

— A BEGINNER'S GUIDE TO —

# **DIVORCE:**

**The Nuts And Bolts Of Family Law**

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**Shazad Z. Omar, Esq.**

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## **PREFACE**

This book was written for the purposes of providing people with basic information of various issues within family law in California. It is my hope that this book will provide people with a framework of issues that people face when dealing with the Court system in California. It is not uncommon for those who have family law issues to find the California Court system to be overwhelming and daunting. My experience in practicing family law for over a decade and dealing with various clients uncovered the importance of allowing people to understand complicated aspects in layman's terms. It is my hope that this book will provide further context of some of the more common issues people face when dealing with divorce, paternity actions, custody and support of children and spouses and much more. It is my hope that sharing these personal experiences of dealing with clients in the family law context is with the hope that it will benefit those struggle with the system.

# **DEDICATION**

I dedicate this book to my parents, who were instrumental in the pursuit of my dreams and aspirations of becoming a lawyer. I also dedicate this book to my wife and children who have supported my endeavors of running a successful law firm.

# **DISCLAIMER**

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# TESTIMONIALS

*“Mr. Shazad Omar and his assistant Yousney have been absolutely wonderful! They genuinely care about giving their clients honest guidance and taking the best route of action for the circumstances at hand. They were also flexible in payments, prompt in answering questions, and have great communication. I will happily refer others to this business.”*

**- Ashley H.**

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*“Mr. Omar was extremely helpful, professional, fair, and patient in offering his services. He most definitely was accurate and fair in logging hours and did a wonderful job to ensure my experience was positive from beginning to end. I would (and do!) highly recommend him to others and would personally return for future services if needed.”*

**- Samar H.**

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*“I was struggling with a highly complex Family law/ Child Custody Case Omar helped me straighten it all out. I couldn't be happier with the services provided by Apex Lawyers. I highly recommend Apex Lawyers Inc.”*

**- George G.**

\*\*\*\*\*

*“I absolutely recommend this law office for your legal needs, their professionalism and compassion shown to me during a difficult time was greatly appreciated. Expectations and timelines were met as promised, I would highly recommend this law firm and Attorney Shazad Omar as well as his exceptional paralegal Yosuny Villela.”*

**- Christina M.**

\*\*\*\*\*

*“Mr. Omar was very professional and very helpful with my case. The time he dedicated to me was greatly appreciated, the attention he gave me made me feel at ease with the process. It was a win situation, I highly recommend Mr. Omar.”*

**- Shannon M.**

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*“Mr. Omar is very professional and helped me with my case in a very professional manner, I would highly recommend his services.”*

**- Froy G.**

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## ABOUT THE AUTHOR



I have been an attorney since December of 2010. Since being admitted to the bar, I have focused on my practice on handling family law matters in California. Over the course of this period, I have been involved in countless cases that had a significant impact on people's lives. This is why I started practicing family law to begin with and why it remains so important to me.

This book is for anyone and everyone, regardless of whether you have any familiarity with family law, with the hope that there will be something that can help you understand an area of family law and better grasp the general framework of how family law works in California.

# CHAPTER 1

## COMMON CONCERNS WHEN CONTEMPLATING DIVORCE



### *Common Concerns People Have When Contemplating A Divorce*

When clients come to me, they bring various concerns when contemplating divorce in California. These concerns are usually unique to their specific situation. Nevertheless, there are some common themes I have observed over the years.

Unfortunately, many people hold misconceptions about the divorce process, leading them to assume it is easy that can be handled without a lawyer. As such, many people often attempt to represent themselves in court. This approach of self-representing is often built on misunderstandings about what constitutes community property, how assets and debts are distributed, and how retirement accounts and pensions are divided. As a result, many face more difficult cases than would have been the case had they partnered with a family lawyer.

Clients also have questions about how assets and debts are characterized based on their actions during the marriage. As a family lawyer, I work closely with clients to address their concerns and provide guidance on how to navigate the divorce process with confidence and clarity.

### *Common Misconceptions About Divorce*

The most common misconceptions about divorce. Oh, how I wish there was only one! After practicing for over a decade, I have realized that there

are not common misconceptions. Instead, the misconceptions vary because they tend to be shaped by each individual's priorities and concerns. For example, someone nearing retirement is likely more concerned with how their pension or retirement account will be divided. It is not uncommon for people to discuss issues involving divorce and form misconceptions from inaccurate information heard from friends, colleagues or relatives.

