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# HOW TO FILE FOR AN ANNULMENT IN CALIFORNIA

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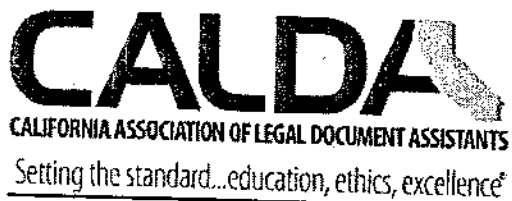
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*This guide will help you understand the process of filing an annulment in California and includes a brief discussion of different scenarios in obtaining a final judgment. We have tried to answer many of the most frequently asked questions and outline the court forms required by California courts.*

### **FILING AN ANNULMENT - AN OVERVIEW**

Marriages in California are dissolved only by one of the following:

- (a) The death of one of the parties.
- (b) A judgment of dissolution of marriage.
- (c) A judgment of nullity of marriage (annulment)

The goal of the legal process of annulment is not only to terminate the marriage but also to unwind the marriage and restore the parties to their original pre-marital status. Unlike a divorce or legal separation, judgment on an annulment can only be granted under specific conditions set forth in California Family Code Sections 2200-2212 as follows:

**Void marriages:** A void marriage is one that is invalid from the beginning and there is no subsequent conduct or action that may be taken by the parties to ratify or "legitimize" it. However, because a marriage license is issued, it "appears valid" on its face and a court action must be filed to have the marriage declared **void**.

California marriages considered void are:

1. *Incestuous marriages* - Marriages between parents and children, ancestors and descendants of every degree, between brothers and sisters (whole or half) and between uncles and nieces or aunts and nephews whether the relationship is legitimate or illegitimate.
2. *Bigamous/polygamous marriages* - A subsequent marriage by a person that took place during the period of time the person had a former marriage to another individual, unless:
  - a. The former marriage has been dissolved or adjudged a nullity before the date of the subsequent marriage, or
  - b. The former husband or wife (i) is absent and not known to the person to be

living for the period of five successive years immediately preceding the subsequent marriage or (ii) is generally reputed or believed by the person to be dead at the time the subsequent marriage was contracted.

In either of the cases described in paragraph 2b above, the subsequent marriage is valid until the court orders a decree of annulment.

**Voidable marriages:** Family Code Sections 2210 and 2211 set forth six legal reasons for a voidable marriage to be declared annulled. ~~If the voidable marriage is not declared a nullity it becomes valid and can be dissolved only by a judgment of dissolution of marriage.~~

The six reasons California marriages can be considered voidable are:

1. *Under Age Consent* – Either party was under the age of legal consent and contracted the marriage without the consent of parent or guardian unless such party, after obtaining the age of consent, freely cohabited with the other party. A Petition for Nullity of Marriage must be filed by the under-aged party to the marriage within four years after arriving at the age of consent or by a parent, guardian, conservator or other person having charge of the under-aged male or female at any time before the married minor has arrived at the age of legal consent.
2. *Former Spouse* – The former spouse of a party was living although they were believed to have been dead. A Petition for Nullity of Marriage may be filed by either party during the life of the other or by the former husband or wife.
3. *Unsound Mind* - Either party was of unsound mind unless the party of unsound mind, after coming to reason, freely cohabited with the other as husband and wife. A Petition for Nullity may be filed by the party injured or by a relative or conservator of the party of unsound mind at any time before the death of either party.
4. *Consent by Fraud* - The consent of either party was obtained by fraud unless the party whose consent was obtained by fraud afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife..
5. *Consent by Force* - The consent of either party was obtained by force unless the party whose consent was obtained by force afterwards freely cohabited with the other as husband or wife.
6. *Physical Incapacity* - Either party was, at the time of marriage, physically incapable of entering into the marriage state and that incapacity continues and appears to be incurable.

### ***Requirements to File an Annulment***

Residency requirements are less strict when couples seek to nullify their marriage or domestic partnership. For an annulment, it is only necessary for one spouse/partner to be a resident of the

county where your case is initiated, and there is no duration of residency requirement, as there is for a divorce

A party's residency in California brings the marriage within the court's power (jurisdiction) but that does not mean it necessarily has authority over your spouse. To make an enforceable order against anyone, the court must have "personal jurisdiction" over that person. Although the issue of "personal jurisdiction" is somewhat complicated, basically it means that if you want the other party to pay money such as for spousal support, child support or debts it must be established that the other party had some personal connection with California (i.e, the parties were originally married in California).

