

Who's At Fault? It Doesn't Matter!! No Fault Divorce

What grounds are needed to get a divorce?

Many of my clients want to know if they need to have a reason to get a divorce or if they will be impacted if they are the first to leave. California is a no fault state which means that the only grounds required for a divorce are irreconcilable differences. Prior to 1970 couples were required to have grounds for a divorce. Those grounds included adultery, mental cruelty, etc. Courts were heavily burdened with couples trying to prove allegations against the other. Further if there was a couple that just "fell out of love" with each other there was no remedy to allow for a simple divorce.

My Spouse told me that they won't "give" me a divorce

In California, only one party needs to state that the marriage is over. If one spouse wants to leave and the other refuses to cooperate with the divorce process, a court can grant a default judgment against the uncooperative spouse. It is to each spouse's best interests to cooperate with the process in order to save time and money, however one spouse cannot prevent the other from ultimately obtaining their divorce.

Who Pays for attorney fees if I didn't want the divorce?

Many parties think that because they didn't want the divorce or they were not the ones who left the marriage, then they should not have to pay for the attorney fees. California Courts do not agree with this theory. Attorney fees are awarded to a spouse against another spouse under two grounds. One is the ability to pay attorney fees and the other is the manner in which a spouse conducts themselves in a divorce. Where there is a great disparity of income or in cases where there is a stay at home mother and a working father, the court may order that the high earner pay the attorney fees for the low earner. The reasoning in awarding attorney fees is to allow each party an equal playing field in a divorce action. However, where one party wants to litigate a divorce case and does not cooperate in divorce proceedings, they may be ordered to pay the attorney fees of the other party as a punishment.

Will my husband still have to pay me spousal support if I was the one who filed for divorce?

Spousal support is based on many factors, however the primary factor which is considered is the disparity in income between the parties. The courts do not look at which spouse left the marriage or why they left the marriage in making an award for spousal support. Where there is a high earning spouse, the courts will order support for a time which is appropriate considering the length of time of the marriage. If however, the leaving spouse is cohabiting with someone else, the courts would consider that to be a relevant factor in determining spousal support. Many courts view cohabitation with a person of the opposite sex as being tantamount to a remarriage and would therefore terminate the right to receive spousal support from the other party.

What does this mean for you?

In some states, parties spend thousands of dollars fighting about why they should be able to be granted a divorce. This also prolongs the time that it takes to get a divorce. California eliminates a parties ability to point fingers and enables parties who wish to have an amicable divorce to do so. You are free to focus on protecting your rights rather than justifying your reasons for ending the marriage.