

CALIFORNIA DIVORCE BASICS

Residency Requirements and Grounds for Divorce

You must be a resident of California for six months and a county resident for three months to file for a divorce, called a “dissolution.”

Either spouse can get a divorce simply by stating in the divorce papers that “irreconcilable differences” have caused a breakdown in the marriage. If both spouses are in agreement that there should be a divorce, they can agree in writing (called a “stipulation”) that the marriage can be ended.

The legal divorce process begins when one of the spouses files a “Petition for Dissolution of Marriage” with the Superior Court. The other spouse is then served with the paperwork and given time to respond. If the parties are in agreement about property and debt division, as well as any child custody and support matters, the divorce can be finalized without a trial. If the parties can’t come to an agreement, the court will set a time for a hearing in the future.

After the Petition for Dissolution has been filed, either party can request temporary assistance from the court, for instance, in the form of temporary custody and child support orders, spousal support orders, or orders to determine who pays community debts on a temporary basis.

Dividing Your Property

California is a “community property” state, which means that assets and debts acquired during your marriage will be divided equally when you divorce.

But not all property is considered “community property”:

For example, any assets you had before you married will be considered “separate property” if you kept that property separated from property acquired during the marriage.

The income produced by a separate property investment is also separate property, as long as it hasn’t been “commingled;” meaning, that it wasn’t mixed together with community money. Property you inherit from your family or otherwise gifted to you during your marriage will generally be considered your own separate property if it was willed exclusively to you and you did not commingle it with community assets during the marriage.

It’s important to collect all the information you can about all your property, including when you purchased it, approximately how much it is worth, and details such as account numbers, serial numbers, and so forth. Collecting this information before you see a divorce lawyer can save you a lot of time and money.

Alimony

A court can order alimony, which is called “spousal support” in California. A court will generally consider such factors as:

- The standard of living established during the marriage
- The duration of the marriage
- The needs of each party
- The financial resources and liabilities of each party
- The impact on the children of having the care-giving spouse working
- The contribution of each party to domestic duties and the education and career of the other party
- Any tax consequences
- All sources of income available to either party

A court can order temporary spousal support while the divorce is pending. Spousal support is usually ordered for a specific length of time. Once ordered, it can be modified only upon a showing of a “change in circumstances.”

Child Custody and Visitation

In California, the court can make custody decisions based on what is in the “best interest” of the child, but will do so only if the parents can’t come to an agreement between themselves. In deciding which parent should have primary custody, the court will consider:

- Which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent
- The history of contact between the parents and the child
- The health, safety, and welfare of the child
- The mental and physical health of the parents, including any history of continual alcohol or drug usage
- The preference of the child, if the child is intelligent, understanding, and experienced/mature enough to express a preference
- Evidence of child abuse

After the custody order is signed by the judge and filed with the court clerk, both parents are bound by it. If a parent is denied court-ordered access to a child, he or she may bring the issue back before the court to enforce visitation. The judge may decide to modify the custody/visitation order, order makeup visitation for the time missed, or order counseling or mediation.

Child Support

In California, child support is based on factors, such as:

- The incomes of both parents
- How many children the parent is responsible for supporting
- How much time the children spend with each parent

If necessary, a court can set aside a portion of joint or separate assets of the parties to be put into a separate trust or fund for the support and education of the parties' children.

A California child support order can be modified if there has been a "change in circumstances." Examples of this would include:

- A big increase or decrease in either parent's income
- The child spending a lot more time with the other parent
- The child being several years older or having special financial needs such as schooling or medical expenses

For more information, or to have a confidential discussion about your particular matter, please contact the Law Offices of Michael Apicella at: 415-377-1580, or visit our website at: www.apicellalaw.com.