The law says your spouse must be told that you have started the legal process for an annulment. The judge cannot make any orders or judgments unless and until your spouse has been properly "served." In California, it doesn't really matter which party files first, however once the other party has been served with the paperwork, jurisdiction is established for the court in which the documents were filed. For example, if both parties file any kind of divorce papers in different counties in California, both having satisfied the jurisdiction requirements to file in their county. The court that has jurisdiction would be the county court of the person who served the papers on the other party first. Although, in uncontested matters, this may not be a problem if it is believed the other party may contest the matter. It may be a matter of convenience to have the matter heard in your local county court vs. a court that is not local to you. In this instance, filing and serving the other party first may be important.

### *Out of State and Foreign Marriages*

In general, all marriages entered into outside of California that were valid under the laws of the state or country where they were made are considered valid in California. There is one exception to this rule: marriages performed elsewhere that would be odious in California aren't recognized here. No matter where you were married, some other state or some other country, if you meet the residency requirement you can file annulment proceedings in California.

**FORMS YOU WILL NEED TO START YOUR PROCEEDINGS:**

FORM NAME	Form No.
Petition (Family Law)	FL-100
Summons (Family Law)	FL-110
Court Assignment Form (local form)	Varies
Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) If you have minor children with your spouse)	FC-105
Blank Response	FL-120
Blank UCCJEA Declaration (if minor children are involved)	FL-105
Blank Disclosure forms (Declaration of Disclosure (Family Law); Income and Expense Declaration (Family Law) or Financial Statement (Simplified); Schedule of Assets and Debts (Family Law)	FL-140, FL-150 or FL-155; and FL-142
Notice and Acknowledgement of Receipt	FL-117
Proof of Service of Summons	FL-115

*(Note: Additional local forms may be required. Check with your local clerk's office for special form requirements in your particular county or refer to the special "County Local Forms" insert in this brochure)*

Fill out your forms, making at least two copies of the Petition, Summons and any required preliminary local forms required in your county. Bring the originals and copies of your forms to your court clerk's office. The clerk will take the original of each form, one set will be for your records and the third set for service on your spouse. The clerk will ask you to pay a fee to file your papers. If you can't afford the fee you can ask for a fee waiver [Form FW-001 and Form FW-003]. If you want the judge to make temporary orders for child or spousal support, bill payment, protection from domestic violence or other issues you must fill out and file other forms.

**SERVING YOUR SPOUSE**

The law says your spouse must be told that you have started the legal process for a annulment. The judge can't make any orders or judgments unless and until your spouse has been properly "served."

There are two ways your spouse can be served with the paperwork: personal service and service by mail.

**Personal service:** Usually your papers must be "personally" served on your spouse. That means that someone - not you - must personally give each of the forms you filed with the court and a blank Response form plus disclosure documents to your spouse. (See *Supplemental Documents For Service*.)

**Service by mail:** If you and your spouse are cooperating on your family law case and your spouse agrees to accept service by mail this is the easiest and least expensive way to serve the papers. Someone - not you - must mail copies of each of the forms you filed with the court along with two copies of the Notice and Acknowledgment of Receipt (form FL-117) plus an envelope with first-class postage that is addressed to you. You should also mail a blank Response form and disclosure documents.

***Supplemental Documents For Service with Summons and Petition:***

In addition to providing the other party with copies of the filed paperwork you should also serve them with the following blank responsive and disclosure documents: blank Response (FL-120), Declaration of Disclosure (Family Law) (FL-140); Income and Expense Declaration (FL-150) or Financial Statement (Simplified) (FL-155) and Schedule of Assets and Debts (FL-142.)

No matter which manner you choose to serve the paperwork, the server must:

- Be 18 or older
- Not involved in your case, and
- Fill out and sign the Proof of Service.

***Providing Proof of Service to the Court:***

**Service by Mail:** Form FL-117 shows the court that your spouse voluntarily acknowledges receipt of your forms. Your spouse must sign and date it and return it to you. If your spouse does not sign, date and return this form to you he/she must be personally served with the forms. The server can be a friend, relative, county sheriff or process server.

