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New York Divorce and Family Law Blog

[What is a constructive abandonment?](#)

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Despite overwhelming support to adopt a no-fault or irreconcilable grounds for divorce, New York remains the only state in which a party must allege and prove marital fault in order to obtain a divorce.

By far, the most common fault based ground for divorce in New York is constructive abandonment. In the recent case of [Mehl v. Mehl](#), the Appellate Division defined the elements of this ground for divorce.

It is well settled that to establish a cause of action for a divorce on the ground of constructive abandonment, the spouse who claims to have been constructively abandoned must prove that the abandoning spouse unjustifiably refused to fulfill the basic obligations arising from the marriage contract and that the abandonment continued for at least one year.

“Basic obligations arising from the marriage” is legalese for sexual relations.

In order to rise to the level of constructive abandonment, the refusal to engage in intercourse must be "unjustified, willful, and continued, despite repeated requests from the other spouse for resumption of cohabitation"

Further, as the Mehl case illustrates, the person seeking the divorce cannot be the party who refused to have sex.