

## **GLOSSARY DISSOLUTION OF MARRIAGE**

Note: The following are general descriptions of various terms commonly used in divorce proceedings. Please note that the circumstances of your case may involve complexities which affect that application of these terms to your situation.

### *ALTERNATE DISPUTE RESOLUTION*

Alternate Dispute Resolution, or "ADR," is the term used for all the ways to resolve disputes which do not involve litigating in court. See below for descriptions of arbitration, collaborative law, mediation, neutral case evaluation and private judging. Typically, the use of ADR leads to a more satisfactory and cost-effective resolution.

### *ARBITRATION*

Parties can agree to have the contested issues in their case decided by an arbitrator chosen by them. Each party has an opportunity to present the arbitrator with a written statement outlining their position, in advance of the hearing. On the day of the hearing, each party receives an appropriate amount of time to present their side. Upon a review of all the evidence, including the oral testimony, the arbitrator makes a formal decision in writing, which is filed with the Court.

There are two types of arbitration: binding and non-binding. In non-binding arbitration, the arbitrator's decision serves as a guide to bring the parties closer to settlement. If binding, once the Arbitrator files the decision with the Court, it becomes the judgment on the issues arbitrated, unless one of the parties requests a trial within 30 days.

### *ARREARS*

"Arrears" in family law usually refers to overdue support.

### *BIFURCATION*

"Bifurcation" literally means to split something in two. Sometimes the complexity of a divorce case or other factors makes it difficult to resolve all issues (property division, support, custody of children, etc.) at one time. In this situation, bifurcation allows the parties to split the issue of whether they are married or not from the other issues. A Judgment can be entered that the parties are no longer married and are now legally single, and leaving the remaining issues of their marriage to be decided at a later date. Other issues can also be bifurcated, or decided separately from the remaining issues. However, the term "bifurcation" is commonly used to refer to the separate Judgment regarding the status of the marriage.

### *COLLABORATIVE LAW*

This is a process whereby each spouse retains an attorney to represent them in the dissolution process with the understanding that the case will be resolved outside of court. The goal is to resolve the conflict in as close to a win-win manner as possible, while avoiding the powerlessness and expense of litigation and trial. Collaborative process involves informal conferences and the open sharing of information. Both parties sign a collaborative law stipulation which states that if the parties are not able to resolve the issues, the collaborative lawyers must withdraw and trial lawyers will be retained for court proceedings.. Collaborative process can also include the use of other professionals who are committed to assisting the family in resolving the divorce outside of court.

### *CHILD ABDUCTION*

It is a crime for a parent to maliciously take, detain, conceal or entice away a child, with intent to deprive custody or visitation rights of the other parent.

### *CHILD CUSTODY*

The custody of children will be awarded according to the best interests of the children. There is a presumption that joint custody is in the best interest of a minor child. If one parent is granted sole custody, the non-custodial parent will be granted reasonable visitation rights, unless there is a showing of emergency or unusual circumstances. Temporary orders regarding custody will generally keep the children in the home in which the children have been living for the past several months, unless there is a showing of unusual circumstances which would be damaging or dangerous to the children's general welfare.

The following are the statutory definitions of the different custodial arrangements: (Family Code Sections 3002-3009)

1. "Joint custody" means joint physical custody and joint legal custody.
2. "Sole physical custody" means that a child shall reside with and be under the supervision of one parent, subject to the power of the court to order visitation.
3. "Joint physical custody" means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way so as to assure a child of frequent and continuing contact with both parents.
4. "Sole legal custody" means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

5. "Joint legal custody" means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

### *CHILD SUPPORT*

Parents have the duty to support their children until they either turn 18, or if still in high school, until age 19 or graduation from high school, whichever comes first. Parents can also be ordered to pay child support for a child of any age who is incapacitated and unable to support him or herself.

The Courts have established a statewide unified "guideline" child support formula which is typically calculated in Sonoma County by means of a computer program called "Dissomaster." The following principles are components of guideline child support (Family Code Section 4053):

"(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."

Certain variables are entered into the *Dissomaster* computer system in order to calculate the appropriate guideline child support on a case by case basis. These main variables include: (1) the monthly gross income of each party from all sources, (2) the actual federal income tax filing status of each parent (for example, single, married, married filing separately, or head of household) and number of exemptions, (3) deductions from gross income for each parent, (4) the number of minor children and the approximate percentage of time that each parent has primary physical responsibility for the children compared to the other parent.

