

DIVORCE

Absolute Grounds

FL 7-103

Flanagan v. Flanagan, 181 Md.App. 492 (2008)

(1) adultery;

(2) desertion, if: (i) the desertion has continued for 12 months without interruption before the filing of the application for divorce; (ii) the desertion is deliberate and final; and (iii) there is no reasonable expectation of reconciliation;

(3) conviction of a felony or misdemeanor in any state or in any court of the United States if before the filing of the application for divorce the respondent has: (i) been sentenced to serve at least three years or an indeterminate sentence in a penal institution; and (ii) served 12 months of the sentence;

(4) 12 month separation, when the parties have lived separate and apart without cohabitation for two years without interruption before the filing of the application for divorce; or

(5) insanity if: (i) the insane spouse has been confined in a mental institution, hospital, or other similar institution for at least three years before the filing of the application for divorce; (ii) the court determines from the testimony of at least two physicians who are competent in psychiatry that the insanity is incurable and there is no hope or recovery; and (iii) one of the parties has been a resident of the State of Maryland for at least two years before the filing of the application for divorce.

(6) cruelty of treatment toward the complaining party or a minor child of the complaining party, if there is no reasonable expectation of reconciliation; or

(7) excessively vicious conduct toward the complaining party or a minor child of the complaining party, if there is no reasonable expectation of reconciliation.

Roth v. Roth, 49 Md. App. 433 (1981)

Either Party may seek divorce where there is a void marriage regardless of conduct, fault or consent

Adultery-

Adultery means voluntary intercourse between married person and someone other than spouse "Something more than suspicion" is needed to overcome presumption of innocence.

Flood v. Flood, 24 Md. App. 395 (1975) May be proved by public display between married spouse and other person. Deckman v. Deckman, 15 Md. App. 553 (1972)

Separation

Requires that the parties live in separate abodes during entire statutory period without sexual relations. Merely demonstrating that there was no sexual relations is not sufficient.

Jackson v. Jackson, 13 Md.App. 725 (1971)

Cruelty

Cruelty must be grave and weighty so as to make the continued marital relations inconsiderate with the health, self respect and reasonable comfort of the other. *Schwartzman v. Schwartzman*, 204 Md. 125 (1954)

Only such conduct as will endanger life, limb, personal security, or health, or will cause reasonable apprehension of bodily suffering, is sufficient.

Reicher v. Reicher, 196 Md. 494 (1950)

Provocation may be a defense to cruelty. *Bryce v. Bryce*, 229 Md. 16 (1962)

List under Cruelty- **MD-ENC DIVORCE § 10**

Limited Divorce

Grounds:

- (1) cruelty of treatment of the complaining party or of a minor child of the complaining party;
- (2) excessively vicious conduct to the complaining party or to a minor child of the complaining party;
- (3) desertion; or
- (4) voluntary separation, if the parties are living separate and apart without cohabitation, and there is no reasonable expectation of reconciliation.

Defenses

An agreement for support, property or separation is not a bar to divorce. *Stevens v. Stevens*, 233 Md. 279 (1964)

Offer of reconciliation is not a defense- FL 7-104(b)

Condonation

Condonation is a conditional not absolute forgiveness of marital offenses. *Moore v. Moore*, 36 Md. App. 696 (1977) Continued cohabitation with knowledge that a marital offense has occurred is generally a condonation of the act. *Dorsey v. Dorsey*, 245 Md. 703 (1967).

Condonation is not a bar to divorce on grounds on adultery, but is a factor to be considered. FL 7-103(b)

Property Division, Alimony and Support Agreements

Agreements Generally

Husband and wife may make a valid and enforceable agreement for alimony, support or property division. FL 8-101

Statutory Factors considered for Alimony

- (1) the ability of the party seeking alimony to be wholly or partially self-supporting;
- (2) the time deemed necessary by the court for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
- (3) the standard of living of the parties established during the marriage;

- (4) the duration of the marriage;

- (5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;

- (6) the circumstances leading to the estrangement of the parties;

- (7) the age of each party;

- (8) the physical and mental condition of each party;

- (9) the ability of the party from whom alimony is sought to meet his or her needs while meeting those of the party seeking alimony;

- (10) any agreement between the parties;

- (11) the financial needs and resources of both parties; and

- (12) whether the award would cause a spouse who is a resident of a related institution and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.[\[FN4\]](#)