

Fault v. No Fault Divorce – Pennsylvania

In the state of Pennsylvania, the Divorce Code provides that a divorce can be granted on the grounds of “fault” or “no-fault.” Fault based divorces are awarded to the “innocent and injured” spouse stemming from at least one of the following six categories: 1) Desertion – “willful and malicious desertion and absence... without reasonable cause, for a period of one or more years”; 2) Adultery – extramarital sexual relations prior to final separation; 3) Cruel and Barbarous Treatment – “endangering the life or health of the innocent and injured spouse”; 4) Bigamy – when one spouse is aware of an in-tact marriage; 5) Incarceration – being sentenced to a term or two or more years imprisonment; and 6) Indignities – “offered such indignities to the innocent and injured spouse as to render that spouse’s condition intolerable and life burdensome.”

No-Fault divorces are available in two situations, both of which are based on the premise of an “irretrievable breakdown” of the marriage. This basically means that marital difficulties exist and that there is no reasonable prospect of reconciliation. The first way to obtain a no-fault divorce is when both parties agree to the divorce and execute all of the necessary paperwork. The second is when one party does not consent to the divorce, but the parties have lived separate and apart for at least two years.

The question for today revolves around whether it makes sense for a spouse to file for a Fault Divorce. In a fault divorce, the party asserting the fault ground must prove to the Court that the action occurred. Clear and convincing evidence of an “opportunity and inclination” to have an affair prior to separation is required to prove adultery. To prove indignities, a spouse must show that the course of conduct was humiliating, degrading and inconsistent with their own position. All in all, a separate hearing is required to prove this to the Court. Therefore, having your attorney present and taking off from work is required to prove that your spouse wronged you.

What are the benefits to the Courts finding fault? Well, simply put, there aren’t many. Fault is irrelevant for purposes of the equitable distribution of marital property, and only has a very limited role in support matters. It cannot be denied that it is a factor that the Courts look at when determining support. However, the Courts generally consider the reasonable needs of each spouse, in accordance with the lifestyle and standard of living established by the parties during the marriage, as well as the obligor’s ability to pay.

With all of this in mind, the emotional toll that a divorce takes upon the parties involved will only be exacerbated by proving fault. However, some spouses believe that proving fault vindicates them and allows them to move on in their own life.

Most divorces in Pennsylvania are now processed using No-Fault grounds in order to save money on filing fees and attorneys’ fees, while avoiding the emotional toll that a Fault divorce provides. With that being said, at Crosson Law Office, I am understanding as to the specific needs and desires of my clients and will help steer my clients in the right direction when it comes to their divorce. No matter what, I am here to protect your rights, while remaining compassionate to your situation.