In addition to the base guideline support amount, the court will order the following as additional child support:

- (1) Child care costs related to employment or to reasonably necessary education or training for employment skills; and
- (2) The reasonable uninsured health care costs for the children.

The court may order the following as additional child support:

- (1) Costs related to the educational or other special needs of the children.
- (2) Travel expenses for visitation.

In addition, Family Code Section 4066 provides that parties may designate as "family support" an unallocated total sum for support of the spouse and any children without specifically labeling all or any portion as "child support," as long as the amount is adjusted to reflect the effect of the tax liability to the recipient. Family

support is fully taxable to the recipient and tax deductible by the payor. Child support is not taxable or tax deductible.

Family support is designed to maximize the tax benefits for both parents and can result in significant additional cash flow for the family. However, parties may wish to seek the advice of a tax professional in determining whether to allocate support as separate child support and spousal support, or lump it together as family support.

It is not unusual for the needs of the parties to exceed their combined income. The Court is primarily concerned with the actual income of the parties and only secondarily concerned with the living expenses.

*CHILDREN'S PROPERTY* According to Family Code Section 7502, the child's property belongs to the child. Therefore, unless there is a Van Gogh painting hanging in one of your children's rooms, it would be best to concede that the children's furniture is owned by them and excluded from the personal property division.

*CLAIMANT* Claimant refers to a non-spouse who becomes a party to a dissolution action for any of a variety of reasons. For example, sometimes a retirement plan is joined as a party.

*COMMUNITY PROPERTY* Community property includes both assets and obligations and is generally defined as all real property situated in the State of California and all personal property, wherever situated, acquired during marriage by a married person while domiciled in the State of California; and property held in trust pursuant to Family Code Section 761 (with some exceptions; see SEPARATE PROPERTY). Community property is also generally defined so as to include the earnings of either party from the date of marriage to the date of separation and any property of any nature acquired with those earnings, and any obligations incurred by either party from date of marriage to date of separation for personal, family business, or household purposes other than obligations attributable to separate property. (See Debts for other exceptions.)

*CONTEMPT OF COURT* A party may be held in contempt of court when it has been established that the court has made a lawful order, the citee (person to be held in contempt) had knowledge of the order; the citee had the ability to comply with the order; and the citee wilfully disobeyed the court order. Punishment for contempt in Family Law Court is limited to 120 hours jail time or community service for the first conviction. Subsequent violations are more severe, up

to 240 hours of jail time or community service, and may include administrative fines. In certain circumstances, a citee may be jailed until he or she obeys the order.

### *DEBTS*

In the divorce situation, debts are characterized either as community (incurred during the marriage) or separate (incurred before marriage or after the date of separation or final Judgment).

All separate debts are allocated to the spouse who incurred them. Sometimes a debt incurred by one spouse during the marriage, but not incurred for the benefit of the community (such as a gambling debt), is assigned to the spouse who incurred the debt.

Unless the parties agree in writing otherwise, the Court will divide all community debts between the parties equally. The value of the debts is determined at the time of trial or distribution.

There are some exceptions to the general rule. For example, under some circumstances, a student loan is assumed by the student without offsetting property or an offsetting debt assigned to the other spouse.

In a situation where community debts exceed total assets, the excess of debt is assigned between the parties as the Court deems just and equitable, taking into account factors such as the parties' earning capacity and relative ability to pay. (Family Code Section 2622 (b).)

### *DECLARATION FOR DEFAULT OR UNCONTESTED DISSOLUTION*

A request filed by either the Petitioner or the Respondent that the Judgment be entered in the action without appearing in person.

### *DECLARATION OF DISCLOSURE*

California law provides that each party in a dissolution is required to disclose any information which is relevant to the decisions to be made in dividing property or the payment of support (see Fiduciary Duties). As part of this requirement, each party is required under Family Code Sections 2100 and 2105 to prepare and give to the other party numerous forms describing assets, debts, income, expenses, and other important financial information. The package of forms is called a Declaration of Disclosure, and includes a Schedule of Assets and Debts, an Income and Expense Declaration.

