



CALIFORNIA DIVORCE GUIDE

How to Save Money, Protect Your Rights, and Make Better Divorce Decisions

Prepared by Legal Action Workshop

Affordable Flat Fee Divorce Attorneys Serving California

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Divorce is one of life's most stressful events, both emotionally and financially. During this time, people are often vulnerable and may make decisions based on emotion rather than careful planning. This guide is designed to help you understand your options so you can make informed decisions with confidence.

In essence, this guide is designed to assist couples who cannot afford the high cost of divorce, or do not wish to spend a great deal of money on their divorce. The guide will educate you so that you avoid signing an attorney contract before understanding your choices. Divorce can be one of the most stressful events in a person's life. Making informed decisions early can save thousands of dollars, reduce conflict, and help you move forward with confidence.

In addition, this guide will explain the kinds of information that divorce attorneys as well as the courts require, to finalize your divorce. It will also outline the options that are available to you in California and will spell out the best ways to save money on your divorce. Get ready to learn & save!

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PART 1: The 8 Steps to Understanding Divorce in California:

1. Understand the Importance of the Date of Marriage & the Date of Separation:

The dates that are most important for Divorce are the date of marriage and the date of separation. A divorce attorney will want to know these dates so that he/she can give you an accurate understanding of your legal rights.

The length of the marriage (from the date of marriage to the date of separation) influences spousal support, division of property and all other issues.

The date of marriage is the date on your marriage certificate. The marriage may or may not include a religious ceremony. Basically, a marriage license will be procured before the marriage date and is valid for 90 days. When the marriage takes place, the person who officiates the marriage will return the marriage license to the County Clerk or County Recorder office with the date the marriage took place. If the parties do not know their marriage date, then they would have to consult with the office where the marriage license is registered.

However, the date of separation is less clear. In California, a legal separation is not needed to divorce but the courts require a date of separation. The date in which one party leaves the marriage home may be the date of separation, but it may not. Basically, the date of separation is the date in which one party deems that the marriage is permanently over. If the parties agree on a separation date, then this agreed upon date will be the 'separation date'. If the parties do not agree on the separation date, then the court will need to determine it based on the evidence submitted at trial.

Many legal rights will be determined by the length of the marriage (from the date of marriage to the date of separation) such as spousal support, interest in retirement plans, division of property (such as real estate) as well as division of assets and debts. Many factors contribute to the determination of the 'date of separation' such as whether the parties continue to live together, how they live together, whether marriage counseling was tried individually or jointly and whether they have attempted to reconcile. If the parties separate and then get back together, the date of separation becomes the latest date. Attorneys, as well as the courts, will want to know the date of marriage and the date of separation.

2. Learn how Income affects Support

It is very important to be aware of all income sources as it directly affects the issues of spousal support and child support. Look for information in tax returns, pay stubs, interest earned from investment funds or other investment vehicles such as rental income. Make copies of all paperwork that show income as well as bank account statements.

Income information is used to determine temporary child support and temporary spousal support. Temporary support is used when the parties do not agree on a support payment, there is usually a differential in income and there is need. In order to determine the appropriate amount of support, the courts and attorneys use a software program called a 'dissomaster'. Dissomaster is software widely used in California to estimate guideline child support and temporary spousal support. For temporary child support, factors such as the amount of time spent with the child as well as income are used to calculate the appropriate amount of support. For temporary spousal support, the court relies on one party's need when there is a significant differentiation in income. A temporary support order will stay in effect until the order is modified or the Divorce is finalized by a signed judgment.

Spousal support that is awarded in the judgment of divorce is based on a variety of factors such as length of marriage, differential in income, need, educational background, job history, lifestyle while married, health and other factors.

It should be noted that both child support and spousal support can be modified. This can occur in a 'temporary' order or after the final judgment of the divorce. The modification is based on a change of circumstance. An experienced attorney will explain if child support

and/or spousal support will be a factor in your divorce as well as what is a reasonable amount and for how long.

If the parties agree on a child and/or spousal support amount, a Marital Settlement Agreement or Stipulated Judgment is filed with the court. It is best to know all sources of income so that an appropriate child or spousal support order can be calculated.

