

The POCKET LAWYER®
Self-Help Series
Understanding California Divorce
(Summary Dissolution or Regular Dissolution)

The information in this brochure is for educational purposes only and is intended to assist you in preparing your own California Divorce. It is NOT legal advice or a substitute for the professional advice of a licensed attorney.

What is Annulment, or “Nullity of Marriage”?

An annulment is a legal action that says your marriage was never legally valid because of unsound mind, incest, bigamy, being under the age of consent, fraud, force, or physical incapacity.

What is Dissolution?

It is a marriage that is ended by a judge’s decision. This is also known as a Divorce.

What is a Legal Separation?

You and your spouse can end your relationship but still remain legally married, and get court orders on parenting and money issues with a Judgment of Legal Separation. This might be for religious reasons or because an ill spouse is still covered by the other spouse’s health insurance policy. A Judgment of Legal Separation will describe how you will handle the money and (if you have children) parenting issues. You cannot marry someone else if you are legally separated but not divorced.

What is the difference between “Summary Dissolution”, and “Regular Dissolution”?

A Summary Dissolution is a process for people who:

- Have been married less than five years as of the date they filed their Joint Petition for Summary Dissolution of Marriage;
- Have no children together that were adopted or born before or during the marriage (and the wife isn’t pregnant now);
- Do not own or have an interest in any real estate. This means a house, condominium, rental property, land, or a one-year lease or option to buy;
- Do not owe more than \$5,000 total for debts acquired since the date of the marriage (not counting vehicle loans);
- Have less than \$25,000 total property (not counting any money owed on the property and not counting any cars) that was acquired during the marriage;
- Do not have separate property (not counting any money owed on the property and not counting any cars) worth more than \$25,000;
- Agree that neither spouse will ever get spousal support;
- Both sign the Joint Petition and pay the court filing fees or get a fee waiver;
- Meet the residency requirements for getting a divorce in California; and
- Have signed an agreement before filing the Joint Petition for Summary Dissolution of Marriage that divides their property and debts. A Regular Dissolution is the normal process for divorce that is used when a party does not qualify for a Summary Dissolution

Is my case Uncontested or Contested?

If you and your spouse can agree about the money and parenting issues in your divorce, legal separation or annulment, then you have an “uncontested” case. For some, this means that your spouse won’t even have to file a Response to your court forms. Most uncontested cases can be handled by mail or brief contacts with the clerk or judge. You may not have to go into court to handle your case.

If you and your spouse cannot agree on one or more issues, then your case is “contested.” The judge will know that your case is contested if your spouse files a Response that lists what he or she disagrees about. Once the case becomes contested, you or your spouse must file the necessary forms to set a court hearing or

trial date so the judge can hear both sides and resolve the disagreement. If your case becomes contested you should seek the advice of an attorney to protect your rights.

If your case starts out or later becomes contested, you may be able to work out an agreement through negotiation, mediation, or some other process. If you are able to reach an agreement in this way, your case can then become uncontested. Once the case is uncontested, you can handle it without going to a court hearing and can cancel any future court dates that may have already been scheduled.

What Forms are Required?

- a. Petition
- b. Response
- c. Summons
- d. Notice and Acknowledgment of Receipt
- e. Confidential Counseling Statement
- f. Schedule of Assets and Debts
- g. Income Information
- h. Expense Information
- i. Income and Expense Declaration
- j. Declaration of Disclosure
- k. Proof of Service of Summons
- l. Proof of Service by Mail
- m. Request to Enter Default
- n. Declaration for Default or Uncontested Dissolution
- o. Declaration Regarding Service of Declaration of Disclosure
- p. Judgment
- q. Notice of Entry of Judgment

What are the steps in an Uncontested Divorce?

- a. File the appropriate forms with the court, and serve the appropriate individuals
- b. File and serve the appropriate Disclosure forms
- c. File and serve the Judgment forms
- d. When you receive your Judgment form stamped by the court clerk with the date it was filed, and you have successfully served your spouse, your marriage is dissolved.

What is a Preliminary Declaration of Disclosure?

It is a form required to be completed and served by both parties. It contains information that can help you divide your property and debts, and reach agreements regarding support.

How do we separate household items?

All goods that belonged to the husband and wife before the marriage normally are returned to that individual. The husband and wife should then decide who will keep the remaining items. All of these goods should be in the hands of each spouse by the time you file for your divorce. If not, a listing of the division of goods should be included as part of the Marital Settlement Agreement.

What about personal property?

Each person involved should be permitted to keep his or her personal property. This includes such items as clothes, jewelry, books, etc. All personal property should be in the hands of its owner prior to filing for divorce. If not, a list of the division should be included in the Marital Settlement Agreement.

How do we divide our debts?

Debts can be divided in any way the husband and wife decide. As with property, any debts belonging to the spouse before the marriage are normally their responsibility after the divorce. All debts must be included in

the Marital Settlement Agreement. These may include, but are not limited to: loans, credit cards, mortgage payments, leases (apartments, cars, etc.) and medical bills.

The spouse can agree to take on complete responsibility for a debt or the husband and wife can split the payments. However, a creditor will still hold whoever signed the agreement responsible, person possessing the property. (Example: the husband keeps the microwave and pays the credit card on which the microwave was charged.)

How do we divide our bank accounts?

Savings and checking accounts should be handled in a separate provision. All money belonging to the husband and wife before marriage, should be returned to them. All remaining funds are normally divided equally although this is not a requirement.

What about our income taxes?

