

LEGAL UPDATE

August 17, 2010

NO-FAULT DIVORCE LAW ENACTED IN NEW YORK

On August 16, 2010, New York State finally joined every other state in the nation by enacting a no-fault divorce law. Under the new law, which goes into effect on December 14th of this year, judges may now grant divorces when a marriage has been “irretrievably broken” for more than six months. Previously, a husband or wife, faced with an uncooperative spouse, could only obtain a divorce if he or she could prove fault-based grounds such as cruel and inhuman treatment, abandonment, or adultery. And even when spouses agreed to divorce, if they could not honestly demonstrate grounds, their only option was to either invent grounds to satisfy New York’s out-of-step statute or, even before applying for a divorce, live apart for a full year under a separation agreement. The new no-fault law allows couples to divorce without deviating from the truth, and effectively ends one spouse’s ability to hold the other in an unhappy marriage that was not quite unhappy enough to satisfy any of New York’s fault-based grounds for divorce.

While the passage of the no-fault law is grabbing all the headlines, the bigger story may be that in the first sweeping changes to the economic terrain of divorce in nearly thirty years, New York also enacted two additional provisions to its divorce laws: one effectively mandating spousal maintenance in set amounts while a divorce action is pending, and the other all but requiring the more well-heeled spouse to pay the other spouse’s legal and expert fees. The first of these provisions is intended to address inconsistency and unpredictability in interim maintenance awards; the second to level the playing field by ensuring that each party is adequately represented by counsel.

The highlights of the new laws are:

NO-FAULT DIVORCE

- A divorce may be granted when the relationship between a husband and wife “has broken down irretrievably for a period of at least six month.”
- Proof that the marriage is “irretrievably broken” is supplied merely by one party stating so under oath.
- The court may not grant a judgment of divorce, however, until all the economic issues of the divorce, and all issues involving any children, are resolved by the parties or determined by the court.
- Effective December 14, 2010

INTERIM MAINTENANCE

- Interim maintenance — also known as pendente lite or temporary maintenance — is required when one spouse’s income is less than two-third’s of the other’s.
- Unless it would be “unjust or inappropriate,” in those situations where interim maintenance is required, the judge must award a “presumptive amount” based upon a formula that takes the respective incomes of the parties into account.
- “Income” includes all income of any kind, plus income from income-producing property subject to marital distribution.
- The formula is applied to up to \$500,000 of the payor’s income, and may, in the court’s discretion, be applied to even more.

- The NY State Law Revision Commission is directed to study the permanent maintenance provisions of NY's divorce law with a goal of effectuating the state's policy of ensuring that the economic consequences of divorce are "fairly and equitably shared by the divorcing couple."
- Effective October 15, 2010

LEGAL AND EXPERTS FEES

- Judges are bound by a "rebuttable presumption" that "counsel fees shall be awarded to the less monied spouse" in divorce actions, as well as in post-divorce enforcement and modification proceedings.
- Judges must award counsel fees on a "timely basis" during the pendency of a divorce action, enforcement or modification proceeding to ensure that each party is "adequately represented."
- Newly added is the discretion to make counsel and expert fee awards not only in cases seeking enforcement, but also in those seeking modification of divorce awards. In addition, counsel and expert fees may be awarded not only in post-divorce cases concerning child support, visitation, and custody, but also in those concerning spousal maintenance, distributive awards, and equitable distribution.
- Effective December 14, 2010

With these new laws, New York's legislature has brought the state into the modern era of no-fault divorce, and has signaled a clear direction towards leveling the economic playing field in divorce actions. As with any new law, the impact of these new divorce laws will only be fully appreciated as they are put into practice and interpreted by the courts. Pryor Cashman's expert Family Law attorneys will continue to stay on top of new developments in New York's divorce law and stand ready to assist you in all your family matters.

