

No Fault Divorce in Maryland: Legal Reduction of Separation Period

by Bryan Renchan, Partner

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A new law was recently passed in the Maryland General Assembly making a change in the grounds for divorce.

Currently, Maryland has two “no-fault” grounds for an absolute divorce: a mutual and voluntary separation of one year, or a separation of two years. As of October 1, 2011, the new law eliminates voluntary separation as a ground for absolute divorce but in return reduces the period the parties must be continuously separated from two years to one year. This means you no longer have to prove that you and your spouse have agreed to the separation and that it was mutual and voluntary.

This is a major change in the law. It shortens the time a spouse, who does not have an agreement to separate or a fault ground for divorce, has to wait for a divorce to one year down from two years.

Maryland’s single no fault ground requires that there be no sexual relations during the one year separation and that they live in separate residences for the entire year. This is unlike Virginia and DC, which allow the parties to separate but to live under the same roof while separated. Meanwhile, couples can still obtain a divorce on the fault grounds of cruelty, excessively vicious conduct, adultery and desertion even if the parties are living together under the same roof.

This change will take place on October 1, 2011, once the Governor signs Senate Bill 139 into law, amending Section 7-103 of the Family Law Article of the Maryland Code.

The prior advice given to clients who were contemplating a divorce, and did not have a fault ground or an agreement to separate, was that they could be held up for a divorce by their spouse for two years following a separation. With the new ground, this lack of a fault ground or lack of an agreement to separate is no longer an impediment because the courts will usually not schedule a contested divorce case until after the parties have been separated for a year, and even a client who is “at fault” can now easily proceed with a divorce.

To complicate matters slightly the legislature did not change the grounds for a limited divorce (what many think of as a legal separation). These remain:

1. Cruelty of Treatment
2. Excessively Vicious Conduct
3. Desertion
4. Voluntary Separation.

While Limited Divorces are rarely granted in modern divorce practice, a Limited Divorce is often requested in initial pleadings to get the proceedings started, with the intent of amending the pleadings shortly before trial to request an Absolute Divorce. In these cases a fault ground or voluntary separation must still be alleged in the initial filings even if the intent is to later amend to a one year non fault ground.

About The Author

Bryan Renehan is an “AV” rated attorney by Martindale Hubble for excellence in the practice of law as distinguished by members of the area Bar and Judiciary. He is recognized by the Maryland and District of Columbia SuperLawyers publications as one of the top Maryland metropolitan area Family Law attorneys. Mr. Renehan has, since the early 1990s, been consistently named by Washingtonian magazine as one of the area’s “Best Divorce Attorneys.” There he was editorialized as receiving “accolades from clients and colleagues alike for being one of the most organized and professional divorce lawyers in Washington.” A tech-savvy specialist in complicated cases, Mr. Renehan is a frequent lecturer for the Maryland Institute for Continuing Professional Education of Lawyers, Inc. (MICPEL) on Family Law. He instructs the Maryland Family Law Update course annually and updates the Maryland Divorce and Separation Law Manual’s chapter on Pleadings and Litigation Tactics in Domestic Cases, for MICPEL. Bryan Renehan obtained his Juris Doctorate from the New England School of Law in 1976. After serving a judicial clerkship in the Circuit Court for Montgomery County, he joined the firm of Brodsky and Greenblatt in 1977. He was named Partner in 1980.

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