In practicing law for over a decade, I have realized that there are many misconceptions about the characterization of community property assets, with some assuming that separate accounts will remain separate after a divorce. However, there are overarching principles that determine what constitutes community property. Other misconceptions involve important questions about the date of separation and its significance in family law, as well as issues related to child support, child custody, and spousal support.

Another significant misconception surrounds prenuptial agreements, with people believing that they

are only for the wealthy. As a family lawyer, I often encounter these misconceptions and work to educate clients about the realities of the divorce process and their legal rights and obligations.

A very common misconception that we hear frequently involves the six month rule involving divorces. People, on numerous occasions, have discussed that they don't know why they are not divorced as they have filed their divorce petition and have waited six months and therefore should be already divorced. This is inaccurate. The parties are only divorced once they receive a judgment for a divorce. If the parties have not received a judgment, then they are not divorced. The Courts can dismiss a divorce case if there has been no action for the preceding three years. Additionally, the law states that it is mandatory that the Court dismiss a case if no judgment has been submitted. The mere action of filing a divorce will not result in an automatic judgment for divorce. There are many additional steps that need to be taken before the Court will grant a divorce.

## CHAPTER 2

# PREMARITAL AGREEMENTS



Prior to marriage, people have the choice as to whether they want to make determinations regarding assets and debts before they enter the marriage. The common term that people refer to this is “prenuptial” or “premarital” agreements. As stated above, a common misconception that exists regarding these agreements is that they are for the rich. A second comment that I have frequently heard regarding these agreements is that they are promotive of divorce as people are attempting to resolve how things will end before they start.

Although I do understand these concerns, I believe the benefits far outweigh any concerns. In my opinion, these agreements assist with providing people clarity regarding assets, debts, and potentially spousal support. Sadly, this misconception results in most people not making the effort to discuss these issues before marriage. In California, most people who are obtaining a divorce and own an asset, like a house, would benefit greatly in having clarity as to the house and the additional issues like income, retirement accounts, pensions, trading accounts, etc. Without having clarity regarding these types of assets, people result in long-winded drawn out battles to get as much as they possibly can through the divorce action resulting in higher fees owed to attorneys.

Premarital agreements require a strict application in following the law otherwise a court will potentially invalidate the premarital agreement. Common pitfalls with premarital agreements include but are not limited to executing the premarital agreement too close in time to the marriage; not negotiating the premarital agreement; not having



counsel to review the premarital agreement and etc. Generally, it is well worth the costs of hiring a lawyer to prepare a premarital agreement and having a second lawyer represent the other party in reviewing and negotiating. I have handled numerous premarital agreements over the years and have generally seen those who have these agreements spend less time in court fighting over the divorce.

## CHAPTER 3

# WHAT TO DO WITH DIVORCE ON THE HORIZON



### *Preparing For Divorce In California*

Although likely extremely difficult emotionally, there are a few things you can do with a divorce on the horizon in California. These simple steps can help make things a little easier down the road.

First, find a lawyer who you feel comfortable working with and who has a strong command of family

law. This will help ensure that your divorce is in good hands with a trustworthy and respectable party.

Another important step is to start putting together a list of assets and debts that were acquired during your marriage, as well as any acquired prior to and after the date of separation. These will need to be resolved at some point during the divorce process, so it is best to be prepared sooner than later.

It may also be helpful to have a discussion with your soon-to-be ex-spouse about the decision to file for divorce and see if there is any middle ground in how to separate assets and debts. This can lead to a non-litigious resolution, which is often less expensive and promotes a path to success for moving forward after the divorce.

### *Separation Requirements For Divorce*

Although similar to divorce, legal separation is its own legal process in California. Being legally separated is not required to be divorced in California. Interestingly, it is very common for people to continue living together while their divorce unfolds.

California is a no-fault state, meaning the reason for wanting a divorce does not matter to the courts. The divorce will be granted regardless of the reason.

Legal separation is a similar process to divorce, which resolves all aspects of a marriage, including property, children, child support, child custody, spousal support, and attorney's fees. The difference between a legal separation and a divorce is that legal separation does not involve taking status, meaning that the parties are still legally considered married.

