

Divorce, Separation and Annulment in California

The purposes of filing a petition for dissolution of marriage - divorce - are to end the marriage and restore the parties to the status of single persons. During the proceeding, community property is divided, custody and visitation of any minor children are determined and orders regarding child and spousal support are made. The spouse that files the petition is the petitioner and the other spouse is the respondent. The earliest date the marital status can be terminated is six months after the date the summons and petition is served on the respondent or after the respondent files a response, whichever occurs first. A petitioner must have been a resident of California for at least six months and a resident of the county in which the petition for dissolution is filed for at least three months immediately prior to the filing.

The purposes of filing a petition for legal separation are similar to filing for dissolution except that the marital status of the parties is not ended. A person might file for legal separation for religious or personal reasons, such as the need to maintain spousal health insurance coverage. Also, a person who cannot meet the residency requirements for filing for dissolution can file a petition for legal separation and then file an amended petition for dissolution when the required residency periods are met. The six-month waiting period for obtaining a dissolution begins with the filing of the first petition, so a person who has just moved to California or a particular county can still obtain a dissolution within six months. Both spouses must agree - or the respondent must fail to respond to the petition - before a court can enter a judgment for legal separation - i.e., if one spouse asks for a dissolution, the court must grant it.

It is important to distinguish a judgment for legal separation from the term “date of separation.” The latter is the date one spouse decides to end the marriage and takes actions that clearly show the finality of the decision. The date of separation is important because, in general, it is the date new assets (e.g., wages) and debts obtained by either of the spouses are considered separate rather than community. The date of separation must be listed on a petition for either dissolution or legal separation.

A petition for nullity - annulment - may be filed only if the marriage is void or voidable. In brief, a marriage is void in cases of incest or bigamy and is voidable in cases of minority age, a mistaken belief that a current spouse is dead, unsound mind, fraud, force and physical incapacity. A void marriage is void from the beginning, but it is important to obtain a judgment of nullity because it provides a judicial determination and a public record that the parties are not married. A voidable marriage may be terminated by a judgment of nullity or of dissolution. A judgment of nullity usually “relates back” and erases the marriage. However, there are exceptions, such as when one party qualifies for “putative spouse” status because he or she had a good faith and reasonable belief the marriage was valid or when an innocent third party would suffer as a result a result of treating the marriage as void.

These rules and requirements apply also to California domestic partnerships. Also, in both cases of marriage and partnership, “summary” or quick procedures are available to terminate the status if certain criteria are met. In the case of marriage, the summary dissolution is obtained through the court system and may be used if both spouses agree, the marriage is of no more than five years, there are no children, the parties own no real property, community debts are less than \$5000 and community assets are less than \$33,000, and neither spouse is requesting support. In the case of domestic partnership, termination of status is possible if both parties file a notice or termination with the Secretary of State and the other requirements pertaining to summary dissolution of marriage are met.

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