

COMMONLY ASKED QUESTIONS ABOUT GETTING A DIVORCE IN CALIFORNIA

1. How long will it take for my divorce to be completed?

A divorce is not a quick process. The soonest you can terminate your marital status is six months after the date the Petition is filed and served (see below.) Other issues of the case can take a longer or shorter time to resolve. The timing of resolution may depend upon the amount of information to gather, the emotional state of the participants, and the complexity of the issues to resolve. Collaborative Practice or mediation typically result in an agreement in weeks or months. In contrast, litigated cases can sometimes take up to a number of years to conclude.

2. Will I automatically be divorced in six months?

In California, you can obtain a divorce no sooner than six months from the date the Petition is served. If the other issues of the divorce (i.e. property division, support and parenting issues) are not resolved within this six month time frame, you are entitled to request a "bifurcated Judgment." This is a fancy term meaning that your status as a married person is separated from the other issues in your case, and a judgment terminating your status as a married person is obtained. This does not happen automatically. If you want to terminate your marital status before the other issues of your case are resolved, you must affirmatively ask the court for relief. It will not magically happen at the six month mark.

3. What is the difference between a "legal separation" and a "divorce"?

The main difference between obtaining a legal separation versus obtaining a divorce is that in a legal separation, you do not ask the court to terminate your marital status. Some parties choose to pursue a legal separation for personal reasons such as religious beliefs or health insurance concerns. They still, however, must complete the same process as parties undergoing a divorce (i.e. divide marital assets and debts). Also, to file for a *divorce* in a certain county, you must reside there for at least three months. If you have not lived in that county for three months, you can first file for a legal separation (which has no time restrictions for filing) and then later amend your Petition to file for a divorce once you have resided in the county for three months.

4. What protects me from having my spouse take all of the money/assets?

While a dissolution is pending, there are certain duties and restraining orders which apply to both spouses. At the beginning of the case, the court automatically issues restraining orders. These are found on the back of the Summons if you need to review them. Generally, you are prohibited from doing any of the following:

- a. Taking minor children out of state without prior written consent or court order;
- b. Making changes regarding your insurance, including cancelling, borrowing against, cashing, or changing the beneficiaries. This includes all types of insurance;
- c. Transferring, selling, or concealing assets or using them as security for a loan, without the consent of the other or court order.
- d. Making certain changes in your estate plan.

In addition to these restraining orders, you have a fiduciary duty to manage and control community property properly. This duty is one of "the highest good faith and fair dealing." You must provide information or access to information which affects transactions regarding community property. If you obtain a profit from community property without the other's consent, you hold it as trustee for the other.

5. How long will I be entitled to receive or be obligated to pay spousal support?

The duration of spousal support is always within the discretion of the court. As a general framework, however, if you were married for a period less than ten years, you may be entitled to or required to pay support for approximately one half the length of the marriage. For example, if you were married for six years, spousal support may be paid for three years.

If you were married for a period of greater than ten years, this is considered a marriage of "long duration", and the duration of support could extend for an even greater period of time when parties were married for extended periods of time. If litigated, a court would usually retain the ability to make decisions about the amount and duration of spousal support.

6. How is spousal support and child support calculated?

In the absence of an agreement, the following is how a court will determine support.

Child support is calculated by using a "guideline" formula. Attorneys and court systems in California use a computer program which calculates guideline child support. This guideline formula takes into consideration the respective incomes of each party, the percentage of time the child has with each parent, and various other factors that affect an individual's income. The "guideline" amount is followed by the court except in rare and unusual circumstances.

Spousal support is based on the following circumstances:

- a. The standard of living enjoyed by the parties during their marriage;
- b. The income or earning capacity of each party;
- c. The marketable skills, job training or education needed for the supported spouse;
- d. The extent to which the supported party's present or future earning capacity is impaired due to periods of unemployment;
- e. The extent to which the supported party contributed to the attainment of education, training, or career of the paying party;
- f. The needs of each party based on the standard of living established during the marriage;

- g. The obligations and assets of each party;
- h. The duration of the marriage;
- i. The ability of the supported spouse to engage in gainful employment without interfering with the interests of dependent children in that spouse's custody;
- j. The age and health of the parties;
- k. Documented history of domestic violence;
- l. The immediate tax consequences to each party;
- m. The balance of the hardships to each party;
- n. Goal that the supported spouse be self supporting within a reasonable period of time. For marriages of less than ten years, this is generally one-half the length of the marriage;
- o. Criminal conviction of an abusive spouse;
- p. Any other facts the court determines are just and reasonable.

In determining long-term support, the court is not permitted to use a formula. The possible range of support which could be ordered is significant because the judge who makes the decision has substantial discretion.

7. What happens to gifts or inheritances or assets I owned prior to marriage?

A gift or inheritance is the separate property of the party receiving the gift or the inheritance. It is not a community property asset that will be evenly divided, unless the gift or inheritance is intended for *both spouses*. Separate property also includes assets owned prior to marriage. Subsequent actions can alter the ownership of or rights associated with the ownership of separate property. The question of whether a particular asset or debt is community or separate is sometimes complicated, so obtaining information from an attorney can be helpful.

8. Do I ever have to appear in court?

It is not necessary to appear in court if you reach an agreement. Once an agreement is reached, the Marital Settlement Agreement, which sets forth the division of the parties' property, support and parenting arrangements, can be submitted and approved by the court without a personal appearance.

9. How do I help our children deal with this process?

Talk with your children and be open and honest, without disparaging the other parent. Talking ill about the other parent in front of your children is harmful and will cause long term harm to your children and their relationships with you and the other parent. There are also many resources available in Sonoma County to help children deal with the transition. There are programs for children offered through Kids Turn and Kaiser, and there is an abundance of reading material available.

10. What is the difference between "legal custody" and "physical custody"?

Legal Custody refers to the right and the responsibility to make the decisions relating to the health, education, and welfare of a child. Physical Custody refers to the periods in which a parent physically cares for the child.