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New York Divorce and Family Law Blog

[Why No Fault Divorce Should Be Enacted in New York](#)

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In view of news reports of the hopeful passage by the New York legislature of a “no fault” divorce law, I have been repeatedly asked, “what is no fault divorce” and “why is this no fault divorce so important.

A no fault divorce essentially allows a couple to dissolve a marriage without assigning fault; typically the parties would only have to allege that the marriage has irretrievably broken down and there is no likelihood of reconciliation.

The present law in New York, (the only state that does not have provision for a no fault divorce) requires one of the parties to allege that the other has committed marital fault –adultery, cruel and inhuman treatment, abandonment (actual or constructive) or imprisonment for a term of three years or more. The only non fault ground requires the parties to live separate and apart for at least one year pursuant to a separation agreement or judgment of separation.

Requiring a litigant to allege grounds for a divorce requires an assignment of blame. Even in the most amicable of divorces one of the parties has to accuse the other for causing the break up of the marriage. In a high conflict divorce, accusations of fault only fuel the fire.

In cases where grounds do not exist, the necessity of pleading fault requires a party to perjure him or herself by making sworn statements he or she knows to be false simply to obtain the divorce.

In the most contentious divorces, grounds can be used as a weapon. An all too common scenario is where one spouse, in this example the wife, wants a divorce simply because the relationship has, for no particular reason soured, but where the husband is not guilty of marital fault (i.e., there has been no abandonment, cruel and inhuman treatment or adultery). In the absence of the

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husband consenting to the divorce, the wife has to prove her grounds at trial. Knowing that the wife would be unable to prove grounds, the husband could contest the grounds for divorce to legally extort other concessions from the wife. In this scenario, the husband would make it clear that grounds would not be an issue if he got, for instance, a sum of money or sum asset that was in dispute.

This legalized extortion is a common occurrence under the existing fault based law.

The other problem is cost. Grounds trials force litigants to needlessly incur legal fees, tapping into the very pool of marital funds that could be used to support the parties' post divorce lives.

Moreover, grounds trials waste time and judicial resources.

There is no benefit to locking people into dead marriages. If the defendant prevails at a grounds trial and the divorce is denied, the parties do not resume a life of marital bliss. To the contrary, the parties are probably even bitterer towards each other, having hurled accusations at each other at a trial; the marriage is over in every way but legally.

The enactment of no fault divorce will not open the floodgates to divorce litigation. Couples who are unhappy in their marriage have and always will find away out of their marriages. No fault divorce will simply make the process more civil.