

Todd J. Zimmer Esq., Voted Long Island's Best Divorce Lawyer 2009

Ending A Marriage—New York Style: “Divorce, Separation or Annulment, Oh My!”



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When people decide their marriage should not continue, they're often unsure of the proper way to end it – annulment, divorce or separation? New York is the sole remaining state that has laws on the books requiring a party to have grounds to get a divorce. We do not have grounds of Irreconcilable Differences or Incompatibility. New York is a fault state and the grounds we have available all

allege some form of fault on the other spouse. In New York there are five distinct grounds to get a divorce:

- 1) Cruel and Inhuman Treatment (Verbal, Emotional and/or Physical Abuse).
- 2) Abandonment (Your Spouse Having Left the Marital Home for a Year or More).
- 3) Constructive Abandonment (no sex for one year).
- 4) Imprisonment for a Period of Three Years.
- 5) Adultery.

If a spouse cannot prove one of the above grounds before a Court or their spouse does not otherwise consent to the divorce on one of these grounds, a Court can and will force

the spouses to remain married! The topic of these grounds is a “hot button” topic in New York and the New York State legislature has for many years tried unsuccessfully to pass non-fault grounds such as “Irreconcilable Differences.”

A divorce by separation, commonly referred to as a “conversion divorce,” is the only true “no-fault” way to obtain a divorce in New York State. In order to obtain a legal separation, you and your spouse must enter into an agreement that settles all the outstanding issues of the marriage – custody, visitation, child support, maintenance, division of assets, etc. In addition, the parties must live in separate residences for one year. After one year has passed, either party may start proceedings to convert the separation agreement into a final divorce.

An annulment means that the marriage is considered void – that it never happened. In New York State, a marriage can only be annulled if it can be shown that the marriage was never legally entered into. In order to be granted an Annulment, you must be able to prove one of the following:

- 1) A spouse's previous marriage was not legally dissolved.
- 2) One of the parties was below the age of 18.
- 3) The marriage was obtained through force or fraud.

- 4) Mental illness at the time of the marriage, not known to the spouse, or incurable mental illness for five years.
- 5) Incurable physical incapacity to enter into a marital relationship, which was not made known to the spouse.

Regardless of whether you choose divorce, separation or annulment all lead to the same place, the end of ones marriage. Choosing which one is best for you is dependant upon the facts of your case. As with most clothes we buy, “one size” does not always “fit all.” Your attorney should be able to analyze the facts of your case and determine the best way to proceed on your behalf.

For more information on Divorce, Separation, or Annulments and Frequently Asked Questions, visit our website at www.ToddZimmerLaw.com

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