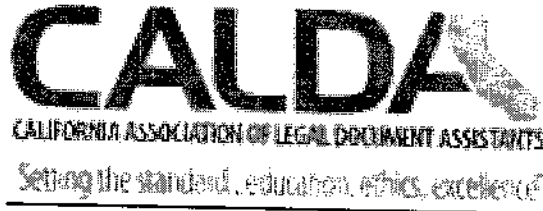


SUMMARY DISSOLUTION



SUMMARY DISSOLUTION



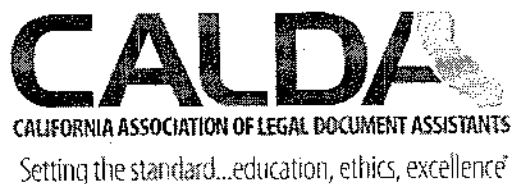
Legal Assistants of San Diego County

(619) 447-3188

560 Broadway

El Cajon, CA 92021

www.legal-assistants-san-diego.com



This guide will help you understand how to end a marriage through a summary dissolution proceeding and includes a brief discussion of who qualifies to use the summary dissolution process. We have tried to answer many of the most frequently asked questions about the differences between a summary dissolution and a regular dissolution, briefly address some basic legal terminology and provide the steps that are involved in dissolving a marriage by summary dissolution in California.

SUMMARY DISSOLUTION OVERVIEW

The official word for divorce in California is “dissolution.” There are two ways to obtain a dissolution in California. The most common is a “regular dissolution.” A shorter and easier way is “summary dissolution” but not everyone can utilize this method. Briefly, a summary dissolution is possible for couples that generally meet the following criteria:

- Have no children together
- The date of marriage was less than five years (from the date of marriage to the date of separation)
- Do not own much property
- Do not owe many debts
- Have no disagreements about how their belongings and their debts are going to be divided once they are no longer married

With this procedure a court appearance is not required.

To begin this procedure the petitioner and respondent must prepare a Joint Petition for Summary Dissolution, together with the completed financial worksheets. These documents are filed with the court clerk in your county. After a six-month waiting period, during which time either spouse can revoke or terminate the process, either spouse can apply for and receive a final divorce judgment.

Both parties sign the Joint Petition acknowledging that each has read and understands the Summary Dissolution Information Booklet published by West Group (FL-810).

LEGAL TERMINOLOGY

Only qualifying parties can obtain a divorce through the summary dissolution procedure. To determine if you qualify for this process, a basic understanding of some legal terminology is required.

A married couple is, in the eyes of the law, a single unit. There are certain things owned together rather than separately. There may also be certain debts owed together. If one spouse incurs debt the other spouse can be made to pay. Decisions must be made regarding division of property and debts owned jointly. When marriage terminates, the parties become two separate individuals again.

California acknowledges the community property law. Community property is a theory of law in which the husband and wife are treated as co-owners of property in a form similar to a partnership. All of the property owned by married couples in California can be classified as community property, separate property or quasi-community property. The California legislature has enacted statutes that govern how property and debts acquired during a marriage must be classified.

Community Property: This has been defined by the California legislature as “all property, real or personal, wherever situated, acquired by a married person during a marriage while domiciled in this state.” In other words, each spouse owns a one-half interest in all property acquired from the date of their marriage to the date of their separation. In most cases that includes:

- Money that you now have which either of you earned during the time you lived together as husband and wife.
- Anything either of you bought with money earned during that period.

This holds true unless the item of property meets the definition of separate property. Sometimes, during a marriage, one spouse will produce a majority of the couple’s income. It is important to note that such income and all of the property acquired with this income is community property.

NOTE: Any income produced during marriage not originating from separate property, as it is defined below, is community property. In other words, unless the item of property (including real estate) can be traced back to a separate property source, a one-half ownership interest exists.

Separate Property: This is any property that has been acquired by either spouse prior to marriage, after permanent separation or during marriage by gift or inheritance. Any rents or profits that an item of separate property produces are also separate property. For example, if someone has left you an item of property in his or her will it is considered separate property and will not be split with your spouse upon dissolution. In most cases separate property includes:

- Anything owned before marriage.
- Anything earned or received after separation.
- Anything that either party received as a gift or by inheritance, at any- time

Quasi-community Property: This is essentially the same as community property. Quasi-community property is a concept that was developed to deal with property that has been acquired by a couple while living outside of California. Basically, the rule states that if the property would qualify as community property if the person were living in California at the time it was acquired, it will be treated as community property in a dissolution proceeding. For property located outside of California to be considered community property both spouses must be California residents when the dissolution action is filed with the court. Therefore, the state where a married couple was living when the property was acquired is irrelevant. If the parties are living in California at the time of dissolution California's community property laws will apply. Real estate located outside of the state presents a more difficult jurisdictional problem and should be discussed with an attorney.

Community Obligations/Debts: These are debts that a husband and wife incurred during the period of marriage whether or not the debt is in the name of one or both parties.

