

Adultery: The Loophole Residency Requirement

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When seeking a divorce in the State of New Jersey, you have the option of filing for a "no-fault" or a "fault" based divorce. By filing for a "no fault" divorce, essentially you are alleviating any blame on your spouse for causing the divorce action, and opting not to point a critical finger at any party in particular for the dissolution of the marriage. Alternatively, some spouses choose the "fault" route, which includes desertion, physical or emotional abuse, alcohol or drug abuse, and/or adultery.

Most couples file under a "no fault" ground, either irreconcilable differences or 18-month separation. However, if one files under a "fault" ground, they may choose adultery. Adultery is unique in that it does not have a one-year residency requirement.

Generally, parties filing for divorce in the State of New Jersey must meet residency requirements in order for the Court to establish jurisdiction and venue. Jurisdiction is established when, at the time the cause of action arose, either party was a bona fide resident of the State of New Jersey, and has continued to be so up until the time of the commencement of the divorce action; or when either party has become a bona fide resident of the State of New Jersey since the time the cause of action arose, and has been a resident for at least one year next preceding the commencement of the divorce action.

The only cause of action that does not necessitate the one-year residency requirement is adultery. Pursuant to N.J.S.A. 2A:34-10, the requirement applies to "any cause other than adultery." But, the only requirement for filing for divorce on the basis of adultery is that at least one spouse is a resident of the State of New Jersey at the time of filing.

Accordingly, if it becomes necessary for you to file a Complaint for Divorce and you do not meet the residency requirement, but have sufficient evidence of adultery, you do not need to wait one year in order to file for divorce. Rather, you can file immediately and begin the process of dissolving an unsuccessful bond.