

No Fault Divorce – What Does It Mean?

September 22, 2016 | by Patricia M. Barbarito

The word on the street is that Brad had an affair and that's the reason Angelina filed for divorce. So, anyone reading this would clearly think that if that is true then Brad is "at fault". The logical extension of that thought would be that Angelina should "win" in divorce, right?

Unfortunately, that is not how the legal industry would look at this situation. Historically in the United States, in order to seek divorce one needed to prove legal grounds to dissolve a marriage. In 1970 the State of California decided that it didn't make sense to force a couple who didn't want to be married any longer to stay together – and it legislated that no one needed to be "at fault" in order for a marriage to legally come to an end.

Shortly after California, New Jersey followed suit and became a "no fault" state. In other words, one does not have to "accuse" his/her spouse of misconduct or wrongdoing in order to get divorced. And, even if somebody does accuse a spouse of being at fault, it doesn't really impact the ultimate outcome of the divorce. Of course, there are exceptions when there are extreme circumstances. However, for the most part it is safe to say whether or not one has an affair, emotionally abuses the other person or is simply a bad person, the end result may not vary.

New Jersey No Fault Divorce

- Couples can seek a divorce on the basis of 'irreconcilable differences.' Basically, the fact that a couple can't get along anymore is sufficient grounds to end their marriage.
- Requires that both parties have lived in New Jersey for 12 consecutive months prior to filing for divorce
- Requires that couples have experienced irreconcilable differences for at least 6 months OR that they have lived separate and apart for at least 18 months with no chance for reconciliation.
- This accounts for the overwhelming majority of divorces in the State of New Jersey today.

Fault Divorce

- One spouse has to prove the other spouse's misconduct as the cause of the breakdown of their marriage.
- For the overwhelming majority of cases and circumstances, this does not impact the outcome of a divorce
- In New Jersey, this misconduct includes:
 - o adultery
 - o abandonment for at least one year
 - o physical or mental cruelty
 - o continued drug or alcohol abuse for at least one year

The fact that a spouse is not found to be at fault does not offer an advantage in the divorce with regard to economic decisions (alimony, child support, equitable distribution) or custody (should somebody get the kids because they are a better person than the other?). This is probably the most difficult thing for any client to understand. Anyone reading the tabloids is probably thinking that Angelina has been wronged and she should "win". Putting aside the fact that there are no "winners" in divorce at the end of the day, the reality is that whether or not Brad had an affair is interesting reading, and I like everyone else will follow the story, however, in a courtroom it will just not matter.