumably the marital home with the intent not to return. Thus, the short answer to “Can we be separated while living in the same house?” is no. But there have been exceptions in the Virginia case law that leave open the door of possibility of an in-home separation. One must realize what the risk of such a separation entails before undertaking such an endeavor.

Living separately within the same residence as your spouse can be very difficult to prove to a judge. You may discover that the judge

will not accept your “separate under the same roof” status and tell you to come back after a year of living separately in your own residences. This could pose an added expense as well as a delay to your divorce process.

In Virginia, “cohabitation” is living together as if married. This does not mean that one has to be having sex with one’s partner in order to be deemed a family in the eyes of the law. Accordingly, because a married couple has not had intimacy for a while does not mean that the two aren’t cohabiting. Thus, when

*Continued on page 2*



Charlie is a founding partner of the firm Hofheimer/Ferrebee, P.C., he has been representing women only in divorce since 1992 and is the author of the book *What Every Virginia Women Should Know about Divorce*. To order your free copy, go to [virginiadivorceattorney.com](http://virginiadivorceattorney.com)

## WELCOME!

Welcome to the inaugural edition of the Hofheimer/Ferrebee, P.C. newsletter. This is one of many new changes that we are making in the office in 2009. Through our newsletter, you will be able to read more about what is going on in the office and about changes or developments in divorce and child custody laws. As the newsletter develops we hope to offer some levity as well as good old fashioned practical information.

The biggest change to the Hofheimer/Ferrebee law firm was the retirement of Jack Ferrebee in May 2008. Jack and his wife, Boone, moved to Savannah, Georgia to welcome their first grandchild. After the birth of little Jack in September, big Jack traveled to Haiti twice in 2008 to work with the Hands On Disaster Relief organization. Haiti is the poorest country in the western hemisphere and experienced three successive hurricanes in 2008. These natural disasters dealt a devastating blow to the country. Boone returned to Haiti with Jack in January 2009 to do more disaster relief work. They are committed to doing volunteer work and are still waiting for an assignment in the Caribbean for February 2010 with the Peace Corps. While they await their Peace Corps assignment, Boone

and Jack intend to continue doing volunteer work with other organizations.

In August 2008, we welcomed Shannon D. Lemm, Esq. as a new member of Hofheimer/Ferrebee P.C.. Shannon, in addition to all her responsibilities, is the lead facilitator at our new 2nd Saturday Divorce Seminar location in Newport News.

Shannon is a vivacious and passionate woman raising 2 beautiful girls in the Yorktown area. She has a very close nit family of which she is extremely proud. Her mother, Barbara Robertson, is Shannon’s very best friend and a true Red Head.

Shannon is very compassionate regarding the plight of women fighting to protect their children and is devoted to helping women and children facing the challenges in a divorce and/or custody fight. After personally experiencing divorce and a child custody battle, as well as being a former client of Hofheimer/Ferrebee, she has unique perspective in representing women. Shannon is a tough opponent, fighting for what her client deserves.

## LIVING SEPARATE AND APART IN THE SAME HOUSE

Continued from page 1



you live together in a home, you are holding yourself out to the public essentially as a family, which is a contradiction of the element of "intent to separate." Often, couples do not want their friends to know that they are getting separated or divorced, and the Commonwealth of Virginia essentially is saying that if you intend to be separated or divorced, then you must present yourselves as being separated in order to obtain a divorce. You cannot appear to be married while claiming to be separated. Furthermore, when you live together with your spouse, but claim you are

separated, there is a great chance for "collusion" in the eyes of the court. Remember, it would be collusion if a husband and wife fraudulently claimed that they were separated, when in fact they were not. Finally, the public policy of the Commonwealth of Virginia is to support the family and marriage. Thus, the Commonwealth, through the legislature and the courts, wants to make it more, rather than less difficult to get divorced. Accordingly, the intent to separate is not readily manifested in an in-home separation.



## FIGHTING OVER FLUFFY – CUSTODY OF PETS

Who gets custody of the family pet?

By Sheera R. Herrell



You and your husband have agreed on the parenting plan, support and how to divide the assets and liabilities - things are going well. Then, you realize one very important topic has not been addressed - who gets custody of the family pet. This is a hot topic and occurs more frequently than most people would expect. Even the Today Show is talking about it. In Virginia, the loyal family pet is not treated like

## ALEC BALDWIN USES DISCREDITED PARENTAL ALIENATION SYNDROME ON 20/20 INTERVIEW

By Kristen Hofheimer



On Friday, September 19, 2008, Alec Baldwin appeared on a 20/20 interview with Diane Sawyer to promote his book. Blaming his outrageous voice mail message to his daughter and his multi-million dollar divorce litigation on the scientifically discredited theory of "Parental Alienation Syndrome," Baldwin attempted to portray himself as a victim of former wife Kim Basinger, and as a victim of

his daughter. Interviewer Diane Sawyer did not fall for Baldwin's self-portrayal as a victim, and asked Baldwin difficult questions, to which he attempted to object off-camera. Sawyer turned the cameras back on and confronted Baldwin about his off-camera accusations that Sawyer was being biased against him. Both Baldwin and Sawyer alluded to Baldwin storming off several times during the interview. Baldwin was visibly agitated and sweating during the interview, and did not have a good answer for Sawyer's question to him about the impact on his daughter of Baldwin's book, and his vilification of Basinger in the book. Professor Joan Meier did an excellent job addressing the fact that Parental Alienation Syndrome is not accepted as a valid syndrome within the scientific community.

