

## Current law on Grounds for Dissolution of Marriage

To obtain a divorce in Illinois, fault grounds must be plead. However, grounds of irreconcilable differences can also be plead. The court will enter a Judgment for Dissolution of Marriage if one or more of the following “fault” grounds for divorce has been proven: (1) That, without cause or provocation by the petitioner: the responding party was at the time of such marriage, and continues to be naturally impotent; (2) had a wife or husband living at the time of the marriage; (3) has had committed adultery subsequent to the marriage; (4) has willfully deserted or absented himself or herself from the petitioner for the space of one year, including any period during which litigation may have pended between the spouses for dissolution of marriage or legal separation; (5) has been guilty of habitual drunkenness for the space of 2 years; (6) has been guilty of gross and confirmed habits caused by the excessive use of addictive drugs for the space of 2 years; (7) has attempted the life of the other by poison or other means showing malice; (8) has been guilty of extreme and repeated physical or mental cruelty; (9) has been convicted of a felony or other infamous crime; or (10) has infected the other with a sexually transmitted disease. 750 ILCS 5/401(a)(1).

A common ground alleged in filing for divorce is “extreme and repeated acts of physical or mental cruelty.” In order to determine whether a spouse's conduct constitutes extreme and repeated mental cruelty, the court must look to the misconduct’s “ultimate effect” on the complaining party and the marriage. *In re Marriage of Kirkpatrick*, 329 Ill. App. 3d 202, 768 N.E.2d 808 (2d Dist. 2002). For the conduct to constitute “repeated” activity, it must have occurred on two or more occasions. It is important to note that the standard implemented is not “whether a spouse's conduct toward the other spouse is cruel to a reasonable person of average sensibilities, but rather whether a spouse's conduct is in fact, cruel to the other spouse.” *In re Marriage of Reeder*, 212 Ill. App. 3d 56, 570 N.E.2d 876 (3d Dist. 1991).

Filing for Dissolution of Marriage on grounds for “irreconcilable differences” between the parties, or what is commonly known as a “no fault” divorce is more common for divorcing spouses. Irreconcilable differences are defined as “substantial marital problems which have so impaired the marriage relationship that the legitimate objects of matrimony have been destroyed and as to which there is no reasonable possibility of elimination, correction, or resolution, or where the evidence shows that one spouse clearly desires no longer to continue to be married to the other.” 24 Am. Jur. 2d Divorce and Separation § 24. Section § 401(2) of the Illinois Marriage and Dissolution of Marriage Act (IMDMA) mandates that parties to a no-fault divorce must “have lived separate and apart for a continuous period in excess of two years.” However, if the spouses have lived “separate and apart” for a continuous period of six or more months, the two year requirement may be waived upon written stipulation of both spouses. 750 ILCS 5/401(a)(2). It should be noted that this six-month separation period *will* include “any period of cohabitation during which the parties attempted in good faith to reconcile and participated in marriage counseling.” 750 ILCS 5/401(a)(2)(A).

A divorce should not be granted unless the Petitioner can prove, by a preponderance of the evidence, whatever statutory grounds he or she has alleged. *Sharer v. Sharer*, 39 Ill.App.3d 818, 350 N.E.2d 779 (5<sup>th</sup> Dist. 1976). Grounds for dissolution of

marriage in Illinois can only be used to obtain a dissolution and has no effect on property distribution which is based on “equitable distribution.”