

## In This Issue

- Filing For Divorce In New Jersey Based Upon Adultery



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## Filing for Divorce In New Jersey Based Upon Adultery

At one time, parties in New Jersey were limited to filing for divorce based upon marital “fault” grounds (adultery, abandonment, extreme physical or mental cruelty, or substance abuse). On January 20, 2007, the New Jersey Legislature passed what is known as no-fault grounds for divorce based upon “irreconcilable differences.” Filing based upon irreconcilable differences removes the need to prove marital fault, and it leaves the parties in the position of having to deal solely with the economic, child and spousal support, and custody issues in the divorce.

Although no-fault divorce has removed the need for establishing a divorce based upon fault grounds, there are situations where it makes sense to pursue divorce on fault grounds. One such situation is adultery because it eliminates the one-year residence requirement for divorce actions under New Jersey law. N.J.S.A. 2A:34-10. This requirement is essentially waived for divorce actions based upon adultery.

A spouse that files for divorce in New Jersey based upon adultery should be aware of the procedural requirements of the New Jersey Rules of Court. New Jersey Rule of Court 5:4-2 requires a divorce based upon adultery to specifically name the person with whom the defendant spouse engaged in the adulterous affair. Moreover, the complaint must state the specifics of the affair (dates, times, etc.). Finally, the person named as the paramour of the cheating spouse will specifically have to be served with the divorce complaint.

Finally, filing for divorce based upon adultery may have an affect on the award of alimony, but only so far as the aggrieved spouse can show that the cheating spouse used significant marital assets to pursue the affair, or where the aggrieved spouse can show that it would offend all notions of justice for the aggrieved spouse to provide financial support to the cheating spouse.

If you are interested in pursuing a divorce based upon adultery, or have questions regarding the process, please contact **THE LAW OFFICES OF DAVID T. GARNES, LLC**