

# POM LEGAL ASSISTANCE GUIDE TO DIVORCE IN CALIFORNIA

(Revised June 2024)

## **I. PURPOSE OF THIS GUIDE**

1. To provide general information regarding marital dissolution (divorce), separation or annulment in the state of California. It provides an overview of the legal process, which will help you do your own uncontested dissolution or separation.
2. To provide a model marital settlement agreement for your use when drafting your own. This document can be downloaded from our legal assistance website at <http://www.monterey.army.mil>. Click on “Staff Judge Advocate”, then “Legal Assistance”, then “Family Law”, then “Dissolution: Sample Marital Settlement Agreement”.
3. To provide you with filing options. There are two resources that you may opt to use, the **Monterey Superior Court Online Self-Help Center** and the **File at Home** online service:
  - a) The **Monterey Superior Court Online Self-Help Center** has PDF forms that you can fill out on your computer and also has example forms for your use. The specific forms you need may be found at <https://www.monterey.courts.ca.gov/self-help/obtain-legal-forms>.

You can also visit the Monterey County Superior Court Self-Help Center, where staff can provide assistance with obtaining and filling out the correct forms. Note that staff is not able to provide legal advice.

Monterey County Superior Court Self-Help Center  
First Floor of the Monterey Courthouse  
1200 Aguajito Road  
Monterey, CA 93940  
Phone: (831) 647-5800 ext. 3005

- b) The **File at Home** service is an interactive program that asks you questions and takes your answers and puts them in the proper court forms. It will also notify you via email when the next document is due in your case.  
<https://www.monterey.courts.ca.gov/online-services/file-home>.

## **II. UNDERSTANDING - SEPARATION, DISSOLUTION, and NULLITY**

These procedures are all done through the California courts; the military has no authority to grant any type of change in marital status.

**SEPARATION:** In California a married couple is considered to be a “community” and their property is considered “community property.” Once the parties no longer hold themselves out to the world as a “community,” they are considered to be “separated.” There is no requirement

in California that a couple be separated before filing for dissolution of the marriage. Other states do have this requirement, however, so you should consult an attorney in regard to the rules for your state, if you file somewhere other than California.

A married couple may be “separated” in any one of these four ways:

- 1) court order (“legal separation”)
- 2) written agreement between the parties
- 3) mutual oral agreement
- 4) one party leaving the other with the intent never to return.

If the parties dispute the date of separation, it is nearly impossible to enforce an oral agreement. A signed written agreement is more enforceable, while a court order is the best tool for enforcing rights arising from separation.

The date of separation is very important; it affects the division of your property. The date of separation is the date of a court order, or if no court order exists, the date the couple stops living together and intends not to remain together. It is not necessary for both parties to intend not to remain together; the intent of one party is sufficient. You can agree to that date, and it may occur while you both still occupy the same residence.

The effect of a separation or court ordered separation is the termination of the marital community, but the parties remain married in a legal sense. This may be important for tax and military entitlement purposes. **\*\*NOTE:** a separation does not remove or reduce the military member’s duty to support their dependent under their service regulations. Failure to do so may result in punitive action in accordance with the Uniform Code of Military Justice (UCMJ). Also, a separation (sometimes referred to as a “legal separation”) is **not** considered to be a divorce by any legal authority; meaning that the military member can still be prosecuted for adultery even while separated since the marriage is not yet terminated.

Note that there is no waiting period or legal residency requirement for the legal separation action. You can file immediately. A permanent separation without divorce is a procedure that was more common in the days when divorce carried a social stigma, but it is still used today when one spouse wishes to “let the other down easy,” where the parties have religious scruples against divorce, or where it is important that the civilian spouse maintain military medical benefits. However, if either party meets the six-month residency requirement to file for dissolution then he/she may petition the court to change the separation into a divorce.

**Separation and Healthcare** – A civilian spouse’s healthcare eligibility is unaffected by separation. So, if you separate at 19 years, but do not get divorced until after the 20-year mark, you will remain eligible for lifetime healthcare, provided you do not remarry. A spouse has to be 20-20-20 (at least twenty years of marriage, at least twenty years of military service, and at least twenty years of overlap of the marriage and the military service) and that is counted from date of marriage to date of divorce. A spouse has 90 days from date of divorce to apply for 20-20-20 benefits (ID Card, TRICARE, etc.). TRICARE still comes at a monthly cost, but it is very small relative to other health plans.

**SUMMARY and REGULAR DISSOLUTION (Divorce):** There are two methods to dissolve your marriage in California, a (1) regular procedure and a (2) summary procedure. The summary procedure requires that you and your spouse file a joint petition, that you both sign and submit to the court.

Summary Dissolution is a simple procedure and can be used by those with short-term marriages, if **ALL** the following conditions are satisfied when the petition is filed:

- 1) You have been married less than 5 years by the date you file your petition;
- 2) No children of the marriage (natural or adopted), and the wife is not pregnant;
- 3) Neither spouse owns an interest in any real estate anywhere in the world;
- 4) One spouse has lived in California at least six months, and in the county in which you file at least three months immediately before the date you file;
- 5) There is LESS than \$7,000 in community debts, not counting car loans;
- 6) There is less than \$53,000 in community property, not counting cars;
- 7) Neither spouse owns over \$53,000 separately, not counting cars;
- 8) Neither spouse is to pay spousal support (alimony); and
- 9) Both spouses sign an agreement dividing all their property and debts.

