

DIVORCE

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DISSOLUTION OF MARRIAGE

*LEGAL ASSISTANTS
of San Diego County*

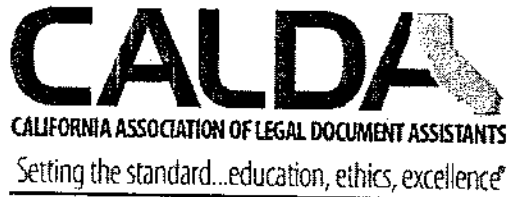
Legal Assistants of San Diego County

(619) 447-3188

560 Broadway

El Cajon, CA 92021

www.legal-assistants-san-diego.com



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

DISSOLUTION OVERVIEW

When the marriage ends: The goal of the dissolution process is to end the marriage and decide issues such as child custody, visitation, child support, spousal support and division of assets and debts.

Residency requirements: To file for dissolution of marriage in California one spouse must be a resident of California for at least six months and a resident of the county of filing for at least three months immediately prior to filing the petition. If you have been a resident of the state of California for less than six months or of the county less than three months you may file for a legal separation and amend your legal separation to a dissolution of marriage after you have met the residency requirements.

Grounds for dissolution: The grounds for dissolution of marriage in California are "irreconcilable differences" and "incurable insanity." Grounds for incurable insanity can only be asserted if the individual is medically insane.

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 valid in California. No matter where you were married, if you meet the residency requirement you may file for dissolution of marriage in California.

Uncontested vs. contested proceedings: If you and your spouse can agree on all of the issues you have an "uncontested case." If your spouse fails to file a response, in other words he or she defaults, your case can be completed as an uncontested case. Many uncontested cases can be handled by mail and in most instances you may not have to see the judge at all. Some courts have a case management system and require case status hearings. Check your county's local court rules.

If your spouse files a response you have a "contested case." You may have to appear before a judge at least once in order to resolve your disagreements.

If your case starts out or later becomes contested you may be able to come to an agreement through negotiation or mediation. Refer to Scenario 3 of this brochure for additional information under these circumstances.

When the required documents are filed, marital status can be ended six months and one day after the respondent has been served, but no sooner. The clock begins ticking from the time the respondent has been served.

FORMS YOU WILL NEED TO START YOUR PROCEEDINGS

- Petition (FL-100)
- Summons (FL-110)
- Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (FL-105/GC-120) (if you and your spouse have minor children)
- Blank Response (FL-120)
- Blank Notice and Acknowledgement of Receipt (FL-117)
- Proof of Service of Summons (FL-115)

Note: Additional local forms may be required. Check with your court clerk for any special form requirements for your particular county.

File the original and two copies with the court clerk. The clerk will retain the originals and return two stamped copies to you - one set will be for your records and the other set for service of process on your spouse. You will be required to pay a fee to file your papers. If you cannot afford the fee, you can request a fee waiver. (Form FW-001 and FW-003).

Automatic Restraining Orders: Some basic restraining orders are built into the Summons (FL-110) and become automatically effective on the Respondent when the Summons is served. However, some orders may not be enforceable if you cannot serve your spouse within the state of California. These orders are set forth on page two of the Summons and remain in effect until the date of final judgment. **IMPORTANT:** Make sure that you are fully aware of each of these orders, because you are bound by them when you sign the Petition.

SERVING YOUR SPOUSE

The law says your spouse must be notified that you have started the legal process for dissolution of marriage. Your spouse must be served with copies of the documents and a Proof of Service must be filed with the court. The judge cannot make any orders or judgments until your spouse has been properly "served." This serves to establish jurisdiction over your spouse. In addition to service of copies of the filed paperwork you must have your spouse served with the following blank documents: Response (FL-120) and Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (FL-105/GC-120) if you have minor children with your spouse.

You cannot be the person who serves your spouse. For methods of serving your spouse refer to

CALDA's brochure entitled "Overview of California Process Serving Procedures."

