

Cal Divorce 123

Chapter 1



Before You File

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One of the most tragic things I know about human nature is that all of us tend to put off living. We are all dreaming of some magical rose garden over the horizon -- instead of enjoying the roses that are blooming outside our windows today.

Dale Carnegie

1. Important Considerations.

Many important considerations must be taken into account before you decide to file for divorce. Divorce actions are called dissolution of marriage actions. The marriage will be "dissolved" by the court. We use the terms "divorce," "dissolution," and "dissolution of marriage" interchangeably.

a. Representing Yourself. Hiring an attorney to handle your divorce is not necessary in many situations. Obviously, the simpler the issues are, the simpler the paperwork will be. If you and your spouse reach an agreement, this also simplifies your case. If you have children or complex property issues, your task will be more complicated, but not impossible. You can fill out the forms yourself as your own attorney. This is called to be "in pro per," "in propria persona," or "pro se." If you file the case representing yourself, you can always substitute an attorney in to represent

you later. If you have an attorney, you can change to a different attorney or change to representing yourself. When attorneys are changed in a case, or when you have an attorney come in or out of your case, a Substitution of Attorney form will be filled out and filed with the court. Your attorney will usually prepare the form for you.

b. Available Options for Legal Assistance. If you do not want to hire a lawyer to represent you in your case, you have the option of seeking advice from an attorney for limited representation. This is called "limited scope representation" or the "unbundling" of legal services instead of the traditional "full service representation" generally offered by lawyers. You have the option of doing your own paperwork to start the divorce and then seeking assistance with, for example, a complicated child support issue. Limited scope representation is a great way for you to control the cost of your divorce. You can seek assistance with only

the matters you feel incapable of handling yourself. You can also seek advice on various matters throughout your action, such as child support guidelines or custody provisions. Not all lawyers provide limited scope representation.

c. Consider Mediation.

Mediation is a process in which a neutral third party helps people resolve a controversy. The mediator helps the parties talk and focus on the real issues of the dispute and create options for settlement. The purpose of mediation is for the parties to agree to the resolution of their issues. Mediation is usually less costly than a contested divorce with attorneys involved and the parties to mediation typically resolve their emotional difficulties sooner than in a contested matter. Mediation allows the parties to resolve their issues in creative ways that work for their particular case.

d. Where to Find Additional Help. This Guide cannot cover all situations that people seeking divorces will encounter. Periodically throughout this guide we advise you to seek the advice of an attorney. .

e. Family Law Facilitator/Self Help Center. Some courts have Family Law Facilitators and Self Help Centers tlp people representing themselves fill out their paperwork. Call your courthouse to see if this service is provided.

f. A Note on the Law. The statute governing divorce in the State of California is the California Family Code. You can find a copy of the Family Code at libraries, certain book stores, or you can obtain one from a legal publishing company. You can also obtain California statutes from the State of California Website (<http://www.leginfo.ca.gov>)

There are also cases that interpret or clarify the Family Code. This is called case law.

g. The Length of Your Marriage.

The length of your marriage is relevant in several instances.

For purposes of spousal support (alimony), a marriage of more than ten (10) years is considered a "lengthy marriage." The court cannot end spousal support jurisdiction on its own in a lengthy marriage. For spousal support purposes the length of the marriage is determined from the date of marriage to the date of separation.

A spouse married more than ten years may qualify to receive part of their former spouse's old age benefits pursuant to the federal Social Security Act. Derivative social security benefits ("divorced wife" benefits) may be payable to a former spouse following a marriage that lasted ten (10) years. The length of marriage is determined from date of marriage to date of divorce for purposes of "divorced wife" benefits.

If you are close to the ten-year mark in your marriage, you must consider these provisions in deciding to separate from your spouse or file for divorce. Obviously, each situation is unique and the advice of an attorney may help you decide.

In addition, a factor considered by the court in determining the length of time spousal support will be payable is the length of the marriage.

Things to Consider Before Filing For Divorce

- Length of Marriage
- Standard Automatic Restraining Orders
- Title to Property
- Date of Separation
- Emergency Orders
- Where to File

h. Standard Restraining Orders.

When the Petition for dissolution is filed with the court, standard restraining orders automatically become effective against you.

They do not become effective against the other party until he or she is served with the divorce papers. Thus, the timing of the filing and serving of the divorce papers can be very important. The automatic standard restraining orders prohibit (1) removing minor children of the parties from the State of California; (2) changing beneficiaries of insurance policies; (3) transferring or encumbering any property.; and (4) creating or modifying nonprobate transfers in certain conditions.

