

## **Overview of Divorce in Maryland, Part One**

### **Divorce Defined**

Under Maryland law, a marriage is considered a civil contract between husband and wife. Divorce may terminate both the contract and the marriage. Going through a divorce is often very complicated and can be a difficult experience both emotionally and financially. You should consult an experienced divorce attorney if you are considering filing for a divorce.

### **Two Types of Divorce: Absolute and Limited**

There are two types of divorce granted in Maryland: absolute divorce and limited divorce. Part One of this article addresses only absolute divorce. Part Two will address limited divorce.

When a Maryland court enters a Judgment of Absolute Divorce the marriage is terminated and the parties are permitted to remarry. In the course of an absolute divorce proceeding, the court will resolve all issues arising out of the marriage including issues of support and all property claims between spouses as well as any issues related to custody of children, child support and access may be brought as part of an action for absolute divorce.

### **Absolute Divorce**

Under Maryland law, you may file for an absolute divorce using any of the following grounds: adultery, cruelty of treatment, excessively vicious conduct, desertion, conviction of a crime, a jail sentence of three or more years, insanity. Prior to filing, one of the married parties must have been a resident of Maryland for at least one year for a Maryland court to have jurisdiction over the case.

An absolute divorce dissolves the marriage. Once a decree of absolute divorce is entered, the parties are free to remarry. After an absolute divorce, one party can no longer inherit property from the other, any property owned by them jointly as husband and wife automatically becomes property held in common (each owns one-half). In addition, the decree may provide for the sole or joint custody of the children, the terms for payment of alimony and child support, and the disposition of personal property and an equitable distribution of all the parties' assets, including ordering the sale of jointly held property and the dividing the proceeds

Finally, a spouse may ask the court to include an order in the divorce decree which will allow that party to resume the use of a former name given to the party at birth or any name used by that party prior to marriage if that party changed his or her name upon marriage. These requests are almost always granted. The request to return to the use of a former name will be denied if made for some fraudulent, illegal or immoral purpose.

### **Grounds for Absolute Divorce**

To obtain an absolute divorce, you must prove that at least one ground for absolute divorce exists. The following are brief descriptions of each of the "at fault" grounds and two "no fault" grounds for absolute divorce.

#### **Adultery**

By common law, adultery is consensual sexual intercourse involving penetration between a married person and someone other than that individual's spouse. Adultery is rarely witnessed, so proof of adultery by circumstantial evidence must include both a showing of disposition by the defendant and his or her alleged paramour and sufficient opportunity to commit the offense.

## **Desertion: Actual and Constructive**

### **Actual Desertion**

A spouse commits desertion by leaving the marriage unjustifiably with the intention of leaving the marriage and remains away for 12 consecutive months prior to the filing of a complaint for divorce. Proof of a desertion requires the party seeking a divorce to show that the deserting spouse intended to terminate the marriage, that the deserting spouse was unjustified in leaving the marriage, that an uninterrupted desertion has continued for 12 consecutive months, and that the parties are beyond any reasonable hope of reconciliation.

### **Constructive Desertion**

The most common justification for constructive desertion is cruelty. If cruelty or intolerable conduct by one spouse causes the other spouse to leave the home, the departing spouse might file for divorce alleging constructive desertion of the relationship by the other spouse's misconduct. In cases involving constructive desertion, the court will take into account the nature and duration of the misconduct, the length of time the spouse endured the misconduct; and any attempts made to salvage the marriage.

### **Cruelty of Treatment**

Now available as a ground for an absolute divorce, cruelty is frequently discussed interchangeably with constructive desertion because the conduct frequently results in one party leaving the marriage. Generally, an absolute divorce based upon cruelty is limited to situations involving gross misconduct and not a single act or instance and there must be evidence the cruelty was detrimental to health or happiness. Conduct such as complaining, cursing, displays of jealousy and nagging are not sufficient. An absolute divorce may be granted upon proof of cruelty of treatment if there is no reasonable expectation of reconciliation between the parties.

### **Excessively Vicious Conduct**

Historically, this ground was intended as a ground for divorce in cases where one spouse was excessively vice-tious, engaging in a particular vice to an excessive degree but more recently courts discuss cruelty and excessively vicious behavior without much distinction between the two grounds. An absolute divorce may be granted upon proof of excessively vicious conduct if there is no reasonable expectation of reconciliation between the parties.

### **Conviction of a Crime**

Conviction of a crime can be a satisfactory grounds for divorce if a spouse is convicted of felony or a misdemeanor in any state or federal court in the United States and if before filing for divorce, the non-filing spouse was sentenced to serve at least three years in a penal institution and has already served twelve months of that sentence.

### **Insanity**

Permanent and incurable insanity is a ground for divorce. For insanity to be considered permanently incurable, a person must have been confined in a mental institution, hospital, or other institution for at least three years preceding a filing for divorce, and the court determines from the testimony of at least two physicians, competent in psychiatry, that there is no hope for recovery.

### **No Fault Divorce**

In Maryland there are two “no fault” grounds for divorce. “No fault” divorces can be granted based on either of the following. These are the most common reasons given for a divorce.

- **Voluntary Separation—12 months**

This is one of the two “no fault” grounds for absolute divorce. If there has been a consensual separation for one year, either party may file for divorce. Proof of the voluntary separation requires the party seeking a divorce to show that both parties have mutually agreed to live separate and apart without cohabitation, and have done so, for twelve consecutive months before any filing for divorce and that there is no reasonable hope of reconciliation between them.

- **Involuntary Separation—24 months**

This is one of the two “no fault” grounds for absolute divorce. If there has been a non-consensual separation for two years, either party may file for divorce. Proof of an involuntary separation requires only that the party seeking a divorce to show that the parties have lived separate and apart without cohabitation for twenty-four consecutive months without interruption before filing for divorce and that there is no reasonable hope of reconciliation. The voluntariness of the separation is not a consideration.