

The True Effect of No Fault Divorce

There is much buzz in the legal community about the status of No Fault divorce in New York State. While various proposals have been tossed about for decades now, New York State has finally embraced a No Fault Divorce bill.

As most in the legal field know, New York is the last State in the Union that still requires a party to claim and prove that their spouse did something wrong, and based on that wrong –what we call “grounds”- they have a right to a divorce.

The most common grounds in New York are: a) adultery; b) cruel and inhuman treatment (physical or emotional); or c) abandonment (physical or sexual).

A common complaint is that requiring grounds leaves people who lack such claims stuck in a loveless marriage or worse, with one spouse leveraging grounds against the other spouse.

Commonly seen is one spouse arguing that the other has no grounds for divorce, and thus, if they want out of the marriage, they may need to walk away from some assets or benefits that they would otherwise be entitled to in order to “pay the price” to end the marriage.

While there is much debate as to whether or not grounds are of more benefit than harm to the parties, it appears as though New York is ready to take that final step and allow couples to get divorced simply due to what is now being termed “an irretrievable breakdown” of the marriage.

So what effect will this have on Matrimonial Practitioners? No Fault grounds may not be the panacea that many may expect. The proposed law specifically says that while one party may claim an “irretrievable breakdown” in the marriage, (which must exist for a period of 6 months) the statute does not go on to define the term “irretrievable breakdown.” Will there be new standards articulated by the Courts as to exactly what is an “irretrievable breakdown?” That may be so.

The bigger issue however, is that even where the Court finds an irretrievable breakdown to exist, they still cannot grant divorce unless the couple has also resolved all of their issues of custody, support, asset distribution, and division of debts. In effect, the only thing the new law does is take away the battleground as to whether or not the marriage should be dissolved. While on occasion grounds trials do still occur, the reality however, is that the bulk of litigation in divorces is not over one of the parties wanting to remain married, but rather over how to resolve issues including custody, the division of their assets, and support.

While there is no doubt, that No Fault will be greatly welcomed by many practitioners and may even open the flood gates of litigation for those clients who have been putting their divorces on hold due to lack of grounds, the practitioners will still have to navigate the mine fields of litigation and negotiation since no final Judgment of Divorce can be granted until all other issues are resolved by the parties either through agreement or after trial.

More anxiously awaited by most practitioners are the two companion bills that a) posit a stronger mandate for payment of legal fees to the financially disadvantaged spouse and b) sets a formula for spousal support. Look for more on those laws in later issues.

