



# DISSOLUTION OF MARRIAGE

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SAMPLE

*This guide will help you understand the process of filing for dissolution of marriage in California and includes a brief discussion of the different scenarios that can arise when obtaining a final judgment. We have tried to answer many of the frequently asked questions and have provided an outline and the court forms required by California courts.*

### **DISSOLUTION OVERVIEW**

**When the marriage ends:** The goal of the dissolution process is to end the marriage and decide issues such as child custody, visitation, child support, spousal support and division of assets and debts.

**Residency requirements:** To file for dissolution of marriage in California, your spouse must be a resident of California for at least six months and you must be a resident of the county of filing for at least three months immediately prior to filing the petition. If you have been a resident of the state of California for less than six months or of the county for less than three months you may file for a legal separation and amend your legal separation to a dissolution of marriage after you have met the residency requirements.

**Grounds for dissolution:** The grounds for dissolution of marriage in California are "irreconcilable differences" and "permanent and incurable insanity to make decisions." Grounds for incurable insanity can only be asserted if the individual is legally insane.

**Out of state and foreign marriages:** In general, all marriages entered into outside of California that were valid under the laws of the country where they were made are valid in California. No matter where you were married, if you meet the residency requirement you may file for dissolution of marriage in California.

**Uncontested vs. contested proceedings:** If you and your spouse can agree on all of the issues you have an "uncontested case." If your spouse fails to file a response, in other words he or she defaults, your case can be treated as a default or uncontested case. Many uncontested cases can be handled by mail. In most counties you may not have to see the judge at all. Some courts have a case management system and require case status hearings. Check your county's local court rules.

If your spouse files a response you have a "contested case." You may have to appear before a judge at least once in order to resolve any disagreements.

If your case starts out or later becomes contested you may be able to come to an agreement through negotiation or mediation. Refer to Scenario 3 of this brochure for additional information under these circumstances.

When the required documents are filed, then marital status can be ended six months and one day after the respondent has been served, but no sooner. The clock starts ticking from the time the respondent has been served. There are many extenuating factors which could cause the dissolution to take longer than six (6) months.

### **FORMS YOU WILL NEED TO START YOUR PROCEEDINGS**

- Petition (FL-100)
- Summons (FL-110)
- Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (FL-105/GC-120) (if you and your spouse have minor children)
- Blank Response (FL-120)
- Blank Notice and Acknowledgement of Receipt (FL-115)
- Proof of Service of Summons (FL-115)

**Note:** Additional local forms may be required. Check with your court clerk for any special form requirements for your specific county.

File the original and two copies with the court clerk. The clerk will retain the originals and return two stamped copies to you - one set will be for your records and the other set for service of process on your spouse. You will be required to pay a fee to file your papers. If you cannot afford the fee, you can request a fee waiver (Forms FW-001 and FW-003).

**Automatic Restraining Orders:** The basic restraining orders are built into the Summons (FL-110) and become automatically effective against both of you when the Summons is served. However, some orders may not be enforceable if you cannot serve your spouse within the state of California. These orders are set forth on page 1 of the Summons and remain in effect until the date of final judgment. **IMPORTANT:** Read the Summons and make sure that you are fully aware of each of the orders, because you will be bound by them when you sign the Petition.

### **SERVING YOUR SPOUSE**

The law requires your spouse to be notified that you have started the legal process for dissolution of marriage. Your spouse must be served with copies of the documents and a Proof of Service must be filed with the court. The judge cannot make any orders or judgments until your spouse has been properly served." The service establishes jurisdiction over your spouse. In order to service copies of the filed paperwork you must have your spouse served with the following blank documents: Response (FL-120) and Declaration Under



Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (FL-105/GC-120) if you have minor children with your spouse.

You cannot be the person who serves your spouse. For methods of serving your spouse refer to CALDA's brochure entitled "Overview of California Process Service Procedures."

### **PROVIDING PROOF OF SERVICE TO THE COURT**

Regardless of the method used to serve your spouse the court has to be notified that your spouse has been served. A completed, signed original Proof of Service of Summons (FL-115) (and two copies) must be filed with the court. If your spouse has been served by mail you must file an original and two copies of the signed Notice of Acknowledgment of Receipt (FL-116) (the spouse who was served by mail) (FL-117) along with the Proof of Service of Summons.

