

# Shunneson Law Offices

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## Explaining the Basis, Grounds and Ways to Get a Divorce in Illinois



Many clients have difficulties understanding what the requirements are in Illinois to dissolve their marriage. Unlike most states, Illinois allows for parties to ask for a dissolution (divorce) on the basis of “no-fault” and “fault.” Illinois’ [divorce law](#) allows for no-fault divorces, as well as fault divorces on the grounds of impotency, bigamy, adultery, desertion for a period of one year, drunkenness, drug addiction, attempted murder of the other spouse, infected the other spouse with an STD, cruelty or a felony conviction. Illinois is in the minority of states that still has such laws. As you can imagine, filing for divorce on the basis that one party is at-fault for the divorce often creates unnecessary tension and fighting between the parties. It also encourages people to engage in morally questionable activities such as intentionally committing adultery in order to obtain a divorce (which you are advised not to do because one defense to this type of divorce is that you only did it to get the divorce).

Fortunately, due to the ability of parties to file a “no-fault” divorce, most married clients seeking a divorce no longer need to blame their husband or wife for the divorce. As in every

other state in the country, Illinois' [divorce law](#) also allows for individuals to get a divorce based solely on the fact the marriage has become untenable. This is known as a "no-fault" divorce. The only basis you need for a divorce under this ground is that the parties have been separate and apart for the statutory period, that "irreconcilable differences" have arisen, and that the marriage is "irretrievably broken." As a practical matter, this means you can get a divorce on the basis that you just don't want to be married anymore and that any attempts to reconcile have either failed or would be pointless.

However, due to politics, and the public policy in Illinois of protecting the sanctity of marriage, Illinois places restrictions on individuals seeking to utilize the no-fault ground in obtaining a divorce. In this regard, because Illinois is a "modified no-fault" divorce state, Illinois has a fairly draconian separation requirement for a no-fault divorce. Specifically, Illinois requires that the parties "have lived separate and apart for a continuous period in excess of 2 years."

This draconian requirement is tempered in four important ways. First, it can be reduced to six months provided the parties agree to waive the full 2 year period. Second, the separation requirement is determined from the date of the trial or judgment and not from when the petition is filed. Many divorces will take years to become final and, as such, the separation requirement may be met during the course of litigation. Third, you should be aware that "separate and apart" does not mean that you have to be actually living in separate residences. Rather, so long as the parties have clearly not been living together as husband and wife, then the parties are living separate and apart, even if living in the same home. Fourth, the law allows for parties to try to reconcile and doesn't count the following periods in determining the continuous period:

Any period of cohabitation during which the parties attempted in good faith to reconcile and participated in marriage counseling under the guidance of any of the following: a psychiatrist, a clinical psychologist, a clinical social worker, a marriage and family therapist, a person authorized to provide counseling in accordance with the prescriptions of any religious denomination, or a person regularly engaged in providing family or marriage counseling; and

Any period of cohabitation under written agreement of the parties to attempt to reconcile.

Of course, the situation still comes up where one spouse is completely against the divorce, there is no legal ground for a fault divorce, and the separation period has not yet begun. In this situation, clients should consider a legal separation. By filing a petition for legal separation, a party may obtain reasonable support, maintenance, and other benefits while they live separate and apart. These proceedings are virtually identical to divorce proceedings in most aspects. This lets a court decide many issues without actually dissolving the marriage. Very often, a legal separation Order wherein the Court determines the property

rights of parties, and awards appropriate support and maintenance between the parties, will be recognized in the subsequent divorce proceeding.

Even though Illinois allows for a no-fault or fault divorce, parties with the option of both should utilize them! It is my opinion that parties are well-advised to file divorce on one of the fault grounds for divorce and, in the alternative, the no-fault ground for divorce. After the separation requirement has been met during the course of litigation, the parties can convert the case to a no-fault divorce and dismiss any of the fault grounds.

At [Shunneson Law Office](#), we are dedicated to helping you through your difficult family situation. We strive to understand your particular issues and needs. [Contact us](#) to schedule a consultation. Located in Lake County, Illinois, with meeting locations throughout Chicago, we have the ability to meet with you at any convenient Chicagoland location 9:00 a.m. to 5:00 p.m., Monday-Friday. However, evening and weekend appointments are available upon request by calling 847-693-9120.

-Drake Shunneson (copyright 2012)

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