

# FAMILY LAW

Family law applies to the creation, termination, and course of the family relationship. Matters governed by family law include prenuptial agreements, dissolution of marriage (divorce), separation, judgment by nullity, spousal support, child support, child custody, visitation, and adoption.

## MARRIAGE

Marriage is a legally binding relationship. “Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary. Consent alone does not constitute marriage. Consent must be followed by the issuance of a license and solemnization.” Family Code §300.

In the absence of a premarital agreement, “community property” rules govern the assets and debts of married couples and Registered Domestic Partners in California. Under community property rules, each spouse is presumed to have a one-half interest in property acquired by the couple during marriage. All property acquired during marriage is presumed to be community property, regardless of property location. Fam. C. §760. Debt incurred both prior to and during marriage is presumed to be allocable to the community. Fam. C. §910(a).

Spouses do not share a one-half interest in “separate property,” which includes property acquired by each spouse before marriage, property that each spouse receives as a gift, and the rents or profits from separate property. Fam. C. §770. A spouse's separate property is *not* generally liable for the other spouse's debts, no matter when the debts were incurred. Fam. C. §913(b)(1).

Property acquired while the couple is “living separate and apart” from each other is considered separate property. Fam. C. §771. Similarly, debt incurred during legal separation is generally not considered community debt. Fam. C. §910(b). Courts will consider whether a couple intended to reunify or remain separated to determine if the couple was “living separate and apart.” *In re Marriage of Manfer* (2006) 144 Cal.App.4th 925, 927-928.

## TERMINATION OF MARRIAGE

A marriage may be terminated by law in three ways. Dissolution of marriage is the most common. The other two ways of terminating marriage are legal separation and judgment of nullity (or “annulment.”)

Dissolution of marriage “restore[s] the parties to the state of unmarried persons.” Fam. C. §2300. In colloquial terms, dissolution is often called divorce.

As suggested, legal separation is distinct from dissolution of marriage. Legal separation offers a way for couples to resolve property and custody issues if they no longer wish to live together but do not want to permanently end their marriage. Religious beliefs are one reason why a couple may pursue legal separation instead of marital dissolution. If a couple is legally separated, they are unable to remarry.

Some marriages are considered void or voidable in California, and are subject to nullity. A void marriage is one that is illegal at the time it occurs. Marriages between close relatives or in which one person is already married or is a registered domestic partner with another person are void. Fam. C. §§ 2200-2201. Voidable marriages include marriages in which one party is not able to give valid consent. Fam. C. §2210. A judgment of nullity may be issued for void and voidable marriages, wherein a court finds that the marriage by law never existed.

### **SPOUSAL AND CHILD SUPPORT**

Upon the termination of marriage, courts may order, or spouses may agree, to have financial support provided by one spouse to another. Arrangements for spousal support are completely separate from the division of property between spouses. Fam. C. §3590. Absent an agreement to the contrary, courts may make, modify, or terminate spousal support orders. Fam. C. §3591. Courts will consider many factors when determining if, to what extent, and for how long one spouse is ordered to support another. Factors include the needs and circumstances of the recipient spouse, the recipient spouse's ability to work and earn an income, and the amount and length of time for which support is "just and reasonable." Fam. C. §§ 4330-4331.

Courts treat child support separately from all other arrangements regarding spousal support or division of property. Fam. C. §3585. Child support guidelines seek to ensure that parents mutually support their children, that children share in the quality of life of their parents, and that child support orders reflect each parent's income. Fam. C. §4050.

### **CHILD CUSTODY**

Courts in family proceedings make most decisions regarding minor children, including custody decisions, using a "best interest of the child" standard. Courts consider many issues in determining the best interests of a child, including health, safety, and welfare; each parent's relationship to the child; the parents' significant others; any history of child abuse; any history of substance abuse; and how much and how often each parent has had contact with the child.

"Physical custody" refers to which parent the child will live with and which parent will supervise the child. The court can order "joint physical custody" in which parents share physical custody, or "sole physical custody" in which one parent is granted physical custody subject to visitation with the child by the noncustodial parent. Fam. C. §§ 3004, 3007.

In the event sole physical custody is awarded, courts may order "reasonable" visitation rights to the noncustodial parent. A court has the option of not awarding visitation to a parent if the court finds that it would not be in the best interest of the child. Generally, however, courts find that interaction with both parents is in the child's best interest. Visitation rights may be granted to any person, not just parents, if held to be in the best interest of the child. Fam. C. §3100.

"Legal custody" describes the "right and responsibility to make the decisions relating to the health, education, and welfare of a child." Fam. C. §3003. A court can order "joint legal custody," in which parents share the decision-making responsibilities, or "sole legal custody," in which one parent is granted sole decision-making responsibilities. Fam. C. §§ 3003, 3006.

## **GETTING HELP**

The following are free resources for students who have questions relating to family law.

### ***General Legal***

Student Legal Services, 858.534.4374 or <http://sls.ucsd.edu>

### ***Family Law***

Family Law Facilitator, 619.531.3234 (information line) or

<http://www.courtinfo.ca.gov/selfhelp/lowcost/flcountysandiego.htm>

Main office: 220 W. Broadway, Room 4001, San Diego CA 92101; other locations throughout San Diego County.