



New York Divorce

A Complete Guide

Understanding the Process, Your Rights & What to Expect

Experienced Family Law Representation in Western New York

Serving Buffalo, Williamsville, Amherst, Erie County, and Niagara County.

This guide is provided for informational purposes only and does not constitute legal advice. Every case is different. Contact our office to discuss your specific situation.



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Section 1 — Overview of New York Divorce Law

New York is an **equitable distribution state**, meaning marital property is divided fairly between the spouses — but not necessarily equally. Courts weigh many factors when dividing assets and debts.

New York adopted **no-fault divorce in 2010**, allowing either spouse to seek divorce without proving wrongdoing by the other party. The no-fault ground is used in the vast majority of cases today.

Key Point	Detail
Court	New York State Supreme Court in the county where either spouse resides
Waiting period	None required after filing; contested cases often take one to two years
Residency	At least one spouse must meet DRL §230 residency requirements before filing
No-fault ground	Irretrievable breakdown of the marriage for at least six months
Filing fee	Approximately \$210 in most New York counties (subject to change)



Section 2 — Grounds for Divorce

New York Domestic Relations Law §170 provides seven grounds for divorce. Most people today use the no-fault ground.

No-Fault Ground (Most Common)

The marriage has broken down irretrievably for a period of at least six months. Either spouse may make this statement; the other cannot block the divorce. Financial, custody, and property issues must still be resolved before the divorce is granted.

Fault-Based Grounds

- Cruel and inhuman treatment
- Abandonment for one or more years
- Imprisonment for three or more consecutive years
- Adultery
- Living apart pursuant to a separation judgment or decree for one year
- Living apart pursuant to a written separation agreement for one year

Fault-based grounds are rarely used today because the no-fault ground is simpler, faster, and does not require the parties to air grievances publicly in court.



Section 3 — The Divorce Process Step by Step

Step	Description
Step 1	Retain an attorney. Consult with a family law attorney to understand your rights and options before filing.
Step 2	File the summons & complaint. The Plaintiff files a Summons with Notice or a Summons and Verified Complaint in Supreme Court.
Step 3	Serve the defendant. The other spouse must be personally served. Service by publication is available if the spouse cannot be located.
Step 4	Defendant responds. The Defendant has 20 days (if served in-state) or 30 days (if served out-of-state) to respond.
Step 5	Automatic orders take effect. Both parties are restrained from dissipating marital assets, changing beneficiaries, or removing children from the state.
Step 6	Financial disclosure. Both parties exchange financial documents and complete a Statement of Net Worth (DRL §236B).
Step 7	Negotiate or litigate. Parties may resolve issues through negotiation, mediation, or court proceedings.
Step 8	Settlement agreement or trial. If resolved, a Settlement Agreement is executed. If not, the matter proceeds to trial.
Step 9	Judgment of divorce. The court enters a Judgment of Divorce incorporating all resolved issues.



Section 4 — Residency Requirements

Before filing for divorce in New York, at least one of the following residency requirements under DRL §230 must be met:

- The parties were married in New York **and** either party is a state resident at the time of filing.
- The parties lived as a married couple in New York **and** either party has been a resident for at least one continuous year immediately before filing.
- The grounds for divorce occurred in New York **and** either party has been a resident for at least one continuous year immediately before filing.
- Either party has been a New York resident for a continuous period of at least **two years** immediately before filing (regardless of where the marriage took place or where the grounds arose).

If you have questions about whether you meet New York's residency requirements, contact our office before filing. Filing in the wrong jurisdiction can delay your case.



Section 5 — Property Division & Equitable Distribution

New York courts divide “marital property” equitably between the spouses under DRL §236(B). Equitable does not always mean 50/50 — courts weigh many factors.

Category	Definition
Marital property	Assets acquired by either spouse during the marriage: income, homes, retirement contributions, businesses, vehicles, savings, and most investments.
Separate property	Assets owned before marriage; inheritances and gifts from third parties; personal injury compensation (pain & suffering portion); property defined as separate by a valid prenuptial agreement.
Commingling	Separate property mixed with marital funds may lose its separate character and become subject to equitable distribution.

Factors Courts Consider in Property Division

- Duration of the marriage
- Age and health of each spouse
- Income and earning capacity of each spouse
- Need of a custodial parent to occupy the marital home
- Loss of inheritance and pension rights upon dissolution
- Any award of maintenance
- Contributions to the career or career potential of the other spouse
- Liquid or non-liquid character of the marital property
- Tax consequences to each spouse
- Wasteful dissipation of assets by either spouse



Section 6 — Spousal Maintenance (Alimony)

Spousal maintenance (formerly called alimony) is governed by DRL §236(B)(6). New York uses a statutory formula to calculate a presumptive maintenance amount and duration, which the court may adjust based on statutory factors.

Type	Description
Temporary maintenance (Pendente Lite)	Paid during the divorce proceeding to maintain the lower-income spouse's standard of living while the case is pending. Calculated by a statutory formula.
Post-divorce maintenance	Awarded in the final judgment. Duration is based on the length of the marriage. The court applies a formula and then considers statutory adjustment factors.

Maintenance Formula (DRL §236B(5-a))

The formula applies to income up to the statutory cap (adjusted annually by OCSE). When the payor also pays child support, reduced percentages apply under Formula A. Courts may deviate from the formula based on statutory factors including the standard of living established during the marriage, present and future earning capacity, need of one party to obtain education or training, and the existence of a pre-nuptial agreement.

Note on Tax Treatment

Under the Tax Cuts and Jobs Act of 2017, maintenance payments are no longer deductible by the payor or taxable to the recipient for divorce agreements executed after December 31, 2018. This change has significant implications for negotiating maintenance. Speak with your attorney and a tax professional before finalizing any maintenance agreement.



