

## **Darrell M. Harding** **Attorney at Law, PLC**

With more than twenty years of experience we know that not every case is the same and provide each case with the personalized individual attention it deserves. Our firm is committed to providing our clients with skillful and professional representation. We provide our clients personalized attention and service. Our firm understands that family issues involving divorce and/or children can be emotionally and physically stressful. We are here to help guide you through the legal system and will take you through the process one step at a time.



**Darrell M. Harding** graduated with honors with a Bachelor of Science in Psychology from Brigham Young University in 1984. He also graduated at the top of his class with his Juris Doctor Degree from J. Reuben Clark Law School, Brigham Young University, in 1988. He served as Legal and Political Chairman over the Civil Law Division from 1987-1988, Negotiator Forum Vice President in 1988 and served on the Law Review. For over 23 years he has focused exclusively on family law to best serve individuals like you.

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# **GROUNDS FOR DIVORCE**

## **DID YOU KNOW:**

**Virginia requires you to have a “ground” for divorce before you can file for divorce.**

**Read on to better  
analyze your case.**



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Given the increase in marital breakdown in our society, almost everyone has been or could be affected in some way by a separation or divorce. Dissolving a marriage often involves property rights and financial matters and can raise complicated legal problems, especially when children are involved. However, before you can file for divorce, you must have a ground.

## WHAT ARE THE GROUNDS FOR DIVORCE?

The law requires that "grounds" (valid reasons for divorce prescribed by law) for divorce must exist and be proven to the court even if the husband and wife agree that a marriage should end. These grounds are briefly described as follows:

### 1. Willful desertion or abandonment

Desertion or abandonment requires both the breaking off of cohabitation and an intent to desert in the mind of the offender. A mere separation by mutual consent will not be considered desertion by either spouse. Further, if one spouse leaves because the other has committed acts that legally amount to cruelty, then the spouse who leaves is not guilty of desertion. In fact, the spouse who leaves may be awarded a divorce on the ground of cruelty or constructive desertion.

If desertion grounds exist, a suit for a divorce may be, and usually should be, filed with the court immediately after the separation; however, desertion must continue for more than one year from the date the parties originally separated before you can finalize your divorce.

What facts in your case support this ground?

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### 2. Cruelty and reasonable apprehension of bodily harm

Cruelty authorizing divorce requires acts that tend to cause bodily harm and render the spouses' living together unsafe. Mental cruelty alone is not normally a ground for divorce in Virginia. However, if the conduct is such that it affects and endangers the mental or physical health of the divorce-seeking spouse, it may be sufficient to establish grounds for divorce.

When cruelty constitutes the basis for a divorce, you may, and usually should, file for divorce immediately after the parties separate; however, one year must elapse from the time the act(s) of cruelty were committed before you can finalize your divorce.

What facts in your case support this ground?

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### 3. Separation divorce- the "No Fault" divorce

While grounds for divorce traditionally implied misconduct by one or the other spouse, modern divorce laws do not require "fault" grounds for a divorce to be granted. A "no fault" divorce from the bond of matrimony may be awarded upon a showing that for more than one year the husband or wife intended to and have continuously lived separate and apart without any cohabitation with the intent to terminate the marriage. If the husband and wife have entered into a Property Settlement or Separation Agreement and there are no minor children, the time period is reduced from one year to six months. However, unlike the other grounds for divorce, for a separation-no fault divorce, you cannot file for divorce until you have been separated the requisite period of time.

What facts in your case support this ground?

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### 4. Adultery, sodomy, or buggery

Proving adultery is very fact-specific. The evidence must be clear and convincing that the other spouse did in fact engage in sexual relations with another person. While there must be some corroboration of the testimony of a spouse to prove adultery, "eyewitness" testimony as to the adulterous acts is not required. In fact, most cases of adultery are proven without eyewitness testimony by using other evidence of the circumstances involved.

Sodomy is a sexual act, other than intercourse, such as oral or anal sex. To be grounds for divorce, it must be committed with someone outside the marriage.

Buggery is bestiality or a sexual act against nature. The standard of proof for these grounds is also clear and convincing.

The "guilty" spouse has a number of "defenses" to the charge of adultery, sodomy or buggery. If the guilty spouse can successfully establish any one of these defenses, then a divorce will not be awarded on these grounds.

Defenses include:

**Condonation.** The innocent spouse has "condoned" or legally forgiven the offending behavior by voluntarily cohabiting with the guilty spouse after learning of the adultery, sodomy or buggery.

**Procurement/Connivance.** The innocent spouse has actively encouraged or facilitated the other spouse in committing the adultery, sodomy or buggery.

**Recrimination.** Proof that the accusing spouse is also guilty of one of the "fault" grounds for divorce.

**Time Barred.** If the adultery, sodomy or buggery occurred more than five years before bringing of the suit for divorce, then a divorce will not be granted on these grounds.

What facts in your case support this ground?

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### 5. Conviction of a felony

If the husband or wife has been convicted of a felony, sentenced to confinement for more than one year and is in fact confined, then the other party has grounds for a divorce from the bond of matrimony as long as he or she does not resume cohabitation with the guilty spouse after knowledge of the confinement.

What facts in your case support this ground?

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