

State Divorce Laws: California

Residency and Filing Requirements: In order to file for a dissolution of marriage in California, residency requirements must be met for the court to accept the case. If the court discovers it does not have jurisdictional rights to hear the case it will not be accepted or it will eventually be dismissed. The requirements are as follows:

A judgment of dissolution of marriage may not be entered unless one of the parties to the marriage has been a resident of this state for six months and of the county in which the proceeding is filed for three months next preceding the filing of the petition.

For the purpose of a proceeding for dissolution of marriage, the husband and wife each may have a separate domicile or residence depending upon proof of the fact and not upon legal presumptions. (California Code - Sections: 297, 298, 2320, 2339)

Grounds for Filing: The Petition for Dissolution of Marriage must declare the appropriate California grounds upon which the dissolution of marriage is being sought. The appropriate lawful ground will be that which the parties agree upon and can substantiate, or that which the filing spouse desires to prove to the court. The dissolution of marriage grounds are as follows:

The effect of a judgment of dissolution of marriage when it becomes final is to restore the parties to the state of unmarried persons.

Dissolution of the marriage or legal separation of the parties may be based on either of the following grounds, which shall be pleaded generally: (a) Irreconcilable differences, which have caused the irremediable breakdown of the marriage. (b) Incurable insanity.

Irreconcilable differences are those grounds which are determined by the court to be substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved.

A marriage may be dissolved on the grounds of incurable insanity only upon proof, including competent medical or psychiatric testimony, that the insane spouse was at the time the petition was filed, and remains, incurably insane.

No dissolution of marriage granted on the ground of incurable insanity relieves a spouse from any obligation imposed by law as a result of the marriage for the support of the spouse who is incurably insane, and the court may make such order for support. (California Code - Sections: 2310)

Filing Spouse Title: Petitioner. The Petitioner is the spouse who initiates the

filing procedure with the family law or domestic relations court.

Non-Filing Spouse Title: Respondent. The Respondent is the spouse who does not file the initial dissolution of marriage papers, but rather receives them by service.

Court Name: Superior Court of California, County of _____. This is the California court where the dissolution of marriage will be filed. The court will assign a case number and have jurisdictional rights to facilitate and grant the orders concerning, but not limited to: property and debt division, support, custody, and visitation. The name of the court is clearly represented at the top of all documents that are filed.

Primary Documents: Petition for Dissolution of Marriage and Final Judgment of Dissolution of Marriage. These are the essential documents needed to start and finalize a dissolution of marriage according to California law. There are anywhere from ten to twenty other documents that may be required throughout the filing process. A few other documents that are typically filed during the process are: Appearance, Stipulations, and Waivers, Preliminary Declaration of Disclosure, Declaration Re Service of Declaration of Disclosure and Income and Expense Statement, Marital Settlement Agreement, and Declaration for Default or Uncontested Dissolution of Marriage.

Court Clerk's Title: County Clerk's Office of the Superior Court. The clerk or the clerk's assistants will be the people managing your paperwork with the court. The clerk's office will keep the parties and the lawyers informed throughout the process in regards to additional paperwork that is needed, further requirements, and hearing dates and times.

Property Distribution: California is a "Community Property" state. Community property is all property that was acquired during the marriage. This property will be divided equally (50-50) by the court if the parties are not able to come to an agreement.

For the purpose of division of property on dissolution of marriage or legal separation of the parties, property acquired by the parties during marriage in joint form, including property held in tenancy in common, joint tenancy, or tenancy by the entirety, or as community property, is presumed to be community property. This presumption is a presumption affecting the burden of proof and may be rebutted by either of the following: (a) A clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community property. (b) Proof that the parties have made a written agreement that the property is separate property.

Where economic circumstances warrant, the court may award an asset of the community estate to one party on such conditions as the court deems proper to

effect a substantially equal division of the community estate.

As an additional award or offset against existing property, the court may award, from a party's share, the amount the court determines to have been deliberately misappropriated by the party to the exclusion of the interest of the other party in the community estate.

Debts incurred by either spouse after the date of separation but before entry of a judgment of dissolution of marriage or legal separation of the parties shall be confirmed as follows: (a) Debts incurred by either spouse for the common necessities of life of either spouse or the necessities of life of the children of the marriage for whom support may be ordered, in the absence of a court order or written agreement for support or for the payment of these debts, shall be confirmed to either spouse according to the parties' respective needs and abilities to pay at the time the debt was incurred. (b) Debts incurred by either spouse for nonnecessaries of that spouse or children of the marriage for whom support may be ordered shall be confirmed without offset to the spouse who incurred the debt.

