

# The New No Fault Divorce Law



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On August 13, 2010, New York passed its version of a "no fault" divorce. In theory, the new law allows one spouse, unilaterally, to state that the marriage has "broken down irretrievably for a period of at least six months" without assigning fault or blame in order to obtain a divorce. However, the devil is in the details and it is not as simple as saying "I want a divorce".

The first thing to know is that the new law is only available to divorces that are commenced on or after October 12, 2010. If your divorce was commenced before that date, then the new law does not apply to you.

The second thing to know is that before granting the "no fault" divorce, the following issues of the marriage must **first** be resolved:

- equitable distribution of marital property
- spousal support (a.k.a. alimony or maintenance)
- child support
- child custody
- child visitation
- attorney's fees
- expert's fees

This will mean that the time to get divorced can still be a lengthy process. A trial still may be necessary to resolve all the above issues.

Prior to the new law, a spouse had to prove the "grounds" of a divorce. This meant that a trial on who was at fault could be held and more importantly, a judge could decide that you did not prove grounds and therefore you were still married.

With the new law, the only thing that may be avoided is a long trial on the grounds of getting divorced. However, if one spouse states that the marriage **has not** broken down irretrievably for a period of at least six months, then the court may have to hold a trial on that one issue. At this point, it is difficult to predict how courts will handle this hypothetical issue.

The new divorce law also contains two other important provisions (and some other minor changes). One is a provision for temporary ("pendente lite") maintenance, the other is a presumption for attorney's fees. Those issues will be explored in more detail in other articles.

The following is a brief explanation of the new temporary maintenance law. Once a divorce action is started, one spouse can request temporary maintenance. Temporary maintenance is the amount of money that one spouse has to give to the other spouse for support. Temporary maintenance can be in place until the divorce is granted or until the court decides it should end.

The new law provides for a formula to compute how much money should be paid from one spouse to the other. With the new formula, it is likely that the more monied spouse (i.e., the one who

makes more money) will have to pay some amount of maintenance to the less monied spouse (i.e., the spouse who makes less money). The new law is unclear as to how long you will have to pay this amount of maintenance, except that it will definitely end upon the issuance of a final award of maintenance (which occurs when the divorce is final) or the death of either party.

Once the amount of temporary maintenance is computed, the new law states that it is presumed to be the correct amount. This means that in all likelihood, a court will award this amount of maintenance. However, if the amount of temporary maintenance is "unjust or inappropriate", then the Court can deviate from this amount.

The new law also establishes a rebuttable presumption in favor of awarding attorney and expert fees to the less monied spouse. This will make it very easy for the less monied spouse to be awarded attorney and expert fees (from the moment that the divorce is commenced). If you want to contest this provision, you have to establish why the award of attorney and expert fees is incorrect.

The Badanes Law Office has assisted several individuals with divorces and can help you understand the new divorce laws and how they affect you. Call the Badanes Law Office today at: 631-239-1702, email us at: [dbattorney@optonline.net](mailto:dbattorney@optonline.net) or visit our web site: [www.dbnylaw.com](http://www.dbnylaw.com).

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