

## Pre-Divorce Planning Worksheet for Women

Confidential

**Objective:** To obtain the necessary information and have a strategy in place should divorce become necessary.

**Benefits:** Knowledge of the laws impacting your children, division of your assets, debts, income and expenses will allow you to make careful thought out decisions concerning your future.

This Worksheet reflects the legal opinions of the attorneys associated with The McKay Law Group. The worksheet was designed as an outline to assist you in preparing for a divorce, should that be inevitable. The worksheet is designed for you to use while working with your lawyer and to help trigger questions you may need to ask your lawyer. The worksheet is not a complete statement on the law and should not be used as such.

The legal process of divorce starts with the filing of a Summons and Petition by the Petitioner. This is a brief document that gives the court the statistics or facts of the marriage. If any orders are needed, such as child support or a visitation schedule, a party must file a motion with the court.

**Temporary Orders:** In the beginning of a divorce, after a party has filed a motion, a judge will typically grant temporary orders. Temporary orders include orders related to child or spousal support, custody and visitation, possession or use of the residence or vehicles and any restraining orders that might be relevant.

**Final or Trial Orders:** Orders dividing property and setting permanent support or permanent custody and visitation orders are made at the end of the case, usually referred to as 'the time of trial.'

**Law is gender neutral.** The law does not allow a father or mother to have preferential treatment, simply due to gender. For instance, it is unconstitutional for a judge to order the custody of young children to be with their mother, simply because she is their mother.

**California is a No-Fault state.** The court's role in any divorce is to 1) set custody and visitation orders; 2) set support orders; 3) divide assets and debts; and 4) order any reimbursements or other orders needed to effect the divorce. This means the judge is not to take into account any wrong doing by a party when making a support order or dividing assets and debts. However, the court can take into account any type of behavior that a parent might have that would impact his or her parenting ability and the court can impose sanctions on a husband or wife that engages in activities that harm or cheat the other party from an equal division of the marital estate.

**Custody & Visitation**

**Notes**

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| <p><b>Custody &amp; Visitation of Children</b><br/><br/>by Agreement</p>  | <p>Parents are encouraged to make agreements on a parenting schedule for children. Schedules include provisions on which parent will have time with the child during the week (Monday through Thursday); weekends (Friday through Sunday); holidays and vacations. Any agreements relating to the child's school, medical or extracurricular needs should also be addressed. A Stipulation is drafted to reflect all of the parents' agreements. This Stipulation becomes court order.</p>   |  |
| <p><b>Custody &amp; Visitation of Children</b><br/><br/>when Disputed</p> | <p>When parents are in dispute on any aspect of the parenting schedule, usually one parent will file a motion to allow the judge to make the decision. By law, the parents are sent to court ordered mediation. In the court ordered mediation, each parent will present his or her position to the mediator on each disputed issue. The mediator's first job is to obtain an agreement between the parties on each issue. If that is not possible, the mediator will make a recommendation to the judge as to what the mediator believes the parenting plan should be. The mediator's recommendations can be challenged by either parent. After hearing argument on any challenges, the judge can adopt the mediator's recommendations or the judge may make an order that he or she believes is best for the children.</p> |  |
| <p>Action to be taken</p>   | <p>Determine whether or not you and your husband will reach an agreement on a schedule for the children. What issues will you need help in resolving? Can a mediator help you come to an agreement or will you need to litigate? If litigation is necessary, do you have information needed from third parties to support your position?</p>   |  |

## Spousal Support

## Notes

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| <p><b>Spousal Support</b><br/>aka alimony</p> <p>by Agreement</p> | <p>Spousal support is allowed for the 'lesser earning spouse,' who receives it for approximately one-half the length the marriage. In the beginning of a divorce, it is determined by a computer calculated formula called Guideline spousal support. A Stipulation is drafted to reflect all of the parents' agreements. This Stipulation becomes court order.</p>  |  |
| <p><b>Spousal Support</b></p> <p>when Disputed</p>                | <p>Spousal support is one of the most disputed issues, as it has an 'emotional' attachment to it. At the beginning of a divorce, the objective of the court is to put an order in place that will maintain the parties' lifestyle as close to that they enjoyed while married. This is difficult, as two households are now operating, as opposed to one. The judge will usually make an order based on Guideline support in the beginning of the case, making adjustments at the time of trial.</p> |  |
| <p>Action to be taken if you are seeking support</p>              | <p>You need evidence to prove your husband's income, your income, factors or reasons why you made less income during the marriage. Documents needed include prior tax returns, paystubs, W-2's.</p>  |  |
| <p>Action to be taken if you wish to avoid payment of support</p> | <p>You need evidence to prove that your husband has the ability to make an income equal to yours, or that jobs are available that he would be qualified to take if he chose to work. You should also be prepared to show that his lack of equal earning is not a result of any agreement you made during the marriage. Documents needed include prior tax returns, paystubs, W-2's, his resumes, education or other evidence of higher earning.</p>  |  |

