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GROUNDS FOR DIVORCE

In order to file for a divorce in New Jersey, either spouse must have been a resident of the State for at least one year prior to the filing of the action. The only exception to the one year residency requirement is when the grounds for divorce are for adultery. In cases of adultery the requirement is that at least one spouse must be a New Jersey resident. In New Jersey there are eight grounds or causes to file for divorce. The three most popular grounds are extreme cruelty, no-fault separation, and adultery. Remember, the grounds of extreme cruelty are really just a “term of art”, and it really does not mean that your spouse was extremely cruel.

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No-Fault Divorce Causes of Action

Separation is New Jersey's only no-fault ground for divorce. To qualify under this grounds, both the husband and wife must have lived separately, in different houses (and not only different rooms) for a period of at least eighteen consecutive months. Moreover, in order to qualify for the no-fault divorce, there must not be a reasonable expectation of reconciliation. N.J.S.A. 2A:34-2A(d).

Separation

Separation is a no-fault ground for divorce. To qualify under this grounds, both the husband and wife must have lived separately, in different houses (and not only different rooms) for a period of at least eighteen consecutive months. Moreover, in order to qualify for the no-fault divorce, there must not be a reasonable expectation of reconciliation. N.J.S.A . 2A:34-2A(d).

Irreconcilable Differences

On January 20, 2007, Governor Corzine signed into law a change to the divorce statute. The new law created the ground for divorce for irreconcilable differences. Before the law change, most divorce complaints were based on either separation or extreme cruelty. The grounds of extreme cruelty required one spouse to accuse the other of specific acts of

cruel behavior. The new law now allows for a true no-fault divorce based on either spouse claiming irreconcilable differences.

Prior to this new cause of action, a person wanting a divorce had to establish fault such as extreme cruelty or adultery. The only no-fault alternative required spouses to live separate and apart for 18 months prior to filing a complaint for divorce. Many people considering divorce felt very uneasy alleging fault grounds necessary to be granted a divorce without a lengthy separation. Now, the legislature has created a new no-fault cause of action, without the 18-month separation requirement known as "irreconcilable differences."

The new law means that a complaint for divorce can now assert the existence of irreconcilable differences which have caused a breakdown of the marriage for six or more months. This new law has no separation requirement, meaning that two people can now file for divorce under this cause of action if they still live together. Moreover, this ground for divorce may be appropriate to allege in certain situations such as when two people have simply grown apart and wish to end their marriage. However, the couple still wish to reside together until the divorce is finalized. The new cause of action brings a level of civility and practicality to matrimonial practice. This ground for divorce eliminates the need for spouses to allege wrongdoing on their spouse's part.

To file a divorce based on irreconcilable differences, the following requirements must be met:

- a. You or your spouse must have lived in New Jersey for 12 consecutive months before the filing of the divorce complaint.
- b. You and your spouse must have experienced irreconcilable differences for six months.

This new ground for divorce further allows either husband or wife to file a complaint for divorce without any specific reason. The irreconcilable differences basis for divorce does not require that one spouse make allegations or accusations against the other.

The legal impact is that persons may now file for divorce without having to allege marital fault against their spouse, or await the expiration of eighteen months separation. The law will remove some of the animosity in a divorce. The great majority of cases are more vigorously contested with regard to such issues as custody, parenting time, alimony, child support and the equitable distribution of the marital assets. The new law is very beneficial because it is only in rare instances wherein egregious marital faults may be considered by the court to decide the outcome of the case. Marital fault is not a factor in the financial aspects of divorce, and in the equitable distribution of the assets. Moreover, even in custody cases, the fact that one's spouse has committed marital fault is not a significant factor. Finally, the new law does not replace the other grounds for divorce such as adultery, desertion or extreme cruelty.

If you have children with your ex-spouse then it is very important to keep the divorce litigation as "business like" as possible. The divorce case is about splitting up the marital assets, paying off your debts, assessing a child support award, negotiating an alimony award, and figuring out what to do with the marital home. A divorce case is not designed to determine which spouse ruined the marriage. This question is a personal one, and it is

not the family court's role to make this decision. If you treat your divorce process similar to a business decision and not a personal one, then your results will be much better. Moreover, you will save thousands of dollars in legal fees, and you will be able to reach a settlement much quicker.

