INTRODUCTION

Ending a serious relationship is never a pleasant experience for anyone, male or female. However, for many couples, certain irreconcilable differences arise during the course of their relationship that spawns discussions of divorce. Such "differences" can be numerous and varied; from financial problems to an unfaithful spouse, mental and physical abuse to simply falling "out of love." Whatever the reasons might be, more important than the actual ending of your marital status is how you will resolve specific issues related to the ending of your marriage. How will you co-parent your children? How will your children be supported? How will your property be divided? Are there retirement plans that need to be divided? Will one of the parties need temporary/permanent spousal support or alimony? How will the community debt be paid? These are just a few of the questions that will need to be answered during the course of divorce proceedings.

I want to emphasize that this book is not just a legal "how to" guide. It is a complete look at the emotional, philosophical and legal issues related to family law court proceedings.

I am reminded of an old proverb that states: “knowledge is the key to understanding.” Accordingly, if individuals facing family law problems have a balanced understanding of the emotional and philosophical issues first, the legal issues will be that much easier to resolve. It is to this end that this book is dedicated; helping men (and women) understand and resolve their family law legal issues in a civil, fair and equitable manner.

MY THREE “GOLDEN RULES” OF DIVORCE
In my legal career I have assisted in hundreds of divorce cases and related court actions. I have listened to numerous stories (usually told by one party) that place the majority of blame for the break-up on the other party. In listening to such story’s I have always kept in mind that rarely is one person entirely responsible for the break-up of any relationship. In fact, I don’t believe I have ever had a case where both parties did not share in the demise of the relationship. No break-up is ever as one-sided as one party would represent! Therefore, let me make it clear to everyone that I totally subscribe to the three “Golden Rules” of divorce.

1. **There are always three sides to every story:** His side, her side and The Truth.
2. **Truth often lies in the middle of two extremes.**
3. **It takes two to tango.**

These may be old cliches but they remain very relevant when providing divorce legal assistance and counseling.

One final word: I have and will say many times in the course of this book that the court is entirely unconcerned with why two people end a relationship. There is no legal platform from which to express these issues. The all-encompassing legal designation that the court allows in most divorce cases is “irreconcilable differences.” The court doesn’t care what those differences are specifically. Therefore, since the court doesn’t care why you are ending your relationship your goal should be to obtain favorable agreements on the issues inside the divorce. *(I.e. Custody, Visitation, Child and Spousal Support, Division of debt and property.)* Once divorce is eminent both parties should avoid discussions on “who did what to whom.” If the parties get into a finger-pointing contest they will only diminish their ability to obtain such favorable agreements. So, get a grip and don’t go there!

**DIVORCE AMERICAN STYLE**

In 1970 most States changed their divorce laws adopting a “no fault” system. Previous to 1970, most States required that an individual filing for divorce have “grounds” for divorce. Grounds for divorce would be: mental cruelty, adultery, bigamy, fraud etc. etc…. Presently, *(in most states)* we have an all-encompassing category called “irreconcilable differences.” No longer is it required to have specific grounds for divorce. In New Jersey, Pennsylvania, Virginia and some other eastern states fault based divorce still exists but they also offer “no fault” if the parties can agree that there are no grounds for divorce. In those states, there is generally a two year waiting period before a “no fault” divorce can be granted. It appears that most states are moving away from “grounds based divorce” in favor of a “no fault” system. Most recently New York has adopted the “No fault” divorce system. It may take a few more years for the other States to adopt “no fault” but it will happen.
That said, the Courts in most states are largely unconcerned with why two people divorce. However they are very concerned with how two people parent their children, support their children and divide their property and debt. In most States it only takes one person to want the divorce and the divorce will be granted.

Since many states no longer solely require grounds for divorce it is therefore unnecessary to discuss the issues that cause divorce in no fault cases. Notwithstanding adultery, bigamy, domestic violence, drug/alcohol abuse or other such problems which are “grounds” for divorce in certain states such issues are merely symptoms of deeper problems and are not the cause of broken marriages. All of these symptoms definitely contribute to the destruction of a relationship but there is no longer a legal requirement to establish such problems when requesting “no fault” dissolution of your marital status. On the other hand, these problems may be significant when determining issues of child custody, visitation and other related issues within the divorce.

There is, however, one longstanding “cause” that includes most symptoms described previously. I do believe that this “cause” is worthy of some discussion.

