



**ANGIULI & GENTILE, LLP**  
ATTORNEYS AT LAW

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**THE 5 COMMON MYTHS  
ABOUT THE DIVORCE  
PROCESS IN NEW YORK,  
DEBUNKED**





The most common misconception perpetuated by our society is that divorce somehow equals failure. Most people contemplating a divorce have legitimate fears and doubts about how a divorce might affect their lives. It is very common for married people considering divorce to think that they may never be happy again. It is important to know, however, that there is “life after divorce.” In fact, the real truth is that many people are much happier and more fulfilled because divorce was made available to them. Divorce can be a fresh start to life.

There are countless myths and misconceptions about the divorce process. We will detail five of them in this e-book. These five misconceptions often discourage couples from moving ahead with the divorce process and thereby condemn them to a lifetime of unhappiness. At Angiuli & Gentile, LLP, we want to set the record straight. We hope to educate you and put you at ease about how the divorce process works should you decide to move forward with dissolving your marriage.



If you are facing divorce, our team of experienced matrimonial attorneys at Angiuli & Gentile, LLP will advocate for you with support and compassion as you navigate this transition so that you can begin working towards building a more fulfilling life—your life after a divorce. Please contact us today at **718-816-0005** or at **[www.aglawnyc.com](http://www.aglawnyc.com)** to schedule your consultation. We are in this together.

## ■ MYTH #1: MOST DIVORCES GO TO TRIAL

The first and most common myth about divorce is that all divorces end up in a lengthy trial. When a person contemplates getting a divorce, the first image that usually comes to mind is an embarrassing and prolonged courtroom drama with lawyers in suits, heated cross-examination of spouses and children, and a robed judge keeping order by banging a gavel. However, the actual process of divorce is usually much less cumbersome and/or dramatic. As it turns out, **many, if not most divorce cases never need to go to trial.**

New York is a “no-fault” divorce state. This means that there is no requirement for spouses to detail their personal lives in a courtroom by setting out the specific reasons as to why they are seeking a divorce. They need only acknowledge that their marriage is irretrievably broken. That is all that it takes. In fact, if the parties can reach an agreement on the key issues, their divorce may even be granted by way of a settlement agreement without the parties ever stepping foot into a courtroom.

At Angiuli & Gentile, LLP, our matrimonial attorneys are well-qualified to navigate settlement negotiations between spouses on key issues including such matters as child custody and support, spousal support, and the division of marital assets and debts. Our matrimonial attorneys are here to support you with personalized representation and will help you make informed decisions every step of the way. Please contact us today at **718-816-0005** or at **[www.aglawnyc.com](http://www.aglawnyc.com)** to schedule your consultation.

## ■ MYTH #2: EACH SPOUSE AUTOMATICALLY GETS HALF OF THE MARITAL ASSETS IN A DIVORCE

The second most common divorce myth is that each spouse will automatically receive half of the marital assets, in other words, a 50/50 split so to speak. While New York is what is known as an “equitable distribution” state, it is important to note the term “equitable” does not necessarily mean an equal 50-50 split. In fact, often it is not an exact 50-50 split. Rather, “equitable distribution” means that the court will direct that the marital assets be divided in a manner believed to be fair but not necessarily an equal allocation and will be based upon *the particular facts of each marriage*.

In New York, there is no set formula which a court is compelled to use. The court may look at the income and earning capacity of each spouse and/or it may consider other applicable factors as well when trying to divide the marital assets. The court’s goal is for each spouse to emerge from the divorce on a relatively even footing and to try as best as possible to maintain a standard of living for both parties as similar as achievable to that which they enjoyed during their marriage.

If you are contemplating a divorce, it is important that you consult with an experienced matrimonial attorney. Many of the issues surrounding divorce are complex and require thorough analysis. Please contact Angiuli & Gentile, LLP today at **718-816-0005** or at **[www.aglawnyc.com](http://www.aglawnyc.com)** to schedule your consultation.

