

Getting a Divorce in New York State - 10 Things You Should Know

If you're planning a divorce in New York State, here are the top ten things you should know.

1. New York is an equitable distribution state, meaning that all marital assets and property will be divided fairly between partners. Keep in mind that "fair" and "half" do not mean the same thing - you may receive more or less than your partner, depending on the circumstances. Divorce mediation can ensure that you receive your fair share of assets. Keep in mind that debts as well as assets will be divided.
2. While New York State has technically no longer required "fault" for divorce, the state requires that you have had your marriage broken down irretrievably for 6 months or more. All issues, such as child support and custody, spousal support/alimony, equitable distribution, and parenting plans must be resolved before the divorce can be granted. If you choose to settle things with lawyers rather than a divorce mediator you can do so, although that option is a great deal more costly and could take quite a bit longer.
3. Custody in New York State is granted based on what is best for the child - and joint custody is rarely awarded by the courts. If you want custody (in the courts), you will need to be prepared to fight for your custody rights. This "fight" can be avoided through Divorce Mediation.
4. The odds are nine to one that you won't go to trial. Less than 10% of divorces in New York State actually go to trial. Many are settled "on the courthouse steps" so to speak, as they come very close to trial before finally settling; but very few actually do go on to trial.
5. In order to get a divorce in New York State, you must have been a resident for a minimum of a year. However if the "grounds" for the divorce occurred in the state and both spouses are residents, a divorce can be granted even if one or both have not been resident for a full year.
6. The average divorce in New York State lasts one year if contested, six months if uncontested and without assets or children involved. In a contested divorce, you can divide, or "bifurcate" the divorce so that the trial for everything that could have been settled in divorce mediation occurs separately.
7. Equitable distribution and "fault" are mutually unrelated in New York State, meaning even if you're found to be at fault in the divorce, it won't affect your share of the assets. The exception is when the fault is something that "shocks the conscience of the court". This means that the fault would have to be something shocking, outrageous, or heinous, to affect the division of assets.
8. There are court fees just to get started with the summons and complaint; when you add in the mediation and litigation fees, divorce is very costly. However, representing yourself is not recommended, as it is easy to become too emotional, angry, or bitter to portray yourself in a manner that the court will approve of. In New York the fees just to begin the process total \$210, as of February 1st, 2013. However, if you can prove financial hardship, the court may waive the fees.
9. You have to "commence the action" or file for divorce in the county in which you live. In New York State it is only permissible to file for divorce in a different county from where you live if your soon-to-be-ex does not object. However, it is still frowned upon to go "forum shopping" to try to find the best county for divorce.

10. Honesty and integrity - regardless of where you get your divorce, if you have children, you want to protect them from being hurt by the divorce as much as possible. Even if you don't have children, you want to walk away from this divorce feeling as good about it as possible. So be honest, and keep your integrity intact - no matter how upset or angry you feel at times. It could end up costing you otherwise.