In the early 1940's while this country was at war, women began to enter the work force in significant numbers. At first, they worked in factories that manufactured items needed by our military. After the war ended women began pursuing careers in every sector of the job market. Presently, the number of women in the work force is almost equal to that of men. Their presence in the work force was originally born out of necessity rather than choice. Since many of our men were in the military and stationed over seas the only available workers left were mainly women. During this period in our history divorce was available but uncommon.

One such female worker became very well known. Her name was "Rosie the Riveter." Now whether Rosie the Riveter was an actual person or simply a designation given to women who were working in factories supporting the war effort is unclear. What ever the case might be, the "Rosie the Riveter" phenomenon, of women entering the work force in mass was very real and would forever change the attitude of the American people regarding women in the workplace.

In 1945 when the war ended, and men returned home to their families and jobs, Rosie the Riveter didn't want to stop working. She had acquired a level of independence and self-sufficiency that most women had never experienced. This newly acquired independence would ultimately change the fabric of the American family forever by creating an entirely new set of parameters for emotional, philosophical, religious and legal issues.
Before we go any further with this discussion let me assure you that I am not a member of the "He-man, women haters association." I can just see the faces of women who will read this and say to them selves; "here we go with the women bashing!" Another "it's all the women’s’ fault" or "let's blame it on the woman" routine. Not so! Although I am a dedicated advocate of Father's rights, 80% of the initial contacts to this organization are from women. (The new wife, new Girlfriend, Mother, Grandmother, Sister etc etc....) I am very respectful of women and their right to work in the career of their choice. So let's go beyond any idea you might have that I am bashing or blaming women because that is entirely not true. So let’s continue!

In the years following World War II divorce statistics skyrocketed. American society was ill prepared to accept the changing role of women and its subsequent effect upon family, friends, business, religion, politics and courts of law. The changes reached far into the very fabric of what had previously been considered the traditional family. Let’s face it! The role of men all over the world has been the same since time immemorial. Men wake in the morning, shower, eat, kiss the wife goodbye and go to work. When they return home they eat again, play with the kids, read the paper, (1920’s to present-watch some T.V.) and go to bed. This has been and continues to be the cycle of life for men. Contrarily, the role of women is vastly different today than that of 20, 50, 100 or 1000 years ago.

I want to emphasize again that the emergence of women into the work place has been problematic largely due to society’s apparent inability to adapt to their changing role within the family. Therefore, the issue here is not whether it’s right or wrong for a woman to work outside the home but rather what adjustments are needed to accommodate such changes. Until society, which includes churches, businesses, schools and Courts of law, accepts the emerging role of women in the workplace and makes the necessary changes, men and women can both expect continued problems in their marital or co-habitant relationships.

LEGAL v. EMOTIONAL ISSUES

Emotional Issues:
It has been my experience that Divorce issues can be divided into two basic categories: emotional issues and legal issues. Let's discuss the emotional issues first.

Divorce is always bad! It’s bad for the parties, their children, family, friends, co-workers and just about everyone else associated with the couple. But, there are varying levels of “Bad.” “Bad” can quickly deteriorate into other less acceptable scenarios. Bad can become “worse, terrible, horrendous, catastrophic, cataclysmic, nuclear, etc. etc....” Therefore, it should be the
goal of every couple seeking divorce to keep things at the level of “bad” and keep “bad” from regressing to other intolerable scenarios.

The emotional pain of Divorce can be and often is traumatic and severe for both parties. Despite what you may have heard, men agonize over divorce as much as women do. When I am contacted by a man that is either considering divorce or has been served with divorce papers he usually is experiencing very common symptoms of deep hurt and pain; sleepless nights, can't eat, hard time concentrating at work, every song he hears on the radio reminds him of his spouse, anger, tears, confusion, depression, feelings of inadequacy and failure etc etc. Again, both men and women will experience trauma, not just women.

However, notwithstanding the immediate trauma of divorce, emotional issues usually resolve themselves in time. Each morning you wake up the trauma will be less than the previous morning.

It is also important to understand that as human beings we are not always able to control what we feel. We may be able to control how we express our emotions but we can't control what we actually feel. A well-known psychiatrist who specializes in marriage and family counseling said it best: "Feelings are never right or wrong, they just are!" Therefore, we need to be careful that we don't make important decisions based on our emotions or feelings of the day. The bottom line here is that both parties should make sure that the initial trauma of separating for purposes of ending your marriage subsides before making any long-term legal agreements.