Legal separation was more commonly used in the past to save money on healthcare insurance provided by the employer of one of the parties. However, this is no longer as common due to changes in healthcare laws that provide low to no-cost healthcare insurance depending on income brackets.

### *Life After A Finalized Divorce*

After a divorce is finalized, couples may take any path they wish. While some may continue living together for years after the divorce, others may wait

until the division of assets and debts is settled to have some money to start anew and figure out their next steps. There is no law that regulates how soon a couple must separate after divorcing, if at all.

## CHAPTER 4

# UNDERSTANDING THE PROCESS OF A STANDARDIZED DIVORCE



### *Standardized Divorce In California*

Understanding the process of a standardized divorce in California will help you better navigate your situation. California courts have specific requirements for taking a divorce from beginning to end. Although this typically only applies to cases where no assets, debts, children, or spousal support are involved, it makes the process simpler for those that meet relevant criteria.

The first step is filing a petition, followed by preliminary declarations of disclosure, a formal requirement in California. Next, the parties in the marriage must disclose all assets and debts, whether they are community or separate property. Finally, this information is sent to the other party, regardless of the type of marriage or divorce.

The final steps of the process depend on whether the divorce is contested or uncontested. In uncontested situations, after preliminary declarations of disclosure, the parties agree to a settlement or stipulated judgment that specifies the disposition of anything related to the marriage. The most basic process is filing a petition, property declarations, and a judgment. However, the middle part of the process can vary greatly depending on the parties' circumstances. Access to professional help is essential to understand your situation's next steps.

### ***Settling Peripheral Matters To A Divorce***

Divorce cases often involve various peripheral matters such as child custody, child support, spousal

support, division of assets, and claims for attorney's fees. These issues do not necessarily have to be settled at the same time and can instead be resolved in a piecemeal fashion. Parties may agree on some aspects but not others, allowing them to focus their efforts on the contested issues.

Nevertheless, it is ideal to resolve all issues simultaneously to achieve a global resolution for the divorce case. When parties cannot agree on certain aspects, the case can become protracted, leading to further entrenchment and frustration. This can result in higher costs and dissatisfaction with the process.

### *Waiting Periods And California Divorce*

The State of California mandates a six-month waiting period for a divorce. This law intends to allow for parties to reconcile rather than continue with the divorce. Unfortunately, it is rare for couples to file for divorce and then decide to reconcile after a few months. Although it does happen, it is usually due to external factors that impact the couple's decision to proceed with the divorce.



Despite the waiting period, some couples can resolve all aspects of their marriage through mutual agreement, which is admirable. However, although such couples may complete all procedural requirements and reach a stipulated agreement, they still have to wait for the court to declare them no longer legally married by single, which takes six months.

### *Summary Dissolutions*

California has a process called summary dissolution which provides an easier alternative for those who are seeking to get divorced and meet certain criteria. This process is only available to those who:

- Have been Married for Less than Five (5) Years;
- Have no Children Together;
- Own or owe relatively little;
- Do not want spousal support; and
- Agree on how to Split any Property

Some of these requirements are self-explanatory while others require additional context. For example, it

is easy to determine whether or not the parties have been married for less than five years. The area that requires more information is the issue of whether the parties own or owe relatively little. As defined by the law, the community assets and debts need to be worth less than \$47,000. This does not include the values of vehicles but instead involves property like money, cash in the bank, or furniture. In as much debt, the married couple would need to owe less than \$6,000 in debts that count from the date that the parties split up.

Although there is strict adherence to these rules, qualifying for a summary dissolution may be a quicker and easier way to obtain a divorce. Again, this requires sufficient discussions between the parties, and that results in an agreement as to the issues involving the divorce. It is also important to know that either party in a summary dissolution proceeding during the six-month waiting period before the divorce becomes final can file a notice of revocation of the summary dissolution petition with the court. This notice will invalidate (cancel) the summary dissolution cases and the impending judgment. If this happens, the parties

looking to get divorced would need to file the matter as a regular divorce.

### *Fast-Tracking A California Divorce*

Although California does not have any way to fast-track divorce cases, there are certain circumstances where the court will prioritize a case and move it along faster than the standard process. These priorities include severe health issues that may result in a party passing away during the proceedings, such as stage four liver cancer. Additionally, the court may prioritize cases involving elderly individuals, usually 70 years or older, with health conditions affecting their ability to participate in the normal process, such as dementia. In such cases, the parties can file specific motions with the court to receive priority. The only way a case can be expedited is if the parties reach an agreement on the issues.

