



GILLIGAN FRISCO
& TRUTANICH LLP

DIVORCE GLOSSARY

Court Actions, Hearings and Motions

"Court" means any superior court of this state and any court or tribunal of another state that has jurisdiction to determine the liability of persons for the support of another person.

"Court Order" or "Order" means any judgment, decree, or order of any court of this state that orders the payment of a set or determinable amount of support by a parent. It does not include any order or decree of any proceeding in which a court did not order support.

"Ex Parte" is an application brought by one party to a proceeding without notice to or challenge by an adverse party.

"Declaration" is a formal document which includes the facts necessary to sustain an action.

"Dissolution" Divorce is dissolution.

"Judgment of Divorce" The written document that states that a husband and wife are divorced. Typically, lawyers or a mediator draft the judgment of divorce for the judge to sign.

"Motion" is an application to the court requesting an order or ruling regarding pending litigation.

"Request for Order" is an order requiring a party to appear and argue why a certain thing should not be done. This is a way to accelerate litigation by compelling the adverse party to respond in a shorter period of time regarding an issue.

"Petitioner" is the party who first goes to court in a dissolution to file a request or petition for some kind of relief. Sometimes called the plaintiff in other civil matters.

"Petition" is a formal written request of the court for a certain thing to be done.

"Postnuptial Agreement" or "Separation Agreement" A written contract entered into by a husband and wife, which sets forth all their present and future rights in the event of a divorce or a spouse's death. The parties may or may not be involved in divorce litigation at the time they sign such an agreement.

"Prenuptial Agreement" or "Premarital Agreement" A written contract entered into by a couple who intend to marry but want to establish, before marriage, their rights in the event of a death or divorce after the marriage. The validity of such agreements depends on state law.

"Respondent" is the person who has to defend the action in a dissolution. The respondent also responds to the petition in the trial court, and, in that case, may also be referred to as the "defendant" in a civil matter.

"Summons" is a mandate requiring the appearance of the defendant under penalty of having judgment entered against him/her for failure to appear.

Child Custody Terms

"Joint custody" means joint physical custody and joint legal custody.

"Joint legal custody" means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

"Joint physical custody" means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way so as to assure a child of frequent and continuing contact with both parents, subject to Sections 3011 and 3020.

"Sole legal custody" means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

"Sole physical custody" means that a child shall reside with and be under the supervision of one parent, subject to the power of the court to order visitation.

Support Terms

"Alimony" or "Spousal Support" is payments made by one spouse to the other to assist with the support of the recipient spouse. Payments usually terminate upon the earlier death of either spouse, the remarriage of the recipient spouse, or a date decided by a judge or agreed upon by the husband and wife. Payments received are usually taxable to the recipient spouse and tax-deductible by the paying spouse.

"Arrearages" means the amount of money owed as support pursuant to a court order.

"Child Support" is a sum of money to be paid by one parent to the other to assist with the support of the couple's children. Child support usually terminates upon a child's emancipation. Unlike alimony, child support is not taxed as income to the recipient.

"Child Support Order" means any court order for the payment of a set or determinable amount of support by a parent or a court order requiring a parent to provide for health insurance coverage. "Child support order" includes any court order for spousal support or for medical support to the extent these obligations are to be enforced by a single state agency for child support under Title IV-D.

"Cohabitation" is the act of living with someone. In California, cohabitation may be grounds for the reduction or termination of support.

"Dependent Child" means any of the following: (1) Any person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States. (2) Any unmarried person who is at least 18 years of age but who has not reached his or her 19th birthday, is not emancipated, and is a student regularly attending high school or a program of vocational or technical training designed to train that person for gainful employment.

"Family Support" means an agreement between the parents, or an order or judgment, that combines child support and spousal support without designating the amount to be paid for child support and the amount to be paid for spousal support. "Garnishment" or "Wage Assignment" A mechanism whereby support is sent by the paying spouse's employer directly to the recipient spouse and is deducted from the paying spouse's paycheck.

"Obligee" means a person to whom a duty of support is owed.

"Obligor" means a person who owes a duty of support.

"Support" refers to a support obligation owing on behalf of a child, spouse, or family, or an amount owing pursuant to Section 17402. It also includes past due support or arrearage when it exists. "Support," when used with reference to a minor child or a child described in Section 3901, includes maintenance and education.

"Parent" means the natural or adoptive father or mother of a dependent child and includes any person who has an enforceable obligation to support a dependent child.

Property Terms

"Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

"Community property" Except as otherwise provided by statute, all property, real or personal, wherever situated, (and typically income), acquired by a married person

during the marriage is presumed to belong equally to both parties, unless acquired by gift, inheritance or devise.

"Quasi-community property" means all real or personal property, wherever situated, acquired before or after the operative date of this code in any of the following ways: (a) By either spouse while domiciled elsewhere which would have been community property if the spouse who acquired the property had been domiciled in this state at the time of its acquisition. (b) In exchange for real or personal property, wherever situated, which would have been community property if the spouse who acquired the property so exchanged had been domiciled in this state at the time of its acquisition.

"Separate property" Separate property of a married person includes all of the following: (1) All property owned by the person before marriage. (2) All property acquired by the person after marriage by gift, bequest, devise, descent, or disability awards may be considered separate property. (3) The rents, issues, and profits of the property described in this section. A married person may, without the consent of the person's spouse, convey the person's separate property.

Retirement Terms

"Employee benefit plan" includes public and private retirement, pension, annuity, savings, profit sharing, stock bonus, stock option, thrift, vacation pay, and similar plans of deferred or fringe benefit compensation, whether of the defined contribution or defined benefit type whether or not such plan is qualified under the Employee Retirement Income Security Act of 1974 (P.L. 93-406) (ERISA), as amended. The term also includes "employee benefit plan" as defined in Section 3 of ERISA (29 U.S.C.A. Sec. 1002(3)).

"QDRO" means Qualified Domestic Relations Order.