**Legal Issues:**

While emotional issues resolve themselves in time, legal issues, not handled properly can haunt you for a lifetime. Therefore, despite your personal feelings and emotions it is important to “take care of business.” Failing to respond to legal issues in a timely manner can and often does have far-reaching and irreparable consequences. It is of paramount importance that both parties take care of business no matter how they may personally feel about the pending legal action. This is particularly true for men.

Unlike women, Men often fail to take the necessary action when faced with emotional or legal problems. Men enter into denial that prevents them from facing emotional and legal realities. Subsequently they fail to do anything at all. This is why women prevail more often than men in divorce court. Women are generally last to leave a marriage. You might be surprised to learn that women will endure and forgive serious breaches in the marital relationship such as adultery, domestic abuse, drug/alcohol abuse, neglect and a number of other common marital problems. However, once a woman determines that the marriage is over she will not hesitate in taking the proper legal action. In support of the forgoing, a recent statistic printed in US Today claims that women file 86% of all divorces nationwide.
THE FIVE BIGGEST MISTAKES MEN MAKE IN DIVORCE COURT.

1. **Failing to respond:** This is the biggest mistake of all! Men commonly fail to respond to legal actions. They simply don’t do anything at all. They rationalize that their spouse will likely drop the action or they will be able to work out an agreement outside of court. The reality here is that women almost always follow through with divorce. In California alone, 94% of all divorce filings proceed to final judgment. In New York, 42% of all divorce judgments are by default. *(Other states report similar statistics)*

   Failing to respond to a divorce action or other family law legal proceeding will result in a “default judgment” being entered against you. This means that everything your spouse has requested in her petition will be granted. The Court can even make additional orders it deems necessary and proper. If you are served with papers, **always respond!** If, after responding, you are able to obtain an out of Court settlement or your spouse reconsiders and drops the action, great. **However, always respond!** Failing to do so can, and likely will, result in severe and far reaching consequences from which you may never recover. The Family Law Court system is a very unforgiving system. If you fail to respond to any Family Law legal action in which you are a party, you may lose forever certain rights related to your case.

2. **Incorrect legal advice:** Every one has had a family member or friend that has been through a divorce or related family court action. Once these well-intentioned individuals know that you are facing family law legal problems they are quick to give you advice. Unfortunately, the information they dispense is generally incorrect, incomplete and/or outdated. Family law legal guidelines used by the Court change frequently. Wherefore, there is no substitute for accurate legal information that specifically pertains to your case. *(See our section on “The Truth about Family Law and Attorney’s)*

   Acting on bad legal advice can be worse than not doing anything. Take the time to learn the facts. **You can be sure your soon to be Ex has!**

3. **Signs bad settlement agreement:** Men that have failed to be properly advised often sign a bad settlement agreement called a **Stipulated Judgment** or **Marital Settlement Agreement.** Remember that the Court doesn’t care what agreements two sides of a legal action make. Their only concern is that it’s agreed too by both parties.

   If the opposing party has an attorney, that attorney will usually make a high-pressure offer of settlement that will always benefit their client. Family law attorneys are very adept at intimidating an improperly advised, unrepresented party in hopes of obtaining a stipulated agreement. The rule of
thumb here is; don’t sign an agreement if it’s not what you want. Don’t forget Family Court is a civil Court, not a criminal Court. The Judge is your best friend in Family Court. Unlike criminal court, your best deal will come from the Judge in the courtroom not in the hallway from the opposing attorney. When confronting an aggressive attorney who is pressing you for an agreement, remember the magic words: “Let’s go in and see the Judge.”

4. **Doesn’t perform agreements:** The message here is simple. Don’t sign an agreement you don’t like. If, after having been properly advised, you like the agreement being offered, sign it! But, if you are not comfortable with the offer of settlement, don’t sign it! More importantly, don’t sign anything that you do not intend to perform. The Court has little patience with those who don’t perform orders. Non-compliance with court orders can severely prejudice your case and can even result in contempt of court charges in which jail time can be imposed.

5. **Becomes frustrated, gives up:** It’s no secret that the Family Court continues to be biased in favor of women. Although this bias has subsided in recent years due to new laws and guidelines, it still exists.

   There is nothing more frustrating than watching a Judge or mediator allow a woman to ramble on and on about her position and yet not give the man even a moment to respond in support of his position. Despite the prevalent bias men should never get so frustrated that they lose their composure. Patience is a great virtue in Family Court. Don’t forget that a family law case stays open until you die or there are no longer any issues to be resolved. Therefore, your involvement in the case is not limited to just the present court date or most recent filing. You may face Court again in the future. Don’t get discouraged and never just give up!

