

Divorce Magazine Questions/Answers

1. I now live in California but I was married in Texas. Can I file for divorce in California.

If you have lived in the State of California for six continuous months and any particular county for three continuous months, you may file for divorce in that county in California where you reside. Even if you don't meet these residency requirements, you may file for legal separation first and then convert it to a divorce once you meet the residency requirements. It doesn't matter where you were married.

2. How soon will I be divorced? How can I shorten the process?

A divorce cannot occur in California prior to six months from the day the court acquires jurisdiction over the Respondent. Therefore, if you are the petitioner and file for divorce, the six months does not begin to run until you have received the conformed copy of the petition back from the court and served said petition upon your spouse. A divorce may be final six months and a day thereafter.

3. My spouse has stock options at his work; are those considered an asset to be divided during our divorce?

If your spouse was granted the stock options prior to your separation, i.e., during your marriage, the options are considered community property subject to equal division. However, some stock options are granted on a certain date, vested on a certain date and exercisable on a certain date. On each of these dates a certain portion of the stock option becomes property. If all three dates occurred during the marriage before separation, the entire proceeds are community property subject to equal division. If the option is granted during the marriage, becomes vested after the marriage and then is exercised after the marriage, the stock acquired is apportioned usually in accordance with a complicated formula called the "time rule." Also, to exercise the stock option, it requires the payment of money. If this money is community money, it gives the community a greater interest than if it was exercised with the payment of separate money. To calculate the community interest in an apportioned stock option, it typically requires the services of a forensic accountant.

4. My ex-wife and our two kids have moved in with her boyfriend. Do I still have to pay alimony and child support?

Since child support is for the benefit of your children, you will still need to pay child support. Also, since living with a boyfriend is not equivalent to marriage, you will still need to pay alimony. However, there may be a reduced need for your ex-wife if she is being supported by the boyfriend. This may result in your alimony payment being decreased.

5. Does the judge decide our entire case if we can resolve everything except how to divide some of our property?

The judge decides all issues you and your spouse are unable to agree to. Typically, before the trial starts, the judge will want to see all of your agreed upon issues in writing, signed by the parties or read into the record. The judge will then hear testimony and make decisions on the unresolved issue.

6. What effect does our prenuptial agreement have on our divorce?

A prenuptial agreement circumvents California law. This means that the court will uphold the agreement you and your spouse have as opposed to implementing California law. A prerequisite, of course, is that the prenuptial agreement must be valid. However, assuming that it is valid, the court will incorporate the terms and conditions of your premarital agreement into a judgment even if your agreed upon issues are contrary to California law.

7. Do men ever receive spousal support?

There is no gender bias in the law. In making an award for spousal support, the court looks at the various factors set forth in Family Code §4320 and makes a decision on the amount of spousal support one spouse must pay to the other no matter what the gender of the recipient spouse is. For example, if the wife was the breadwinner during the marriage and the husband stayed at home tending to the household, it is quite likely the wife will pay to the husband spousal support upon divorce.

8. Can my former spouse file for bankruptcy to avoid paying child support?

The filing of bankruptcy does not discharge a child support order. The child support will still need to be paid by the bankrupt party in the amount set forth in the family law court order made.

9. When will my child support end?

Child support ends in California when the child reaches the age of majority, defined as the age of 18 if the child has already graduated from high school or the age of 19 if the child is a full time high school student residing with a parent.

10. My wife is an alcoholic. I want to leave her, but I'm worried that I won't get custody of our kids. Are the courts still reluctant to grant sole custody to fathers?

Courts grant custody to the party who is best able to care for the children regardless of gender. If your wife is an alcoholic who is not in recovery, depending upon the evidence presented at the time of your trial, the courts typically won't grant custody to her since her alcohol use would most likely endanger the children. Therefore, if you present evidence showing that her alcohol problem makes it difficult or impossible to care for the children, the court will grant you primary physical custody. The court will most likely give the mother an opportunity to rehabilitate herself and review the custody situation after she has had a history of sobriety.

11. I inherited a summer home from my parents. Is this home still my separate property now that we're getting a divorce?

So long as the inherited property remains in your name alone and has not been transmuted to community property, it is still your separate property upon divorce.

12. My career was raising the kids. My attorney mentioned I would be entitled to Social Security benefits via my ex-husband's record. How does this work?

I assume that in raising your kids, you were essentially a stay at home during the marriage who did not work and who therefore did not pay earnings into the Social Security system. If you were married to your ex-husband for in excess of 10 years, you acquire your ex-husband's derivative social security benefits from the social security he paid into the system during the time you were married and living together. Therefore, when you reach retirement age, you will receive a portion of these payments. I suggest you make an appointment with the Social Security Administration to ascertain whether it is best to start collecting at 62, 65 or 70.

13. Will I lose some or all of my pension as a result of divorce? I don't see why my spouse should get any of it – he has hardly worked a day in his life

A marriage is a partnership. All money you earned during the time you were married and living together is owned half by your spouse, even if he didn't work a day in his life. Therefore, when you divorce, your spouse is entitled to one-half of whatever pension was accumulated during the marriage.

14. How much does mediation typically cost? How does the mediator charge for services?

A mediator is a neutral party who represents neither party during a divorce but assists the parties in resolving all of the issues in the divorce. A mediator typically charges by the hour. Even if your case is mediated by an impartial mediator, you still need your own lawyer to represent you so that your rights are fully protected. The mediator is not employed to represent the interest of the individual parties. He is employed to get you and your spouse to come to an agreement.

15. What is collaborative practice? Is it the same thing as collaborative law or collaborative divorce?

A collaborative divorce is when both parties to a divorce and their respective attorneys sign an agreement which says that no matter what happens during the course of the divorce, no court actions will be filed. It involves employing a team of non-lawyers, if necessary, such as mental health professionals, forensic accountants, certified divorce planners, appraisers and others to get through the divorce without going to court. If the parties reach an impasse and cannot settle their case without going to court, the agreement must be rescinded and all parties involved in the case must resign. The parties are then free to hire litigation counsel to proceed to the divorce court.

16. Do I need a financial advisor as well as a lawyer for my divorce? Won't I be paying twice the money for two professionals to be doing the same work?

Typically, one does not need a lawyer and a financial advisor to get divorced since the lawyer typically has the adequate expertise to provide financial advice to the client. However, if it is a complicated and diverse business or conglomerate of businesses which need to be divided during the course of the divorce, a forensic accountant may be necessary to value the businesses and determine the cash flow of the businesses.

17. My husband received annual bonuses during our marriage, which he put in a savings account in his name only. Are these funds considered marital or separate property?

Bonuses received during the marriage are community property even if they were put into his name only. Therefore, the proceeds of this account in your spouse's name alone are half yours.