

Divorce Magazine Questions/Answers

1. What are the grounds for divorce in my area? I have been told that we live in a no-fault state. What does this mean? My spouse had an affair, so isn't he at fault for breaking up our marriage?

There are two grounds for divorce in California:

- A. *Irreconcilable differences which have led to the irremedial breakdown of your marriage or incurable insanity. California is a no-fault state. This means that the court considers irrelevant the reasons behind the break up, unless, of course, it adversely affects the best interests of the children such as domestic violence, breach of fiduciary duty and other similar intentional acts. Therefore, if your wife had an affair, which led to the breakup of your marriage, she does not get punished for her ill-advised actions. She would still get 50% of the community property; it will not discredit or hamper her chances to obtain custody of the children, if any; and it won't affect her ability to obtain support if the economic circumstances permit it. However, there are some acts of wrongdoing which could affect the division of the property and/or the payment of support. For example, if a spouse took a large amount of community funds and spent it in ways that did not benefit the community (gambling, payments to entertain a girlfriend, risky investments without the consent of the other spouse, and similar types of action) this could be offset against the wrongdoer's property he/or she will receive in the divorce plus possible interest and plus possible attorney's fees. This is found under Family Code §1101, §721 and certain provisions of the Corporations Code.*
- B. *Another example of "fault" in a marriage is where a spouse inflicts injury upon the other spouse which causes the court to render a finding of domestic violence. There is a presumption, which can be rebutted through the appropriate evidence, that the spouse who is a victim in such domestic violence incident should not be required to pay to the spouse who committed domestic violence spousal support.*

Therefore, although California is "technically" a no-fault state, there are certain acts of "fault" which affect the ability of the at-fault spouse from obtaining 50% of the community property or the amount of support that spouse would otherwise receive.

There is a fine line between this "no-fault" aspect of the system as compared to those few exceptions where "fault" will be considered. Only an experienced family law certified specialist can adequately and properly advise you on such issues.