a child. There are no custody or visitation statutes that provide a framework for this problem. The Court classifies our beloved pets as property just like a couch or kitchen table. The law permits the Court to award one party sole ownership of Fluffy or order that Fluffy be sold. While the Court can not order shared custody of Fluffy, here are two things you can do. First, try mediation. With the help of

a trained mediator, parties can design a shared custody plan for the family pet. Second, make sure the ownership and licensing documents are in your name only. If you and your husband can't reach an agreement, having Fluffy titled in your name only can bolster your position before the Court that you should receive Fluffy as your sole property.

# UPCOMING EVENTS

## Monthly Seminars

### What Women Need to Know About Divorce

If you are a woman who is considering divorce, or perhaps in the early stages of the divorce process, you need to attend this information-packed 3-hour presentation.

#### Join other women like you to:

- Explore the legal, financial and emotional support resources available during the divorce process.
- Learn what to expect during a divorce and how to prepare for this challenge with greater confidence and understanding.
- Discover the four ways to obtain a divorce: Litigation, Negotiation, Mediation and the Collaborative Team Model.
- Listen to other women like you who are experiencing similar life changes.

The seminars are led by a Family Law attorney from **Hofheimer | Ferrebee P.C.** who represent “women only” in divorce and custody cases. Additionally a therapist experienced in dealing with divorce and related issues will present information and be available for questions. Seminars are located in Virginia Beach, Chesapeake and Newport News.

[monthlydivorceseminar.com](http://monthlydivorceseminar.com)

## Second Saturday

Virginia Beach, Chesapeake and Newport News

April 11, 2009

May 9, 2009

June 13, 2009

## Third Tuesday

Virginia Beach Only

April 21, 2009

May 19, 2009

June 16, 2009

# FUNDING COLLEGE EDUCATION – HOW UPROMISE CAN HELP

By Mary Elizabeth Davis



Many parents are faced with the challenge of sending their children to college while in the middle of a divorce. In Virginia, neither parent can be financially required by the courts to pay for college unless college costs were agreed upon in a separation agreement or another document. This frustrates many parents, who feel that they are “going it alone” in supporting their children through college.

Upromise is a free service that can help. It can fund a 529 account for a student or for yourself. It can even repay student loans for select lenders.

Register for Upromise at [www.upromise.com](http://www.upromise.com), and register each

of your credit card and debit cards. When you make purchases at participating retailers, online merchants or restaurants, a percentage of your transaction will be placed into your account. Upromise partners also include mortgage companies, auto finance companies, phone companies, and other service providers. Your account balance will be transferred quarterly into the 529 account or transferred to pay an existing student loan.

Citibank has a Upromise credit card. A 1% rebate for all purchases you make is placed into your Upromise account. You do not have to have the Upromise credit

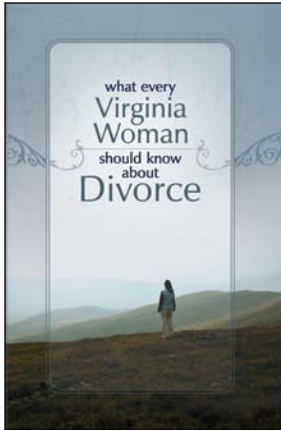
card to participate in Upromise, though.

The Upromise service is free and it provides rebates on purchases you would otherwise be making. Friends and family may also be invited to help save for your college student by linking their credit and debit card purchases to your Upromise account.

Paying for college during a divorce – check out **Upromise.com**

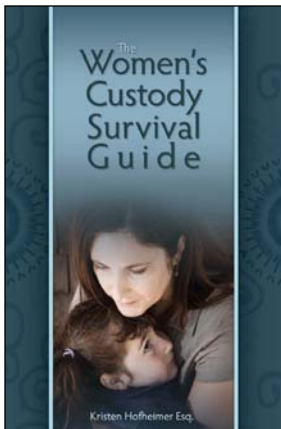
# Order our Free Divorce Book!

## What Every Virginia Woman Should Know About Divorce



Inside you'll find:

- 20 Guidelines for "separation under the same roof"
- 13 critical factors used to determine spousal support
- 3 types of property classification recognized by VIRGINIA courts
- 10 factors your judge must consider in a contested custody case
- the formula to determine your percentage share of his retirement benefits
- 38 Financial Records you should be aware of
- 20 steps to prepare for divorce
- 7 stages of divorce
- 40 age appropriate books about divorce for children



Coming soon!

## Women's Custody Survival Guide

*by Kristen Hofheimer*

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HOFHEIMER | FERREBEE P.C.

REPRESENTING ONLY WOMEN IN DIVORCE

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