## MYTH #3: INFIDELITY (ADULTERY) WILL LEAD TO AN EMBARRASSING COURTROOM DRAMA

The third common myth about divorce is that adultery inevitably will lead to embarrassing courtroom drama. While technically a spouse may sue for adultery in New York, utilization of New York State's "no-fault" ground in the divorce process is heavily encouraged by courts and no showing of infidelity is required or encouraged. Most courts do not usually concern themselves with "marital fault" when making rulings on support, custody, and the distribution of marital assets unless the circumstances are truly severe and egregious.

It is important to note that there are in fact certain circumstances when New York courts may consider adultery. In particular, the court may take adultery into consideration when the circumstances surrounding the adultery involved the marital assets. For example, if a cheating spouse used marital assets to pay for lavish gifts or expensive trips for a lover, this might qualify as wasteful use of marital assets and may justify a deviation from the spousal maintenance guidelines amount. The court may also consider the squandering of marital assets when deciding how to divide marital property. The cheating spouse who has unfairly squandered marital assets may be compelled by the court to compensate the other spouse in the division of assets and/or debt under certain circumstances.

Another example as to how adultery might affect a divorce in New York is in connection with child custody. In most cases, a mere "affair" will not alter the way the court arrives at a custodial award. It is noteworthy however, if the adultery was committed in a careless or otherwise explicit manner resulting in emotional harm to the child(ren), the court may then consider this factor in its determination as to what custodial arrangement would be appropriate.

## ■ MYTH #4: THE COURT WILL AUTOMATICALLY ORDER THE SALE OF THE MARITAL RESIDENCE

While divorce is often the best scenario to restore harmony to a family, concern with regard to the disposition of the family home remains when a couple with children gets divorced. Often, the custodial parent may wish to defer the sale of the marital home.

It is a common misconception that the only option for the court is to order the sale of the marital residence. In New York, the outcome that a court orders in connection with the sale of the marital residence will depend upon the specific circumstances of each matter. For example, New York courts may order the sale of marital residences and then divide the proceeds that come from that sale between both spouses using the method of equitable distribution. Alternatively, a court may award the marital home to one spouse and request that the spouse receiving the home “buy out” the other spouse. There is also the possibility that the court may order that the sale of the marital home be deferred for a time if it is determined to be in the best interests of the child(ren). A court may consider a number of factors when deciding whether the sale of a marital home should be deferred for a time including factors such as the age of the children, how long the children have lived in the same family home, and the financial ability of the custodial parent to obtain housing after the divorce is finalized.

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## ■ MYTH #5: THE COURT WILL ALWAYS AWARD CUSTODY OF THE CHILDREN TO THE MOTHER

It is a common misconception that mothers will always be awarded custody when a couple with children get divorced. In New York, the court is prohibited from and may give no increased consideration or weight to the gender of the parent. From a legal perspective, **each parent starts with the exact same rights when it comes to child custody.**

New York courts will decide custody matters based upon all relevant factors that they believe pertain to protect the best interests of the child(ren). The court will consider which parent is most fit to care for the child(ren) and will look at factors such as which parent was the primary caregiver during marriage, where the child has been residing after the separation of the parties, the existence of siblings, instances of domestic violence, special needs of a child or children that one parent can best provide for over the other, current work schedules that are conducive to providing care for the children, and finally, the respective financial resources of each parent. After careful consideration of all the relevant factors, the court may, in some circumstances, award joint custody allowing for shared decision making.

Bitter child custody battles in a divorce can often negatively impact the relationship between the child(ren) and either or both of the parents. This is where an experienced attorney who concentrates in the area of matrimonial and family law issues can be invaluable when trying to structure a settlement with regard to custody matters.



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We hope that this e-book has been helpful. If you are ready to begin the divorce process or if you have more questions, please contact us today at **718-816-0005** or at **[www.aglawnyc.com](http://www.aglawnyc.com)**.

You will be glad that you did.  
You deserve peace of mind.

Contact us today to  
schedule and appointment.  
**We're in this together.**

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## **LEGAL ADVERTISING**

This book does not constitute legal advice, and you are not a client of Angiuli & Gentile, LLP until you have retained the firm's counsel in writing. This e-book is designed for clients with matters that require the application of New York law. Other jurisdictions may have different rules and/or other state-specific laws that apply.