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An Overview of No Fault and Fault Divorce Law

No Fault Divorce

A no fault divorce refers to a type of divorce in which the spouse that is filing for divorce does not have to prove any fault on the part of the other spouse. All a spouse has to do is give any reason that the state honors for the divorce. The most commonly given reason is "irreconcilable differences" or an "irreparable breakdown of the marriage." These are just fancy ways of saying that the couple does not get along and that the marital relationship cannot be repaired. A spouse cannot object to another's petition for no fault divorce, as that objection itself is viewed by the court as an irreconcilable difference. All states recognize no fault divorces, but some states require that the spouses live separately for a designate period of time before either of them can file for a divorce.

Fault Divorce

Fault divorces are not as common, and in fact, many states no longer even recognize them. In the states that do recognize them, one of the spouses requests that a divorce be granted based on some fault of the other spouse. The most common grounds for granting a fault divorce are:

- Adultery
- Abandonment for a certain length of time
- Prison confinement
- A spouse is physically unable to have sexual intercourse
- Inflicting emotional or physical pain (cruelty)

No state requires the spouses seeking a fault divorce to live apart for a specific period of time, unlike a no fault divorce. Proving fault also often provides the spouse without fault with a larger portion of the marital property or support. These two characteristics make a fault divorce more attractive to some people.

Comparative Rectitude

When both spouses seek a fault divorce and can both prove the other spouse is at fault, the court decides which one is least at fault. That party will be granted the divorce. This is called "comparative rectitude." This doctrine was created to address the problem of courts granting neither party a divorce if they were both at fault. Courts have a public policy interest in not forcing two people to stay married if they don't want to be.

Defenses to a Fault Divorce

Unlike a no fault divorce, a spouse can object to a fault divorce by disproving or presenting a defense to the fault complained of. The following is a list of common fault divorce defenses:

- **Connivance** is an absolute defense to adultery. Connivance alleges that the complaining spouse agreed to and even participated in the infidelity. It makes sense that a couple who voluntarily participates in group sex cannot then go and complain of adultery. Similarly, a spouse who prostitutes the other or who facilitates the other's infidelity cannot thereafter claim adultery as grounds for divorce.
- **Condonation** is a claim that the other spouse knew about the complained of conduct, forgave such conduct, and resumed the marital relationship. This is typically used to defend an adultery accusation.
- **Recrimination** is when the complaining spouse is equally at fault or engaged in similar conduct. For example, if both spouses had affairs, neither one would be able to use adultery as grounds for a fault divorce.

- **Provocation** is where one spouse is enticed by the other spouse to act in a certain way. For example, where one spouse abuses the other spouse, which forces that other spouse to leave the marital home, the abusive spouse would not be able to then use abandonment as grounds for divorce, since it was his or her abuse that caused the other spouse to leave.
- **Collusion** refers to an agreement between both of the spouses to fabricate the grounds for divorce. If one of the spouses changes his or her mind, collusion could be raised to lessen the original grounds for the fault divorce.

Proving any of these defenses can be costly, timely, and often involves the use of witnesses. Furthermore, courts have an interest in not forcing people to stay married who don't want to be married, and so usually grant divorces to people who ask, despite defenses given by the other spouse. These reasons typically defer people from attempting defenses.

Residency Requirements for Filing for Divorce

Because state laws vary regarding fault divorce and no fault divorce, it is important to understand where you or your spouse could potentially file for divorce. Most states have a residency requirement, meaning that at least one of the spouses must have been a resident of that state for a specified length of time--usually six months to one year--in order to file for divorce there. However, Washington, South Dakota, and Alaska have no required length of time. To file in one of those states, you merely need to be a resident of that state at the time you are filing.

It is in your best interest to have your divorce filed in the state you are living in. Divorce proceedings often take more than one court visit and you will have to bear the expense and burden of traveling. Also, whichever court orders the divorce decree is the same court that must hear all other matters, including changes. For example, if your spouse files for and receives a divorce in Illinois, and the two of you want to revise your child custody arrangement, you must return to that Illinois court that granted the initial divorce. If you live in Missouri, this could cause you years of inconvenient and expensive interstate travel.

Divorce Orders of One State, Valid in All States

Courts of all states like to honor decisions made by courts of other states, because courts want the same respect paid to their decisions. Therefore, going back to the preceding example, if your spouse files in Illinois, this divorce and all of the court orders related to it, apply to you in your Missouri home.

However, the court may not have personal jurisdiction over the nonresident spouse at the time of the divorce proceeding, rendering certain court decisions invalid. A court gets jurisdiction over someone by that person being present in the state when he or she is personally served with the divorce papers, or when he or she consents to the jurisdiction by appearing at the court proceedings, signing off on receiving the legal papers, or fulfilling a court-ordered duty. A lack of personal jurisdiction means that although the divorce decree is valid, other related decisions, such as child custody, support, and property division, may be invalid.

It is always best to consult an attorney if you receive documents from a foreign state, but especially if you receive papers from a foreign country. There are many jurisdictional issues, such as what country is involved, where the spouses live or have lived, and where the children (if any) live. A lawyer will be the best person to help you sort through all of these issues and advise you on what to do.

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