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**Easy to Read Guide
Divorce in California**

What is a divorce?

A divorce is a proceeding in which a married couple (same sex or traditional) dissolves their marriage. This process usually requires court appearances, however there are situations where it can be resolved without the clients appearing in court.

What types of divorces are there?

There are two main categories of divorce. The first and most common type is a contested divorce. In this process the parties are not getting along and are fighting about something whether that be assets, child custody, or support. In this situation, the costs of divorce can be very high. In our office, we have seen cases where clients have paid in excess of \$50,000 for the process and they have taken over 2 years in court to resolve. **This is not the preferred option for clients.** In our office, we have a variety of different options to keep your costs down and manageable. The unique legal strategy that we employ will allow you to resolve your divorce quickly and very cost effectively.

The second type of divorce is an uncontested divorce. In this situation, both parties are amicable with one another and are NOT fighting over anything. This means that there is an agreement about the division of assets, child custody, child support, and spousal support. This type of divorce is not common, but does occur. In contrast to the contested divorce, this process is much cheaper. On average the costs for an uncontested divorce is about \$5,000.

There is a third type of divorce that is technically classified as a contested divorce but works somewhat like an uncontested divorce. This is called a default divorce.

Default divorce is when only one party files the paperwork and the other party does not respond. In this type of divorce, only one party needs to hire an attorney. If you and your spouse are in agreement about every aspect of the divorce and you want to save yourself some money, you can file a divorce, serve your spouse, and your spouse just does not respond. This means that the court will award everything requested in the petitioner's paperwork. If you and your spouse are agreement anyhow, this is a great way to save some money. This usually is cheaper than an uncontested divorce and has been effective for our clients.

Who is the petitioner and who is the respondent?

The petitioner is the person who initiates the divorce by filing the paperwork first. The person who responds to the paperwork is called the respondent.

What is required to file a divorce in California?

In California, the process is not a simple one. There are 14 forms that have to be filed per party in California. I am not going to go into every form, but they talk about community property, separate property, and most importantly financial disclosures. Within in the forms, you can also talk about child support, child custody, and spousal support. These forms are NOT easy to fill out. In fact, they can be very daunting. It is advised that you use an attorney especially if your divorce is contested.

What are the parameters of a divorce in California?

In all divorce cases in California, there are four major facets that need to be discussed. First is division of assets. An asset is anything that has financial value. This includes homes, cars, checking/savings accounts, brokerage accounts, retirement accounts, household furnishings, etc.

Second is child custody. There are two types of custody. Physical custody means, which spouse is primarily caring for your children. Do you children spend an equal amount of time with and your ex-spouse? If so, that would be a 50/50 custody split, or equal co-parenting. California courts favor a 50/50 custody split whenever possible. The Courts care most about your children above the needs of you and your spouse. If you do have a 50/50 physical custody split, then child support payments are the minimum.

Third is child support. As just stated, if you and your ex-spouse share physical custody of your children equally then the amount of child support is nominalized but may NOT be zero. For example, let's say that you make \$150,000/year and your spouse makes \$50,000/year, then the children are entitled to a lifestyle provided for by \$200,000/year. So, even if you both share the equal physical custody of your children, the spouse making more money will still end up paying something in child

support. A calculation can be made by your attorney that will give you a guideline as to what that number may be.

Fourth is spousal support. In California, spousal support before 10 years of marriage is usually given for half the duration of the marriage if there is a large discrepancy in the incomes of the spouses. However, at the 10-year mark it can be awarded for more than half of the duration of the marriage, sometimes even for life. There is an equation known as the court guideline for spousal support that an attorney can use to calculate what the number may be, but it's only a guideline. At the 10-year mark, there are a number of factors that used to determine how long spousal support will be awarded. Some of the factors include: age of your spouse, years of marriage, difference in income, education level of your spouse, disabilities your spouse may suffer from, ability to work, etc.

