

# New York State Grounds for Divorce

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## **What do I need to know about getting a divorce in New York State?**

New York has laws that limit how you can get a divorce. There are now seven grounds (reasons) you can use to get a divorce in New York. The divorce judgment will include orders about marital property and marital debts, as well as child custody, visitation, child support, and spousal support.

## **Where do I go to get a divorce?**

You must go to the New York State Supreme Court in your county. All divorces in New York State are handled in the county Supreme Courts. Family Court can order child support and/or child custody, but cannot grant a divorce.

## **What are the 7 grounds for divorce in New York?**

1. Irretrievable Breakdown: The relationship between you and your spouse has broken down irretrievably for at least six months, which means your relationship is broken beyond repair. The court cannot give you a divorce on these grounds until after property, debts, child custody, visitation, spousal support, and child support have been settled (where both parties are in agreement) or decided by the court.
2. Cruel and inhuman treatment: "Cruel and inhuman treatment" by your spouse. This means that your physical or mental health is in danger if you continue living together. However, if the most recent abusive treatment happened more than 5 years ago, you cannot divorce for this reason if your spouse objects.
3. Abandonment: Your spouse "abandons" you for at least a year. This means that your spouse has left you, or kicked you out, and does not intend to return.
4. Imprisonment: If your spouse goes to jail for three or more years. However, if your spouse was released more than 5 years ago, you cannot divorce for this

reason. Additionally, the imprisonment must have started after you got married.

5. Adultery: Your spouse commits adultery. However, this is not a reason for divorce if you do any of the following: encourage your spouse to commit adultery, forgive your spouse by having sexual relations with them after you discover the adultery, or commit adultery yourself. You also cannot divorce because of adultery if it has been more than 5 years since you discovered the adultery. You cannot testify yourself to prove adultery, so you must have a witness who can testify.
6. Judgment of Separation: You and your spouse have not lived together because of a "Decree of Separation" or "Judgment of Separation", given by the Court, for at least one year. You must obey all the conditions of the decree or judgment. It is unusual to have a Judgment of Separation because it requires similar proof to that needed for a divorce. Most people skip the Judgment and go directly to divorce.
7. Separation Agreement: You and your spouse have not lived together because of a written "Agreement of Separation" for at least one year. Both you and your spouse must sign this agreement before a notary and the agreement must follow specific legal rules if you live in NY. If those rules are not followed, the agreement is invalid, so it is best to have a lawyer review it. You must obey all the conditions of the agreement.

### **What is the most common way to get a divorce?**

We expect that most people will try to use irretrievable breakdown, sometimes called "no fault" divorce, when they file for divorce in New York. This first became a grounds for divorce in NY in 2010. It is not the only way to get a divorce, though.

### **What is a "conversion divorce"?**

Number 7 listed above is sometimes called a conversion divorce. Conversion divorces allow divorces based upon a Separation Agreement that you already had in place for a full year. Basically, you change the Separation Agreement into a divorce. Even if you want a divorce on other grounds, a Separation Agreement can make a divorce easier and faster.

### **What are "residency requirements," and what do they mean for my divorce?**

Residency requirements give a New York court the power to decide your divorce case. A New York court can only decide a divorce case if at least one of the spouses is a New Yorker. In most cases, one of the spouses must have lived in New York for at least one year before trying to get a divorce.

### **What happens to property in a divorce?**

The law says that property should be divided equitably. This means that the court divides the marital property as fairly as it thinks is possible. Usually the property is divided 50/50, although this does not have to happen. For more information, please read our article called "What Happens to Property after a Divorce?"

### **How can I make my divorce go as smoothly as possible?**

If you and your spouse can agree on how to divide the property, pay support, and settle any debts, you will not need a trial, which takes much longer and usually costs you more money. Try to get child support and child custody orders from Family Court before you file for divorce. It is important to try and settle as much as possible with your spouse before going to court. If your spouse is abusive, get the help of a domestic violence advocate before you try to negotiate these important things.

### **Why might my spouse argue against my reason for divorce?**

In addition to the emotional reasons to resist a divorce, people may have reasons that have to do with money. Ending the marriage allows the court to divide property even if your spouse doesn't agree to do so. Your spouse may want to remain married to be eligible for your health insurance coverage, or may want to stay married for ten years to qualify for Social Security retirement benefits. Even if you don't get a divorce, your spouse must still support you for as long as the marriage lasts, and you can get a spousal support order from Family Court while you are still married.

### **What if my spouse filed for divorce against me?**

Unless you have a signed Separation Agreement that will become part of the divorce, it is important for you to respond in writing to the court and your spouse if you are served with divorce papers. You usually only have 20 days to send your written response, which is called an Answer. You should get a lawyer to help you if you can. You can ask the court to make your spouse pay for a lawyer if you have

less money than your spouse.

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