## CHAPTER 5

# NAVIGATING THE LITIGATION OF FAMILY LAW MATTERS



### *Divorce Litigation - A Last Resort*

Litigation of family law matters in California should be reserved as a last resort due to various factors that can affect those involved in a contentious situation such as divorce or child custody disputes.

One of the primary reasons is the significant time commitment required. Parties must gather and provide documents, meet with their attorneys, sign

declarations under the penalty of perjury, and spend time away from their work or children to ensure that their attorneys have all the necessary information.

Financial concerns are another significant factor to consider. While the court fees are not exorbitant, other costs such as attorney fees, court reporters, and discovery can add up quickly. This only adds to the already challenging emotional aspect of going through a divorce or disagreeing over child custody and visitation for those involved.

Litigation should be a last resort when there is no middle ground for resolution. However, it is essential to consider whether everything possible has been done to promote resolution before taking this step. For example, if one party is being unreasonable or reaching an agreement is not viable due to many issues and contention, then litigation may be necessary. Nonetheless, it is crucial to weigh the costs and benefits before proceeding.

### *Avoiding Divorce Court*

There is no way to entirely avoid court if going through a divorce in California. Although how much

involvement can vary significantly based on whether you can reach an agreement with your spouse, there will be some level of involvement with the court system. This is because the courts determine the divorce and declare that a party has gone from married to single once it is complete.

The question then becomes how to navigate the litigation of family law matters in California in a way that is efficient and cost-effective, reducing the level of involvement.

One way is through settlement negotiations, which allows parties to reach an agreement outside the court. Still, there may be instances where the court requires parties to appear to clarify settlement terms. Despite this, the process is typically more straightforward and less contentious than when parties argue over the fairness of distributions. Instead, the focus should be on ensuring parties fully understand and agree to the terms of the settlement agreement.

## CHAPTER 6

# CHILD CUSTODY AND VISITATION ARRANGEMENTS IN DIVORCE: THE BASICS



### *Custody And Visitation Arrangements During A Divorce Case*

Child custody and visitation arrangements in a California divorce can be incredibly sensitive issues that can arise during divorce. Children are of paramount importance to parents, and couples may adopt different approaches to address the challenges

that arise in parenting. Some couples can communicate effectively with each other, reach an agreement on custody and visitation, and then proceed to have a court order put in place. This type of situation is ideal, as it allows for amicable co-parenting while working towards what is in the best interest of their child. However, if couples cannot reach a mutual agreement, they would need to approach the court for legal intervention to determine child custody and visitation.

The Family Code is a body of law that regulates various matters concerning marriage and child custody. It gives the court authority to exercise jurisdiction over initial custody determinations in California if the state is the child's home state when the custody proceedings begin (or it has been within six months before the proceedings) and the person acting as the parent lives in California. These are the general criteria that courts in California use to make determinations regarding child custody and visitation. However, it is worth noting that custody and visitation matters may not necessarily arise from a divorce, as they can also arise from parentage actions.



A parentage action is a legal proceeding to establish the identity of a child's biological father. Unlike in marriage, where the law assumes that children born during the marriage are the couple's children, in a parentage action, paternity must be established through DNA testing or other evidence. While determining the mother is usually straightforward, establishing the father's identity can be more complex. Even if the alleged father was present at the birth, it does not necessarily mean he is the biological father. Therefore, in parentage actions, the court's determination of paternity is based on the facts and evidence presented rather than any legal presumptions.

In California, there are two scenarios under child custody and visitation. They include the initial determinations involving marriage and divorce and parentage actions where there is a need to determine the minor child's father. In cases of marriage and divorce, there is a conclusive presumption that the children born during the marriage are the children of the parents of the marriage unless that presumption is

refuted within a timely period. However, in parentage actions, there are no presumptions, and it is not always clear who the father is. Therefore, the court has to make a determination before considering any questions about child custody and visitation. There is a presumption that the father is the father if he has signed the voluntary declaration of paternity at the hospital, which results in his name being put on the birth certificate.

