

## **New York Divorce and Family Law Blog**

### **Financing Divorce: Loans Available**

*Posted by [Daniel Clement](#) on December 06, 2010*

In a front page article, [Binyamin Appelbaum](#) in the [New York Times](#) explored the newest trend in divorce-third parties are investing in and funding divorces. A funding company “invests” in a divorce and advances the litigant money to pay the costs of the divorce. The litigant repays the loan at the conclusion of the case- generally as a percentage of their “winnings.”

According to Stacey Napp, the founder of one funding company, [Balance Point](#), “Everybody knows somebody where at the end of the day, the divorce was not equitable,” she said. “We want to help those people, the underdog, to make sure they get their fair share.”

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So, is there a need to have a third party to invest in a divorce action?  
Perhaps!

Recently, New York [amended its law](#) regarding awards of attorney's fees in divorce and other matrimonial actions. The law was intended to even the playing field in divorce actions between the money and non-moneyed spouses. According the law, judges are to presumptively award attorneys' fees and expert expenses to the non-moneyed or economically dependent spouse.

In most cases, an award of attorneys' fees is sufficient to even the playing field between moneyed and non-moneyed spouses in a divorce. However, in the extreme cases, where money and assets have been secreted or the moneyed spouse is employing a strategy of delay and obfuscation intended to economically wear the other party out, third party financing may be useful.

Indeed, Napp conceded that third party funding is not for everyone.

The company wants to focus on people with marital assets between \$2 million and \$15 million, a bracket Ms. Napp described as "the lower end of the high end." She said that investing in smaller disputes was

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not worthwhile. Wealthier people, she said, seemed to resolve divorces more easily — perhaps because they still felt wealthy in the aftermath.

Another concern is control of the case.

Most lawsuit lenders avoid any role in the management of cases, seeking to disarm critics who worry that lenders seeking profits will corrupt the pursuit of justice. Ms. Napp, by contrast, sells the benefit of her own experience.

Ms. Napp said that as she decided to create Balance Point, she realized that she could not settle her own case. “I had to win,” she said. “Because I don’t know that, if you don’t have a happy ending, that people are going to think it’s such a fantastic idea.”

It is no secret that mounting legal fees and the costs of litigation often facilitate the settlement of a divorce. No one wants to pay legal fees. If the case is resolved, the hemorrhage of seemingly endless legal fees stops. On the other hand, if the costs of going forward are removed, there would no incentive to settle.

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The “divorce loans” are not free. The litigant has to pay an undisclosed percentage of the “winnings” to the lender.

Divorce funding would be appropriate in limited circumstances. It would only be appropriate in cases where the marital estate is sizable and one spouse is economically dependant on the other. Obviously, this type of financing would not be appropriate where the issues are non-economic, like custody or access to children.

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