3. Factors that Determine the Length and Amount of Spousal Support

Spousal support is unique for several reasons. First, a Spousal Support award that is entered pursuant to the divorce judgment may or may not have a termination date. If a marriage is under 10 years the spousal support order will likely have a start date and a termination date.

However, if the marriage is over 10 years (from the date of marriage to the date of separation) then, without the parties agreeing to a termination date, the termination date would be the death of either party or the marriage of the party receiving the support as to that party. However, if neither party receives spousal support, but the courts 'hold jurisdiction' (meaning that either party at a later date could request support) then future spousal support would terminate if either party died or the one who requests it remarries.

Either party can request spousal support at the time of the trial. There are many factors that require evidence to help the court determine whether support should be awarded and for how long. These factors are also considered when an existing order is modified after the entry of the divorce judgment.

California Code Section 4320 outlines the factors that contribute to a Spousal Support order. Some of these factors are: earning capacity to maintain the lifestyle during the marriage, marketable skill level (or need for more education), the extent of unemployment during the marriage (which may hinder future employment), the ability of the supporting party to pay spousal support, the need of each party based on the lifestyle of the marriage, assets & obligations of each party, length of marriage, age & health of both parties, as well as other factors. Evidence would need to be produced to argue these and other factors.

Temporary spousal support is much easier to obtain than a more permanent order and for this reason it is important to have a thorough conversation with the attorney so that appropriate expectations are set.

4. Division of Community & Quasi Community Assets and Debts

It is best to be as accurate as possible regarding the family financial situation. Assets such as real estate, retirement and investment funds as well as other assets may be considered community property and as such may be divided as part of the divorce. Debts may also be divided depending on the type of debt and when they were acquired. Make a written list as to all the information that you know and try to find answers to what you don't know. Every attorney will want to know this information and will advise you based on this information. Likewise, it is best to make copies of retirement or investment accounts, mortgage information, life insurance and health plans as well as other assets such as jewelry or art etc.

Community property in California refers to property that is acquired after the date of marriage and prior to the date of separation. Community property can also be property that was separate at one time and then one party voluntarily transferred the asset into the names of both parties during the marriage. The court presumes that property in the names of both parties is 'community property' unless evidence to the contrary is brought forward in trial. Usually, community property is split equally 50/50 between the parties. It should be noted that the court can offset some assets to try to come to a 50/50 split for all assets.

When the parties are in agreement, they may wish to divide the assets and/or debts differently. The parties can agree on a standard division or something different. The attorney would prepare a Marital Settlement Agreement or a Stipulated Judgment which states the agreed upon terms and conditions of the division of assets and debts.

There are times when one or both parties do not wish to divulge information about assets, debts and earnings. The court requires that each party disclose their assets & debts to the other party. There are 2 sets of 'disclosure documents', namely a preliminary disclosure and a final disclosure. The purpose of these documents is to protect against fraud. In addition to disclosure documents, some attorneys will also do 'discovery' to obtain more detailed information about the assets and debts of the party. Discovery includes notices to produce, interrogatories, requests for admissions, depositions and subpoenas. Further, there may be a need for 'forensic accounting' in cases with substantial assets. These legal procedures are costly and time-consuming. It is always best to try to be cooperative.

Debt may also be considered 'community debt' if it was acquired during the marriage, from the date of marriage to the date of separation. This debt would be 'community' regardless of whose name the debt is in. If the parties agree then the debt can be shared according to their agreement. However, in a contested divorce the court would determine who should pay each of the debt. It's important to understand that the creditors can go after both parties if the debt is not repaid.

'Quasi community property' means that assets that would have been considered 'community property' if acquired in California, would still be considered 'community' property even if acquired in another state. Debt is considered in the same way. As an example, if a loan was acquired in another state during the marriage it would still be considered 'community debt' in California. The Attorney would confirm which asset or

debt is considered 'community', 'quasi community' or separate or a percentage thereof and assign a value to each asset. The value can also be agreed upon by the parties.

5. Confirmation of Separate Property

Property or assets that are acquired before the marriage or after the separation date are generally considered 'separate' property. This would include real estate, cars, investment funds, bank accounts etc. It also includes 'gifts' or inheritance assets even if these were acquired during the marriage (unless the inheritor makes the asset(s) community).