Both parties are responsible for all taxes due during the marriage, even if you were still married only a portion of the tax year. All tax debts acquired during the marriage must be paid. Responsibility for this debt cannot be divided. Therefore, if it is decided that the husband and wife will split the tax bill and one party does not pay, the IRS will continue to demand payment from both parties including the spouse that paid his or her share. The only way you can force your non-paying spouse to pay taxes is to take him or her to court. Once the divorce is finalized, you are no longer able to file a joint return unless the decree was dated January 1 of the next year. In other words, your marital status as of December 31, is the tax status the IRS recognizes.

Your tax return can be divided any way the parties choose or a portion could be used to pay agreed upon debts, with remaining monies being divided between the spouses.

Can I collect alimony (spousal support)?

Alimony is likely to be an area concerning your divorce, which you should not plan without legal advice. It involves complicated matters, including assessments of spouse's needs and current status, income taxes and a variety of other considerations. However, if it is not provided for in the Marital Settlement Agreement, alimony will more than likely never again be considered with regard to that particular divorce. For the most part, alimony is not provided for in brief marriages without children, given that both spouses can generally support themselves.

Alimony can be paid by either spouse on a temporary or permanent basis. The length of support can be weeks or years and can stop because of remarriage, death or a variety of reasons initially agreed upon by the husband and wife.

What if children are involved?

If children are born or adopted to the husband and wife during the marriage, the Marital Settlement Agreement must provide them with respect to custody, support visitation, medical and life insurance and tax exemptions. Remember, to obtain a no-fault divorce, you and your spouse must agree on all terms, including the care of your children, if you have any. A *Declaration Under Uniform Child Custody Jurisdiction Act* form must be completed for each child under the age of 18 that have lived outside of California in the last five years. The court may take a closer look at your documents if it looks as though more alimony or child support should be made.

Will we need mediation?

Parents must go to mediation if they disagree about how they will make decisions about or spend time with their children. Mediators are trained professionals who can help parents agree about a parenting plan. You can go to a court mediator at no cost or hire your own.

What are some of the issues concerning child custody?

The custodial spouse (the one who has main custody of the child or children) will be responsible for all aspects of raising the children. The court will always consider the best interests of the child, but generally should accept the husband and wife agreement on custody. However if the husband and wife decide to split the children between the parents, the court is likely to question that choice. **Joint legal custody** is where both parents work together to make decisions regarding their child. However, unless the joint legal custody order lists the circumstances where joint consent is required, either parent alone can make these decisions. A parent with **sole legal custody** makes parenting decisions on his or her own, without consulting the other parent.

Physical Custody: refers to where the child lives. With **joint physical custody**, the child spends significant (but not necessarily equal) time living with each parent. When one parent has **sole physical custody**, the child lives primarily with that parent and has visitation with their other parent.

Visitation

Except in cases of an unfit parent, visitation is allowed to the non-custodial parent. In fact, if the non-custodial parent is denied agreed-upon visitation, the parent denying visitation may be charged with contempt of court.

A good rule of thumb for visitation is every other weekend, one day during the opposite week, two weeks during the summer and every other holiday. Of course, other arrangements are acceptable of both parties agree, as with all terms of the no-fault divorce. These may include extended summer visits. Some parents ask the judge to decide that visits can take place only when another responsible adult is there. This is called **supervised visitation**. If you ask for supervised visits, you should say who the supervisor would be and how he or she will be paid.

Can my child may be taken out of state without my permission?

A “**Standard Family Law Restraining Order**” goes into effect as soon as the divorce petition is filed. This order stops either parent from taking the child out of California unless he or she gets the other parent’s written consent before the travel occurs, or there is a court order allowing the travel. This restriction ends when the final Judgment has been signed by the judge and filed with the court, unless the court continues that restriction in the Judgment.

How much child support is required?

The child support agreement should be flexible, taking into account the revenues and debts of the husband and wife. If you are unable to determine a proper amount of support, consult your county government or a lawyer.

Some counties have charts that suggest amounts of support and may have minimal requirements. Generally, the parent providing support may set aside a percentage of his or her after-tax salary based on the following structure:

- One child – 15-20 percent
- Two children – 25-30 percent
- Three children – 30-35 percent
- Four children – 35-40 percent
- Five children – 40-45 percent
- Six children – 45-50 percent
- Seven + children – 50 percent

In some states, support is paid through your county’s Bureau of Child Support. An administration fee will be charged for handling the payment and is usually paid by the parent paying support. Check with your County Clerks office.

Must medical insurance and life insurance be provided to the children?

You and your spouse are required to provide medical insurance for your children and coverage for non-covered expenses, which can include dental, optical and medication. Insurance can be paid by one party or split between the two. Coverage can come from the parent's existing medical coverage from their employer or can be acquired from a private medical insurance company. Life insurance is not required, however, providing life insurance in the event of your death for the benefit of your minor children may be recommended by the court. As with medical insurance, the policy may be obtained from your employer or a private agency. After your children reach the age of 18, the policy may be cancelled.

Can I qualify for a Fee Waiver so I do not have to pay filing fees?

The current filing fee for dissolution of marriage is between \$199 and \$210, depending on the County. Permission not to pay filing fees is given to some people with very low incomes. Check with your local court clerk for applications and requirements.

How long after I serve my spouse with the *Summons* and *Petition* can my divorce becomes final?

A *Notice of Entry of Judgment*, can be issued six months plus one day after serving the *Summons* and *Petition*. The court process will be over when the clerk returns your *Judgment* and the stamp in the upper right corner has the date it was filed, and you have the *Judgment* served on your spouse.

Can I ever change the agreement regarding the children, once the divorce is final?

Yes, parents can negotiate new agreements about their children at any time. If there are substantial changes in the children's needs or family situation, and you and your former spouse cannot reach an agreement on changes, a motion for modification of your current order can be made. You should consult with an attorney if there are unresolved issues.