Once the parents are established, the court determines what type of custody and visitation is in the child's best interest based on factors such as health, safety, and welfare, contact with parents, and public policy concerns. Family Code 3040 provides a preference for joint custody to both parents and, if not possible, to the parent who is more likely to allow frequent and continuing contact with the non-custodial parent. The court cannot use a parent's gender as a factor in making its determination.

When determining what is in the best interest of the child, the courts consider who can provide a

wholesome and stable environment for the child, as well as adequate care and guidance. The goal is to give the child the best opportunity to become a stable, well-adjusted adult. Joint legal custody is often granted unless there is a domestic violence issue.

Child custody and visitation arrangements in a California divorce are defined by California law such that they are not the same, despite often being conflated. As such, it is critical to note the legal distinction between the two. Child custody involves making important decisions for the child related to their health, education, and other matters that require discussion between the parents. On the other hand, visitation is simply the schedule of when each parent will spend time with the child. Essentially, there are two aspects to child custody and visitation – decision-making and physical time with the child. Therefore, the courts consider these key factors when determining child custody and visitation.

Suppose a court determines that domestic violence has occurred. In that case, specific provisions

under the Family Code guide how child custody and visitation are determined. One such provision is a rebuttable presumption that granting joint legal or physical custody to the perpetrator of domestic violence is not in the child's best interest. This presumption can be overcome by demonstrating to the court that the perpetrator has undergone counseling and education programs to address their behavior. However, some parties may misuse allegations of domestic violence to gain an advantage in legal proceedings.

Co-parenting in the future can be significantly impacted by how domestic violence allegations are handled, particularly when the evidentiary burden is unmet. However, if there is a court finding of domestic violence, it can lead to certain requirements for the alleged perpetrator to demonstrate that they are not a threat to the children or the victim.

### ***Determining Child Custody In California***

The court determines what is in the child's best interest. This order is not rigid and can be changed if

there is a change in the parents' or child's circumstances. This is often the case since the needs of the child vary as they get older. For instance, if a child starts going to school, the previously established 50-50 schedule may not work, and there may be a need to adjust pick-up and drop-off times.

### *Types of Custody in California*

Determining Child Custody in California requires the Court to make determinations regarding two types of custody:

- Legal Custody
- Physical Custody

Legal custody involves a number of issues that involve the minor child/children. When granting joint legal custody, the parties must discuss in making decisions on the following matters:

- Enrollment in school or daycare;
- Psychiatric, psychological, or other mental health counseling or therapy;
- Participation in extracurricular activities;

- Selection of a doctor, dentist, or other health professional (except in emergency situations);
- Participation in particular religious activities or institutions;
- Out-of-country or out-of-state travel; and
- Access to school and/or medical records.

If a party does not obtain the consent of the other party, the party violating may be subject to civil or criminal penalties and may also result in the Court changing the legal or physical custody of the minor children. Joint legal custody also requires that each party be designated as a person the children's school will contact in the event of an emergency and that the parties will not change the last name of the child/children without the consent of the other party.

Physical Custody generally refers to the visitation schedule that the parties wish to have involving the minor child/children. People can elect to have a more malleable visitation schedule by the parties agreeing to a reasonable right of visitation to the parties. In more contentious matters, people may want a specified visitation order due to the parties

having high conflict involving the child/children. In extenuating circumstances, the Court can also order that visitation with any given parent be supervised and may appoint either a non-professional or professional monitor.

A determination that one party has sole physical custody is a product of the allocated percentage of time that the child/children spend with each parent. This is usually calculated based on the visitation times that were either agreed to or ordered by the court. For example, if the visitation schedule equates to 4,380 hours of visitation in a calendar year this equates to a 50/50 visitation schedule as the total amount of hours in a given year is 8760 (24 Hours a Day x 7 Days a week x 52 weeks a year).

### *Hearing The Child's Voice*

There is a general rule regarding child custody that outlines whether a child can have any input on who they end up living with. This largely rests on the child's mental state. If the child can understand right from wrong and has a good reason for wanting to live

with one parent over the other, the court will consider their wishes.

According to the Family Code, a child 14 years or older must be allowed to address the court unless it is determined that doing so is not in the child's best interest. If a child is under 14, the court may still hear from them if it is deemed to be in their best interest. However, if the court decides not to allow the child to testify, it must provide an alternative means of obtaining information regarding the child's preferences.