A problem can occur when separate property is 'partially' community. This can happen when a down payment for a home purchased after the date of marriage came from a home sold or money saved, by one party, before the date of marriage and can be determined to be 'separate' property. In this case, the down payment would be reimbursed from the community asset and then the remainder would be divided 50/50.

Another instance of a 'partial' community asset is when one party makes upgrades to real estate or pays some of the mortgage for said real estate. These types of acts can make the asset 'partially' community.

In cases where an asset is 'partially' community, the court will not only want to hear testimony regarding the asset but will also need to see documentation showing the 'paper trail'. Sometimes this is difficult to obtain and instances such as these may require 'forensic accounting' which is costly.

If the parties agree as to what is separate and what is community (as well as what is partially so) then the court will not need to see proof of transactions. It is important to discuss the assets with the attorney so that he/she can properly assess each asset and its value. The attorney can also alert the client of anything that may seem problematic.

6. The Ins and Outs of Child Support:

When the parties are in agreement regarding a Child Support payment, there would be no need to file for a temporary order in the Family Court. One party would pay the agreed upon child support payment voluntarily. In this case the Divorce would be finalized by agreement and in most cases a court appearance would not be necessary.

When the parties are not in agreement regarding child support, then a determination of support would be based on the 'dissomaster' which calculates support based on custody, visitation, each party's gross income and the number of children. In addition, childcare costs are usually divided equally between the parties. There can be a 'hardship' deduction based on whether the one who would pay support has been ordered to support other

children. There may be other hardship reasons. Generally speaking, the court does not look at the expenses of the parties to determine support.

When there is a Child Support Services order, the issue of child support will be handled by that court and not the Family court. However, once a custody/ visitation order is made in the Family Court, the child support order from Child Support Services can be modified.

7. Child Custody and Visitation Issues

When children are involved in a divorce, issues such as custody, visitation and support need to be addressed. There are two kinds of custody, namely 'legal custody' and 'physical custody'. The court would prefer that both parents be involved in important decisions regarding the children. Joint legal custody means that both parents have the right to make decisions regarding education, religion as well as healthcare with a provision for equal access to medical and school records. Physical custody means where the children live primarily. Typically, children live primarily with one parent and the other parent has visitation rights. Some parents agree to joint physical custody.

The parties can agree on these issues and finalize the divorce with a Marital Settlement Agreement or Stipulated Judgment. There may be other child issues depending on the situation. All issues would need to be addressed in an agreement to finalize the divorce without going to court.

If the parties cannot agree on child issues, then there may be a need for temporary orders while the divorce is in progress. For this, a Request for Order would be filed, and a hearing would take place.

An attorney can advise you as to what kind of custody and visitation you can expect.

8. Looking at other Child Issues:

Other child issues are health insurance, life insurance as well as tax issues. Generally, the court will order one parent to maintain a health insurance policy for the children as long as the cost is reasonable. In many cases, the parent maintains the policy by way of employment or union affiliation. Deductibles and non-coverable expenses are usually shared equally between the parties.

In some cases the custodial parent will want the court to order that the other parent take out a life insurance policy naming him/her (the custodial parent) as the beneficiary. This would ensure that, in the event of the death of the party paying child support, a life

insurance pay out would substitute for the child support payment. In some cases the children will be listed as the beneficiary of the life insurance and in this case the custodial parent would have to petition the Probate court for access to the money for the benefit of the minors.

Another issue is the determination of which parent should be allowed to claim the minor(s) for state and federal income tax purposes. Sometimes parents will elect to claim the children on alternate years, or, if more than 1 child, split the children so that one or more can be claimed each year. However, in most cases the custodial parent will want to claim the children for tax purposes. This is an important issue to resolve because if both parties make the claim, the state & federal government will determine who should make the claim and an audit may be pursued.

It should be noted that both parents can agree on these important issues and the attorney would prepare a Marital Settlement Agreement or Stipulated Judgment to this effect.

PART 2: Consider Your Legal Options:

1. Get Legal Advice

Once you understand the way that the courts and attorneys look at divorce and you have gathered the information needed, it is time to get sound legal advice. This is a very important step and one that is often over-looked. Suffice it to say that many people do not know their legal rights. An experienced divorce lawyer will be able to explain the issues in your particular case and advise you. The attorney should also explain what is reasonable as well as how the courts would likely respond in cases such as yours.

