

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

# **No Fault Divorce: Complete Lunacy or Totally Rational?**

*By Daniel Clement on September 23, 2011*

In *No Fault Nuttiness: Why Modern Divorce is Lunacy*, Beverly Willett wrote a scathing criticism of no-fault divorce. Central to Ms. Willett criticism is her misplaced belief that divorce is about “innocence” “wrongdoers” and efforts to “receive compensation for your loss.” Divorce is about none of those.

Divorce is simply the process of unraveling the marital partnership. Even before New York adopted no fault divorce and, except in the most egregious cases, marital fault had no impact equitable distribution. No fault divorce simply institutionalized that.

Divorce need not be about lying blame, pointing fingers or airing dirty laundry. The process, even without a need to establish fault, is emotionally and economically draining. If the purpose of divorce was to award “compensation for your loss” divorce would be a blood sport; there would be no winners, except divorce attorney’s who profit from litigation. Ironically, divorce attorneys were the moving force behind no fault divorce.

Ms. Willett writes about how no-fault divorce empowers one spouse to unilaterally end a marriage and obtain a divorce against the will or to the surprise of the other. In most cases, one spouse does not simply wake up one morning and spontaneously decide

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that their marriage is over and file for divorce; at some level the couple must be experiencing problems. My antidotal experience is that people who are surprised by their spouse's desire to divorce are simply living with blinders on.

Regardless, even if the announcement "I want a divorce" comes out of the blue, placing a barrier to divorce will not revive a dead marriage. A denial of a fault based ground did not require the parties to reconcile; it just locked two resentful people in a dead marriage.

Interestingly, Ms. Willet calls the matrimonial parts a "divorce factory" "Because most judges face a huge volume of cases, litigants get herded in and out as quickly as possible." This is true. Judges, however, freed of the need to hear pointless and, often, long winded, tales of adultery, abandonment and name calling, can have more time to do justice - to evaluate custody disputes and to equitably distribute the property of the marriage.

No fault divorce rather than leading to lunacy, brings rationality to divorce. Gone from the process are the emotional issues of blame and wrong-doing. Judges are instead empowered to deal with the issues that really matter-the financial well being of the family and the health, welfare and safety of the children.