If your spouse was served by mail, the person who served the forms by mail must fill out a Proof of Service of Summons (Family Law, Uniform Parentage, Custody and Support) (form FL-115) which states your spouse was served by mail using Notice and Acknowledgment of Receipt (form FL-117). Attach the form FL-117 that your spouse signed and returned to you to the Proof of Service of Summons. Then file this form at the court clerk's office. Keep the filed-stamped copy that the clerk returns to you, for your records.

**Personal Service:** If your spouse was served in person, the person who served the forms must fill out and sign a Proof of Service of Summons (Family Law, Uniform Parentage, (form FL-115) and state when and where the papers were given to your spouse. Then file this form at the court clerk's office. Keep the filed-stamped copy that the clerk returns to you, for your records.

If you are unable to locate your spouse to have him/her personally served, you may be able to

serve by applying to the court for permission to serve the spouse by publication in an adjudicated legal newspaper. Upon proving to the court that the party cannot be served in any other manner, the court will order and approve service to be made by publication. To affect service on the other party the Summons must be published in a newspaper most likely to give actual notice to the person, once a week for four weeks. Service is deemed completed on the other party as of the last day of publication (28<sup>th</sup> day).

If you or your spouse receives financial aid from the government for a child of this relationship (or if you have a support action pending with the local child support agency) you must also serve a copy of your filed forms on the child support agency's office in the county where the benefits are being paid. The child support agency can be served by mail. Use Proof of Service by Mail (form FL-335). Form FL-335 is only used to prove service by mail to non-parties (people not involved in the case).

### ***DISCLOSURES REQUIRED BY CALIFORNIA LAW***

Next, fill out and serve your disclosure forms. State law requires that you and your spouse exchange written information about what you own and what you owe and your monthly income and expenses. If you leave anything out, either by mistake or on purpose, your property division can be "set aside." That means it won't be valid. If that happens your case may be reopened. If you purposely make any false statement in the disclosure papers you could be punished severely. Disclosure allows both you and your spouse to be aware of everything you each own and owe so that you can divide your property and debts equally. It also gives you the financial information you need to make decisions about child and spousal support. Although the disclosure documents are not filed with the court, formal verification that the disclosures have been exchanged between the parties is required to be filed with the court. (Form FL-141.)

#### **Preliminary Declaration of Disclosure**

Complete your preliminary Declaration of Disclosure (form FL-140). Try to do it as soon as possible after your spouse has been served. That will give you and your spouse the information necessary to divide your property and debts and make an agreement on support.

You and your spouse may each have to prepare and serve a final Declaration of Disclosure at the end of your case unless you agree to waive service of the final disclosures. The final Declaration of Disclosure will be the same form and must have complete, up-to-date information.

You do NOT file either of these Declarations of Disclosure with the court. Instead, each of you mails or gives your spouse a copy of the completed forms. You keep the original disclosure forms.

The only form you file with the court at this step is the Declaration Regarding Service of Declaration of Disclosure (form FL-141). This shows you have given your spouse the preliminary or final Declaration of Disclosure.

**FORMS YOU WILL NEED:**

FORM NAME	Form No.
Declaration of Disclosure - Preliminary	FL-140
Income and Expense Declaration or Financial Statement (Simplified)	FL-150 or FL-155
Schedule of Assets and Debts (Family Law)	FL-142
Declaration Regarding Service of Declaration of Disclosure - Preliminary	FL-141
Declaration of Final Disclosure - Final or Waiver of Final Disclosure	FL-140 or FL-144 (or local form)
Declaration Regarding Service of Declaration of Disclosure - Final	FL-141

*(Note: Additional local forms may be required. Check with your local clerk's office for special form requirements in your particular county)*

**Final Declaration of Disclosure**

A final Declaration of Disclosure is more detailed than the preliminary Declaration of Disclosure because it includes the value of property and amount of debt, however you don't have to file a final Declaration of Disclosure if:

- You and your spouse agree in writing to skip ("waive") your final Declarations of Disclosure, or
- Your spouse hasn't filed a Response to your Petition for Annulment or any other papers with the court AND your spouse hasn't signed a written and notarized settlement agreement and/or a stipulated judgment.