## Child Support

## Notes

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| <p><b>Child Support</b><br/>by Agreement</p>         | <p>Child support is determined by calculation of the income of each parent, timeshare of the children based on the parenting schedule, tax filing status, and other factors using the California Guideline formula. Once the numbers are entered into the Dissomaster program, an amount of support is calculated to be received by the custodial parent. A Stipulation is drafted to reflect all of the parents' agreements. This Stipulation becomes court order.</p>  |  |
| <p><b>Child Support</b><br/>when Disputed</p>        | <p>Child support is governed by strict laws, which a judge must follow. If disputed, the parties will complete Income and Expense Declarations which give the judge information on their incomes, expenses and other factors to determine support. By law, the judge must make findings as to what each parent's income and circumstances are and make the corresponding child support orders. By law, the judge is mandated to order the amount of child support determined by the Guideline, irrespective of a parent's claims that he cannot afford it.</p> |  |
| <p>Action to be taken if you are seeking support</p> | <p>You need evidence to prove the parenting timeshare, your husband's income, your income, factors or reasons why you made less income during the marriage. Documents needed include prior tax returns, paystubs, W-2's.</p>   |  |

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| <p>Action to be taken if you wish to avoid payment of support</p> | <p>Child support is mandatory. At the time the parties separate, the court will usually use the actual income of each parent to determine the support, even if one parent is underemployed. Thus, if your husband is unemployed and has a substantial amount of time with the children, you would likely be ordered to pay him temporary child support on a temporary basis.</p> |  |
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### Division of Assets and Debts

Note: California is a community property state, which means that any assets accumulated during the marriage are considered 'community' with each spouse entitled to one-half value of that asset. If one party receives the asset, the other party may receive an equalization payment or an asset of similar value.

#### House

| <b>Notes</b>                       |   |
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| <p>House<br/><br/>by Agreement</p> | <p>The community property value is determined by obtaining the fair market value of the home (the value of the home minus any loans or encumbrances). If one spouse put a down payment on the home, this is usually deducted from the community property share and belongs to that spouse. If the parties agree that one spouse will remain in the home, then the other spouse receives one-half of the equity in the home as an offset to the other spouse retaining the home. This issue is considered a 'trial issue' and if agreed upon is incorporated into a Marital Settlement Agreement, which will become the court's orders at the time the divorce is finalized.</p> |

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| <p><b>House</b></p> <p>when Disputed</p>                     | <p>Disputes arise when both spouses want to remain in the house or when one spouse wants the house sold and the other wishes to keep it. As this is a trial issue, a judge can make a decision at the early part of a divorce as to who will stay in the house, but will not make a decision on the ultimate disposition of the house until the time of trial. At the time of trial, the judge will receive evidence from both parties to determine whether the house should be sold or whether one of the parties can keep the house. If a party is allowed to keep the house, he or she will also be responsible for the mortgage payment.</p> |  |
| <p>Action to be taken if you want to remain in the house</p> | <p>If your husband also wants to stay in the house, you need evidence to persuade the judge that 'fairness' dictates you remain in the house. Reasons could be that it is best for the children, you can afford to maintain the mortgage payments, you have put a substantial amount of time and care into the home, etc. Documents needed include residential appraisals, mortgage statements, tax statements.</p>  |  |
| <p>Action to be taken if you want the house to be sold</p>   | <p>The courts will usually allow a spouse to keep the house, if that party is living in it and can maintain the mortgage payments. If you want the house sold, you must prove that your husband cannot afford to pay the mortgage on his own or that he cannot afford to buy you out of the house. Documents needed include residential appraisals, mortgage statements, tax statements.</p>   |  |

