

February 3, 2011

No Fault, Less Pain! The No-Fault Divorce in New Mexico

The New Mexico statute governing the dissolution of marriage (divorce) lists four reasons that can be given to the court as grounds for divorce: 1) incompatibility; 2) cruel and inhuman treatment; 3) adultery; and, 4) abandonment.

Practically speaking, the vast majority of divorces in New Mexico are granted on the basis of incompatibility, which is known as a "no-fault" divorce. The policy of no-fault divorce has been a part of New Mexico law for more than sixty years and is so strongly favored by the courts that the other three grounds are rarely used anymore.

Even if one of those grounds is used as a basis for a divorce petition, the court will often not investigate that claim. Instead the court will recognize that the parties are incompatible and move on to the parties' debts and assets and addressing issues of custody and support.

This means that parties to a divorce in New Mexico will generally not have to spend time (and the associated attorney's fees and costs) proving that the other party committed adultery, behaved cruelly or is otherwise a bad person because the courts will deem that information irrelevant.

Often the no-fault policy can be hard for parties to a divorce to accept. This is especially so in cases where there has been adultery or cruel treatment by a spouse during the marriage. There is no shortage of animosity associated with financial affairs as well. Far too often, parties go into the divorce with the intention and the need to prove the other party is at fault. Sometimes, they simply will not be content until they have shown the court that the other party is simply a bad person.

In fact, the spouse may be a bad person guilty of all kinds of bad and sometimes atrocious behavior. Unfortunately, this behavior is with rare exceptions irrelevant to the divorce and the division of property and debt. It may or may not be relevant to child custody and time-sharing. Even when it is not, there are many occasions when the battlefield is shifted to the children. Child custody and time-sharing disputes will often to the great detriment of the parties, and especially the children, serve purely to punish the other spouse for the misdeeds during the marriage.

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Consulting with an experienced divorce attorney can help parties focus on the relevant facts and applicable law, so that they can get through the divorce process efficiently and get on with their lives. In the absence of domestic violence, domestic abuse, child abuse, or child neglect, battles for moral superiority have no place in a divorce action. No-fault divorce has grown over time with the knowledge that the fault based divorces were often devastating to the parties and the children. The courts of New Mexico have made clear that allegations of fault will no longer be entertained.

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