



## SAN MATEO COUNTY LAW LIBRARY

### RESEARCH GUIDE #9

## DIVORCE/DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION

This resource guide only provides guidance, and does not constitute legal advice. If you need legal advice you need to speak with an attorney. To find an attorney to assist you, you may contact the San Mateo County Lawyer Referral Service at (650) 369-4149.

California Law entitles you to a divorce (dissolution) based on irreconcilable differences. Before you file for divorce, understand that a divorce:

- Will legally end your marriage forever;
- May divide your property and debts;
- Provide for child support and if requested, spousal support; and/or
- Determine who will care for the children and be entitled to make decisions on their behalf.

If you are not sure that you are ready for a divorce, you may want to seek personal or marriage counseling.

### WHERE DO I BEGIN?

#### DIVORCE

##### STEP 1: FILL OUT AND FILE THE NECESSARY FORMS

**ALL FORMS REFERENCED IN THIS GUIDE ARE AVAILABLE ON THE JUDICIAL COUNCIL WEBSITE, [HTTP://WWW.COURTS.CA.GOV/FORMNUMBER.HTM](http://www.courts.ca.gov/formnumber.htm).**

The "Petitioner" (the person who is filing for divorce or legal separation with the court) fills out the forms and files the FL-100: *Petition-Marriage* and FL-110: *Summons* with the Court. If there are children of the marriage, FL-105: *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act* needs to be filed as well. If this is a same-sex marriage or a

registered domestic partnership, you must file form FL-103: *Petition – Domestic Partnership/Marriage*, instead of FL-100. If filing in San Mateo County, you must also file Local Form FL-2, *Notice of ADR Options*, which can be found at [www.sanmateocourt.org](http://www.sanmateocourt.org).

After you file your paperwork, you must keep the court informed of any change in your mailing address or other contact information. You must file a Notice of Change of Address or Other Contact Information (MC-040) and serve it on the opposing party or his/her attorney.

## STEP 2: SERVE THE FORMS

Someone who is over the age of 18 (not the petitioner) needs to serve the spouse with all the forms indicated in Step 1, plus a blank FL-120: *Response –Marriage Form*. A Proof of Service Form, FL-115: *Proof of Service of Summons*, also needs to be filed, indicating how and when the respondent was served. For more information on Service, see “What is Service?” Research Guide #10. The Respondent has 30 days to file a response to the Petition, and serve it on the Petitioner.

## STEP 3: DISCLOSURE OF FINANCIAL INFORMATION

Within 60 days of filing the Petition, the petitioner must fill out and serve the following forms on the other party:

- FL-140: *Declaration of Disclosure*;
- FL-150: *Income and Expense Declaration* (only required to be filed if spousal support or child support is requested);
- FL-142: *Schedule of Assets and Debts*;
- FL-160: *Property Declaration*; and
- All tax returns that have been filed by the party for the past two years before serving the disclosure documents.

All tax returns that have been filed by the party for the past two years before serving the disclosure documents must also be filed with the Court.

## STEP 4: FINISHING UP → TWO WAYS TO GO

- 1) IF THE RESPONDENT FILES A RESPONSE (FL-120 form):
  - a. AND A SETTLEMENT AGREEMENT.
    - i. Then, either party files a FL-130: *Appearance, Stipulations and Waivers* and the proposed Judgment with the written agreement attached and other necessary forms. This is called an Uncontested Case.
  - b. BUT NO SETTLEMENT AGREEMENT:
    - i. Then, the parties must go to trial and have a judicial officer resolve the issues. This is called a Contested Case.

2) RESPONDENT DOES NOT FILE A RESPONSE (FL-120 form):

- a. AND NO SETTLEMENT AGREEMENT, the Petitioner waits 30 days after Service has been completed (STEP 2), and prepares a proposed Judgment form (FL-180), and all other necessary forms. This is a True Default Case.
- b. BUT PARTIES HAVE A SETTLEMENT AGREEMENT, the Petitioner attaches the signed and notarized agreement to the proposed Judgment form (FL-180), together with all the other necessary forms. This is called a Default case with a Written Agreement.

PLEASE NOTE:

The earliest you can be divorced is six months and one day from the date the respondent is served, filed a response, or filed an appearance, stipulations, and waivers. There is no waiting period for Legal Separation. YOU ARE NOT DIVORCED OR LEGALLY SEPARATED UNTIL THE COURT ENTERS A JUDGMENT IN YOUR CASE.

If you need child support, custody, spousal support, visitation, restraining orders, or other orders prior to the finalization of the case, you can file a fl-130: *Request for Order*. This requests temporary orders while the case is pending.

LEGAL SEPARATION

The process for legal separation is identical to the divorce procedures except there will be no judgment for legal separation unless BOTH parties agree to a legal separation OR the respondent has not filed a Response. Also, a legal separation does not have residency requirements.

If both parties agree to be legally separated but do not agree on other issues, the parties must go to trial to have a judge resolve those issues. YOU ARE NOT LEGALLY SEPARATED UNTIL YOU RECEIVE A JUDGMENT signed by the court. If you decide you desire a divorce after your legal separation judgment, you must start a new case to request a divorce, and pay another filing fee.

**WHERE CAN I OBTAIN ASSISTANCE WITH MY DIVORCE/LEGAL SEPARATION?**

This resource guide only provides guidance, and does not constitute legal advice. If you need legal advice you need to speak with an attorney. To find an attorney to assist you, you may contact the Lawyer Referral Service at (650)369-4149.

You may also seek assistance at **Family Law Facilitator's Office**, (650) 363-4590. People are seen on a first come, first serve basis. A sign-up sheet is posted at 8:00am outside the office at both locations.

- Redwood City Courthouse: (400 County Center, 2<sup>nd</sup> Floor): Monday, Tuesdays, Thursdays: 8:30am-2:00pm; Fridays: 8:30am-noon
- South San Francisco Courthouse: (1050 Mission Road): Wednesdays: 8:30am-noon

Child Support Professionals are in the Family Law Facilitator's Office every Tuesday from 9:00am-1:00am in Redwood City ONLY.

The Family Law Facilitator's Office provides a FREE workshop on divorce. This is for the initial filing process ONLY. Workshops are held EVERY TUESDAY at 1:15pm at the Family Law Facilitator's Office, 400 County Center, 2<sup>nd</sup> Floor. Workshops are also held at 1050 Mission Road in South San Francisco on alternating Fridays. Workshops are by appointment only and last two hours.

#### **WHAT IF THERE IS A PROTECTIVE ORDER IN PLACE?**

If there is a restraining order in effect, you need to speak with an attorney, mediator, or counselor prior to making arrangements.

For assistance with domestic violence situations, please call the National Domestic Violence Hotline: (800) 799-7233.

#### **DISSOLUTION OF DOMESTIC PARTNERSHIP**

Domestic Partnerships in California are only available to same-sex couples, and opposite sex couples over the age of 65 whom are receiving Social Security benefits.

To end a domestic partnership, follow the steps above, except file form FL-103: *Petition – Domestic Partnership/Marriage*, in lieu of FL-100. The Petitioner must also serve Respondent with a blank FL-123: *Response – Domestic Partnership/Marriage*.