All of the parameters discussed above must be decided on before a divorce can be finalized. There are situations where the parties can agree to get a divorce, but divide their assets up at a later time, but we do not advise this situation.

How much does the Court charge to file a divorce in California?

At the time of this guide, the court-filing fee in California to file a divorce is \$435 per party. This does NOT include the attorney fees, or the process serving fees.

Do attorneys take payment plans for their fees?

This depends on the attorney. Most attorneys will NOT take a payment plan for the initial retainer in a divorce matter. The reason for this is because there is a lot of initial work to either file or respond to a divorce petition. As stated above, remember there are 14 forms per party that need to be filed and they need to be filed within 30 days of being served.

How do I serve my spouse if I want to get a divorce?

Most of the time, people hire a process serving company. You could also use someone over the age of 18 who is not a party to the action, however then this person must fill out the appropriate paperwork indicating that he/she did serve the respondent.

How do attorneys charge for divorce?

Most attorneys will charge based on an hourly rate. Usually, an attorney has a retainer and an hourly rate. A retainer (or an advance of fees in California) is the fee that is charged up front to begin your matter. These retainer fees vary widely based on the complexity of your case and the quality of attorney. For example, if your case involves domestic violence and is extremely heated, the fee will be more than if both parties are amicable with one another. For most divorce cases we handle, the

retainer is between \$5,000-\$10,000. The hourly rate is the rate that the attorney will charge per hour of time spent on your case. So, if the hourly rate is \$400/hour, that means out of your retainer \$400 will be deducted from the retainer for every hour spent on your case. It is very rare that an attorney will give you a flat rate for a divorce because divorce cases can last for two years. Unless the flat rate fee is extremely high, it won't be worth it for the attorney to take. Divorce is one of the most contested issues under the law. Although a divorce can be costly, it does not have to be. The cost of your divorce depends on the quality of your attorney, the reasonableness of the parties, and the desire to negotiate. A high quality attorney will attempt to negotiate a settlement early on in the process so as to lower your bills.

I got asked to do mediation, what is that?

Mediation is the process in which two disputing parties try and negotiate a settlement. A mediator is used to try and get the disputing parties to settle their dispute. Most mediators are former judges or attorneys that now practice mediation. Mediators usually bill in 4-hour increments, and their fees are split evenly amongst the parties. The Court in divorce cases can order mediation also. Mediation is a completely voluntary process and usually is encouraged by the Court.

Is mediation is good option for me?

Mediation is always worth a try. Mediators can be very convincing and if successful, a mediator can write up a marriage settlement agreement that can be turned into a judgment for a final divorce decree. Mediation is usually much cheaper than a contested divorce. Your attorney should encourage mediation if at all possible.

How long does a divorce take in California?

The minimum time frame to complete a divorce in California is six months. This means that the shortest amount of time a divorce can take is six months and one day to complete, even if both parties are in agreement as to everything. However, most divorces do take longer than six months especially if you and your spouse are fighting.

What costs the most in divorce cases?

The biggest cost a client is going to have to pay for is the discovery process. During this process, the attorneys are trying to get an idea of what assets each party has, if such assets are community property, how much each spouse is entitled to for spousal support, and who is entitled to child support. During this process, your attorney may even request a deposition, which allows your attorney to ask questions of your spouse so as to strengthen your legal strategy and position. The discovery process is the most important part of the case because your attorney uses this to negotiate a settlement.

Should I try and negotiate a settlement early on in my divorce case?

In most situations, the answer is yes. If you are able to negotiate a settlement it will lower your attorney fees. There are situations in which your spouse may have to pay for your attorney fees. However, even in these situations it is still advisable to settle because that means more money for you. A good attorney will always do his/her best for you. That means he/she will also try to save you money without jeopardizing your legal position.

How common is divorce in California?

Various websites have different answers, but if you look on Google you will find that the divorce rate is as high as 60% of marriages currently. I believe that the rate is even higher for couples breaking up because some people elect to get a legal separation rather than a divorce. This still means the couple is breaking up.