**LEGAL PROCEDURE**

In California, *(and many other States)* a person filing for divorce must have established certain residency requirements. Generally, most states require a residency of six months in the State of filing and three months in the county of filing. *(There are some exceptions so check with your local Court)*

All legal cases start with a “**Summons**”. This document informs the other party that a case has been opened in which he/she is a party. A summons will always include a notice requiring the other party to file an “**Answer**” or “**Response**” within a prescribed period of time, usually 30 days. Some States only require 10 days so be sure and read the Summons carefully. Additionally, All States require that the Respondent, *(other party)* be personally served the paperwork. This means that the paperwork must be given directly to the other party who is named in the Summons. It cannot be mailed unless that other party lives outside of the State where the paperwork
was filed. Again, there are some exceptions to this rule so check with your local court.

Along with the **Summons**, there will be a “**Petition**” or “**Complaint**”. This document will tell you what the filing party is asking of the Court. There may also be some other documents that you will be required to complete and return to the court. There is always a court fee for filing an “Answer” or “Response.” Depending on the State, this fee can range from $200.00 to $300.00.

If you do not respond or answer the Summons and Complaint within 30 days, *(or other required period of time)* the filing party will ask the Court to enter a judgment of “Default.” This means that they automatically get what they are asking for in their Petition or Complaint.

If you file a Response or Answer, there will be either a court hearing to resolve the issues within the divorce, *(Child Custody, Visitation, Child Support, Spousal Support and property issues)* or you will be contacted by the opposing party or their attorney regarding a “Stipulated Judgment” or “Marital Settlement Agreement.” One of these two must occur or the issues will be settled by the court at a trial.

If you have community property and debt issues the court will hold a separate hearing before a court appointed mediator, *(mandatory settlement conference)* who will assist the parties in dividing their property and debt. Remember, most States are “community property” States. This means that all property and/or debt acquired from the date of marriage to the date of physical separation must be divided equally. Property and debt issues can also be included in a settlement agreement and would therefore not require a hearing. Don’t forget; the Court does not care what agreements the parties make regarding their specific issues as long as they both agree. If there is no agreement, then the court will make the decisions for the parties based on established legal guidelines.

Once all of the issues have been resolved either by the Court or by settlement agreement the matter can proceed to final judgment once the required waiting period has been reached. *(In most States, 6 months and 1 day that begins the day the other party is served with the papers.)* It’s important to know that a judgment of final divorce does not automatically occur at the end of the six months and one day waiting period. Again **Final divorce is not automatic!** A final judgment of divorce can only happen when all issues have been resolved through hearing or agreement and one or both of the party’s files for final judgment. In most States a final judgment must be filed within five years of the date the original summons was issued or else the divorce filing expires and must be re-filed.

In most states, it is not necessary to go to court to obtain a final divorce judgment. If the parties have agreed or settled all of the issues by stipulation
(agreement) or by order of the court at a hearing, the parties may file a Declaration and Request for Uncontested Dissolution. A copy of the Stipulated Judgment and/or Marital Settlement Agreement is submitted to the Court and the clerk will simply mail you your final divorce papers. (There are other forms that need to be completed and submitted along with any Stipulation or Marital Settlement Agreement when requesting final dissolution.)

Let me emphasize once again that this section is not designed to be a legal “how to” guide. It is a general explanation of the divorce process and related legal issues. Those seeking legal guidance or document preparation must consult with a licensed attorney or paralegal in their State and County. It must also be pointed out that there are a number of “self help” books related to family law issues that provide good information. You can find these book at most bookstores or the legal library in your area. (Read our section on The Truth about Family Law and Attorneys)

LEGAL SEPARATION

The State of California (All other States too) offers an alternative to Dissolution of marriage. It’s called Legal Separation. The paperwork is the same as for Dissolution of Marriage. The only difference is that marital status is not terminated. However all other issues discussed herein are resolved in the same manner as Dissolution of Marriage.

It is this writer’s belief that, for a number of reasons, Legal Separation is virtually a “useless” filing. Generally speaking, a Legal Separation is an option (for practical reasons not a good option) to certain individuals with religious or ethical opposition to Divorce. Many Catholics, born again Christians and those of other faiths believe that Divorce is a sin and therefore choose not to end their marital status. Their intention is to remain permanently separated.

