

## **WOMEN AND THE LAW**

The 1979 LWNYS Convention adopted a study, Women and the Law, which focused on some of the laws in New York State that affect women. Because of the complexity of the issues, the study was divided into two parts: (1) marriage and divorce; and (2) child custody, insurance, pensions and credit.

### **WOMEN AND THE LAW**

#### **Statement of Position**

**As announced by the State Board, March 1981**

**The LWNYS believes that marriage is an equal economic partnership. Marital property (property acquired during a marriage) is presumed to belong equally to each spouse. Separate property (as defined in the Equitable Distribution Law {EDL}) remains separate.**

**During an ongoing marriage, each partner is entitled to participate equally in decisions with regard to marital property, e.g., to spend, to bequeath, to use as a basis for credit.**

**Couples wishing to end their marriage should be able to divorce by mutual agreement following a waiting period. Fault grounds should be retained as an option for the blameless spouse because proof of fault on the part of one spouse may influence a more favorable settlement for the blameless spouse. This part of the League position is not applicable as fault is not a criterion considered under the EDL for marital property distribution.**

**In distribution of marital property at divorce, the presumption of equality should prevail. If adjustment is required, the criteria in the EDL should be used.**

**With regard to maintenance (alimony), the League supports measures to achieve a standard of living as nearly equal as possible for each spouse. Recognition should be given to the contribution of each spouse (as breadwinner and/or homemaker) and to loss of potential earning power by the spouse who had stayed at home during the marriage. Maintenance (alimony) should be awarded according to the criteria in the EDL.**

**WOMEN AND THE LAW - Statement of Position**  
**As announced by the State Board, March 1981 (continued)**

**The League supports stronger measures to achieve prompt payment of child support and/or maintenance (alimony) payments. However, neither support payments nor visitation rights should be used as enforcement measures. It should not be possible to withhold support payments because visitation has been withheld nor should the reverse be true. Children should not be used as reward or punishment in adult battles.**

**In laws governing intestacy (dying without a will), the League supports measures to incorporate the principle of marital property so that one-half of the marital property is recognized as belonging to the surviving spouse and therefore not part of the estate. The remainder of the estate should be divided in such a way that the surviving spouse would receive more than the one-third of the estate presently allotted by law.**

In 1990, a major divorce reform bill was introduced that provided equal economic distribution, permanent maintenance, and no fault divorce as a cause. The League supported this legislation as it provided for the needs of women and children on a more equal basis. After much debate, this bill failed to be reported out of committee. In 1991 legislation was introduced that would offer greater financial remuneration to surviving spouses. Despite League lobbying efforts, no action was taken in the legislature.

Between the early 1990s and 2006, no legislation was introduced to deal with divorce reform. However, in 2006 the Women's Bar Association of New York State study on no-fault divorce renewed debate of this issue in the legislature. In 2007, the Assembly Judiciary Committee introduced a draft study bill on no-fault divorce. The New York State Board Association, Women's Bar Association of New York State, and several women's organizations, including the League, began informal coalition round table meetings to educate and discuss further refining no-fault divorce legislation. It is anticipated that this legislation will become a priority in the 2008 legislative session.

Each year since 1982, legislation to ensure equal rather than equitable distribution of marital property has been introduced in the state Assembly. Again, in the 1995 legislative session, the LWVNYS supported an equal distribution bill, which passed the Assembly but was not taken up by the Senate. Responding to 1995 LWVNYS convention delegates, support was given to legislation that would provide that attorney fees for the nonmonied spouse be awarded. Passage in the Assembly was achieved, but the bill was not taken up in the Senate. Each legislative year, passage of this legislation by the Assembly is pro forma, but there continues to be no action by the state Senate.