

You may be able to file for divorce based on abandonment or desertion if your spouse left you and never came back. Abandonment or desertion is considered a traditional or fault ground for divorce. In the majority of states that allow fault-based divorce, abandonment or desertion is one of the reasons for divorce.

Many states have laws that allow a spouse to obtain a divorce because their husband or wife has abandoned or deserted them for a certain period of time. The time period varies according to the state where the spouse who files for divorce lives, but it's typically one year or more.

Laws in each state vary, but generally abandonment or desertion is found when one spouse decides to stop living with the other spouse without having a good reason and leaves with the intention of not returning to the couple's home or that the marriage should end. A few states distinguish between "**desertion**" and "**abandonment**." Desertion requires an intent to end the marriage. Abandonment requires only the absence for a certain amount of time.

Abandonment and desertion are closely related to no-fault grounds that allow divorce after a husband and wife have lived apart from one another for a certain period of time. In a no-fault divorce, neither spouse is blamed for the failure of the marriage. No-fault divorces are allowed in every state and the District of Columbia.

What Acts Are Considered Abandonment or Desertion?

Specific acts that are considered to be abandonment or desertion vary under state laws. In addition to physical separation for a specific time period, some states consider failure to provide financial support for a spouse or refusal to engage in sexual intercourse without a good reason to be abandonment or desertion.

How to Prove Abandonment or Desertion?

To get a divorce based on abandonment or desertion, you need to live in a state that recognizes abandonment or desertion as a reason for divorce, and you need to prove your case. You'll need more than evidence of your spouse's leaving home. The circumstances surrounding your spouse's leaving should show that your spouse didn't have a reason to leave and that your spouse was giving up on your marriage and abandoning any marriage obligations. Some states require proof that the spouse who requests the divorce has made attempts to save the

marriage.

In Mississippi, a spouse's "wilful, continued and obstinate desertion" for a period of a year is grounds for a divorce. Miss Code Ann. § 93-5-1 (2004). This claim focuses on one spouse's abandonment of the marriage without the other's consent and, to prove this ground, the plaintiff must show: (a) the spouse was absent for a year or more; (b) the spouse intended to leave or abandon the marriage; and, (c) the plaintiff did not consent to the separation.

- Under this ground for divorce, the desertion must be continuous for a year or more. In other words, if the spouses temporarily reconcile, then the period before and after the reconciliation may not be combined to reach the one year period. However, a short resumption of sexual intimacy during the marriage may not interrupt the one year period if there is no intent to actually return to the marital relationship.

- The spouse must also intend to leave the marriage. For example, absence for a legitimate reason, i.e. to find work or to take care of a sick parent, is not desertion if the spouse plans to return to his or her family. However, should the spouse decide not to return or the reason prove to be fabrication, the absence may constitute desertion.

- Finally, the spouse claiming desertion in Mississippi must not have consented to the separation. Separation by agreement or consent is not desertion. Instead, the evidence supporting the desertion claim must show that one spouse intended to abandon the marriage while the other spouse stood ready and willing to reconcile or continue the marriage.

- A good faith (unqualified) offer of reconciliation within the one year period made by the deserter not only stops the period of desertion, but also may even give the spouse offering the return grounds for a desertion claim if the offer is unjustifiably refused for a one year period. An innocent spouse receiving a good faith offer of reconciliation gets a reasonable amount of time to consider and respond any offer and the deserter must respond to any concerns.

- The doctrine of "constructive desertion" is also available to an individual in Mississippi in extreme cases where a spouse abandons a home to escape abusive conduct. In this situation, the spouse leaving the home to avoid violent or otherwise abusive conduct making the marriage unendurable or dangerous to health or safety may qualify as the deserted rather than the deserting party. Moreover, the refusal to have sexual relations with a spouse may constitute constructive desertion if the refusal continues for a lengthy duration.

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