

GROUNDS FOR DIVORCE

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A client may decide that they want a divorce, but they are not sure on what basis a court would grant them a divorce.

In New Jersey, there are several grounds for divorce. The legal term for grounds for divorce is ‘cause of action.’ In every divorce, a

party has to allege a certain cause of action that warrants a legally sustainable basis for a divorce.

As of January 20, 2007, New Jersey litigants are fortunate in that the option of proceeding on irreconcilable differences was added as grounds for divorce. A party may plead in their complaint for divorce that there have been “irreconcilable differences which have caused the breakdown of the marriage for a period of six months and which make it appear that the marriage should be dissolved and that there is no reasonable prospect of reconciliation.” As such, a party can simply plead irreconcilable differences, with no other allegation, and meet the legal standard of irreconcilable differences. There is no requirement of any period of separation. There is no requirement of name calling or need to disparage the other party. A simple and innocuous assertion of irreconcilable differences is enough to meet the standard.

The enactment of the grounds of irreconcilable differences into law now allows divorcing parties to proceed in obtaining their divorce in a kinder, gentler fashion. This is extremely important to many couples, particularly those with children. Because divorce pleadings are public record, many clients are uncomfortable on having to air the private and personal details of their married life in a divorce pleading.

Prior to its enactment, most couples proceeded on extreme cruelty as the grounds for the divorce. In this situation, a client has to assert allegations of extreme cruelty that occurred during the marriage. I require my clients to provide me with six to eight

allegations. Some struggle to have three allegations while others give me hundreds. The beauty of irreconcilable differences is that a client no longer has to engage in this type of mudslinging. They still can, if they wish, but with irreconcilable differences available as grounds, they have the option not to.

In addition to irreconcilable differences and extreme cruelty, one can file under 18-months separation. The 18-months separation cause of action is not widely utilized because most people cannot afford to live separate and apart for 18 months prior to filing their complaint. As such, these litigants were forced to allege extreme cruelty and come up with allegations against their spouses. Now the farce is over and clients can simply say they have irreconcilable differences to meet the legal threshold necessary to obtain a divorce judgment.

In addition to irreconcilable differences, extreme cruelty and 18-months separation, a client can proceed with an adultery cause of action whereby they must plead and eventually prove opportunity and inclination that their spouse cheated on them.

Desertion (12 or more consecutive months of no intimacy), imprisonment (18 or more months), deviant sexual conduct, habitual drunkenness or drug addition (12 or more months) still remain viable options as grounds for divorce. There is generally no financial benefit to be gained by filing under these grounds, but sometimes a client is driven by their emotions and may opt to file under same.

It is the client’s personal decision as to which cause of action they wish to assert in their pleading. New Jersey now provides litigants with a variety of claims that can be asserted in order to obtain a divorce.

Jeralyn Lawrence, a member of the Norris McLaughlin & Marcus Matrimonial Law Group, has been selected by her peers as one of New Jersey’s Top 10 matrimonial lawyers under the age of 40. She has also been recognized by the New Jersey Law Journal as one of 40 accomplished and promising attorneys in the State of New Jersey under the age of 40. Jeralyn is a frequent speaker at matrimonial law programs and seminars. jllawrence@nmmlaw.com.