What is legal separation?

Legal separation is almost the exact same process as a divorce in California except that the civil case coversheet that is filed is checked as legal separation rather than a divorce. A legal separation can be converted to a divorce if you do in a specific time period without you having to repay the filing fee again for the divorce.

Why would I get a legal separation?

There are various reasons to get a legal separation, some of which include religious reasons, cultural reasons, you wish to still provide health insurance for your spouse, or you do not believe in divorce but want to be separated. The most common reason to have a legal separation is because you want to ensure that your spouse still has health insurance.

Are the fees the same for legal separation as for divorce?

For the initial paperwork, yes the fees are usually the same. It may be less overall however. But remember you are still legally married if you file a legal separation.

What reason do I have to give to file a divorce in California?

California is what is known as a “no fault” state. This means that the reason given for a divorce is “irreconcilable differences.” This is a very nice way of California courts saying that they do not care why you are getting a divorce. You simply cannot get along, and that is good enough.

**What if my spouse cheated on me, abused me, or used me for a green card?
Does that count in my divorce case?**

Unfortunately, the answer is no. California is a no fault state which means that fault is NOT given to either party. The reason you are getting a divorce has no relevance in court. This means it does not matter why you are getting a divorce. Remember, the reason given is irreconcilable differences.

Once I file for divorce, can I get remarried?

No, you must wait until you get the final divorce decree. This decree means that you are officially divorced. Once received, you can then immediately re-marry if you wish to do so.

I hate my spouse but I have kids, can I move out and leave my kids with my spouse?

You certainly can move out, but we would NOT advise it. If you're spouse has custodial custody, which means the children live with her, it is hard to change. This is especially true if your children are in school. Courts are reluctant to disrupt your children's lives anymore than they have to. You always want to set up a custody/visitation schedule before you leave.

If I file a restraining order against my spouse, can I use that in court?

If you file a restraining order in court for domestic violence for example, it can be used in court to indicate that your spouse has violent tendencies if such tendencies are affecting your children. This means that your spouse has abused your children. Unfortunately, it does not help you in terms of the four parameters of divorce (mentioned above).

DCFS/CPS is involved, does that complicate my case?

DCFS means Department of Child and Family Services, and CPS means Child Protective Services. This means that there is indication that your children may be in danger. Yes, this definitely complicates your case and you should hire legal counsel to assist you. These cases usually do cost more, and are more complicated to resolve. Please do NOT try and attempt to resolve these cases on your own. Please find an attorney that is competent to handle these cases. We handle a large variety of these types of cases.

What should I look for when hiring a divorce attorney?

Your attorney should be knowledgeable, affordable, approachable, and accountable. This means that he/she knows the law, you can afford the services, he/she is easily accessible, and he/she stays accountable to you for mistakes and resolves them if any are made. You should also trust your gut. How do you feel when you speak to your attorney? Are you comforted? Is everything explained thoroughly? Was your attorney's strategy explained to you? Remember, you are not the only case your attorney has, but that does not mean that your attorney should rush you off the phone or not return your calls/emails. You should not overly burden your attorney with requests for constant updates either. This will annoy your attorney and cost you more money. Attorneys charge per hour of work spent on your case. This means that if your attorney is constantly talking to you on the phone or responding to your emails, your retainer is going to be used up that much more quickly. Try to get your attorney to use the retainer money on the case itself as much as possible. It is always best to ask your attorney when you will receive updates about your case so your expectations are set in advance.

Closing

Divorce can be very complicated and emotionally draining. It's extremely important that you are informed as to the process and the expectations as much as possible. This is only possible if there is a good communication between you and your attorney. Before hiring your attorney, try and get a free phone consultation where you can get a feel for your attorney's demeanor before hiring him. This will allow you to see if you would be a good match with one another. Divorce can take up to two years to resolve, make sure that you and your attorney like each other. If have further questions about divorce, or any of our legal services, please call us a free legal consultation.

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