



PREVENTIVE LAW SERIES  
**CALIFORNIA DIVORCE &  
LEGAL SEPARATION**



Prepared by:  
Legal Assistance Department  
Region Legal Service Office Southwest  
3395 Sturtevant Street Suite 9  
San Diego CA 92136-5072  
(619) 556-2211

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### **CALIFORNIA DISSOLUTION**

In California, the legal term for divorce is “dissolution.” California law allows you to seek a dissolution based on irreconcilable differences. Fault in causing the breakdown of the marriage is IRRELEVANT in California. **If one spouse wants a divorce, there is nothing the other one can do to prevent it.** To file for a divorce you or your spouse must have been a resident of the state of California for the last six months, and of the county where you or your spouse will file the papers for the last three months. If neither you nor your spouse meets these residency requirements, you may still file for a legal separation (different from a divorce, as explained below), because there are no residency requirements for a legal separation. California can only exercise jurisdiction over the dissolution if either: 1) CA is the legal residence of the military member; 2) CA is the legal residence of the spouse; or 3) the service member is stationed in CA.

Before you file for dissolution, you should understand that a divorce will:

1. Legally end your marriage forever;
2. Divide your property and debts, unless you fail to request it;
3. Provide for child support and possibly spousal support; and
4. Determine who will care for the children and be entitled to make decisions on their behalf.

If you're not sure of whether you are ready for a divorce, you may want to seek personal or marriage counseling. You may seek counseling through the Fleet and Family Support Center.

### **WHEN IS THE LEGAL PROCESS COMPLETE AND THE DISSOLUTION FINAL?**

The process of getting a divorce begins when you file the initial papers. Before your dissolution is complete, all the issues must be resolved, either by default, agreement/stipulation, or through contested court proceedings (hearings and or trial). Everyone's case will take a different amount of time. The process may take several months if the case is uncontested or several years if there are disagreements or complex issues. You and/or your spouse may request that the court restore you to the status of unmarried persons prior to resolving the property, custody or support issues. To do so you must ask the Court to bifurcate status. After status is terminated, you will then be required to complete the proceedings by settling or litigating all child custody, visitation, child support, spousal support and property and debt matters and reducing the orders to a written judgment.

**DO NOT ASSUME THAT YOU ARE DIVORCED UNTIL THERE IS A JUDGMENT FILED AND ENTERED BY THE COURT. YOU ARE NOT DIVORCED UNTIL THE COURT ISSUES A JUDGMENT WITH THE “STATUS TERMINATES” DATE INDICATED ON THE FACE OF THE JUDGMENT. SERVICEMEMBERS REMAIN SUBJECT TO THE PROVISIONS OF THE UCMJ RELATING TO ADULTERY UNTIL A FINAL JUDGMENT.**

A person is able to remarry only AFTER a judgment has been entered terminating marital status. The **earliest** date upon which marital status can be terminated in California is six months and one day after the Respondent filed his or her Answer or was served with the Petition and Summons for dissolution.

It is the responsibility of either or both parties to bring the case to a conclusion. It is important that you seek legal

advice if you have any questions. Failure to bring the case to final judgment will result in the court dismissing your case **without judgment ever being entered.**

### **SUMMARY DISSOLUTION**

Summary dissolution requires much less paperwork and no court appearances. As of August 2015, there is one filing fee of \$435.00. Spousal support cannot be granted in a summary dissolution. During the six-month waiting period, either party can revoke the summary dissolution. This will have the effect of ending the summary dissolution process and requiring the parties to start the dissolution process all over again, either by seeking a regular dissolution or attempting to seek another summary dissolution.

To file for summary dissolution, you must meet ALL of the following requirements;

1. Married or registered as domestic partners for less than five years from the date of marriage or registration as domestic partners to the date of separation. (Note if you are trying to end both a marriage and a domestic partnership through a summary dissolution, both your marriage and domestic partnership must meet the five year rule discussed above).
2. No biological children from the marriage and wife is not currently pregnant by her husband. No adopted children.
3. No real estate (land) is owned.
4. Less than \$6,000 in community debts, not counting car loans.
5. Less than \$40,000 in separate assets, not counting car loans.
6. Less than \$40,000 in community assets, not counting car loans.

If the above requirements are met, and there are community property/debts, then the parties must approve a property settlement agreement.

### **REGULAR DISSOLUTION**

If you and your spouse do not qualify for summary dissolution, you must seek a regular dissolution. For the most part a regular dissolution can be handled by the mail but sometimes you may be required to make a court appearance. As of August 2015, there is a filing fee of \$435.00 for the Petitioner and \$435.00 for the Respondent, unless the active duty service member acts as the Respondent and agrees to waive certain rights under the Servicemembers' Civil Relief Act, in which case there is only one filing fee of \$435.00. As opposed to a summary dissolution, regular dissolution involves much more paperwork.

### **LEGAL SEPARATION**

Seeking a legal separation is very similar to seeking a dissolution. Legal separation is often used instead of a dissolution for financial or religious reasons or so that the non-military spouse keeps his/her military benefits when he/she is legally separated. The important difference is that **a legal separation does not terminate your marriage. When you are legally separated, you are still married and servicemembers remain subject to the adultery provisions of the UCMJ.** In a legal separation, the couple divides their property and debts, decides who will have child custody and who will have visitation, and arranges child and spousal support. As of August 2015, the cost is \$435.00 for the Petitioner and \$435.00 for the Respondent.

### **ANNULMENT**

An annulment is a legal proceeding in which the parties seek to treat the marriage as if it never happened. However, the circumstances under which an annulment is granted are extremely limited. One or more of these five factors must be met in order to satisfy the requirement for an annulment:

1. A spouse was under 18 and entered into the marriage without parental permission
2. A spouse was already married.

3. A spouse entered into the marriage as a result of fraud or force
4. A spouse was of unsound mind when entering into the marriage (requires medical evidence)
5. A spouse, at the time of the marriage, was legally impotent or physically unable to consummate the marriage. The ability to engage in partial, unnatural, or painful copulation is considered to be inability. Concealment or fraud is NOT a factor.

One or more of these five factors **must be proved in a court hearing**. There is no six-month waiting period for an annulment.

### **LEGAL ASSISTANCE SERVICES**

A legal assistance attorney is available by appointment Monday through Thursday from 0800 - 1030 and 1300 - 1500, and Friday from 0900 - 1100. Powers of attorney and notaries are available Monday through Friday at the same times. For more information, please contact the Legal Assistance Office, located in Building 56, 32nd Street Naval Station, San Diego, CA, by telephone at (619) 556-2211, or our office at Naval Air Station North Island – Coronado, Building 318 – Second Deck, above the Fleet and Family Support Center, Saufley Road, by telephone at (619) 545-6437.

### **RESOURCES**

**California Courts:** [www.courts.ca.gov](http://www.courts.ca.gov)

California Family Code §§ 2000 et seq. (2013)