It is not uncommon in some counties that the court can appoint counsel for the minor child/children depending on the severity of the allegations that have been outlined in the request for determination of child custody and visitation. In these situations, the appointed attorney represents only the minor child/children. Once appointed, the attorney will meet with the children, the parents, and potentially any other collateral sources (school, therapist, etc) to determine what they believe would be in the best interests of the minor child/children. At the time of the



hearing, the appointed attorney will make recommendations to the court regarding what they believe is in the best interest of the minor children

# CHAPTER 7

## UNDERSTANDING CHILD SUPPORT GUIDELINES



### *California Child Support Guidelines*

In California, child support and visitation are closely linked. Child support guidelines in a California divorce provide the minimum amount required under the Family Code. Although courts may sometimes deviate from the guideline formula, it nevertheless serves as the framework for determining child support in California. The guideline calculation considers

several factors, including the time each parent spends with the child, their respective incomes, and other related expenses. The court typically uses a tool such as DissoMaster to calculate child support, which requires inputs such as timeshare and gross income.

Many people wonder why California uses gross income when calculating child support. Once the parents' income, timeshare, and tax deductions are entered into the calculator, it determines the parties' net monthly disposable income, which is used in the final calculation. The question of who pays depends on the inputs into the calculator. Generally, the parent who earns more money than their co-parent will have to pay child support, even if they share custody equally. However, this can vary depending on the timeshare arrangement and other factors.

Whether child support is ordered depends on several circumstances – it is not always ordered in custody cases. Generally, disputes over child custody and visitation also involve disputes over child support. It is rare for people to agree on a child support amount

but not on a visitation schedule. It is more common for people to agree on a visitation schedule but not on a child support amount. In some exceptional cases, the court may depart from the guideline calculation. There is a presumption that the guideline formula is the correct amount of child support and can only be rebutted by admissible evidence that shows that applying the formula would be unjust or inappropriate. The evidence must fall under one of the five factors designated by the Family Code.

Additionally, the Family Code allows the court to retroactively create child support from the date of the divorce filing, even if no determination has been made yet. In most cases, child support lasts until the child reaches the age of 19 or graduates from high school, whichever comes first. Although most children graduate at 18 in California, there are cases where a child may turn 19 before graduating from high school due to their birth date.

In California, parents are not typically allowed to dictate how child support payments are spent. Child

support is an obligatory payment, meaning that if the child support calculator determines that the father must pay the mother, the father cannot control how the mother uses the funds. How the money is spent is solely at the mother's discretion. In addition to child support, add-on costs may also be awarded in addition to the child support award. These can include expenses such as copays for health insurance or treatments, extracurricular activities, and childcare costs. These additional costs may be split 50-50 as the court orders.

There must be a significant change in circumstances to modify a child support order in California. For example, if a parent loses their job, they would have adequate grounds to request a modification. On the contrary, if a parent gets a promotion or a new job with higher pay, this change to their income would warrant modifying child support.

## CHAPTER 8

# NAVIGATING SPOUSAL SUPPORT DURING DIVORCE



### *Spousal Support In A Divorce Case*

Although essentially the same thing, California does not use the term "alimony." The process of determining alimony/spousal support in a California divorce is relatively similar to child custody.

California courts classify marriages as "short-term" or "long-term" when determining spousal support. A long-term marriage is considered one that

lasts ten or more years, whereas a short-term one for less. In short-term marriages, spousal support duration is generally half the length of the marriage. For instance, if a couple was married for nine years and is now going through a divorce, the court can typically award spousal support for up to four and a half years – the cap for short-term marriage spousal support. This is a general rule, and there may be exceptions to it. For long-term marriages, spousal support can be until the supported spouse's death or remarriage.

Regarding the application of spousal support, California classifies support on two bases: temporary and permanent. Temporary support may begin on the date of separation (depending on when the motion or request for order is filed with the court) and continues until the judge rules on the divorce. The permanent support period begins after the judgment is made.

In California, temporary spousal support is determined using the same calculator as child support. After the parties input their incomes into the calculator, the courts will use the resulting number to

determine the amount of temporary spousal support until the judgment or trial. Typically, the party who earns more money is responsible for paying temporary spousal support. Permanent spousal support is determined based on the Family Code Section 4320 factors, which consider various criteria to determine whether and how much spousal support should be awarded.