Debts incurred by either spouse after entry of a judgment of dissolution of marriage but before termination of the parties' marital status or after entry of a judgment of legal separation of the parties shall be confirmed without offset to the spouse who incurred the debt. (California Code - Sections: 2501, 2581, 2601, 2602, 2621, 2623, 2625, 2641)

Spousal Support: Not all cases involve support from one spouse to the other. The obligation of one spouse to support the other financially for a temporary or permanent basis is decided on a case-by-case basis as agreed to by the parties or at the court's discretion.

In ordering spousal support under this part, the court shall consider all of the following circumstances: (a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following: (1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment. (2) The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties. (b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party. (c) The ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living. (d) The needs of each party based on the standard of living established during the marriage. (e)

The obligations and assets, including the separate property, of each party. (f) The duration of the marriage. (g) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party. (h) The age and health of the parties. (i) Documented evidence of any history of domestic violence, as defined in Section 6211, between the parties, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party. (j) The immediate and specific tax consequences to each party. (k) The balance of the hardships to each party. (l) The goal that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration as described in Section 4336, a "reasonable period of time" for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court's discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section, Section 4336, and the circumstances of the parties. (m) The criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award. (n) Any other factors the court determines are just and equitable. (California Code - Sections: 4320, 4324, 4330)

Child Custody: When minor children are involved in a dissolution of marriage, the California courts will do everything possible to help lessen the emotional trauma the children may be experiencing. If the parents cannot come to an agreement regarding the issues involving the children, the court will establish the custody order at its discretion.

In making a determination of the best interest of the child, the court shall, among any other factors it finds relevant, consider all of the following: (a) The health, safety, and welfare of the child. (b) Any history of abuse by one parent or any other person seeking custody against any of the following: (1) Any child to whom he or she is related by blood or affinity or with whom he or she has had a caretaking relationship, no matter how temporary. (2) The other parent. (3) A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship. (c) The nature and amount of contact with both parents. (d) The habitual or continual illegal use of controlled substances or habitual or continual abuse of alcohol by either parent. Notwithstanding any other provision of law, in any proceeding to determine child custody or visitation with a child, every custody or visitation order shall contain all of the following: (1) The basis for the court's exercise of jurisdiction. (2) The manner in which notice and opportunity to be heard were given. (3) A clear description of the custody and visitation rights of each party. (4) A provision stating that a violation of the order may subject the party in violation to civil or criminal penalties, or both. (5) Identification of the country of habitual residence of the child or children. (California Code - Sections: 3011, 3020, 3024, 3040, 3042)

Child Support: California child support guidelines are based on the Income Shares Model for calculating child support. The monthly support amount determined by applying the guidelines is divided proportionally according to each parent's income. These two support amounts are then offset to establish which parent will pay the other parent for support of the child. All income is typically verified by examining past W-2's and child support worksheets are available at the courthouse.

In implementing the statewide uniform guideline, the courts shall adhere to the following principles: (a) A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life. (b) Both parents are mutually responsible for the support of their children. (c) The guideline takes into account each parent's actual income and level of responsibility for the children. (d) Each parent should pay for the support of the children according to his or her ability. (e) The guideline seeks to place the interests of children as the state's top priority. (f) Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children. (g) Child support orders in cases in which both parents have high levels of responsibility for the children should reflect the increased costs of raising the children in two homes and should minimize significant disparities in the children's living standards in the two homes. (h) The financial needs of the children should be met through private financial resources as much as possible. (i) It is presumed that a parent having primary physical responsibility for the children contributes a significant portion of available resources for the support of the children. (j) The guideline seeks to encourage fair and efficient settlements of conflicts between parents and seeks to minimize the need for litigation. (k) The guideline is intended to be presumptively correct in all cases, and only under special circumstances should child support orders fall below the child support mandated by the guideline formula. (l) Child support orders must ensure that children actually receive fair, timely, and sufficient support reflecting the state's high standard of living and high costs of raising children compared to other states. (California Code - Sections: 3024, 3622, 4001, 4050)

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