## *DOMESTIC VIOLENCE*

Domestic violence is abuse perpetrated against any of the following persons (Family Code Section 6211):

- (a) A spouse or former spouse.
- (b) A cohabitant or former cohabitant.
- (c) A person with whom a party is having or has had a dating or engagement relationship.
- (d) A person with whom a party has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Fam. Code §7600 et seq.).
- (e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.
- (f) Any other person related by consanguinity or affinity within the second degree.

"Abuse" means intentionally or recklessly to cause or attempt to cause bodily injury, or sexual assault, or to place a person in reasonable apprehension of imminent serious bodily injury to that person or to another. (Fam. Code §6203.)

"Affinity," when applied to the marriage relation, signifies the connection existing in consequence of marriage between each of the married persons and the blood relatives of the other." (Fam. Code §6205.)

"Cohabitant" means a person who regularly resides in the household. "Former cohabitant" means a person who formerly regularly resided in the household. A roommate is not usually a cohabitant. (Fam. Code §6209)

## *EPSTEIN CREDITS*

If either spouse pays community obligations after separation from separate funds, such as earnings, that spouse may be entitled to *Epstein* credits in the property division (named after the case of *Marriage of Epstein*). The spouse will receive credit in the property division for such payments except in certain circumstances. For example, a spouse who is using an asset for which payments are made (i.e. car loan) may not be entitled to full credit. Or a spouse who makes payments in lieu of support may not be entitled to credit.

*EXCLUSION FROM  
THE RESIDENCE  
("Kick-out Order")*

Either spouse can obtain an emergency order from the Court excluding the other from the residence; however, such an order is usually limited to situations when someone has been assaulted or threatened with assault by the other spouse. Shortly after getting the emergency order, there will be a formal, though usually short, hearing or trial to determine if the orders should be permanent.

*EXCLUSIVE POSSESSION  
OF HOME AWARD*

Family Code Sections 3801 and 3802 provide that the Court has the right to defer the sale of the family home and award its temporary exclusive use and possession to a custodial parent in order to minimize the adverse impact of the divorce on the welfare of the child.

When a party makes a request for a deferred sale of the home/exclusive possession order, the court must first determine whether it is economically feasible to maintain the payments of any note secured by a deed of trust, property taxes and insurance for the home during the period the sale of the home is deferred. In making this determination, the court shall consider the resident parent's income, the availability of spousal and/or support, and any other sources of funds available to make those payments.

The Court takes these steps to avoid the likelihood of a possible foreclosure, to avoid inadequate insurance coverage, and to prevent deterioration of the condition of the family home, as well as any other circumstance which would jeopardize both parents' equity in the home.

The court can also consider the financial impact on the other spouse. For example, whether the other spouse will be able to purchase a home without access to the equity in the family residence.

After looking at these factors, the court must then determine that the order is necessary to minimize the adverse impact of the dissolution of marriage or legal separation of the parties on the child. In making this determination, the court considers all of following:

- (1) Time child has resided in home.
- (2) Child's grade in school.
- (3) Accessibility and convenience of school, day care and other services or facilities used by child.
- (4) Modifications to home for physical handicap of child or custodial parent.
- (5) Emotional detriment to child of change in residence.

- (6) Whether location of home permits resident parent to continue employment.
- (7) Financial ability of each parent to obtain suitable housing.
- (8) Tax consequences to parents.
- (9) Economic detriment to nonresident parent of deferred sale of home order.
- (10) Other equitable factors. (Fam. Code Section 3802.)

The order may specify the parties' respective responsibilities for the payment of the costs of routine maintenance and capital improvements. Except as otherwise agreed to by the parties in writing, a deferred sale of home order may be modified or terminated at any time at the discretion of the court. This includes situations where the custodial parent remarries, or there is otherwise a change of circumstances affecting the economic status of the parties or the children on which the award is based.

#### *EX PARTE ORDER*

An order granted before a formal hearing, and sometimes without the opposing party having notice of the request for the order or having the opportunity to present his or her side of the issue to the court. Usually, a court will make an ex parte order only in urgent cases. Typically, the ex parte order is for a limited short period of time until a formal hearing can be held.

#### *EARNINGS*

Earnings refers to the property acquired from the exercise of labor, skill, efforts, or ability of a party. The term "earnings" is broader than the term "wages" or "salary" and includes all forms of economic benefit derived as "the fruit or award for labor and services without the aid of capital."