Most counties simply do not have enough divorce judges. Therefore, even if your case is ready to be tried, you will have to wait many months before you receive a trial date. New Jersey is financially strapped, and the government does not provide the AOC with enough funds to hire more judges, staff, mediators, child support hearing officers, and clerks. Therefore, the family court system sometimes does not work as efficiently as it could. Therefore, it is your interest to try to resolve your case as speedily as possible. If you have a trial and if it lasts three days, then you could easily spend 10 hours waiting at court during the week for your trial. You will have to pay your lawyer a few thousand dollars for legal fees for this waiting time. It is not the lawyer's fault that he has to wait at court for your trial to start. The main message is to keep your divorce as civil as possible. If you give the court a lengthy recitation of your spouse's "dirt" in the divorce complaint based on adultery or on extreme cruelty then it will only enrage your spouse, and make the case much more difficult to settle. If you keep the litigation focused on the financial aspects of the case, and on the welfare of the children, then your ultimate outcome will be much better and cost effective for all parties.

If you are thinking about filing for a divorce, then this change in the law may make the divorce process a little easier for you. When neither spouse has to blame the other for the divorce, it can reduce the level of conflict in the divorce litigation. Most divorces ultimately end with a negotiated settlement. The parties strive to reach a settlement that is written down in a marital contract called a property settlement agreement (PSA). It is very expensive to have a full-blown divorce trial. There are endless adjournments. Moreover, the cases are not tried in a continuous manner. In most divorce cases, the parties only try a few hours of their case for each day that they are present in court. The amount of waiting time that the litigants have to endure is considerable. Moreover, your lawyer must be paid during this waiting time, and it can be very expensive. Therefore, it is very important to set a more peaceful tone in the divorce complaint. This may avert a full-fledged divorce war, and it could encourage a quicker settlement.

It is important to recognize that, in almost all divorces, an allegation against a spouse, even when it can be proven by evidence, will not affect the outcome of the divorce. Therefore, if you claim that your spouse had an adulterous affair this will not improve your chances of receiving more in child support, alimony, or a larger share of equitable distribution.

If you have already filed for divorce based on extreme cruelty, or adultery, then you may want to ask the court to amend your divorce complaint to solely on irreconcilable differences. By doing this, you may be able to withdraw the allegations of bad acts by your spouse. You can only amend your complaint if you have not yet reached a final judgment of divorce.

Fault Divorce Causes of Action

Extreme cruelty includes any physical or mental cruelty which makes it improper or unreasonable to expect that individual to cohabit with their spouse. N.J.S.A. 2A:34-2(c). The courts are very liberal as to what type of conduct constitutes extreme cruelty.

Adultery

The courts have held that "adultery exists when one spouse rejects the other by entering into a personal intimate relationship with any other person, irrespective of the specific sexual acts performed; the rejection of the spouse coupled with out-of-marriage intimacy constitutes adultery." New Jersey Court Rule 5:4-2 requires that the plaintiff in an adultery divorce case, state the name of the person with whom the offending conduct was committed. This person is known as the corespondent. If the name is not known, the person who files must give as much information as possible tending to describe the adulterer.

Desertion

The willful and continuous desertion by one party for a period of twelve or more months, and satisfactory proof that the parties have ceased to cohabit as man and wife constitutes desertion under N.J.S.A. 2A:34-2(b). It is important to note that the parties may live in the same house. The crucial element here is "as man and wife." Thus, desertion may be claimed after twelve or more months of lack of absent sexual relations.

Addiction

Under N.S.J.A 2A:34-2(e), addiction involves a dependence on a narcotic or other controlled, dangerous substance, or a habitual drunkenness for a period of twelve or more consecutive months immediately preceding the filing of the complaint. The evidence must show that the use of alcohol and drugs was persistent and substantial. This is not a common ground for divorce.

Institutionalization

When one spouse has been institutionalized for mental illness for a period of twelve or more consecutive months subsequent to the marriage and preceding the filing of the complaint, institutionalization is a ground for divorce under N.J.S.A. 2A:34-2(f). The primary issue in this ground for divorce is whether or not the spouse is able to function as a working partner in the marriage.

Imprisonment

Imprisonment as a ground for divorce occurs when a spouse has been imprisoned for eighteen or more months after the marriage. N.J.S.A. 2A:34-2(g). Moreover, the parties must not have resumed cohabitation after the imprisonment.

Deviant Sexual Conduct

Deviant Sexual Conduct occurs if the defendant engages in deviant sexual conduct without the consent of the plaintiff spouse. N.J.S.A. 2A:34-2(h).