

DIVORCE MAGAZINE – QUESTIONS AND ANSWERS

Question No. 1

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

Answer: If you have been married in the State of California for at least six (6) months and in your particular county for at least three (3) months, you may file a petition to dissolve your marriage in the California county in which you reside no matter where you were married. These residency requirements do not apply if you are filing for a legal separation.

Question No. 2

"I am getting married for the second time. Both of us have children from our first marriages, and we will be living in my house after we're married. Do we need a prenuptial agreement? It doesn't sound very romantic".

Answer: You don't need a prenuptial agreement for a second marriage. However, if you wish to specifically define the property you are bringing into the marriage and specifically determine how the property you acquire during the marriage is to be held and/or classified, a prenuptial agreement can accomplish those directives. Prenuptial agreements are highly favored by the courts even if their terms are inconsistent with California law. There are various requirements such as full disclosure of all assets and debts and a seven (7) day waiting period between the time the agreement is signed and your actual wedding day. Since these agreements take some time to prepare due to the negotiations and disclosure, I would suggest seeing an attorney well in advance of your intended wedding date.

Question No. 3

"What can the spousal support recipient do to protect against the payments ending with the payor's death or disability?"

Answer: The spousal support recipient can insist in the Marital Settlement Agreement or Judgment that the spousal support payments be non-modifiable and that they continue beyond the death of the payor. In California, if there is no provision otherwise, spousal support ends on the death of either party or the remarriage of the recipient. That law can be contracted around by entering into a Judgment with the above language.

Question No. 4

"If my ex-spouse does not allow me to visit my children, then can I stop paying child support?"

Answer: No. You still must pay child support even if the child is being kept from you. However, if your ex spouse leaves the jurisdiction thereby making it impossible for you to know of their whereabouts, you could claim in the event she comes after you for child support arrearages, that she is estopped from doing so by her failure to have the child available for your visits.

Question No. 5

"What is marital (or community) property and what is separate property? What is the difference between the two?"

Answer: Community property is property acquired in joint form during the marriage. Separate property is all property acquired prior to marriage or by gift or inheritance. Community property is typically split equally among the spouses upon divorce. Separate property stays with the party who took title to the property.

Question No. 6

"Will I lost 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!"

Answer: Every dollar made or earned during your marriage is owned equally by your spouse no matter who is actually working. Therefore, if you put monies into a 401(k) or work towards a retirement during the marriage, your ex spouse, even if she did not work a day during the marriage, is entitled to one-half. This is the policy of a community property state and it is based upon the contention that the mere fact parents take on different roles during the marriage does not result in them getting less of the community property should the parties divorce.

Question No. 7

"Are alimony and child support taxable? If so, is there any way of structuring support payments to my ex to lower my taxes?"

Answer: Alimony is taxable to the recipient and tax deductible to the payor. Child support is not taxable. There are various ways to structuring your payments to lower your taxes. However, the other party must agree to this as this is not something the court would do. For example, you can negotiate an order for "family support" as opposed to child/spousal support. Family support is a combination of the child support

and spousal support and can be structured to make it tax deductible and tax includable to the recipient spouse. We would have to run a number of scenarios to determine if this was in your best interest as opposed to simply receiving the standard child/spousal support order.