The aforementioned individuals have failed to understand three significant legal and practical differences between Divorce and Legal Separation. They are:

1. First of all, many of these individuals will end up divorcing anyway despite their moral and/or religious opposition. I have handled numerous cases involving individuals with religious or moral opposition to divorce. It has been my experience that such opposition usually diminishes in time when the practical realities of divorce versus legal separation are realized.

2. Filing for divorce accomplishes the same thing as legal separation but gives you the option to end the marriage if such should become necessary or desired later on. Remember divorce does not happen automatically. Divorce is something that occurs on one specific day after the required waiting period when all issues have been resolved and one or both party’s
sign and file papers for final Judgment and a **Notice of Entry of Judgment** is issued by the court. In other words, an initial filing of divorce does not make you divorced. You and/or the other party decide if and when you want to permanently end your marriage. In effect you remain separated but have the option of divorcing later without re-filing. *(Saves time and money)*

3. As previously stated the paperwork for Dissolution of Marriage and Legal Separation is exactly the same. The only difference is that there is a box that must be checked (✓) on the paperwork designating Dissolution of Marriage or Legal Separation. *(California forms)* Therefore, there is both a practical and legal issues that must be understood by the petitioning party before deciding on Dissolution of Marriage or Legal Separation. If the petitioning party chooses to file Legal Separation the other party, once properly served with papers can file a “Response” requesting that the Legal Separation be converted into a Dissolution of Marriage simply by checking the box marked Dissolution of Marriage. The conversion is automatic! Don’t forget that it only takes one party to request Dissolution of Marriage and that’s how the matter will proceed; there is nothing the other party can do to stop it!

4. Neither party is **required** to file anything with the court simply because one of them has departed the home. In other words, just because they have become physically separated does not mean they have to file with the court. However, if they have children, community property, debt or other issues that need immediate attention they may wish to file an action with the court requesting orders on the specific issues. They should try to resolve these differences first before filing then if they cannot agree they can proceed to court. Any agreements can then be written into a Marital Settlement Agreement” *(MSA)*

**SUMMARY DISSOLUTION**

Some states have made a provision for what has become known as a “quick and easy” divorce. It is called Summary Dissolution. There are special requirements that must be met in order to qualify for this type of divorce. They are:

1. The parties must have been married for less than five years.
2. The parties must have no children together before or during the marriage.
3. The parties must not have debt or obligations more than $5000.00.
4. The parties must not have more than $25,000.00 in community and/or separate property.
5. One of the parties must have lived in the State of filing for 6 months and the county of filing 3 months.
6. The parties must both agree to Divorce and both must sign the petition in support of their divorce. *(No default Judgment allowed)*

7. The parties cannot be committed to a lease for housing and/or property that doesn’t expire 1 year from the date the petition is submitted.

8. Anytime prior to final judgment either party can file a revocation of petition for summary Dissolution if they change their mind and choose to withdraw from the action.

   Summary Dissolution is not for everyone! The biggest risk is the withdrawal of one of the parties. If one of the parties changes their mind and withdraws for whatever reason the matter is over! The party that wishes to proceed must re-file for a regular dissolution. *(A big delay and waste of time)*

   The keys to Summary Dissolution are making sure that both parties are eligible and willing to follow through. If not, don’t waste your time and file for regular dissolution.

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**ANNULMENT**

Before I begin the explanation of Annulment I want to clear up a widely believed misconception. Many people believe that they can file for Annulment based on a very short-term marriage. *(1-week etc. etc...)* This is simply not true. Annulling a marriage has very little to do with the length of a marriage. It can be a factor that supports other causes and ground’s for annulment but length of marriage in and by itself is not ground’s for annulment.

There are two basic categories of Annulment:

1. Nullity of **void** marriage. *(A marriage that was unlawful before occurrence.)*

   The grounds for annulling a void marriage are:
   a. Incestuous marriage. *(Marriage between blood relatives)*
   b. Bigamous marriage. *(One of the parties is in a valid marriage to someone else.)*

2. Nullity of **voidable** marriage. *(A marriage that may have been lawful at the time of marriage but became unlawful after marriage.)*

