

New York's No-Fault Divorce Law

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Does New York's new no-fault divorce law now automatically allow New Yorker's to get divorced based on irreconcilable differences even if their spouse refuses to consent? No, it is not automatic.

Prior to New York's passage of the no-fault divorce law in October 2010, without the consent of the other spouse, the spouse seeking the divorce had to prove the existence of grounds such as adultery or cruel and inhuman treatment. If you could not prove it, you would be unable to get a divorce and would be stuck being married to your spouse for as long as you lived in New York.

New York's new no-fault divorce law has been hailed as a law that now will allow any spouse to get a divorce based on irreconcilable differences. New York now allows a divorce based on an affidavit from the spouse seeking the divorce that there have been irreconcilable differences between the husband and wife for at least the last 6 months. There is a perception out there about this new law that the court automatically will grant the divorce based on irreconcilable differences even if the other spouse does not agree that there are irreconcilable differences. This is not true.

At least two judges already have ruled that the other spouse can object to their spouse's claim that there are irreconcilable differences and that if the other spouse does object, then the spouse claiming irreconcilable differences will have to prove that there are irreconcilable differences. What does this mean? This means that New York's new no-fault divorce law does not guarantee a person a divorce if their spouse does not consent. However, New York's new no-fault divorce law still is good news for a person who is married to someone that they no longer love or to whom they simply cannot get along with them anymore. It is good news in a case where even though there has been no adultery or cruel and inhuman treatment, as required in the past to get a divorce, the marriage just is not working despite someone's best efforts.

Why is it important for people to realize that New York's new no-fault divorce law does not automatically entitle someone to a divorce based on irreconcilable differences if the other spouse contests that there are irreconcilable differences? It is important for you as the client to know this before you make a decision about proceeding with a divorce based on irreconcilable differences. You as well as your attorney should be prepared for the contingency that your spouse will object to your statement that there are irreconcilable differences. You and your attorney should be prepared to be able to submit to the court proof that there really are irreconcilable differences. You as the client should make sure that you understand that any agreement you come to with your attorney for a no-fault divorce based on irreconcilable differences most likely will not include the extra work it will take to prove that there are irreconcilable differences.

You get what you pay for. This is true for everything including an attorney. There are many attorneys out there who will charge what seems like a very small fee for getting a no-fault divorce for you based on irreconcilable differences. Before you commit to an attorney, you should make sure that the attorney is the type of attorney who also can handle the case if you need to prove irreconcilable differences and that you are clear as to the fees involved.

If you are asking yourself after reading this article what are irreconcilable differences and what will it take and cost to prove them, please contact Mitchell L. Pashkin, Esq. at (631) 351-1047 or mpash@verizon.net to set up an initial complimentary consultation regarding the divorce as well as any issues concerning child support or custody, division of assets or spousal maintenance.