Family Code Section 4320 requires the Court to look at the following factors:

- The Length of the Marriage
- Standard of Living of the Marriage
- Age and Health of the Parties
- Whether there is a documented history of domestic violence
- Documented Evidence of Criminal Convictions
- The Parties Earnings Capacity
- Contributions to the Education or Training of the Party being Asked to Pay Support
- Care for Children
- Needs of the party asking for Support
- Assets and Debts



- Tax Consequences

As a result, judges have more discretion in determining permanent spousal support than in determining temporary spousal support.

Similar to child custody and visitation, spousal support in California can be modified based on a change in circumstances. A case I handled early in my career demonstrates the importance of seeking legal assistance to modify support orders. In it, the husband was making over \$10,000 a month, and the wife was not working. She obtained a temporary spousal support order, but during the divorce process, the husband lost his job and relocated to another state. He could not find another high-paying job and failed to file any paperwork with the courts to modify the spousal support order, resulting in a large amount owed at the end of the case. He had to pay from a real estate property asset the couple owned during the marriage.

## CHAPTER 9

# UNDERSTANDING THE DIVISION OF ASSETS



### *The Court's Automatic Temporary Restraining Orders*

*When parties file for a divorce, the Summons contains language that is commonly referred to as the Automatic Temporary Restraining Orders (“ATROs”). The ATROs go into effect upon service of the divorce petition. The purpose of the ATROs is to inform the parties that they cannot sell or transfer assets that were*

acquired during the marriage to anyone else. The purpose of the ATROs is to preserve the assets so that a fair and proper distribution can be achieved through the court process. The Court has the ability to impose substantial penalties and/or sanctions for violation of the ATROs.

In light of the protections, it is important for people who have or will be going through a divorce to itemize all assets and debts involving the marriage. This can include items such as vehicles, credit cards, bank accounts, trading accounts, debts, retirement or pension accounts, property deeds, tax returns, and potentially trusts. It would also be wise to open a separate bank account for all post-separation earnings to prevent the commingling of community and separate property.

### ***Dividing Assets And Debt In A California Divorce***

When undergoing the division of assets in a California divorce, the point at which a property or debt was acquired is usually the thing courts consider

first. The second factor is how the property was titled. Beyond this, how the asset is financed is important as well. This is relevant regardless of the type of property, whether a house, boat, car, RV, or trailer. For instance, if a couple purchases a house and uses income earned during the marriage to pay the mortgage, the property would likely be considered community property. These are some of the initial factors that determine the division of assets and debts in a divorce.

Assuming that an asset was purchased during the marriage using income to pay off the loan and held jointly between the spouses, it is typically considered a 50-50 asset and will be divided equally. However, the distribution of assets outside of this scenario depends on factors such as when it was acquired, how it was acquired, and whether it was separate property assets, which were bought and paid off before the marriage, or whether it was bought before the marriage and held in one party's name alone, but the loan was being serviced using community property assets. In these cases, a different calculation is used to determine the community property aspect of the asset versus the separate property aspect.

A common scenario I encounter when the division of assets in a California divorce is in question is determining the nature of the asset, whether it was acquired during or before the marriage, and how it was acquired. This is especially important in California, where the source of funds used to acquire an asset is considered. For instance, a house purchased during the marriage using community property assets is generally considered community property. However, suppose it was purchased before the marriage or was fully paid off before the marriage. In that case, it may be considered separate property. Retirement accounts are another example of assets that can have both a community and separate property aspect, especially if contributions were made both before and during the marriage.

Parties may sometimes take actions during the marriage to facilitate a loan, such as adding or removing a spouse from the loan or signing a quick claim deed. While these actions may affect the legal ownership of the asset, California still applies community property laws to determine the division of the asset in the event of divorce.

It is also important to note that just because spouses have an informal agreement that certain income or assets are separate, it does not necessarily mean they are exempt from being considered community property. Further, holding an asset in a separate bank account does not negate its community property aspect, as many people mistakenly believe. For instance, it is common for people to claim that a house is not community property because only one spouse paid for it and is still servicing the loan. However, California law does not work that way, so it is essential to consult a lawyer to determine what constitutes community and separate property.