   The grounds for annulling a voidable marriage are:
   a. Petitioner’s age at the time of marriage. *(Underage)*
   b. Prior existing marriage. *(It is discovered that one of parties is not finally divorced from a previous spouse. Generally, this occurs when a party thought their divorce was final but wasn’t. This is different than a bigamous marriage. A bigamous marriage is done with the knowledge and intent to be married to more than one person. A prior existing marriage is one that a party thought they were divorced but subsequently discovers that the final divorce papers were never filed. The main difference is the party’s knowledge and intent.)*
c. Unsound mind. It is determined, (Psychiatric evaluation) that one of the parties was of such diminished mental capacity they didn’t enter into the marriage capable of understanding. This would also include insanity or other types of mental impairment. The petitioning party could request annulment in that she wasn’t aware of such mental incapacity prior to the marriage.)

d. Fraud. (This is a broad subject. But simply stated, if an individual marries someone and three days after marriage empties the others bank account and runs away without notice this is fraud. Fraud is a specific intent crime. In other words, the petitioning party must show that their spouse had the “intent” to commit fraud.)

e. Force. (An individual was forced into a marriage through duress or threat of harm.)

f. Physical incapacity. (The most common example of physical incapacity is inability of one party to function sexually. This must not have been known prior to marriage.)

As you can see, annulling a marriage is more complicated than most believe or understand. Like Legal Separation it is virtually a useless filing. It is unnecessarily complicated and can involve lengthy litigation to establish the validity of the grounds. Filing for regular dissolution is easier, quicker and less usually less expensive.

THE TRUTH ABOUT COMMON LAW MARRIAGE

There are still a few states that have what is known as “common law” marriage. A common law marriage occurs when a couple resides together continuously for a period of 5-7 years; acquires property together; have children together etc. etc…The most significant of these is the residing together for a period of 5-7 years. Common law marriages are without a marriage license or ceremony. The parties simply lived together for a period of time and the state considers them man and wife.

Most states are not common law states. (Haven’t been since the late 1800’s) No matter how long you live together in these states your relationship can never become a common law marriage. However, California, as well as other states, honors common law marriages that have been established in a common law state. For example, a couple that lived in Texas continuously for seven years and are considered “married” under Texas State law, would also be considered married under California law. California honors common law marriages that have been established in a common law state. (Other non-common law states also honor common law marriages established in a common law state.)
Therefore, if you have established a common law marriage in a common law state and subsequently move to a non-common law state you will have to file for divorce in the non-common Law State if you want to terminate your marital status. Furthermore, be sure and check the residency requirements of the state where you presently reside. Residency requirements vary from state to state. (*California requires that one of the parties be a resident of the state for 6 months and 3 months in the county in which the divorce is filed 3 months.*)

**TO FILE OR NOT TO FILE**

I am often asked if it is better to be the first to file and become the Petitioner or to wait and respond and become the respondent. The fact is the court gives no preference to either. However there are other reasons why an individual may want to file for divorce first.

I have been contacted by men and women who have stated that their spouse is planning to divorce and move to another state. Additionally, I have been told that one spouse is running up credit cards and making other financial decisions in preparation of an impending separation or divorce.

The fact is, when an individual files for divorce or legal separation and are properly served with papers they are immediately under “Family Law Restraining Orders.” These restraining orders read as follows:

**Starting immediately, you and your spouse are restrained from:**

1. Removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court;

2. Cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage including life, health, automobile, and disability held for the benefit of the parties and their minor child or children; and

3. Transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life.

4. The parties must notify each other of any proposed extraordinary expenditures at least five business days prior to incurring these extraordinary expenditures and account to the court for all extraordinary expenditures made after these restraining orders are effective. However, nothing in the restraining orders shall preclude you from using community property to pay reasonable attorney fees in order to retain legal counsel in the action.
So if you have a spouse that has threatened to leave the state with the child or children or you discover that your spouse is running up credit card bills, selling property, obtaining loans etc. etc....You would be wise to file for divorce first so that you can be protected by “Standard Family Law Restraining Orders.”

I recently had a case where the mother was served with divorce papers and decided to move away to Florida with the children. I wrote her a letter explaining the serious nature of her violation and what the court would do if she didn't return immediately. She disregarded my letter. 30 day’s later she was arrested in Florida for parental child abduction which is a felony in every state. The San Bernardino County District Attorney’s Office, Child Abduction Unit flew to Florida and got the kids. She was transported back to California for arraignment and trial. She was later sentenced to 16 months in State prison, 5 years of felony probation and fined $5000.00. Further, my client was awarded sole legal and physical custody with no visitation to the mother.

