

**Effective October 12, 2010, New York joins the other 49 states allowing divorce to proceed without fault.**

In all but the most extreme cases of misconduct, marital fault – cruel and inhuman treatment, abandonment, adultery – does not affect the division of assets or spousal support in divorce. However, New York was the last holdout in accepting no-fault divorce, requiring a party to prove a ground for divorce if the other objected. Now, New York joins the other 49 states in permitting divorce even over one spouse’s objection.

Effective October 12, 2010, a spouse may commence an action for divorce by swearing that “the relationship between husband and wife has broken down irretrievably for a period of at least six months.” The parties must agree, or the Court must decide, the issues of equitable distribution of marital property, payment or waiver of spousal support, child support, counsel fees, custody and visitation.

Prior to this change, a party could object to the granting of a divorce if the spouse asserting grounds did not have the facts to back it up. For example, if the spouse seeking a divorce from, for lack of a better term, a complete jerk after a long-term marriage, the jerk could block the granting of a divorce. The objecting spouse could do this out of a true belief that the marriage was a sacred bond that was worth protecting or out of a desire to be a jerk and/or coerce concessions in settlement. The fault rules occasionally provided another avenue to fight and run up attorney’s fees. While grounds trials were not terribly common, the results were always strained: what kind of marriage survives when the divorce is denied?

The new ground for divorce, found at Domestic Relations Law § 170 (7), should render the grounds trial moot. There will be some grounds cases which linger, having been commenced before October 12, 2010 where grounds might be an issue.

Please read my articles on other laws recently passed affecting divorce situations, including [attorney’s fees](#), [calculation of temporary maintenance payments \(formerly called alimony\)](#), and [child support](#).