**Other Assets and Debts to be Divided**

**Notes**

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| <p><b>Retirement and 401(k) benefits</b></p> <p>by Agreement</p> | <p>Community property law dictates that any benefits earned during the marriage will be divided, irrespective of which spouse earned the benefits. Usually, if the parties' benefits are close to equal in value, each one will retain his or her benefits. If the benefits are not equal, then a 'rollover' can be achieved to equalize the benefits. If a retirement is governed by federal ERISA law, then a QDRO (Qualified Domestic Relations Order) is prepared to divide the benefits.</p> |  |
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| <p><b>Retirement and 401(k) benefits</b></p> <p>when Disputed</p>     | <p>The most common dispute is that one party doesn't believe it's fair to give the other spouse any of the retirement. However, under the law, the judge must divide community retirement benefits. Documents needed: copies of retirement plans, statements, employee benefit packages. After a judge makes an order, if the retirement plan is governed by federal ERISA law, then a QDRO (Qualified Domestic Relations Order) is prepared to divide the benefits.</p> |  |
| <p><b>Rental homes and income properties</b></p> <p>by Agreement</p>  | <p>A rental home is treated as any other asset. Once a fair market value of the equity is determined, the parties may equalize by way of a buyout of the other spouse or an offset of another asset. When the parties agree, they are not bound by law to obtain formal appraisals of the property, but can agree on an values they choose. The terms of the agreement are put in the Marital Settlement Agreement.</p>  |  |
| <p><b>Rental homes and income properties</b></p> <p>when Disputed</p> | <p>If the parties cannot agree on the value or disposition of rental property, the court will order formal appraisals of the property, which may include an income analysis. The judge may order the properties sold or may divide the properties between the parties. Documents needed: appraisals, engineering reports, income analysis.</p>   |  |

Vehicles, Household Furnishings, Miscellaneous Personal Property

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| <p><b>Vehicles</b></p> <p>by Agreement</p>  | <p>A vehicle is community property if it was purchased after the date of marriage. The courts determine the fair market value of a vehicle by taking the 'mid range' between the retail and wholesale values as determined by Kelley Blue Book. A party usually keeps the vehicle he or she drives and is responsible for the payments.</p>        |  |
| <p><b>Vehicles</b></p> <p>when Disputed</p> | <p>Disputing the value of vehicles is usually a waste of attorney's fees. However, at trial, a judge will usually allow the party to keep the vehicle he or she is driving and is ordered to make the corresponding payments. Documents needed: Printouts for the retail and wholesale (trade in) values of the vehicle from Kelley Blue Book.</p> |  |

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| <p><b>Household furniture, electronics, dishes, linens, and other household items.</b></p> | <p>Typically, the judges view the division of the household furniture as the least important issue to be resolved in a divorce. At the time you separate, it is important to obtain the items you need or want at that time, as opposed to trying to get them later. The parties will usually draw up a list dividing the property for division. If one party gets the bulk of the furniture, the other may be entitled to an offset or equalization. Usually the agreement as to division of furniture is referred to in the Marital Settlement Agreement in very general or vague terms.</p> |  |
| <p><b>Household furniture when Disputed</b></p>  | <p>Disputes over household items are usually do not justify the attorney's fees and are often referred to a Special Master. A personal property appraisal is ordered by the judge with the Special Master operating as a referee. The judge will usually adopt as court orders the Special Master's recommendation.</p>  |  |
| <p><b>Debts by Agreement</b></p>   | <p>Debts are considered community debts, with each party 50% responsible, if the debt was incurred during the marriage. It does not matter if only one party's name is on the account. Usually the parties will divide the debts in such a way that they are equal or proportionate to the spouse's earning power.</p>   |  |
| <p><b>Debts by Disagreement</b></p>  | <p>Parties are discouraged from litigating debts in court. However, the judge will order each party to pay one-half of the total debt load, unless the net marital estate is a negative value. In that case, the party most likely to afford the debt may be ordered to pay the bulk of it.</p>  |  |

**Practical matters**

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| <p>Confidentiality of your divorce</p> | <p>Be careful of the 'friends' you share your intentions, private thoughts or concerns about your divorce. Sometimes people who you believed were your friends will not be loyal to you while you are going through the divorce process. Be especially careful of a woman who may be married to your husband's best friend.</p> <p>Have a safe place (preferably locked) to keep any of these papers or other documents you do not wish for your husband to see.</p> | <p><b>Notes</b></p> |
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| <p><b>Legal support</b></p>       | <p>The time before a divorce is filed gives a woman the opportunity to interview several different divorce attorneys to ensure she believes she has found an attorney that she can speak with and will respect her rights, an attorney that is knowledgeable about the law, including an understanding of both the up and downside of settlement and litigation. It is important to find a lawyer that is well respected by the local judges and understands how those judges rule on various issues.</p> |
| <p><b>Financial planning</b></p>  | <p>You will need to have a general idea of what your monthly 'post separation' living expenses are and that you have the resources to maintain those expenses. If you do not and support is needed from your husband, a support order could take up to 90 days to obtain.</p>   |
| <p><b>Living arrangements</b></p> | <p>If you are planning to leave the family residence, you will need to discuss the consequence of this move on your divorce case, especially if children are involved. If you are planning to leave, you will need to research housing and have a strategy in place.</p>  |
| <p><b>Emotional support</b></p>   | <p>Divorce is always a stressful experience. Even if you believe your divorce will be 'friendly,' you need a good emotional support system of friends, family and other people whom you can trust to share your experiences.</p> <p>It is often times helpful to see a therapist or counselor who specializes in divorce or other transitional issues, especially if you have young children.</p>   |