### *Living In The Family House During Divorce*

No law regulates who may live in the family house during a divorce. If there are no safety concerns, it is not uncommon for both parties to continue living in the house. However, as a lawyer, ensuring the safety and well-being of my clients is my top priority. If there are safety concerns, the affected spouse should leave the home as soon as possible. Nevertheless, legally,

both spouses have equal rights to the house since it is considered a community property asset. If both parties agree to continue living in the house for financial reasons, they have the right to do so.

### *The Role Of An Attorney In A Consensual Divorce*

Even if both parties are in agreement, a lawyer can help in several ways, including drafting the necessary legal documents and ensuring they are formatted correctly so the court accepts them. While the courts have resources that help people handle their own matters, having an attorney can make the process smoother and ensure both parties reach a satisfactory resolution.

However, it is essential to note that there can be conflicts of interest if an attorney represents both parties in a divorce. In these cases, an attorney can only represent one spouse. That being said, the other spouse is free to contact the attorney for assistance with the paperwork and to address their concerns.

Having an attorney involved in either the paperwork process or representing each side in a divorce is always in both parties' best interest.

### ***Addendum To The Division Of Assets In A California Divorce***

It is crucial to understand that the division of assets that involve 401ks, pensions, and retirement accounts is typically handled through a qualified domestic relations order (QDRO) process. A third-party attorney usually carries out this process, as most family law attorneys do not handle QDROs independently. This is because many potential errors and omissions could arise, making it a minefield for mistakes.

The same fundamental principles apply when dividing retirement accounts such as 401ks and pensions, regardless of whether they were accrued before, during, or after the marriage. The date of separation also plays a role in determining separate property claims. Generally, the amount accrued and contributed during the marriage must be determined and distributed by a third-party attorney



specializing in retirement accounts. This process is typically done through the employer's retirement account to avoid taxable events and ensure each spouse has their own account. While there is an additional cost involved, it is reasonable and usually done after the judgment of the case.

In addition, there are instances where parties can request the sale of a community property house during the asset division process, even before the judgment is entered. This provides various options for individuals to release assets subject to the marriage and defer decisions on distribution later. These alternative approaches offer different levels of relief if an overall resolution cannot be achieved and prevent parties from having to endure prolonged wait times to resolve the issue in court.

# CHAPTER 10

## MY ADVICE FOR COUPLES GOING THROUGH A DIVORCE IN CALIFORNIA



### *Advice To Consider When Going Through A Divorce In California*

Giving advice to couples going through a California divorce is not easy, as so much depends on their particular situation. Nevertheless, I have found there to be some tendencies that are worth addressing.

To navigate divorce-related matters like custody, visitation, spousal support, and child support as successfully as possible, it is crucial for you and your spouse to truly listen to each other's concerns and try to empathize with one another. It is also important to remember that court decisions often result in some level of dissatisfaction for both parties, and nobody walks away feeling completely happy.

Approaching these situations with a mindset of understanding and compromise and putting the interests of children and the other party first will go far to demonstrate that you are striving for an amicable resolution. This is the ideal outcome, after all. By focusing on the bigger picture and setting up a plan for success, both parties can come out of the process with a positive outcome.

### *What Sets Us Apart*

Our focus on the client distinguishes our law firm from most other family law attorneys. Our top priority is understanding and fulfilling our clients' needs, ensuring they obtain their desired results. If that

requires us to have conversations with our clients to shift their perspective on a problem they are facing with their ex-spouse, then we will make an effort to do so. By prioritizing our clients this way, we can address the two most important things they seek: cost-effectiveness and favorable outcomes. While this approach may heavily emphasize settlement, it ultimately results in greater client satisfaction.

Going through a divorce case can be an emotional rollercoaster ride that adds to already existing insecurity and anxiety. Court proceedings can exacerbate these feelings when you express your emotions and experiences, such as mistreatment or lack of involvement in child-rearing, to make their case. These factors contribute to the already existing emotional toll of divorce. Additionally, the duration of the marriage can intensify the emotional instability experienced by those going through the process. It is not easy for anyone, and we deeply understand that.

Before we embark on the challenging journey of divorce, we ensure that our clients are certain that this

is the path they wish to take instead of immediately pushing them toward divorce. Our approach is to explore every possible avenue to help parties reach a resolution that aligns with their interests and desires, guiding them closer to a mutually beneficial agreement. While we acknowledge and support clients who wish to go to court, we aim to take a multifaceted approach to help our clients benefit and receive the best possible value.

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# NOTES





