

Desertion is one of the statutory fault grounds for divorce in Mississippi. While it is actually one of the lesser used grounds for divorce in this state, it is probably the fault ground that is most misunderstood by laypersons. One of the prevailing misconceptions about this fault ground that I frequently hear when clients come to see me goes something like this, "Our marriage is over, but I know I am not supposed to leave the house because that is desertion, right?" Wrong. That is not desertion. The simple act of leaving the marital home will not provide your spouse with grounds for a divorce based on desertion. Let's take a closer look at what the law says desertion is.

Desertion as defined in the statute is, "**Willful, continued and obstinate desertion for the space of one year.**"

In order to prove desertion a plaintiff must show:

- 1) The defendant has been absent for one year
- 2) The defendant Intended to abandon the marriage
- 3) The plaintiff did not consent to the separation

The space of one year must be continuous. A good faith-offer to reconcile by the deserting spouse interrupts the one-year, effectively restarting the clock at zero.

Interestingly enough, a rejection of a deserting spouse's good-faith offer to reconcile by the deserted spouse could ultimately provide grounds for a divorce for desertion for the spouse that originally abandoned the marriage. So if a wife initially leaves the marital home, intending to abandon the marriage and without the consent of her husband, but after 6 months she offers to reconcile in good-faith (no outrageous demands for her return) but her husband rejects her offer - twelve months later she could potentially sue *him* for desertion.

Additionally, a spouse's absence must be due to an intent to abandon the marriage - an agreed upon separation by itself will not constitute desertion, absent a later rejected offer to reconcile. Also, legitimate absences such as for work will not be considered desertion if there was no intent to abandon the marriage.

While desertion may be one of the lesser used grounds for divorce, there are still plenty of cases that qualify. If your spouse has fled the marital home, contact a divorce and family law attorney to discuss your options.

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