

## **Divorce & Property Division (General)**

Q. Can a military attorney obtain a divorce in California for me?

A. No. In contested cases, you will need to obtain a private attorney to file for divorce and get a judgment of divorce. While the state laws do not specifically require that you have an attorney, it is sometimes very difficult to get the results you want if a civilian lawyer does not represent you when you go to court. In simple, uncontested cases you may be able to complete the necessary documents yourself. See our handouts on do-it-yourself divorces and the role of the legal assistance office: <http://www.monterey.army.mil/staff/SJA/legal/family/dissolution.pdf> (California Guide), [http://www.monterey.army.mil/staff/SJA/legal/family/dissolution\\_sample\\_CA.pdf](http://www.monterey.army.mil/staff/SJA/legal/family/dissolution_sample_CA.pdf) (Sample Marital Settlement), and <http://www.monterey.army.mil/staff/SJA/legal/family/summarydissolution.pdf> (Summary Dissolution).

Q. Who pays for my lawyer?

A. California law provides for the granting of attorney fees and expert fees to place both spouses in substantially equal positions. This applies across the board to property division as well as custody and support cases (Family Code, section 2032).

Q. What if my spouse won't give me a divorce?

A. The judge is the person who grants a divorce, not your spouse. Once you have filed the divorce complaint at the courthouse, your attorney will serve a copy of the summons and complaint on your spouse, by sheriff or by certified mail. If no answer is filed within thirty days after service, you will probably be granted a divorce by default. If your spouse contests the divorce action by filing an answer denying one or more of the statements in your complaint, a hearing will be set during which the two of you can testify and the judge can decide what the truth is. However, if you both agree to all terms of the divorce, you need not ever appear in court.

Q. Is my divorce final when the judge signs the judgment?

A. Yes. There is no waiting period after entry of judgment.

Q. Can I resume the use of my maiden name at the time of divorce?

A. Yes. You may ask for the right to resume your maiden name in the divorce papers your lawyer files for you. The judge routinely grants this.

Q. Can I use "Mental Cruelty" or adultery as a ground for divorce here?

A. No. California is a "no-fault" dissolution state. That means if either spouse asks the court to dissolve the marriage based on irreconcilable differences (the only possible ground), the court will grant the dissolution. Fighting over the terms will not stop the other party from obtaining a divorce, if he or she chooses to be divorced.

Q. If my home is another state, but I am stationed in California, can I file for divorce in this state?

A. California law states that you may file divorce here if you have been living in California for at least six (6) months prior to the date of filing. This includes residence here because of military orders. You may, of course, wish to inquire whether you can file for divorce in your home state, and for this you should see a legal assistance attorney. He or she can discuss with you the laws of your home state as to procedures and grounds.

Q. Do I have to have a "Legal Separation" to get a divorce here, or do I have to "File for Separation" in California?

A. No. In California a married couple is considered to be a "community". Once the parties no longer hold themselves out to the world as a "community", they are considered to be "separated". There is no requirement in California that a couple be separated before filing for a dissolution of the marriage.

A married couple may be "separated" in any one of these four ways: 1) by court order ("legal separation"), 2) by written contract, 3) by mutual oral agreement, or 4) by one party leaving the other with the intent never to return. When problems arise it is nearly impossible to enforce an oral agreement. A signed written agreement is more enforceable, while a court order is the best tool for enforcing rights arising from separation.

The date of separation is very important; it affects the division of your property. The date of separation is the date of a court order, or if no court order exists, the date the couple stops living together with the intent not to remain together. It is not necessary for both parties to intend not to remain together; the intent of one party is sufficient. You can agree to that date, and it may occur while you both occupy the same residence.

The effect of a separation or court ordered separation is the termination of the marital community, but the parties remain married in a legal sense. This may be important for tax and military entitlement purposes. It is also important under the UCMJ because the military member can still be prosecuted for adultery even while separated.

Q. Can the judge in California order a property division at the time of divorce?

A. After the divorce has been granted, the judge can divide the marital or community property of the couple if the court has been requested by either or both of them to do so. The court would not have the power to divide the community property if neither party asked the court to do so before the divorce judgment was entered or if the parties had already executed a separation agreement that fairly divided their property.

Q. Is there some property that the judge cannot divide?

A. The judge in California cannot divide separate property and there are several kinds of separate property. Property acquired by either party before the marriage cannot be divided. Neither can property acquired by either party by gift or by inheritance, even if it is later traded or exchanged for another item. Business and professional licenses are also separate property. And finally non-vested pension rights are separate property that cannot be divided by the courts in this state, although reimbursement may be obtained for contributions to the other spouse's education and training.

Q. How will the judge divide our property?

A. There is a strong presumption in California law that the fairest split would be an even division of all the community property, regardless of who has title to the property, who paid for it, and so on. Under certain circumstances, however, the judge might decide that a fifty-fifty split is not fair to one or both of the parties. The statutes have a list of factors that the judge may then use to determine an unequal division of property between the couple. The judge will consider such matters as: monetary and homemaker contributions to the marriage by each party; tax consequences of an unequal division; efforts of a spouse to preserve and increase the value of the community property; attempts by a spouse to squander, waste or dissipate assets; the health of each party; and the financial situation of each spouse.

Q. What if I have other questions?

A. Please set up an appointment to see our legal assistance attorney. Call 242-5084. We are located in building 275 on Plummer Street.