PROVIDING PROOF OF SERVICE TO THE COURT

Regardless of the method used to serve your spouse the court has to be notified that your spouse has been served. A completed, signed original Proof of Service of Summons (FL-115) (and two copies) must be filed with the court. If your spouse has been served by mail be sure to file an original and two copies of the Notice of Acknowledgment of Receipt (FL-117) along with the Proof of Service of Summons.

REQUEST FOR ENTRY OF DEFAULT

Your spouse has 30 days in which to respond to your Petition. If by the end of the 30th day your spouse has not filed a response with the court you may file the following form with the court:

➤ Request to Enter Default (FL-165)

- If you have not already filed a Proof of Service of Summons (FL-115) it should be filed at this time. When you file your Request to Enter Default (FL-165) you must send a copy to your spouse as indicated on the Request to Enter Default. This informs the court that your spouse has notice of the default. You will also be required to enclose one envelope addressed to you so that an endorsed Request to Enter Default (FL-165) can be mailed to you when default has been granted.
- Check your county's local rules for variations of these requirements.

DISCLOSURES REQUIRED BY CALIFORNIA LAW

State law requires that you and your spouse exchange financial information about your debts and assets. If you do not report all assets and/or debts, either by mistake or on purpose, your property division can be "set aside." If that happens, your case may be reopened. If you purposely make any false statement in the disclosure documents you could be punished severely. Disclosure allows both you and your spouse to be aware of everything you each own and owe so you can divide your property and debts equally. It also provides information needed to make decisions about child and spousal support.

Complete your preliminary Declaration of Disclosure as soon as possible as this document will provide both yourself and your spouse the information you need to divide your property and debts and make any agreements regarding support. The Declaration of Disclosure and accompanying documents can be served on your spouse at the same time you serve the Petition.

You and your spouse may also be required to exchange a final Declaration of Disclosure before you submit the judgment or sign a settlement agreement unless you each agree to waive service of this disclosure. To prepare the final Declaration of Disclosure fill in the same forms used in the preliminary Declaration of Disclosure indicating that this is the final declaration. The financial situation of both you and your spouse may have changed since completion of the preliminary disclosure and preparing a final declaration provides for complete disclosure by each

party and allows for later determined assets and/or debts.

You may waive receipt of a final disclosure by checking the box on the Declaration Regarding Service of Declaration of Disclosure (form FL-141).

Disclosure documents can be served personally or by mail to your spouse. Do **NOT** file either of these Declarations of Disclosure with the court. The only form you are required to file with the court with regard to disclosure is the Declaration Regarding Service of Declaration of Disclosure (form FL-141).

Forms you will need:

- o Declaration of (Preliminary or Final) Disclosure (FL-140)
- o Income and Expense Declaration (FL-150) or Financial Statement (Simplified) (FL-155)
- o Schedule of Assets and Debts (FL-142)
- o Declaration Regarding Service of (Preliminary or Final) Declaration of Disclosure (FL-141)
- o Note: Additional local forms may be required. Check with the court clerk for special form requirements in your county

If you and your spouse choose to waive your final Declaration of Disclosure you can file a Stipulation and Waiver of Final Declaration of Disclosure (FL-144). Alternatively, if you and your spouse enter into a Marital Settlement Agreement the language pertaining to waiver of final Declaration of Disclosure may be included in your agreement. This waiver, however, does not remove the obligation to disclose your assets and debts. 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.

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

COMPLETING YOUR CASE

The forms you use to finish your case depend on whether or not your spouse filed a response to your Petition and whether or not you and your spouse entered into a Marital Settlement Agreement or a Stipulated Judgment.

Scenario 1 - My spouse **DID NOT** file a response, and we **DO NOT** have a Marital Settlement Agreement or a Stipulated Judgment:

Forms you will need to complete your case:

- o Request to Enter Default (FL-165)
- o Declaration for Default or Uncontested Dissolution (FL-170)
- o Judgment (FL-180)
- o Notice of Entry of Judgment (FL-190)

- Self-addressed, stamped return envelopes with court's address as return address for the court's use in returning endorsed copies to you and to your spouse.

See section on "**ADDITIONAL FORMS YOU MAY NEED**" if you are asking for spousal support, child support, custody or visitation orders.

