

Divorce FAQ's

1) *What are the grounds for divorce?*

California follows the “no-fault divorce” concept. In other words, in California, a divorce (called a “dissolution of marriage”) can be granted if the court finds there to be “irreconcilable differences” that have caused an irrevocable breakdown of the marriage. In effect, this means that if a married person wants to end their marriage, that person can do so, even if the other spouse does not want it to end.

2) *Are there any residency requirements in order to obtain a dissolution of marriage?*

Yes. In order to qualify for a dissolution of marriage, one of the spouses has to have been a California resident for at least six months, and a county resident in the same county where the case is filed for the three months immediately preceding the filing of the case.

3) *After the dissolution case is filed, how long does it take to get the marital status terminated?*

The marital status cannot be terminated until six months have passed since the Respondent was “served” with the Summons and Dissolution Petition.

4) *What is the procedure for getting a dissolution of marriage?*

A typical dissolution of marriage must involve some of the following steps, and certain contested cases may also involve additional steps:

The Dissolution Petition must first be filed with the court. The person who files is called the “petitioner.” The petitioner then “serves” the Petition, Summons, and accompanying papers on the “respondent.” The respondent then has thirty days to file a “Response.” However, if the respondent agrees with the Petition, the dissolution can proceed as an uncontested matter and the parties can complete their case “by default;” meaning the respondent need not file a Response. Instead, they file certain documents which set forth their agreement.

If the parties are not in agreement, one of the parties may request temporary court orders during the divorce process (and before final judgment) on issues such as child custody, child support, temporary spousal support, exclusive use of joint assets pending final disposition, restraining orders, among others. If a “Request for Order” is made, there will be a court hearing to resolve these temporary issues.

If the case is contested (i.e., the parties cannot reach an agreement without court intervention on permanent issues. such as division of assets, debts, spousal support, etc.), then the parties may engage in a process called “discovery.” This is the process in which

parties formally request information that is relevant to a disputed issue. For example, information about bank accounts, retirement accounts, debts, income, expenses, and any other relevant facts. Methods of discovery can include interrogatories (written questions), depositions (oral examination under penalty of perjury), and requests for documents.

On a related note, one of the required steps of getting a divorce (whether or not contested) is to provide certain minimum disclosures to each other, apart from the option to use discovery. This is accomplished via certain court forms in which each party lists their community and separate property, as well as current income and expenses.

After disclosures have been exchanged, or if applicable, discovery is completed, the parties (and their attorneys, if they are represented) will typically discuss settlement terms, assuming such discussions have not already begun. Before any matter goes to trial, the court requires that the parties engage in meaningful settlement discussions.

If the case is resolved by agreement, one side will prepare the appropriate documents, which usually includes a "Marital Settlement Agreement." That agreement will contain all of the parties' terms. It is a contract that is signed by the parties, which then becomes an order of the court. As such, it can be enforced by the court in the future if any term of the agreement is breached.

If the parties are not able to agree on all of their legal issues, they can go to trial. Trials typically last anywhere between half a day to several days or even weeks, depending on the complexity and number of issues.

After the trial has concluded, the parties (or their attorneys) will need to prepare and file certain required document(s) which contain all of the court's orders. Once those documents are filed with the court, that ends the formal dissolution process.

4) *Once the divorce is finalized, can issues be re-visited?*

Yes. Even after a dissolution is final, parties can agree (or if they can't agree, go back to court) to modify certain terms. For example, if appropriate, there can be a change to child custody and visitation, child support, and even spousal support, as long as there was no prior agreement that spousal support terms were non-modifiable.

These are answers to just some of the basic divorce issues. If you have any further questions, please feel free to contact Apicella Law at: 415-377-1580, or visit our website at: www.apicellalaw.com.