#### *FIDUCIARY DUTIES*

Both during marriage and after separation until the completed property division, spouses owe fiduciary duties to each other. Under Family Code Section 1100(e), these duties include "the obligation to make full disclosure to the other spouse of all material facts and information regarding the existence, characterization, and valuation of all assets in which the community has or may have an interest and debts for which the community is or may be liable, and to provide equal access to all information, records, and books that pertain to the value and character of those assets and debts, upon request." Spouses are expected to manage community assets for the benefit of both parties and can be liable for actions which detrimentally affect the interests of the other spouse. It is virtually impossible to get into trouble for disclosing too much information. It is possible, if not likely, to create a problem with too little information.

#### *FILING FEES*

The cost to file various documents with the court. The filing fees change frequently, sometimes as often as twice a year. The filing

fee for initiating a case is several hundred dollars. There are other actions (filing a motion, requesting an ex parte order, trial-related activities) that require additional fees to be paid.

#### *GIFTS*

Either spouse can convert his/her separate property to community property or an interest in community property into the other spouse's separate property by making a gift to the other spouse.

In order for there to be a valid gift, in addition to delivery and acceptance, there must be an intention on the part of the donor to make an unconditional gift. It is the burden of the recipient to establish that a gift was intended. Special rules apply to gifts between spouses. A gift of clothing, wearing apparel, jewelry, or other tangible articles of a personal nature and not substantial in value can be made without any documentation. However, other gifts may require written documentation. See Transmutation, below, for further information.

#### *GOODWILL*

Goodwill of a business is the probability that a business will be able to continue to attract business, either from old customers or due to its reputation. When businesses are valued and awarded in a divorce, the value of the business will include an estimate of its goodwill.

#### *HARASSMENT*

Civil harassment is a knowing and wilful course of conduct directed at a specific person which seriously alarms, annoys, or harasses such persons and which serves no legitimate purpose.

#### *INCOME AND EXPENSE DECLARATION*

A form to provide the Court and other party with current information as to the financial circumstances of the party. This form must be filed whenever there will be a hearing regarding money, property, costs or attorneys fees, It can be one of the most important documents in a dissolution proceeding when support is an issue. In addition, each party is required to complete and serve an Income and Expense Declaration on the other party prior to obtaining a Judgment (see Declaration of Disclosure.)

#### *INJUNCTIVE ORDER*

A court order either telling a party to stop doing something, or ordering the party to do something that is required.

#### *IRRECONCILABLE DIFFERENCES*

In California, the only grounds for divorce are incurable insanity or that the marriage has completely broken down due to irreconcilable differences." Irreconcilable differences means any reason by one or both spouses for not continuing the marriage. Spouses are not required or allowed to prove any specific bad acts by the other spouse in order to justify a divorce.

*JOINT TENANCY PROPERTY  
ACQUIRED DURING  
MARRIAGE*

Many couples acquire property during marriage in "joint tenancy" form. Joint tenancy property is owned equally while the owners are alive and goes all to the survivor(s) upon a joint tenant's death. This survivorship feature is different from community property ownership, inasmuch as a spouse can transfer community property on death.

Because of problems these legal concepts created in the dissolution setting, the Legislature specifically enacted Family Code Section 2581, which provides that for purposes of divorce, joint tenancy property is assumed to be community property unless a spouse can prove one 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."

This presumption applies to all jointly-held community property, such as land, bank accounts, automobiles, etc.

Often, property held in joint tenancy is acquired or improved by using separate property funds, such as an inheritance or property owned before marriage. In such a case, unless a party has made a written waiver of the right of reimbursement of his/her separate property contribution or signed a writing having the effect of a waiver, the party is reimbursed for his/her contributions to the acquisition or improvement of the property to the extent the party traces the contributions to a separate property source. The amount of reimbursement is the amount contributed, without interest or appreciation. If the property has decreased in value to lower than the amount of the contribution, then the reimbursement is limited to the current value. Expenditures that can be reimbursed include down payments, payments for improvements and the payments that reduce the principal of a loan that are used to finance the purchase or improvement of the property, but does not include payments of interest on the loan or payments made for the maintenance, insurance or taxation of the property.

*JUDGMENT*

The final court order granting the dissolution of marriage. This may be obtained not less than six (6) months after the date of service of a copy of the Petition and Summons on the Respondent or the date the Respondent appeared (whichever occurs first.)