**CAUTION:
AUTOMATIC RESTRAINING ORDERS**

When you file a Petition for Dissolution of Marriage, automatic restraining orders become effective against **YOU**.

You are restrained from:
(1) removing minor children of the marriage from the State of California;
(2) changing beneficiaries of insurance policies;
(3) transferring or encumbering any property; and
(4) creating or modifying nonprobate transfers in certain conditions.

i. Title to Property. The way you hold title to your property is important. If your property is held in joint tenancy, you can "sever" the joint tenancy and change title to tenants in common by recording a Notice of Severance of Joint Tenancy in the office of the county recorder of the county where the property is located. A notice must be served on the other party. This decision regarding title to property is an important one. You may wish to consult with an attorney regarding this issue. There is a right of survivorship for property held in "joint tenancy." This means that when a person dies their interest automatically passes to the remaining joint tenant and the remaining joint tenant owns the property. If

you hold property as "tenants in common" and one of you dies, the remaining tenant still owns his or her half of the property and the deceased tenant's half passes to his or her heirs (by will, trust or intestate succession).

j. Importance of Date of Separation. Just as the length of your marriage may be important in your case, the date you and your spouse separated (or will separate) may be important. The "date of marriage" marks the beginning of the time when your earnings (and assets purchased with them) become "community property." The "date of separation" marks the end of the time when your earnings (and assets purchased with them) are "community property." Your earnings become your "separate property" as of the "date of separation." This also applies to your spouse's earnings. The classic example of the importance of the date of separation is if a person wins the lottery after the date of separation. If the lottery ticket was purchased before the date of separation or with money earned before the date of separation, the lottery winnings are community property. If the lottery ticket was purchased with money earned after the date of separation, the lottery winnings are separate property. The same general rules apply to debts incurred during the marriage. Generally, if a debt is incurred between the date of marriage and the date of separation it is considered a community property debt and each party is responsible for payment of one-half of the debt. Again, this is a general rule. For interpretation of particular situations, consult a family law attorney.

i. Definition. The "date of separation" is when the parties have come to a parting of the ways with no present intent to resume their marriage and their conduct evidences a complete and final break in the marital relationship. This is often a matter of interpretation. It may or may not be the date you or your spouse moved out of the

family home. Even if you and your spouse are living separately, you may not be considered "separated" if you are maintaining your marital relationship, going to counseling, attending functions together, keeping your joint accounts, etc.

k. Emergency Orders. In certain instances an immediate court hearing may be necessary. An example is where domestic violence is present and an immediate restraining order is necessary. Another situation is where a third party is about to transfer community monies and you want the transfer stopped by the court..

l. Where to File. You can file a dissolution action in the State of California if you or your spouse have lived in California for six (6) months before filing the action. To file a dissolution action in a particular county you or your spouse must have lived in that county for three (3) months before filing the action. You must state this information on the Petition for Dissolution under penalty of perjury. This is usually not an issue unless you have moved around a lot or if you or your spouse are in a different county, state, or country.

If you have minor children with your spouse, the action must be filed in the county in which the children live. If your children have not lived in the State of California for six (6) months before the filing of the action, another state may have jurisdiction of the children under the Uniform Child Custody Jurisdiction Act. You should consult a family law attorney if you are in this situation.

In California divorces are filed in the

Superior Court. If the county you are going to file in has more than one branch of the Superior Court, you must decide which branch is proper for you to file in. This is usually determined by where you or your spouse live.

m. An Overview of a Divorce Action. A divorce action is begun by the filing of paperwork with the court requesting the dissolution of your marriage. The specific paperwork is discussed in detail later in this Guide. The automatic restraining orders go into effect against you when the Petition is filed and against the Respondent when he or she is served. The next step is having the Respondent served with the divorce papers. Once the Respondent is served, the six-month period required for the marital status to be terminated begins to run. The six-month period begins on the date of service, not on the date the Petition is filed. You are not automatically divorced when the six months are up. You must file additional papers with the court to get divorced. Before the final orders either you or the Respondent may ask the court for temporary orders needed until the final orders are made. The final orders are called a Judgment. You can obtain temporary orders for such things as child support, child custody, spousal support, or possession of property, among other things. The method for obtaining the final Judgment varies depending on whether the Respondent has filed response papers with the court and whether you and the Respondent have agreed regarding the issues in your case.