

THE INS AND OUTS OF DIVORCE IN CALIFORNIA

First of all California is a no fault divorce state and calls divorce "dissolution of marriage." No fault means that you do not have to allege any wrongful behavior on the part of your spouse. Fault is virtually irrelevant. There are only two grounds for dissolution in California. One is irreconcilable differences, which means that you and your spouse are no longer able to make your marriage work. The second ground is insanity, but it is rarely used.

PROPERTY DIVISION

There are three classifications of property in California, community property, separate property, and quasi community property. Community property is anything you or your spouse acquired through labor or skills during the marriage while living in California even if this property is in only one spouse's name. Quasi community property is anything acquired by you or your spouse through labor or skills during the marriage while living outside California.

The California courts treat community and quasi community property exactly the same, that is each spouse is considered to own one-half, and the court will divide such property equally.

Separate property is anything acquired by you or your spouse prior to marriage, or after separation, as well as certain gifts and inheritances that one of you receive even during the marriage. However, separate property can be transmuted to community property if it is placed in the name of both spouses. This issue can get quite complex, and your attorney will assist you in understanding and dealing with these issues. Separate property is not divided during dissolution, but must be disclosed to the court as well as your spouse during the dissolution process. Debts of the parties are generally classified in the same way property is classified and the rules for division of debts are the same.

PROPERTY DEFINED

Most people probably believe that they know what property is, but many forget to include many items generally not thought of in terms of property. For example property not only includes real estate, cars, furniture, clothing, jewelry, and bank accounts, but also includes life insurance policies, retirement funds, profit sharing plans, tax refunds, debts owing to the parties, and may even include future rights that are not fully vested yet. Your attorney will help you identify these assets and make sure that you receive your share.

You and your spouse can divide your property any way you like even if the division is not equal, so long as you both agree. However, you still need the advice of an attorney, and an attorney to prepare the settlement agreement. If you cannot agree, then the court will decide how to divide your possessions. Often times neither party is happy with the result when the court makes the decision. Therefore when possible it is preferable for the parties to work out an agreement so long as it is fair to both.

ALIMONY/ SPOUSAL SUPPORT

As in most issues in a dissolution of marriage proceeding you and your spouse can decide if one of you should receive "spousal support." You should always receive the advice of an attorney before entering into an agreement on this issue. If you cannot agree of course the court will decide for you. In making a decision the court will consider the length of the marriage, the earnings and earning capacity of the parties, age of the parties, and special needs of the parties. (For a more in-depth discussion of this issue see my article on this web site entitled "SPOUSAL SUPPORT WHEN AND WHY."

CUSTODY OF OUR MINOR CHILDREN

As with other issues in dissolving your marriage you and your spouse can decide with whom the children will live and how much time the children will spend with each parent. It is always best where possible for you and your spouse to try to reach an agreement on sharing the children, both the responsibilities, as well as the enjoyment of them emphasizing the needs of the children as well as taking into consideration the practicalities of shared custody. Always remember, it is you and your spouse who are getting the divorce, not your children. Your children love and need both of you. You should always attempt to have the children maintain as normal a relationship as possible with both parents. This does not in many cases mean that the child sharing should be half and half. Children do need stability, and in many cases because of school, friends, etc.. the children will need to live with one parent most of the time.

However, where both parents live in the same school district, and both parents have equal ability to care for and meet the needs of the children, and the time outside working hours to do so, and all other things being equal, the children should spend as close to an equal amount of time with each parent as possible. Experts in the area of child counseling have found that where the parents share the children, and make all decisions regarding the children based on the needs of the children as opposed to the needs and feelings of the parents, that children have a much better chance of leading a healthy and happy life. The number one rule is to never use your children as a weapon against your spouse. They will suffer irreparable injury if you do that. You may be in a situation where you for one reason or another cannot reach a child sharing agreement with your spouse. In this case the court will decide for you. You should know that the court does not automatically give custody of children to the mother.

Instead the court must decide which parent will serve the best interests of the children. One important thing you need to know about child custody litigation is that it is extremely expensive often costing \$20,000.00 or \$30,000.00 or more to litigate. It is also very emotionally painful to both parents and children. (For a more at length discussion of child custody litigation see my article on this web page entitled "Child Custody Litigation. Who Wins?" Also see my article on this web page entitled "Step Parent Visitation Rights In California."

CHILD SUPPORT

As in other issues of the dissolution you and your spouse can work out a child support plan. However, the difference is with regard to child support the court must approve the amount to be paid. That is because there are statutory requirements that all child support orders must meet, whether agreed upon or not. If you and your spouse cannot agree, of course the court will decide for you. Among other things,

the court will consider the incomes of each parent, and if more the earning capacity of each parent, the ages and needs of the children and whether you or your spouse are supporting other children from other relationships. Usually child support payments are made until the child is 18 years of age, or 19 if the child is still a full time student in high school. However, if your child becomes emancipated, and self supporting, or married prior to age 18 the court will allow termination of child support upon proper motion being brought before it. You as the paying parent may not stop child support payments generally without a court order. Further upon motion to the court the court may find the paying parent in contempt of court if they fail to make payments previously ordered. Punishment can be time in jail as well as fines. As you can see the issues of divorce are complex. You should always have an attorney. Here at the Law Office of Ronald Pullen I have been handling all issues related to divorce for more than 23 years successfully for my clients. Because the issues of divorce can be very complex I recommend that in all cases, you should receive the advice of an attorney. I can be reached by telephone at (619)425-0810, or E-mail me.