### **REQUEST FOR ENTRY OF DEFAULT**

Your spouse has 30 days to respond to your Petition. At the end of the 30<sup>th</sup> day your spouse has not filed a Response with the court, you must file the following forms with the court:

- **Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration (FL-142)**
  - This form lets the court know that you have disclosed your assets/debts and income information to your spouse.
  - This waiver does not remove either party's obligation to disclose their assets and debts. If your spouse has not filed a Response you may still have to file a unilateral Waiver of Financial Declaration of Disclosure depending on your county's local rules.
- **Request to Enter Default (FL-165)**
  - If you have not already filed a Proof of Service of Summons (FL-115) it should be filed at this time. When you file your Request to Enter Default (FL-165) you must send a copy to your spouse as indicated on the Request to Enter Default. This informs the court that your spouse has notice of the default. You will also be required to send a copy addressed to your spouse so that an endorsed Request to Enter Default (FL-165) can be mailed by the clerk to him/her when default has been entered.
  - Check your county's local rules for variations of these requirements.
- **Declaration for Default or Uncontested Dissolution of Marriage (FL-170)**

The information provided on this document must match the information on your Petition for Dissolution of Marriage, i.e., child custody, child support, spousal support.
- **Declaration for Default or Uncontested Dissolution of Marriage (FL-180)**

The information provided on this document must match the information on your



Petition for Dissolution of Marriage, i.e., child custody, child support, spousal support, etc.

➤ **Notice of Entry of Judgment (FL-190)**

- This document must be accompanied with two envelopes with prepaid postage. One envelope will be addressed to you and the other addressed to your spouse. This allows the court to return mail the Judgment and Notice of Entry of Judgment to both you and your spouse once it has been reviewed and approved by the judge.

**DISCLOSURES REQUIRED BY CALIFORNIA LAW**

State law requires that you and your spouse exchange financial information about your debts and assets. If you do not report all assets and/or debts, either by mistake or on purpose, your property division can be "set aside." If that happens, your case may be reopened. If you purposely make false statements in the disclosure forms, you could be severely punished by the court. Disclosures allow both you and your spouse to see a list of everything you each own and owe so your property and debts can be equitably divided. It also provides the court information needed to make decisions about child and spousal support.

Complete your preliminary Declaration of Disclosure (FL-140) as soon as possible as this document will provide both you and your spouse the information needed to divide your property and debts and come to agreements regarding them. The Declaration of Disclosure does not get filed with the court. Remember to attach all supporting documents. The Declaration of Disclosure should be served on your spouse at the same time you serve the Summons and Petition.

You and your spouse may also be required to exchange a final Declaration of Disclosures before you submit the Judgment or Order of Dissolution. Service of this Disclosure can be waived but in order to do so, you must either file a Stipulation and Waiver of Final Declaration of Disclosure (FL-144) or indicate in your Final Settlement Agreement that you mutually agree to waive the disclosure. To prepare the final Declaration of Disclosure fill in the same forms used in the preliminary Declaration of Disclosure indicating that this is the final declaration. If your financial situation has changed since the service of your preliminary Declaration of Disclosure, you must complete a Final Declaration of Disclosure and provide a copy to your spouse. A Final Declaration of Disclosure provides complete disclosures by each party which can be used later for the determination of assets and debts.

You may waive receipt of a final disclosure by checking the box on the Declaration Regarding Service of Declaration of Disclosure (Form FL-141).

**Forms you will need**

- Declaration (Preliminary and/or Final) Disclosure (FL-140)

- Income and Expense Declaration (FL-150) or Financial Statement (Simplified) (FL-155)
- Schedule of Assets and Debts (FL-142) or Property Declaration (FL-160)
- Declaration Regarding Service of (Preliminary and/or Final) Judgment of
- Disclosure (FL-141)
- Note: Additional local forms may be required. Check with the court clerk for local form requirements in your county

Both spouses MUST make sure their financial information is current with the court. If there are changes in your financial situation you should fill out and serve your spouse with an updated Income and Expense Declaration. You must report any changes in your financial situation to the court every three (3) months until your property is sold, your agreement or court order.

### **COMPLETING YOUR CASE**

The forms you use to finish your case depend on whether your spouse filed a Response to your Petition and whether or not you and your spouse entered into a Marital Settlement Agreement or a Stipulated Judgment.

**Scenario 1** - My spouse **DID NOT** file a response, and we **DO NOT** have a Marital Settlement Agreement or a Stipulated Judgment:

Forms you will need to complete your case:

- Declaration Regarding Service of Judgment and Income and Expense Declaration (FL-150) or Financial Statement (Simplified) (FL-155)
  - Request to Enter Default (FL-160)
  - Declaration for Default or Uncontested Judgment (FL-170)
  - Judgment (FL-190)
  - Notice of Entry of Judgment (FL-190)
  - Two self-addressed stamped envelopes with court's address as return address for the court's use in returning endorsed copies to you and to your spouse. If you do not have sufficient postage, you will receive notification from the court.
- \*General rule of thumb, stamp up for every five (5) pages being mailed.

