

Grounds for Divorce in New York State



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New York is the only State that requires "grounds" to obtain a divorce in New York. There are five valid grounds in New York:

- (i) cruel and inhuman treatment;
- (ii) abandonment of one of the spouses by the other spouse for a period of one or more years;
- (iii) your spouse is in prison for 3 or more years;
- (iv) adultery; and
- (v) living pursuant to a legal separation agreement, for at least one year.

You will note that irreconcilable differences are not one of the valid grounds. Recently, a New York Appellate Court reaffirmed that irreconcilable differences is not a valid grounds. In this case, the Wife alleged that the husband refused to engage in social interaction with the wife. For example, the husband refused to celebrate any holidays with her (including Christmas and Thanksgiving), refused to acknowledge or celebrate the wife's birthday, refused to eat any meals with the wife and by generally ignoring her. However, she did not allege that the couple refused to have sex. The Court refused to grant the divorce on this basis, and stated that the only five grounds for divorce are the ones listed above.

Abandonment can occur in three different forms:

- (i) Where one spouse leaves the marital residence and the departure is unjustified, voluntary, without the consent of the other spouse, and with no intention of the departing spouse to return;
- (ii) Where one spouse locks the other spouse out of the marital residence without justification or consent;
- (iii) Where one spouse refuses to engage in sexual relations with the other spouse for one or more years where such refusal is unjustified, willful, continual and despite repeated requests for the resumption of sexual relations.

Most uncontested divorces will use abandonment (or as it is sometimes referred to as constructive abandonment) as the basis for the divorce. Even where the divorce is contested, typically, abandonment will be one of the grounds for the divorce.

If your divorce does not go to trial, you can agree to the grounds of abandonment. It is almost certain that no one, including the Courts, will question whether or not you had sexual relations in the last year or whether or not your spouse actually left the marital residence for a year.

What is "cruel and inhuman treatment"? It can be either physical or mental cruelty towards you. The acts must have a serious effect on your physical or mental health, such

that it is not safe or proper for the spouses to continue to live together. It is best illustrated by examples:

- Physical attacks upon a spouse
- Frequent screaming
- Having a romantic relationship with another person
- Wrongfully accusing you of having a sexual affair
- If your spouse is an alcoholic or a drug addict, but, it must have a negative effect on the marriage
- If your spouse has a gambling problem, but, it must have a negative effect on the marriage

Adultery, for a divorce, means sexual intercourse. Adultery is very difficult to prove as you can't testify as to the allegations of adultery. In addition, your spouse can claim the following defenses: (1) you consented or caused the adultery; (2) you have forgiven the adultery; (3) more than five years has passed since the adulterous act; and (4) you have also committed adultery.

A legal separation agreement is one that states that the parties will live separate and apart. The agreement must be filed with the county clerk or approved by the court. You must abide by the agreement for at least one year. The agreement does not have to state a reason for why you are getting separated. If you have a legal separation agreement, then you can convert this to a divorce after one year. Since a legal separation agreement does not need to state why you are getting separated, it is a partial exception to the rule that you need "grounds" for a divorce.

Finally, if your spouse is in prison for 3 or more years then you can get divorced. Your spouse does not have to be currently in prison, but, if that is the case, then you must bring the divorce action within five years from the spouse's release from prison.

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