

DIVORCE ON GROUNDS OF ADULTERY: 9 IMPORTANT THINGS TO KNOW

Introduction

Infidelity is a common cause of divorce in Singapore. Yet, many neither understand nor are realistic in their expectations when they seek a divorce on grounds of adultery.

Here are 9 pointers to consider before filing for divorce proceedings based on grounds of adultery.

In practice, the person that is alleging adultery is the plaintiff; and the person that is being alleged of the act is known as the defendant and will be mentioned accordingly in this article for clearer understanding.

1. There are 2 elements to be established in Court before deciding to divorce on grounds of adultery:
 - i. The plaintiff has to prove that the defendant has committed adultery; and
 - ii. Prove that the infidelity has made it intolerable for the plaintiff to live with the defendant.

2. Sexual intercourse must have taken place

In practice, sexual intercourse (penetration) must have taken place between the defendant and a third party. It is therefore insufficient when you provide proof of your spouse communicating intimately through text messages and emails, or other intimate activities such as handholding or kissing, with the alleged third party.

Proving adultery is often rather difficult as the Courts in Singapore have adopted such a high standard of proof. The plaintiff may need to hire a Private Investigator (PI), and fees for hiring a PI can be high.

Evidence gathered by the PI may not always guarantee a successful divorce based on adultery. If the evidence obtained is not sufficient, a better solution may be to engage an experienced divorce lawyer to help identify an alternative fact to support the divorce instead, for example, using the fact of unreasonable behavior.

3. Third-party has to be of the opposite gender

In Singapore, adultery can only be committed between the defendant and a third party of the opposite sex. Thus, if your spouse has engaged in an intimate relationship with another party of the same gender, it is advised that you consider other grounds for divorce.

4. Prove it is intolerable to continue living with your spouse as a result of adultery

The plaintiff will have to prove that living with the defendant has been intolerable since adultery has been committed. The Courts will consider whether a reasonable person in the position of the plaintiff would find it intolerable to live with the defendant. Circumstances and personalities of both parties will also be assessed. However, establishing this element for divorce is not as demanding as that of providing proof of adultery.

5. You have only 6 months to file for divorce

When confronted in the face of evidence that a spouse is cheating, most individuals would first make efforts to save the marriage before considering divorce as an ultimatum.

Should you be in this position, note that you will not be allowed to divorce your spouse based on adultery, if you continue to live with your spouse for six months and longer upon finding out about the adulterous relationship.

Furthermore, it may also be argued that you have acknowledged the actions, and forgiven the grievance caused by your spouse's infidelity, and therefore have found it tolerable to continue living with him/her.

Thus, it is advised that a plaintiff commence divorce proceedings as soon as he/she has confirmed the suspicions of the spouse being unfaithful to the marriage if he/she wishes for it to be based on the grounds of adultery.

6. Must have been married for at least 3 years

A plaintiff can only commence divorce proceedings if he/she has been married for three years or more.

This would mean that even if the plaintiff has knowledge that his/her partner is involved in an adulterous relationship a few months into the marriage, he/she will be unable to file for divorce on the grounds of adultery.

It is only in very exceptional circumstances that the court will grant divorces for cases involving marriages that are less than three years in duration. If you want to file a divorce within 3 years of your marriage, you should engage an experienced divorce lawyer to obtain advice as to what these exceptions are and whether your marriage falls into this category.

7. Pointing out the third party serves no tangible benefit

The plaintiff may decide to identify the third party in Court. However, naming or shaming the third party does not lead to the plaintiff being given a better settlement at the divorce suit. In fact, the plaintiff who files a divorce based on adultery typically spends more legal fees on the divorce as compared to filing a divorce based on separation or unreasonable behavior.

8. Adultery in itself does not affect maintenance, division of matrimonial assets nor custody of children

Adultery is not a crime in Singapore. Neither the third party nor the Defendant would be punished with a jail sentence or be fined. The adulterous defendant does not get automatically get penalized or "punished" by the Court when issues of division of assets, maintenance and child custody are being considered.

However, if the defendant is proved to be a serial adulterer or has been proven to lead a lifestyle that appears to be grossly immoral, it could nevertheless, impact the Court's decision in awarding custody of children. The Court's decision is always made on a case by case basis.

9. Paying party for divorce proceedings

When adultery has been established, the Court may order that the defendant pays for the divorce proceedings to the plaintiff. The defendant may also be ordered to reimburse the plaintiff for the PI's fees if the plaintiff had engaged one to provide the proof of adultery.

The actual amount ordered is left entirely to the Court's discretion.

Conclusion

Filing for divorce based on the reason for adultery can be time-consuming, stressful, and costly.

A veteran divorce lawyer can advise you accordingly for the best outcome and guide you through the divorce procedure. Should you need more advice on divorcing based on adultery, feel free to leave us a message.

Should you have any queries as to how this update may affect you or your organisation or require further information, please do not hesitate to email us.



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This article is intended to discuss the divorce on grounds of adultery in Singapore, and it is not intended to be comprehensive nor should it be construed as legal advice. This article is updated as of 23 November 2020.