See section "ADDITIONAL FORMS YOU MAY NEED" if you are asking for spousal support, child support, or visitation orders.

**Scenario 2** - My spouse **DID NOT** file a response, and we **DO** have a Marital Settlement Agreement or a Stipulated Judgment:

In this situation, the agreement or stipulation will need to be signed by both parties with both signatures requiring notarization. There are additional fees for notarization. In some counties your spouse may be required to pay a filing fee (check your local rules). Your spouse may be required to serve you with a preliminary Declaration of Disclosure and file a Declaration Regarding Service of Preliminary Disclosure (FL141), however, you can both waive service of final Disclosures.

**Forms you will need to complete your case:**

Same as in Scenario 1, however, you will need to attach your Marital Settlement Agreement or Stipulated Judgment to the Judgment (FL-180)

**Scenario 3** - My spouse filed a Response and we **DO** have a Marital Settlement Agreement or a Stipulated Judgment:

When a Response is filed you must also file an Appearance, Stipulation and Waiver form. (FL-130). Forms you will need to complete your case:

- Appearance, Stipulation and Waiver (FL-130)
- Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration (FL-141)
- Declaration for Default or Uncontested Resolution (FL-142) (see section on “Judgment by Declaration” in this brochure for additional information)
- Judgment (FL-180) (attaching Marital Settlement Agreement or Stipulated Judgment)
- Notice of Entry of Judgment (FL-190)
- Two self-addressed stamped envelopes for you and your spouse with court’s address shown as the return address on the upper left corner of the envelope
- Two copies of each document you and your spouse

**ADDITIONAL FORMS YOU MAY NEED**

If child custody or visitation issues have not been addressed in a Marital Settlement Agreement or Stipulated Judgment, you may need to file the following forms to your Judgment (FL-180):

- Child Custody and Visitation Order Attachment (FL-341)
- Child Abduction Prevention Orders Attachment (FL-341B)
- Supervised Visitation Order Attachment (FL-341A)
- Child Holiday Schedule Attachment (FL-341C)
- Additional Provision Physical Custody Attachment (FL-341D)
- Joint Physical Custody Attachment (FL-341E)
- Child Support Information and Order Attachment (FL-342)
- Non-Guideline Child Support Findings Attachment (FL-342A)



- Spousal or Family Support Order Attachment (FL-343)
- Notice of Rights and Responsibilities - Health Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order (FL-192)
- Child Support Case Registry Form (FL-191)

Some counties require you to fill out and file an Income and Expense Declaration (FL-150) if you are asking for support orders in the Judgment; if you have been married more than 10 years, even if you aren't asking for support orders or if you and your spouse have already agreed to a support amount in your Marital Settlement Agreement, Separation Agreement, or Stipulated Judgment. Check your local court rules.

If you or your spouse is seeking a division of real or personal property in the Judgment and you have not included this information in your Marital Settlement Agreement or Stipulated Judgment you should also complete and file Property Order Attachment to Judgment (FL-345)

**OBTAINING THE FINAL JUDGMENT**

**Judgment by Declaration:** Most uncontested proceedings in California can be concluded by declaration without either party appearing in court. If you want to get your Judgment approved without making an appearance before the judge, you must also file a Declaration for Default or Uncontested Dissolution (form FL-170). This form provides information to the court in lieu of your appearance before a judge.

Check the local court rules for information regarding how many copies of the final documents and self-addressed stamped envelopes you need to give to the court.

**Judgment by Uncontested Hearing:** If your uncontested case is concluded by formal process of court hearing your spouse must attend the hearing, but check with your local court before appearing by self. In uncontested hearings the judge will ask you only a few questions. In some cases the judge will go through each item listed in the Judgment to make sure that you understand what is being ordered. If something needs to be corrected ask the judge for a continuance of the hearing to allow time to correct errors.

**RETURNING TO SINGLE STATUS**

Upon entry of the Judgment by the court, each party will be mailed a copy of the Notice of Entry of Judgment (FL-171) which will state the exact date the marriage is terminated. Even though the court proceedings may be concluded, neither party can remarry until after the termination date stated on the Notice of Entry of Judgment.

If you change your mind, any time prior to a termination date of marriage indicated on the Notice of Entry of Judgment the parties may file a Request to Enter Dismissal (Form FL-172) to dismiss the dissolution or legal separation action. If the matter is uncontested, only the Petitioner is required to sign the Dismissal. If the matter is contested

(Response on file) both parties must sign the request to Dismiss. The court will then dismiss your case. If, at a later date, you decide a divorce is inevitable, you must file a new Dissolution of Marriage Petition.

For a complete list of all forms, refer to [www.courts.ca.gov/selfhelp.htm](http://www.courts.ca.gov/selfhelp.htm)

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