The irony of this case is that had the mother stayed in California she likely would have been awarded Primary physical custody of the children. She would have gotten substantial child and spousal support and a fair division of community property. Now she is a convicted felon, with no support or time-share with her children and she has had to use her portion of the community property to pay her legal fees associated with the felony child abduction charges.

The forgoing case story is not uncommon. When two individuals begin discussing divorce the conversation can become very heated and people can react irrationally. (See above paragraph on Emotional v. Legal Issues) They make statements, threats and even take action upon such in support of their reasons for wanting (or not wanting) a divorce. For these reasons, Standard Family Law Restraining Orders are necessary.

The moral of this story is obvious. If you suspect that your spouse is considering any of the aforementioned, be the first to file for divorce. The restraining orders will protect you until the court can make permanent orders. I have had many clients that have filed for divorce for the express purpose of obtaining Family Law Restraining Orders. In some cases the person filing has no intention of finalizing the divorce. They just want restrain the other party from doing anything foolish.

**OBTAINING ORDERS ON CHILD SUPPORT, SPOUSAL SUPPORT, CUSTODY, VISITATION AND PROPERTY DIVISION**

The simple filing for divorce does not automatically result in a court hearing to resolve the issues of Child and Spousal Support, Custody, Visitation or other issues. If you want these issues to be resolved you must
either make an agreement with the other party or file for a hearing. Filing for such a hearing can be filed at the same time as your divorce papers or at any subsequent time prior to finalizing the divorce. All of the above issues are discussed at length in other sections of the guide. My suggestion is that you file for a hearing at the same time you file for divorce. If you are able to resolve these issues out of court and prior to the hearing date that’s great! But, if not, the court will help you resolve these issues. Also, there is a strategy involved here; when you serve the other party with a notice of hearing they know they will have to appear in court. Generally it is easier to settle disputes when it is known that a court date is pending.

COMMUNITY PROPERTY AND DEBT

Most States are what we call “Community Property” States. This means that each party is entitled to one half of the assets and responsible for payment of one half the debts acquired during the marriage. The community begins the day of marriage and ends the day of physical separation. *(Not the day your divorce is filed or becomes final)* Anything acquired by either party prior to marriage or after the date of physical separation is considered that party’s sole and separate property and/or debt. *(There are some rules that apply to what is and what is not considered community verses sole property. Check with your local court if you’re not sure.)*

Once again, the court is unconcerned with how the parties divide their property and debt as long as they both agree. However, if the parties cannot agree the court will divide the property and debt equally. *(50/50)*

As previously stated, there are some rules that determine what is and what is not considered community property. One such rule, *(the most important)* is called the “Rule of Transmutation”. This rule can best be explained through an example:

John and Paula had been married 10 years. Prior to their marriage, Paula’s father gave her a house valued at $150,000.00. There was an existing first trust deed on the house for $50,000.00. The house was solely in Paula’s name. John’s name was not on the deed or title. However, during the course of the marriage Paula paid the monthly mortgage payments on the home using the income from her job. Therefore, the Rule of Transmutation now applies. Remember Wages earned by either party during the course of the marriage are considered community property. Since Paula used community wages to pay the mortgage payment, the home is thus considered community property. This is called “co-mingling”. The home was Transmutated from sole and separate property to community property because Paula had “co-mingled” community wages to pay for the house.

Now, let’s change this scenario a little. Let’s say that Paula’s father paid the mortgage, property taxes and insurance on the home. John’s name is
still not on the title. The house would now be considered Paula’s sole and separate property since no community wages were used in paying for or maintaining the home. In other words, there was no “co-mingling” of community wages.

It has been my experience that community property/debt versus sole and separate property/debt issues are usually resolved without the help of the court. They are easier to resolve than issues of custody, visitation and support. The reason for this is fairly clear; the rules governing division of community and sole property/debt are specific and simple. If the parties can’t agree on how to divide their property and debt the court will set a Mandatory Settlement Conference and a court mediator simply divides the property and debt in half according to its value. Most people understand this simple rule and are aware of what the court will do if they can’t decide for themselves.

I know of one case where the couple could not agree on the division of kitchen utensils and silverware. When they went before the Judge he ruled as follows: He awarded the man all the spoons, the woman all the forks and told the pair to divide equally the knives. He awarded the man the pots and the woman the pans. After he had finished stating his ruling he looked at the couple and said, “Now if you two would like to go out in the hallway and work out a better agreement, I’ll give you five minutes.” Within three minutes the couple had made an agreement. This story says a lot about the nature of family court. Concerning community property/debt issues, if the party’s cannot resolve their differences out of court, generally speaking, neither one of them will get what they really want from the court.