Section 7 — Child Custody & Parenting Time

New York courts determine child custody and parenting time based on the **best interests of the child**. There is no presumption favoring either parent.

Type	Description
Legal custody	The right to make major decisions about the child's education, health care, and religious upbringing. May be sole (one parent) or joint (both parents).
Physical custody	Where the child primarily resides. The non-residential parent typically receives parenting time on an agreed or court-ordered schedule.
Joint custody	Both parents share legal and/or physical custody. Requires cooperation and communication. Courts favor joint arrangements when both parents are fit and willing.
Sole custody	One parent has primary decision-making authority. Awarded when joint custody is not in the child's best interests — often in high-conflict cases.

Best Interests Factors

- Quality of each parent's home environment
- Each parent's ability to provide for the child's emotional and intellectual development
- History of domestic violence or substance abuse
- The child's preference (given weight based on age and maturity)
- Each parent's willingness to foster the relationship with the other parent
- Stability and continuity of the child's current living situation
- Work schedules and childcare arrangements of each parent

Attorney for the Child

In contested custody cases, the court may appoint an Attorney for the Child (AFC) to represent the child's interests independently. Attorney Pieter Weinrieb has served on the Erie County and Niagara County Attorney for the Child panels, giving him unique insight into how courts evaluate parenting in contested custody matters.



Section 8 — Child Support

New York child support is calculated under the Child Support Standards Act (CSSA), Family Court Act §413. The formula applies a percentage to the combined parental income up to a statutory cap.

Number of Children	Basic Support Percentage
1 child	17% of combined parental income
2 children	25% of combined parental income
3 children	29% of combined parental income
4 children	31% of combined parental income
5+ children	No less than 35% of combined parental income

Mandatory Add-Ons

- **Child care expenses** — pro-rated based on income
- **Health insurance premiums** — pro-rated based on income
- **Unreimbursed medical expenses** — pro-rated based on income
- **Educational expenses** — at the court's discretion

Income Cap

The CSSA formula applies to combined parental income up to the statutory cap (currently \$193,000, adjusted periodically by the Office of Child Support Enforcement). Courts have discretion to award support above the cap based on the child's needs and the parents' financial circumstances.



Section 9 — Orders of Protection

An Order of Protection (OOP) directs one person to stop abusive or harassing conduct and may require them to stay away from the protected party and any children. OOPs are available in both Family Court and Supreme Court during divorce proceedings.

Type	Description
Full stay-away order	Requires the respondent to stay away from the home, workplace, school, and the protected person.
Limited (refrain) order	Allows contact but prohibits specific conduct such as harassment, intimidation, assault, or threatening behavior.
Temporary OOP	Issued on an emergency, ex parte basis (without the other party present) and remains in effect until a hearing is held.
Final OOP	Issued after a hearing or upon consent. May remain in effect for up to 5 years (or longer in cases involving aggravated circumstances).

If You Are in Danger

If you are in immediate danger, call 911. For non-emergency situations involving domestic violence, contact the NYS Domestic Violence Hotline at 1-800-942-6906. An order of protection can be sought the same day through Family Court or as part of your divorce proceeding in Supreme Court.



Section 10 — Your Rights During Divorce

Right	What It Means
Right to legal counsel	You have the right to be represented by an attorney at every stage of the proceedings. The court may award counsel fees to the less financially able spouse.
Right to full financial disclosure	Both spouses must fully disclose all income, assets, debts, and financial records. Failure to disclose is grounds for reopening the divorce later.
Right to seek support during proceedings	You may move for temporary maintenance, child support, and exclusive occupancy of the marital home while the divorce is pending.
Automatic orders	Upon filing, automatic restraining orders prevent either party from dissipating marital assets, changing insurance beneficiaries, or removing children from New York.
Right to contest	You have the right to contest any aspect of the divorce — grounds, property division, maintenance, or custody — and to have those issues decided by a court.
Right to appeal	If you disagree with the court's decision, you have the right to appeal to the Appellate Division within 30 days of entry of judgment.



Section 11 — Frequently Asked Questions

How long does a New York divorce take?

An uncontested divorce can be completed in as few as 3–4 months after filing. Contested divorces involving disputes over property, maintenance, or custody often take one to two years or longer, depending on the complexity of the issues and court scheduling.

Do I need to live separately before filing?

Not for a no-fault divorce. You only need to state that the marriage has broken down irretrievably for at least six months. Separation-based grounds do require a period of living apart, but they are rarely used.

Can I get divorced without going to court?

In an uncontested divorce where all issues are resolved by agreement, you may not need to appear in court at all. Your attorney can submit the paperwork for the judge's signature. Contested matters require court appearances.

What happens to the marital home?

The court will consider which spouse has custody of the children (who may have a right to stay in the home), each party's financial ability to maintain the home, and whether it should be sold and the proceeds divided. There is no automatic rule.

What is a Statement of Net Worth?

A Statement of Net Worth is a detailed financial affidavit required by DRL §236B in all contested matrimonial matters. It discloses income, assets, debts, and monthly expenses for both parties and is a key document in property and support negotiations.

Can I change my name as part of the divorce?

Yes. You may request restoration of a prior surname as part of the Judgment of Divorce at no additional cost.

What if my spouse won't sign?

Your spouse cannot prevent the divorce from proceeding. Under no-fault, either spouse may seek a divorce regardless of the other's cooperation. If they do not respond, you may seek a default judgment.

Does fault affect property division or maintenance?

Generally, fault does not affect equitable distribution of property. However, egregious fault — such as concealing assets or domestic violence — may be considered by the court as a factor in dividing property or awarding maintenance.

Ready to speak with an attorney?

(716) 759-4529 pgw@weinrieblaw.com

www.weinrieblaw.com

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