

Early Virginia Marriage Laws, Records, and Practices

The colonial Virginia marriage law of Oct1748^[1] required that all marriages be performed by ministers of the established Anglican Church, and only after either “thrice publication of the banns” or by obtaining a marriage license from the clerk of the county where the bride resided. The process of publishing the banns was troublesome and time-consuming, and rarely resorted to by couples eager to marry, many of whom were in any case only involuntary adherents to the established Church.

Obtaining a civil license required the posting of a \$50 bond by the groom, and by his surety—a second party who was willing to guarantee the forfeit of the bond if for some reason the marriage went ahead but was later deemed to be unlawful. Since the recording clerk who issued the bond (for a fee) was on the hook for the \$50 in case the marriage blew up, the clerks were pretty scrupulous in following the correct procedure in issuing licenses, and in documenting these transactions.

Another provision of the 1748 law required that if either the groom or the bride was still a minor—under the age of 21—that the father or other legal guardian of that child (legally termed an “infant” even though they might be 20 years old) give his consent to that marriage either personally, or in writing with two subscribing witnesses. And it appears that (again, because the clerk was on the hook) that consents were virtually always in writing, creating a record that could be preserved.

By custom, the groom’s bondsman was typically the parent of one of the parties, or another close relative, but though a father acting as surety implied his consent, his relationship to the groom wasn’t usually stated in the bond, and in any case merely being a surety didn’t satisfy the consent statute.

One of the reasons so many colonial Virginians were ripe for revolution in 1776 was the requirement that they (or most of them—Quakers and Presbyterians beyond the mountains were granted special dispensation) were required to be baptized, married, and buried by established ministers, and on top of that pay for their support, and the Anglican Church of Virginia was finally disestablished in 1786—one of Thomas Jefferson’s proudest accomplishments.

Thus it’s not surprising that the old colonial marriage law was revised in Oct1780 (to take effect in Jan1781)^[2] to allow up to four ministers of each other denomination to be allowed to register with the county to perform marriages within its boundaries. All ministers at that time were also required to “return” a record of the marriage to the county clerk within three months of its performance, and the clerk was required to maintain a regular register of all such marriages. Substantial penalties (fines and even imprisonment) threatened both ministers and clerks who didn’t comply with this law.

Although technically, the county clerks were only required to maintain a “**register**” of marriages (contents unspecified), the Draconian penalties appear to have induced most of them to preserve all **the original marriage records—bonds, consents, licenses, and minister’s returns**—for decades or even centuries, and at least some of these original loose paper records have been preserved for most VA counties to the present day—though most that survive are now available only on film or online.

One more note. Because in pre-modern times a man wasn’t considered “marriage material” until he was in a position, both legal and financial, to support a wife and family (and in the days before birth control, a large family was generally guaranteed), very few men married before the age of 21, and not many women either. Legally, minors couldn’t enter into enforceable contracts, and to establish a household generally required the capital to acquire at least the use of a few acres of land and the tools needed to farm it, plus a horse, a cow, and a few other animals for sustenance. As a result, the sons of fathers who weren’t able to provide them with these things, generally needed to labor for hire for a number of years after turning 21 before they could even consider marriage.

¹ [Henings Statutes 6:81-85.](#)

² [Henings Statutes 10:362-363.](#)