

Grounds for Divorce

In order to file for divorce, you need legal grounds for divorce. The law recognizes “no fault” grounds, which simply requires proof of a period of living separate and apart, and “fault” grounds, which requires proof of certain culpable behavior for divorce.

A. No Fault Grounds. A no fault divorce requires that the parties live separate and apart for a given period of time with at least one of the parties having the intention that the separation be permanent, uninterrupted and without cohabitation. A No Fault divorce cannot be filed until six months after the final separation of the parties if the parties have no children under 18 and one year if they have children under 18. This is a minimum interval. During the waiting period the details of custody, visitation, support and property settlement, or, if necessary, trial preparation can proceed. Certain circumstances may qualify for a quicker divorce on fault grounds. A no fault divorce can still be a hotly contested divorce if the parties cannot agree on one or more issues.

You may have a written Property Settlement Agreement (“PSA”) that makes adequate and sufficient provisions in writing for the custody and support of the minor children of the marriage and makes a fair and equitable division of your property. There are also additional technical requirements, but the PSA is the essence of an uncontested “irreconcilable differences” divorce (see PSA section below).

B. Contested Fault Grounds. A traditional contested fault grounds divorce is a case in which there is matrimonial misconduct on the part of one spouse and the parties cannot agree on some point (property division, spousal support, custody, child support or attorneys’ fees). The three common fault grounds for a contested divorce are:

1. Adultery
2. Cruelty
3. Willful desertion

If you are filing for divorce, you need to have grounds to entitle you to the divorce existing BEFORE you file.

Defenses to the fault grounds for divorce include:

Condonation--knowing what your spouse did wrong but forgiving him or her anyway; this is usually proven by showing that you and your spouse had sexual relations after you found out what your spouse did.

Recrimination--conduct by the accusing spouse that is of the same character and nature as the conduct that is alleged.

Time Barred--the conduct alleged is too remote in time (happened too long ago) to constitute grounds now for the suit.

The law of defenses is changing rapidly and for technical reasons, the defense that sounds like it applies in your case might not apply. Ask us about it.

C. Residence and Domicile Requirement. Prior to filing your suit, one spouse must have been a bona fide resident and domiciliary of Virginia for six months. The quick definition of domicile is the place where you have the permanent intention to reside and “call your home”. Domicile is presumed in law for armed services persons who are residents of Virginia for six months on military orders, even though their home of record may be some other state.

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