DO YOU QUALIFY TO FILE A SUMMARY DISSOLUTION?

With an understanding of these legal terms you can determine if you are eligible to file a summary dissolution. Marriage may be terminated through the summary dissolution process only if ALL of the following statements are true at the time the Joint Petition for Dissolution is filed. If even one of these statements is not true for you, you cannot use this procedure to obtain a dissolution.

1. Both parties have read the Summary Dissolution Information booklet and understand it.
2. Both parties are willing to use the summary dissolution process rather than the regular dissolution procedure.
3. The length of the marriage is less than five years (from the date of marriage to the date of separation).
4. No children were born before or during the marriage.
5. Wife is not currently pregnant.
6. Neither party owns real property.
7. Community property is minimal (exclusive of automobile values), see Form FL-810 for the current limit.
8. Separate property value is minimal (see Form FL-810 for the current limit).
9. Community debt is minimal (see Form FL-810 for the current limit).

10. At least one party has lived in California for the past six months and in the county of filing for the past three months.
11. Both parties are willing to complete the worksheets which state how possessions and debts are to be divided.

Even if qualified, parties may not want to file a summary dissolution proceeding.

In some cases the parties may also want to use a Marital Settlement Agreement along with the summary dissolution documents.

Marital Settlement Agreement: A very simple Marital Settlement Agreement should contain at least five elements:

1. A Preliminary Statement which identifies the husband and wife, states that the marriage is being ended and that both husband and wife agree on the details specified in the agreement.
2. A Division of Community Property Statement as to how the community property assets are being divided - specifically what each of the parties are to receive.
3. A Division of Community Obligations Statement as to how the debts of the parties are to be paid - specifically the amount that each of the parties must pay and to whom.
4. A Waiver of Spousal Support stating that each spouse gives up all rights of financial support from the other (a requirement in a summary dissolution proceeding).
5. Dated with signatures of both the petitioners.

IMPORTANT DIFFERENCES BETWEEN SUMMARY DISSOLUTION AND REGULAR DISSOLUTION

In a summary dissolution both parties give up certain legal rights that they may otherwise have if they had used the regular dissolution procedure. In a regular dissolution a court hearing or trial may be held and if either spouse is unhappy with the court's final decision it is possible to challenge this decision. In a summary dissolution there is no trial or hearing. Couples who choose this method of obtaining a divorce forgo the right to ask for a new trial and the right to appeal their case to a higher court. There are, however, some cases in which divorce agreements under a summary dissolution can be challenged. The court may have the power to set aside the summary dissolution if:

- A party was treated unfairly in the settlement agreement.
- A party entered the dissolution procedure against their will.
- The original agreement contains significant inaccuracies.

Unlike a regular dissolution proceeding either party can revoke (stop) a summary dissolution proceeding during the six-month waiting period without the other party's consent by filing a Notice of Revocation of Summary Dissolution Petition. If this happens and one of the

parties still wants to obtain a divorce that party will have to file a regular dissolution proceeding and start over.

SUMMARY DISSOLUTION FORMS

Joint Petition for Summary Dissolution of Marriage FL-800

Summary Dissolution Information Booklet FL-810

Contains:

Worksheet for determining value of separate property

Worksheet for determining value and division of community property

Worksheet for determining community obligations and division of obligations

Income and Expense Declarations (for both of you) FL-150

Judgment of Dissolution and Notice of Entry of Judgment FL-825

If you want to STOP the proceedings, complete and file Notice of Revocation of Petition for Summary Judgment FL-830

Marital Settlement Agreement – optional - (not a form – see section entitled **Marital Settlement Agreement** in this brochure). If used, this would be attached to the Judgment of Dissolution.

FINALIZING PROCEEDINGS

After the six-month waiting period, unless the process has been revoked, the court will process and enter the Judgment of Dissolution and Notice of Entry of Judgment without any further notice from the parties.

THIS INFORMATION IS PROVIDED AS A PUBLIC SERVICE OF THE CALIFORNIA ASSOCIATION OF LEGAL DOCUMENT ASSISTANTS. IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE. IF YOU HAVE ANY LEGAL QUESTIONS YOU SHOULD SEEK THE ADVICE OF AN ATTORNEY.

FOR FURTHER INFORMATION REGARDING OUR ORGANIZATION PLEASE WRITE OR CONTACT US THROUGH OUR WEB SITE: www.calda.org

A Legal Document Assistant (LDA) is not a lawyer. LDAs provide professional self-help services at your specific direction. Although LDAs cannot select your forms or offer legal advice, they can offer self-help reference materials written or approved by attorneys, such as this brochure. LDAs can also assist you procedurally. Many LDAs have self-help manuals in their personal libraries available for purchase or reference. Informational books are also available to you in your local Law Library and book stores. Be sure to seek legal counsel from a licensed attorney if you have any legal questions or require legal advice not addressed by this brochure or other publications.