If you both want to waive your final Declaration of Disclosure you will have to file a Stipulation and Waiver of Final Declaration of Disclosure (FL-144) or a required local form. This waiver, however, does not limit your obligation to disclose. If your spouse has not filed a Response you may still have to file a unilateral Waiver of Final Declaration of Disclosure depending on your county's local rules.



**DISCLOSURE FORMS YOU WILL NEED:**

FORM NAME	Form No.
Declaration of Final Disclosure – Final or Waiver of Final Disclosure	FL-140 or FL-144 (or local form)
Income and Expense Declaration or Financial Statement (Simplified)	FL-150 or FL-155
Schedule of Assets and Debts (Family Law)	FL-142
Declaration Regarding Service of Declaration of Disclosure - Final	FL-141

*(Note: Additional local forms may be required. Check with your local clerk's office for special form requirements in your particular county)*

If you have to do a final disclosure, fill out all of your final Declaration of Disclosure forms. Keep the original set of forms and make one copy of everything for service to your spouse.

If you have a settlement agreement or stipulated judgment you must give the final disclosure forms to your spouse by mail or in person before or at the time the two of you sign your settlement agreement. If there is no settlement agreement or stipulated judgment the disclosure papers should be served before you submit your final Judgment papers.

If your case is contested you should do your final disclosure at least 45 days before your "first assigned trial date." You may mail or hand-deliver the final disclosure forms and attachments to your spouse yourself. Keep the originals and give the copy to your spouse.

Both spouses **MUST** make sure the financial information they give each other is current. If there are changes in your financial situation you may both have to fill out and serve the other spouse with an updated preliminary Declaration of Disclosure. You must report any changes in your financial situation until your property is distributed by agreement or court order.

The only form you file with the court at this step is the Declaration Regarding Service of Declaration of Disclosure (form FL-141). This shows you have served the final disclosure forms. You can't get a final judgment without filing this form unless you have formally waived this requirement. On form FL-141, be sure to list yourself and your spouse correctly as the "petitioner" or "respondent."

**COMPLETING YOUR ANNULMENT – UNCONTESTED PROCEEDINGS**

The last step of your annulment is to fill out and file the last set of forms before the Judgment form and request the court schedule the matter for hearing. The forms you fill out vary, depending on your individual situation.

The forms you use to finish your case depend on:

- whether your spouse filed a Response to your Petition, and
- whether you and your spouse have a settlement agreement or a stipulated judgment.

**Scenario 1 - My Spouse DID NOT File a Response and We Do NOT Have a Settlement Agreement or a Stipulated Judgment:**

If you and your spouse do NOT have a written agreement, only the preliminary (and not a final) Declaration of Disclosure must be filled out and served. Your spouse will not file or sign any of these forms.

FORM NAME	Form No.
Request to Enter Default (Family Law-Uniform Parentage)	FL-165

At the time the Request for Entry of Default is filed with the court you can request the matter be set for a hearing on the annulment. If your spouse is currently in the military, special rules apply and you may have to seek the advice of legal counsel.

If you want to ask the court for spousal or child support or if you have been married at least 10 years, fill out the following form:

FORM NAME	Form No.
Income and Expense Declaration	FL-150

All courts want a computer printout showing what the child or spousal support should be. If you are using the services of a registered Legal Document Assistant he or she can assist you in running these calculations using court approved software.

If there is separate property or debt or community property or debt to divide in the judgment, complete the following form:

FORM NAME	Form No.
Property Declaration	FL-160

**Scenario 2 - My Spouse DID NOT File a Response and We Have a Settlement Agreement or a Stipulated Judgment:**

In this situation, both of you have signed and notarized a settlement agreement or stipulated judgment addressing all your money and parenting issues. In some counties your spouse won't have to pay a filing fee for this step. You can fill out and file a Request to Enter Default (form FL-165). This form tells your spouse that you plan to get a default judgment and does not require your spouse to pay a filing fee. Alternatively, you can file an Appearance, Stipulations, and Waivers form (form FL-130). If the non-filing spouse is in the military the court will require both of these forms. Review and check the appropriate boxes. Both you and your spouse must date and sign this form. After your spouse returns this form to you, file it with the court. ~~Depending on the items checked on the Appearance, Stipulations and Waivers form your spouse may also have to pay a filing fee to the court or ask for a fee waiver. If your spouse can't afford the filing fee he or she can request a waiver of the fee by filing an Application for Waiver of Court Fees and Costs.~~

### **Scenario 3 - My Spouse Filed a Response and We Have a Settlement Agreement or a Stipulated Judgment:**

In this situation, both of you have signed and notarized a settlement agreement or stipulated judgment addressing all your money and parenting issues. You must fill out and sign an Appearance, Stipulations, and Waivers form (form FL-130). Review and check the appropriate boxes. Both you and your spouse must date and sign this form. After your spouse returns this form to you, file it with the court.