If the parties want to agree on their issues, it is mandatory to know what those issues are and what a reasonable settlement of them would look like. Without legal advice one party may agree to something that is not in their best interest. Likewise they may not be aware of some or all issues and may not even discuss them! Remember, in an 'uncontested' divorce, all the issues must be addressed. It is not uncommon for the courts to reject paperwork if Marital Settlement Agreement or Stipulated Judgment is flawed.

You may want to speak with several attorneys before making your final choice. Different attorneys may give you different information about your issues. At this point, you should get legal advice and thoroughly understand the fee structure. It is best not to sign a contract until you know whether your spouse will cooperate or not...this is the next step.

2. Try to Cooperate and Agree with Spouse

In a divorce in which there are no issues i.e. no children, no property and no other issues, it is best for the parties to cooperate and finalize the divorce. An experienced attorney will look at the facts and determine whether there are or are not any issues. In most cases, a court appearance is not necessary when there are no issues to address. A 'flat fee' attorney would be best for this type of divorce.

However, when you have issues such as custody, visitation and support of children, spousal support, division of assets & debts, or retirement/ investment plans etc., you will need to understand your legal rights and options. Once you understand what is reasonable regarding these issues, you are ready to have a dialogue with your spouse.

It is best to try to approach the spouse by requesting time to discuss the issues. If the spouse is open to discussion, then you can proceed. Always strive to be reasonable and non-judgmental. If agreements on the issues are made, you can go ahead and hire an attorney to proceed with your 'uncontested' divorce. In most instances a 'flat fee' attorney would be advisable as the fee would be the most affordable.

However, if, after several attempts, the spouse is not interested in discussion, then it is best to proceed with the divorce. Once served, the spouse will have 30 days to 'respond'. The spouse will either not respond, may wish to agree on issues or may respond. If the spouse does nothing, i.e. does not respond and does not wish to agree on all issues, then, after the 30 day wait period, the petitioner (the one who files) can enter a default. The judge will make a ruling on the issues in a default hearing. However, if the spouse wishes to agree on all issues at some point in the process, an agreement can always be prepared. If a response is filed, the divorce may be 'contested'. Remember, agreements can still be made at this point.

When people understand the costs involved in a contested divorce, they often decide to agree rather than fight. A 'flat fee' attorney can help in either a 'contested' or 'uncontested' divorce. These affordable attorneys have devised ways to help clients that allows for 'flat fees' for court appearances as well as paperwork on an 'as need' basis.

If your spouse has responded and you fail to agree with your spouse regarding custody and visitation you may have at least one hearing (there may be more) for temporary orders as well as a trial for permanent orders. However, there may also be a need for court evaluations and a psychologist's evaluation as well as depositions etc. This can be very costly.

If your spouse has responded and you cannot come to terms with a financial settlement, your attorney may elect to do 'discovery' as well as 'forensic accounting'. This can be very expensive and may take an extended period of time. For people who have this type of situation, it is best to hire an hourly/retainer attorney. For most ordinary people, the amount of money that may be gained would not warrant the cost and a 'flat fee' attorney may be preferable.

3. Available Attorney Choices in California

- **Flat Fee or Fixed Fee Attorney:** This type of attorney evaluates your case, advises you and gives you a fixed fee for the divorce. Most of the time it is a 'pay as you go' fee schedule. This gives you flexibility so that if you cannot come to agreement on your issues, the attorney can still help. This is the best way to go for most people as it is affordable and does not involve unknown or hidden fees. It also allows you to have an attorney on your side no matter what happens. Legal Action Workshop offers an affordable 'flat fee' fee structure for divorce, and our fees are listed right on our website!
- **Hourly/Retainer Attorney:** Hourly attorneys typically charge several hundred dollars per hour, and total fees can vary significantly depending on the complexity of the case. To begin work, the attorney will ask for a 'retainer' which is an amount that will cover a portion of the divorce, but not the whole divorce in most cases. An hourly rate will be charged each time a conversation is had with the attorney as well as each time that your case is reviewed or documents prepared. The total fee for your divorce is 'unknown' and most people who use this approach are surprised at how quickly fees accumulate. The retainer portion may be \$2,000 or as high as \$10,000. This is the costliest way to go and is usually not needed for most divorces. Cases in which this type of fee schedule may be needed are those divorces that involve substantial assets and may have complicated custody, financial or property disputes.
- **Mediation:** Mediation is usually a higher fee than a 'flat or fixed fee' divorce, but lower than an hourly/retainer attorney. In mediation, the attorney does NOT advise either client. According to the law, an attorney cannot give legal advice to both parties as that would be a conflict of interest. The purpose of mediation is to outline the issues and allow the parties to come to an agreement. The problem with this type of procedure is that legal advice is not given to either client and they are not advised as to what is reasonable in their situation. Further, if one party feels pressured, the agreements that are made may not be in that person's best interest.
- **Collaborative Law:** There are some attorneys that agree to 'collaborate' or try to find agreements with the opposing attorney. Each party would hire their own 'collaborative' attorney who would work to forge