*LIVING SEPARATE  
AND APART*

The phrase "living separate and apart" relates to that condition when spouses have come to a parting of the ways with no present intention of resuming marital relations. This term is also called "date of separation." The controlling factor in determining whether separation has occurred is the parties' conduct, and not the subjective intent of one party. The separation date is important as it has a significant bearing on what is community property and what is separate property.

*MARITAL SETTLEMENT  
AGREEMENT*

An agreement between the parties providing for disposition and distribution of their community property, custody of children, support and payment of attorneys fees and court costs.

*"MEDIATION" IN  
CUSTODY DISPUTES*

When a Petition or other application for an order or modification of an order for child custody or visitation is contested, the matter must be set for court-mandated "mediation". The purpose is to attempt to develop an agreement assuring the children's close and continuing contact with both parents after dissolution. Court mediation proceedings are usually only with the parties, and attorneys are excluded from participation. The mediator has the duty to evaluate the children's needs and interests and occasionally may interview them if appropriate or necessary. The mediator may: (1) make recommendations on custody or visitation to the court; (2) when the parties have not reached an agreement, recommend a custody evaluation; (3) recommend other action to be taken by the parties to resolve the controversy prior to hearing; and (4) recommend mutual restraining orders to protect the well-being of the children pending determination of the issues. Court-mandated custody mediation is not confidential.

*MEDIATION -  
PRIVATE MEDIATION*

At any time during the course of the action, the parties can stipulate to mediate their unresolved issues. Mediation is a voluntary form of Alternative Dispute Resolution (see also Arbitration and Collaborative Law). The goal of mediation is an informal, quick and confidential settlement. The mediator remains neutral and assists the parties in arriving at terms that are mutually agreeable by facilitating the identification of issues and areas where the parties already agree. If no agreements have been reached after the initial mediation session, the parties can opt out of the mediation process, or continue mediation sessions until an agreement has been reached. Private mediation is confidential and if an agreement is not reached, information regarding the content of the mediation is not disclosed.

*MODIFICATION*

A change in the terms and conditions of a court order made by stipulation of the parties or upon court order after a proper showing.

*NEUTRAL EVALUATOR*

A neutral evaluator is hired by the parties to give an evaluation of the case to help settle it. The parties are permitted to prepare a written statement, present critical witnesses or other evidence, argue their case to the evaluator, meet separately and confidentially with the evaluator and utilize the evaluator to communicate any settlement offers to the opposing party.

*NOTICE OF ENTRY  
OF JUDGMENT*

A notice to attorney or party of the date of entry of judgment.

*NOTICE OF MOTION*

A notice that a hearing will be held on a particular date regarding the requests made by the moving party in a motion. A motion rather than an Order to Show Cause (see below) can be used when a party has already formally appeared in the case.

*ORDER TO SHOW  
(OSC)*

An order to show cause is a direction by the court to the person or persons named to appear to submit to the court evidence or legal reasons why the court should not issue the orders requested by the other. An order to show case generally concerns issues such as child custody, child visitation, spousal support, attorneys fees and costs, restraining orders, and orders relating to property control. An OSC is used, rather than a Notice of Motion for all hearings where the Respondent has not yet appeared.

*ORDER TO SHOW  
RE CONTEMPT*

An order requiring a party to appear at a hearing for examination to determine whether or not a penalty should be imposed for failure to comply with a pre-existing court order.

*ORDER TO SHOW  
RE: MODIFICATION*

An order requiring a party to appear at a hearing to determine whether or not a court order should be modified due to new circumstances.

*ORDER AFTER  
HEARING*

The order after hearing is the written order of the court based upon the oral orders made at the court hearing for an Order to Show Cause or Notice of Motion. It sets forth the rights and obligations of the parties with respect to each other.

*PETITION*

The document filed to commence an action for dissolution, nullity or legal separation.

*PETITIONER*

The party who initiates the proceeding for a dissolution of marriage, nullity or legal separation.

*PRIVATE JUDGE  
OR JUDGE PRO TEM*

A neutral individual, usually an experienced attorney or retired judge, retained by the parties to conduct a hearing or trial outside of Court. Decisions of a private judge replace the judgments of the Superior Court and are just as binding. They can be appealed in the same manner as a Judgment from a Superior Court judge.