Last January, I was watching a local public television station that was airing an interview with a well-known family law Judge. The host asked the Judge how he resolved difficult family law cases. This is what the Judge said: “before coming into my court room the parties are given numerous opportunities to settle their differences. There is mediation, mandatory settlement conferences, hallway discussions, negotiations between the respective attorneys, telephone discussions etc. etc. . If, after all of these opportunities the parties still can’t settle their differences, don’t blame me for the decision I make.”

Notwithstanding any future agreements you may make with your wife regarding division of such property and debt, Never, Never Never start giving away your property at the beginning stages of your divorce. Even though you may not care about such property you may need to use such property as legal leverage to obtain a more favorable Child support and/or Custody and Visitation agreement. Any community property and debt agreements you make with your wife should be weighed against possible support and custody agreements. In other words try to make a “package deal.” Giving away your
portion of community property before you have agreed on custody and support issues will leave you without leverage to bargain later. You may not particularly want household furnishings, appliances or other community items but your wife most certainly will. There is a proper time and manner in which to bargain these items. Women mistakenly believe that they will get such items automatically. This is absolutely not true! If your wife understands that you are entitled to keep half of the furniture and appliances pursuant to community property rules you will likely be able to make a better deal on support and custody issues.

**HOW TO MAKE SETTLEMENT AGREEMENTS**

When two parties initially separate for the purpose of divorce they are generally confused and often misinformed regarding the legal issues related to divorce. Such confusion can lead to signing either a bad settlement agreement or prevent them from making any agreements at all.

When separation occurs it is important for the parties to set aside the emotional issues and concentrate on the legal issues as stated earlier. Further, it is important for the parties to make specific agreements related to visitation, custody, child support, spousal support and division of community property and debt. Once all of the relative issues have been resolved they can be written into a Marital Settlement Agreement or Stipulated Judgment. As I stated previously divorce is always bad but the agreements that are made regarding the aforementioned issues are critical to the success of the party’s post-divorce lives. The parties should make every attempt to resolve each relative issue out of court. Failing to do so will only result in thousands of dollars in legal fees, lost wages due to court appearances, severe anxiety and frustration and most importantly, court orders that do not benefit either party. **Be fair, be reasonable, and Make good agreements.** *(Read our section on The Truth about Family Law and Attorneys)*

**FINAL DIVORCE**

Once all of the issues have been resolved either by agreement or court order and the required waiting period has been completed the parties can proceed to final divorce. The filing of final divorce papers can be submitted to the court before the 6 month and 1 day waiting period however, the divorce cannot become final until the waiting period is completed. When the final divorce papers have been accepted and filed the clerk of the court will mail each party a “Notice of Entry of Judgment” and other final judgment papers that have been signed by the Judge.

Finally, the submission of final judgment divorce papers can be tricky. Once submitted the court clerk will thoroughly examine each document to make sure it is proper and that the judgment papers accurately reflect what
the parties have agreed to and/or the court has ordered. One slight mistake
will result in the rejection of your papers. The court will then return them to
you requesting certain corrections and/or changes. As such, I would highly
advise that you obtain the services of a competent paralegal or other
document preparation specialist to assist you in preparing and filing your
final divorce papers.

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***Advocate Plan Upgrade***

If after reading the guide you would like additional legal assistance and want
to take the next step towards success I would recommend that you upgrade to
one of our Advocate Plans. Remember, you get a full credit for your purchase
of the guide so you only pay the difference in price. The Advocate Plans
include a "one on one" relationship with me. I will examine every aspect of
your case and associated problems and together we will form a strategy to
resolve your issues. In short The Advocate Plans are simply the best legal
guidance any Father can ever receive! **Real answers, Real help and Real
results!** Fathers Rights legal assistance simply doesn't get any better than
this! You should also know that 86% of those who purchased and read the
Fathers Rights Survival Guide from 6/1/20 to 5/31/21 have upgraded to an
Advocate Plan.

If you would like to upgrade just e-mail me: law4dad@gmail.com and I will
be happy to upgrade you.

To learn more about the Advocate Plans and what they can do for you click
on this link: [www.fathersrightsinc.com](http://www.fathersrightsinc.com)

Again thanks and I look forward to speaking with you soon!

Mike L. Weening