

Grounds for Divorce in Illinois

In Illinois, the technical name for a divorce is a "Judgment for Dissolution of Marriage." We don't have "divorce decrees," instead we have Judgments.

There was a time when a person couldn't get divorced without a very good reason. Now, however, in addition to legal separations, Illinois law offers divorces in two flavors: those where a specific reason is given ("grounds"), and those where no reason is given ("irreconcilable differences"). The various grounds are discussed below:

Irreconcilable Differences: In Illinois we use the term "irreconcilable differences" to describe what others know as a "no fault divorce." Irreconcilable differences don't need much of a definition. Technically, to be granted a divorce, you must prove that irreconcilable differences have caused the irretrievable breakdown of the marriage,¹ that past efforts at reconciliation have failed,² that future efforts at reconciliation would be impracticable and not in the best interests of the family.³

The Two Year Waiting Period: In Illinois, to proceed using "irreconcilable differences" as the grounds for divorce the parties must live "separate and apart" for at least two years before their case may be concluded.⁴ You may file your case while you're still living together,⁵ but you must live separate and apart for two years before the case can be finalized.

The two-year waiting requirement can be waived if both parties sign a special waiver form.⁶ Even then, however, they must still live separate and apart for at least six months before the case may be finalized.⁷

There is a way around the separation requirement.⁸ We have had many clients use "irreconcilable differences" who, for various reasons, continue to live together under the same roof until the day of the divorce and, after the court proceedings, leave the courthouse together, drive home in the same car, and continue to live together until they decide to part ways.

Beyond irreconcilable differences, what are the grounds for divorce in Illinois?

There are 7 major grounds for divorce:

Mental Cruelty: Mental cruelty isn't defined in the law. The courts, in fact, tend to consider the effect of a harmful action more than the action itself.⁹ To sustain an allegation of mental cruelty, there must be more than one occurrence B the law requires that the cruelty be "repeated."¹⁰ The law also requires that there be no provocation for the cruelty.¹¹ Mental cruelty isn't always easy to prove. "Mental cruelty" has been defined as "a course of abusive and humiliating treatment, calculated or obviously of the nature to torture, discommode or render miserable the life of the opposite spouse, which conduct actually affects the physical or mental health of the spouse..."¹²

Adultery: Adultery, in addition to being a ground for divorce,¹³ is also a crime in Illinois.¹⁴ For what it's worth, fornication is also a crime in Illinois.¹⁵

Alienation of Affection: Illinois law provides for suits by a jilted spouse against an interloper. That's right: you may sue your spouse's lover for breaking up your marriage. In fact, you may even sue third parties for standing by and letting it happen. In one 2002 case, a sharp attorney sued a major restaurant chain for failing to stop her husband (he was the manager of the restaurant) from having an affair with a waitress.¹⁶

Physical Cruelty: This ground requires a showing of "extreme and repeated" acts of physical cruelty.¹⁷ "Repeated" acts of cruelty mean just that a single act is not enough.¹⁸ Extreme cruelty can be found where the acts of violence cause pain and bodily harm.¹⁹

Drug Addiction or Drunkenness: The addiction must go on for at least two years.²⁰

Infection with a Sexually Transmitted Disease: If your spouse infected you with an STD, that is enough to permit you to obtain a divorce.²¹

Conviction of a Felony: If your spouse has been convicted of a felony, that is enough to permit you to obtain a divorce.

This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or info@illinoisdivorce.com.