Scenario 2 - My spouse **DID NOT** file a response, and we **DO** have a Marital Settlement Agreement or a Stipulated Judgment:

In this situation, the agreement or stipulation will be signed by both parties with both signatures requiring notarization. In some counties your spouse may be required to pay a filing fee (check your local rules). Your spouse may be required to serve you with a preliminary Declaration of Disclosure and file a Declaration Regarding Service of Preliminary Disclosure (FL141), however, as previously stated, you can both waive service of final Disclosure.

Forms you will need to complete your case:

Same as in **Scenario 1**, however, you will need to attach your Marital Settlement Agreement or Stipulated Judgment to the Judgment (FL-180)

Scenario 3 - My spouse filed a Response and we **DO** have a Marital Settlement Agreement or a Stipulated Judgment:

When a Response is file you must also file an Appearance, Stipulation and Waiver form. (FL-130). Forms you will need to complete your case:

- Appearance, Stipulation and Waiver (FL-130)
- Declaration for Default or Uncontested Dissolution (FL-170) (see section on "Judgment by Declaration" in this brochure for additional information)
- Judgment (FL-180) (attaching Marital Settlement Agreement or Stipulated Judgment)
- Notice of Entry of Judgment (FL-190)
- Self-addressed, stamped return envelopes with court's address shown as the return address for the court's use in returning
- Two copies for you and your spouse

ADDITIONAL FORMS YOU MAY NEED

If child custody or visitation issues have not been addressed in a Marital Settlement Agreement or Stipulated Judgment you may have to attach the following forms to your Judgment (FL-180):

- 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)
- Child Support Information and Order Attachment (FL-342)
- Non-Guideline Child Support Findings Attachment (FL-342A)
- Spousal or Family Support Order Attachment (FL-343)
- Notice of Rights and Responsibilities - Health Care Costs and Reimbursement

- Procedures and Information Sheet on Changing a Child Support Order (FL-192)
- o Child Support Case Registry Form (FL-191)

Some counties require you to fill out and file an Income and Expense Declaration (FL-150) if you are 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 if you and your spouse have already agreed to a support amount in your Marital Settlement Agreement, Legal Separation Agreement, or Stipulated Judgment. Check your local court rules.

If you or your spouse is seeking a division of real or personal property in the Judgment and you have not included this information in your Marital Settlement Agreement or Stipulated Judgment you should also complete and file Property Order Attachment to Judgment (FL-345)

OBTAINING THE FINAL JUDGMENT

Judgment by Declaration: Most uncontested proceedings in California can be concluded by declaration without either party appearing in court. If you want to get your Judgment approved without making an appearance before the judge you must also file a Declaration for Default or Uncontested Dissolution (form FL-170). This form provides information to the court in lieu of your appearance before a judge.

Check the local court rules for information regarding how many copies of the final documents and self-addressed stamped envelopes you need to give the court.

Judgment by Uncontested Hearing: If your uncontested case is concluded by formal process of court hearing your spouse does not need to attend the hearing. In most uncontested hearings the judge will ask you only a few questions. In some cases the judge will go through each item in the Judgment with you to make sure that you understand the orders requested. If something needs to be corrected ask the judge for a continuance of the hearing date to allow time to correct errors.

RETURNING TO UNMARRIED STATUS

Upon entry of the Judgment by the court each party will be mailed a copy of the Notice of Entry of Judgment (FL-190) which will state the exact date the marriage is terminated. Even though the court proceedings may be concluded neither party can remarry until after the termination date stated on the Notice of Entry of Judgment.

If you change your mind any time prior to a termination date of marriage indicated on the Notice of Entry of Judgment the parties may file a Request to Enter Dismissal (Form CIV-110) to dismiss their dissolution or legal separation proceedings. If the matter is uncontested only the petitioner is required to sign. If the matter is contested (response on file) both parties must sign the request. The court will then dismiss your case. If, at a later date, you decide that you wish to become divorced you must file for a new dissolution of marriage.

For a complete list of forms, refer to **LIST OF FORMS**.

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