## ***OBTAINING THE FINAL JUDGMENT***

### ***Judgment by Hearing***

Annulment proceedings in California are usually concluded by hearing. The court hearing to get your judgment is usually short and your spouse usually does not have to go to the hearing. In most uncontested hearings the judge will ask you only a few questions. Most judges ask the following:

- Were you a resident of the county for three months and the state for six months immediately prior to filing your petition?
- Is everything in your Petition true and correct?
- What is the legal basis/reason you are requesting your marriage annulled?

Sometimes the judge will go through each item in your judgment with you to make sure that you are getting the right orders for your case. If something needs to be corrected ask the judge for a new hearing date. You can make the changes and come back to court.

**FORMS TO COMPLETE FOR AN UNCONTESTED PROCEEDING**

*Note: Although courts' procedures vary, forms marked with an \* are usually NOT required if the parties execute a settlement agreement or stipulated judgment that covers those particular issues addressed in these court forms.*

FORM NAME	Form No.
Notice of Entry of Judgment (Family Law-Uniform Parentage-Custody and Support)	FL-190
Judgment (Family Law) - If you and your spouse have signed a notarized marital settlement agreement, legal separation agreement or stipulated judgment, attach it to form FL-180	FL-180

If you or your spouse is asking for child custody or visitation orders, fill out and file the following forms:

FORM NAME	Form No.
Child Custody and Visitation Order Attachment*	FL-341
Child Abduction Prevention Orders Attachment*	FL-341B
Supervised Visitation Order*	FL-341A
Child's Holiday Schedule Attachment*	FL-341C
Additional Provisions - Physical Custody Attachment*	FL-341D
Joint Legal Custody Attachment*	FL-341E

If you or your spouse is asking for support orders in the Judgment, also include and file the following forms:

FORM NAME	Form No.
Child Support Information and Order Attachment*	FL-342
Non-Guideline Child Support Findings Attachment*	FL-342A
Spousal or Family Support Order Attachment (Family Law)*	FL-343
Guideline Calculation printout*	Software
Notice of Rights and Responsibilities - Health Care Costs and Reimbursement Procedures and	FL-192

Information Sheet on Changing a Child Support Order (use this form when child support is involved)		
Child Support Case Registry Form		FL-191

It is always recommended (and in some counties required by local rules) to fill out and file form FL-150, Income and Expense Declaration if:

- you're asking for support orders in the Judgment
- if your marriage lasted more than 10 years, even if you aren't asking for support orders, or
- you and your spouse have already agreed to a support amount in your settlement agreement or stipulated judgment.

Before you fill out form FL-150 contact your court clerk to find out about your court's rules.

If you or your spouse is seeking a division of real or personal property in the Judgment, include and file the following form:

FORM NAME		Form No.
Property Order Attachment to Judgment (Family Law)*		FL-345

Take the original and two copies of all the Judgment forms you've prepared (except for the Judgment form which will require the original and four copies including attachments) with you to your court hearing. You must also include two envelopes with first-class postage on them, one addressed to you and one addressed to your spouse. It may take several weeks before you receive these forms back after your court hearing.

For individuals desiring to handle their own proceedings there are several informational books available in your local Law Library which offer easy-to-understand assistance concerning dissolving marriages through divorce, legal separation or annulment, including *How to Do Your Own Divorce in California* by Nolo Press Occidental or Rutter Group's *LSI The Legal Professional's Handbook*. You may also consider using the services of a registered Legal Document Assistant (LDA) to assist you in the preparation of your paperwork. Keep in mind, however, that LDAs cannot assist you in the selection of forms nor offer you legal advice. Many LDAs also have in-house copies of self-help manuals by Nolo Press for purchase or reference. If you have a legal question be sure to seek out the appropriate legal counsel from an attorney.

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