*QUASI-COMMUNITY  
PROPERTY*

Quasi-community property is all real or personal property, wherever situated, acquired by either spouse when residing out of California that would have been community property if they had been residing in California at the time of acquisition. Quasi-community property also includes any property acquired in exchange for such property. The court in a dissolution proceeding has the jurisdiction to divide quasi-community property as if it were community property.

*RESPONDENT*

The party who answers/responds to the petition.

*RESPONSE*

The Respondent's reply to the petition

*RESPONSIVE  
DECLARATION*

The declaration, given under penalty of perjury, to be used by the responding party if he/she elects to contest the requests made in an Order to Show Cause or Notice of Motion.

*RESTRAINING  
ORDERS*

A court order telling a party to stop doing something. The term is often used in family law to refer to orders relating to stopping domestic violence.

*SCHEDULE OF  
ASSETS AND DEBTS*

List of all community and separate assets and debts of the parties, including their fair market values.

*SEPARATE  
PROPERTY*

A person's separate property is generally defined as property owned by one spouse before marriage or acquired during marriage by gift or inheritance. It includes both assets and obligations. Rents, appreciation, and profits from such property remain separate property. After parties separate, earnings and debts are separate property.

*SPOUSAL SUPPORT*

Spousal support is money paid by one spouse to the other for his or her support after separation. It is sometimes referred to as "alimony."

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Temporary Support: Pursuant to Family Code §3600, the Court

may make a temporary spousal support order while a divorce is pending. The court may order the husband or wife to pay any amount that is necessary for the support of the other spouse. This amount is usually based on the amount provided by a mathematical formula, as calculated in a Dissomaster calculation (See Child Support).

Permanent Spousal Support: At the time of the divorce, the court can make an order for ongoing spousal support. The court is required to analyze a number of factors rather than using a mathematical formula. Under Family Code Section 4320, in establishing a permanent spousal support award, the court must consider:

(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 Family Code 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. (Family Code Section 4336 states that a marriage of ten years or more is presumed to be a marriage of long duration.)

(m) The criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award in accordance with Family Code §4325.

(n) Any other factors the court determines are just and equitable.

The appropriate level and duration of spousal support is greatly affected by the unique circumstances of each marriage, the couple's financial status, and employment history.

*STIPULATION*

An agreement reached between the parties upon which a court may issue an order.

*SUMMONS*

A writ of process issued by the clerk of the court, served with a copy of the petition upon the Respondent for the purpose of obtaining jurisdiction and giving notice of the filing of the action.

Of great importance, the Summons contains language which prohibits either party from (1) removing minor children of the parties from California without the written consent of the other parent; (2) cancelling or otherwise disposing of any life, health, auto or disability insurance policies held for the benefit of either party or their children; (3) transferring, encumbering, concealing or disposing of any community property without the consent of the

other party or order of the court, except for emergency living expenses and (4) Making certain changes to estate plans. These provisions are called "automatic temporary restraining orders (ATROs).

*TEMPORARY  
RESTRAINING  
ORDERS (TRO)*

A temporary order granted without a hearing and sometimes without notice, until a formal hearing can be held to determine whether the requested orders should be granted and made permanent.

*TRACING*

When property acquired during marriage (and, therefore, presumed to be community property) is acquired with separate property funds, the party claiming a separate property interest may "trace" the property to its original source and attempt to have the property characterized as separate property.

*TRANSMUTATION*

Both before and during marriage, a husband and wife may by agreement change the status of any of their property. This process of converting separate property into community property, or community property into separate property, is referred to as "transmutation." As of January 1, 1985, the law requires a written declaration that is made, joined in, consented to or accepted by the spouse whose interest in property is adversely affected in order to complete a transmutation. The written requirement does not apply to gifts between spouses of clothing, jewelry or articles of a personal nature that are not substantial in value considering the circumstances of the marriage. (See **GIFTS**)

*WATTS CREDITS*

A spouse who uses a community asset after separation can be charged with the "use value" of that asset, commonly called *Watts* credits after the case of *In re Marriage of Watts*. The *Watts* credits are normally calculated by determining the fair use value (i.e. typical rent for a comparable house) and then deducting any expenses paid by the spouse using the asset (i.e. mortgage payments, taxes and insurance). The resulting amount is the "excess rental value" owed to the community for the use of the asset. In some cases, the expenses associated with an asset exceed the use value, in which case there would not be any *Watts* credits and there could be *Epstein* credits (see *Epstein* above.)