the best agreement possible so that fees are minimized. This is a good approach to divorce because, in this case, both attorneys wish to come to an agreement that benefits their clients and not go to court. Collaborative attorneys are usually more costly than mediation and may be similar in fees to that of an hourly/retainer attorney. This can be a good alternative in complicated custody or financial cases when both parties wish to agree on their issues.

4. The Advantages of a Flat or Fixed Fee Divorce

A flat or fixed fee approach to divorce (like that of Legal Action Workshop) has many advantages:

1. It is the least costly way to finalize a divorce with an attorney
2. The client receives legal advice from the attorney and legal oversight
3. The client agrees to a fixed fee for specific tasks—no surprises or unforeseen fees
4. The attorney prepares, when needed, a legally sound agreement that in most cases avoids a court appearance
5. The attorney offers alternatives if agreements cannot be made and can make court appearances as needed
6. The attorney can respond to other requests if the opposing party has an attorney

In short, there are relatively few occasions when a ‘flat fee’ attorney would not be in the client’s best interest. These cases are usually ones in which continued disputes arise regarding child custody, child abuse or financial indiscretions. In these instances, an ‘hourly/retainer’ Attorney would be best.

PART 3: Make the Right Choice

1. Be Prepared:

Each of the 8 steps in Part 1 should give you a good idea of the kinds of information that you will need when you meet with an attorney to discuss your case. The steps should also give you an idea of some of the complexities involved in issues such as support, custody, as well as division of property and debt. This should help you understand the divorce process and what issues are most important in your case.

2. Know Your Options:

Part 2 emphasizes the need for legal advice from an experienced attorney as a first step. Once you have a firm grasp on your legal issues you can attempt to forge agreements with your spouse. A divorce with agreement is the least costly way to go. Part 2 also outlines the types of attorneys that are available in California, explains their fee structure and then

emphasizes the advantages of a 'flat fee' system. Remember, in most cases, a 'flat fee' or 'fixed fee' attorney (like those at Legal Action Workshop) is best as it is most affordable. However, if your divorce involves issues that are more complex and disputed, an hourly/retainer Attorney or an attorney who uses 'collaboration' may be your best option.

3. Do Your Research:

Once you know your issues, understand whether you have a 'contested' or 'uncontested' divorce and have determined the best type of attorney for your case, you can now start your search. You may ask friends, search online or consult social media for the appropriate attorney. You may also check the record of each attorney on the State Bar website. Feel free to check the reviews on the Legal Action Workshop website as well as on Google as our 'flat fee' model works well for most people and saves the most money.

Clients may wish to hire an attorney whose office is close to work or home. However, others wish to speak with an attorney by phone for convenience and, in this case, your search for an attorney does not have to be based solely on your home or work address. Fixed fee Attorneys (like those at Legal Action Workshop) typically allow for face-to-face meetings as well as by phone.

Remember, you can save money by forging agreements with your spouse regarding any issues you may have. You can also save money by hiring a 'flat fee' or 'fixed fee' attorney. This type of fee structure works well for most divorces.

Legal Action Workshop has been helping Californians with divorce and family law matters for more than 40 years. Our goal is to provide experienced legal representation at affordable flat fees, so you know your costs in advance and can focus on moving forward.

Ready to Take the Next Step?

If you are considering divorce, the right legal advice at the beginning of your case can save you time, money, and unnecessary stress.

Contact Legal Action Workshop today to schedule a confidential consultation.

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