The foregoing is intended to summarize the no-fault divorce law enacted in New York, and does not constitute legal advice. Please contact the Pryor Cashman attorney with whom you work with any questions you may have. If you would like to learn more about this topic or how Pryor Cashman LLP can serve your legal needs, please contact the following members of the Family Law practice:

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Steven M. Rabinowitz joined Pryor Cashman in 1987, after serving as an Assistant District Attorney in Manhattan and, subsequently, as general counsel to one of the largest real estate development companies in New York. During his 22 years with the firm, he has developed a broad-based practice, applying his litigation, negotiation and conflict resolution skills to everything from complex business disputes and labor/management conflicts, to criminal defense and divorce.

As a family lawyer, Steven enjoys a reputation for bringing civility and dignity to an often stressful process. Yet he is also known for his abilities as a trial attorney – first honed during over thirty trials as a prosecutor – that he brings to bear in matrimonial, criminal defense and business matters.

A highly-trained mediator as well, Steven Rabinowitz mediates both business and interpersonal conflicts, helping companies and individuals resolve their disputes without litigation.

- Steve completed the Harvard University Program on Negotiation in 1996 and the Advanced Mediation program of the Association of the Bar of the City of New York in 1998
- NY Supreme Court/Commercial Division, Court-appointed and certified Mediator
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Donald Lockhart Schuck is a member of Pryor Cashman's Family Law Group. Since 1988, Don's practice has focused on resolving high net worth family matters. He has extensive experience litigating complex financial issues and high conflict custody disputes through trial and appeal. Don is also trained as a family mediator so effort is made to resolve these matters through negotiation and agreement. Prior to his work in family law, Don represented clients involved in corporate, employment and white collar criminal law litigation.

Don is a fellow in the American Academy of Matrimonial Lawyers and the International Academy of Matrimonial Lawyers. He has been named as one of the Best Lawyers in America and a New York Super Lawyer for his work in matrimonial and family law matters. A graduate of Fordham University School of Law, Don was a member of the Fordham Law Review and the National Moot Court Team.



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Judith L. Poller is a partner and Co-Chair of the Family Law Group at Pryor Cashman LLP.

Ms. Poller's practice is focused on providing counsel in a broad range of matrimonial and family law matters including divorce, child custody and access, spousal and child support, paternity, and prenuptial, postnuptial and separation agreements, including same sex partner cohabitation agreements. She has extensive trial and appellate experience in addition to settlement resolutions, mediation and collaborative law.

Prior to joining Pryor Cashman in 2009, Ms. Poller was a partner at Dreier LLP, having founded that firm's matrimonial practice. Before that, she was a partner at Bryan Cave LLP in New York. She previously served as a law clerk for the U.S. Court of Appeals for the Second Circuit.

Ms. Poller has been quoted as a family law expert by numerous media outlets including *U.S. News & World Report*, *W* magazine, *The Boston Globe*, *The New York Observer*, *Crain's*, *Smart Money* magazine and XM Satellite Radio. She has also written for the *American Journal of Family Law*, the *New York Law Journal* and *Estate Planning* magazine. In 2010, Ms. Poller was named to the Editorial Board of *The Matrimonial Strategist*.

She has been a lecturer for Continuing Legal Education for the New York State Bar Association-Family Law Section and has chaired several seminars for the Association of the Bar of the City of New York. Ms. Poller has also spoken at the American Bar Association Family Law annual meetings, before the Family Law Section at the National CLE Conference and at the Institute for Divorce Financial Analysts.

Ms. Poller is a fellow in the International Academy of Matrimonial Lawyers, a fellow in the American Academy of Matrimonial Lawyers, where she has been elected to the Board of Managers and serves on the inter-disciplinary committee, and a member of the Family Law Section of the Bar Association of the City of New York, where she serves on the Matrimonial Law Committee. She is active in the New York State Bar Association Family Law Committee, a member of the Committee for Public Service and Education, and was named to the *New York Super Lawyers* list in 2006, 2007, 2008 and 2009.

Ms. Poller received a J.D. from Northeastern University in 1983 and a B.A. from Clark University in 1980. She is a member of the Bar of the States of New York and Massachusetts and is admitted to practice before the U.S. District Courts for the Eastern and Southern Districts of New York.