If any of the answers above are NO, a Summary Dissolution is not appropriate, and you must seek a regular dissolution. This guide will assist you in using the regular dissolution procedure. Any sections concerning children would not apply to those filing for Summary Dissolution. Those filing for Summary Dissolution need to be particularly careful to disclose all community and separate property (i.e., assets and debts) in the Marital Settlement Agreement.

**UNCONTESTED vs. CONTESTED:** The Legal Assistance Office assists clients with uncontested cases only. If your case is contested, you will not be able to use the services of the Legal Assistance Office to complete the dissolution, although you may visit this office to determine if you can make your case uncontested. If it is contested, you should consult a private attorney. A contested case is one in which the parties cannot reach an agreement on any one or more of the following issues:

1. Division of property
2. Division of debts
3. Division of pension benefits
4. Child custody and visitation
5. Child support
6. Spousal support

It is usually worthwhile to put some energy into reaching an agreement on the legal issues of your dissolution, separation, or nullity. Agreement is more easily achievable if each spouse sees and appreciates the other's point of view. Here is what you and your family have to gain with an uncontested case:

- It is much easier and much cheaper. A contested case in the Monterey area may cost your

family several thousand dollars in attorney's fees. An uncontested case allows you and your spouse to split your property between yourselves, rather than paying a lot of attorney's fees.

- It leads to better relations with your ex-spouse and your children.
- Regardless of whether your divorce is contested or not, it is not advisable to make decisions about your divorce based upon emotional or self-destructive grounds, or a desire for revenge, or fear of displeasing your spouse, or a desire to "stay friends."

**NO-FAULT:** California is a "no-fault" dissolution state. That means if either spouse asks the court to dissolve the marriage based on irreconcilable differences, the court will grant the dissolution. Fighting over the terms will not stop the other party from obtaining a divorce, if he or she chooses to be divorced. Fighting can make the process take more time, make it more unpleasant and much more expensive. This does not mean you should give up your rights simply because there may be a fight over terms. This means if you are fighting over the terms only to prevent a divorce, you will be wasting your energy, because California grants a divorce at the request of **either** party—both parties do not have to want a divorce.

**DEFAULT DIVORCE:** If your spouse cannot be found or declines to participate (e.g., doesn't care) after formal notification of the dissolution, you still may end the marriage through a default divorce. This office offers only limited assistance on default cases, but suggests default be used only if you have little property or debts, no children, and no need for spousal support.

**NULLITY:** A nullity (or annulment) is a court order that the marriage never existed. It is only granted on one of several specific grounds, including close blood relation, bigamy, or fraud, which must exist at the time of marriage. Brevity of the marriage does not qualify. There is no residency requirement. Nullity must be filed via a private attorney.

**RESIDENCY:** For a dissolution either you or your spouse must have lived in California for at least six months and also in the county in which the action is filed for at least three months immediately before filing the petition. One spouse may live either out-of-state or outside the United States and still participate. After the petition is filed, there is no further requirement for residency, so you can move anywhere you wish. Please ensure that you file a change of address form so you will receive your forwarded mail and any notices from the court. Note that in California, you typically cannot take your children out of the state when a divorce is pending. You will need to check with the Court before you can move your children out of state if a divorce is pending.

**CALIFORNIA WAITING PERIOD:** California law imposes a six-month waiting period before your dissolution action can be finalized. This six-month period starts the day the respondent files the Appearance, Stipulation and Waiver (ASW) form or the date the respondent is served. **You remain married until the date the Judge enters on your Judgment and Notice of Entry of Judgment forms.**

**FILING FEES:** The fee to file the Petition (which initiates the divorce case) in Monterey

County is \$435. The fee to file the response, or Appearance, Stipulation and Waiver (ASW) form for divorce is also \$435. If you cannot afford the fee, you can apply for a fee waiver using court form FW-001. Note that the fee for the ASW is waived when respondent is a military servicemember, per California Government Code section 70673.

### III. SETTLING THE ISSUES

**MARITAL SETTLEMENT AGREEMENT:** The Marital Settlement Agreement is an agreement between you and your spouse, which records your understandings on the issues of property, debts, child custody, child support, spousal support, pensions, and others. At the end of your dissolution case, the judge will sign the agreement and it will become part of your divorce court order.

People using either Summary Dissolution or the regular dissolution will prepare a Marital Settlement Agreement. It is not necessary to have a completed, signed Marital Settlement Agreement to file your petition, but it important that you and your spouse work toward creating that agreement.

A sample Marital Settlement Agreement is included in this packet and may be downloaded from the Presidio of Monterey Legal Assistance website at <https://home.army.mil/monterey/index.php/about/garrison-directorates/legal#qt0:4>

**DIVISION OF PROPERTY:** Since California is a “community property” state, if the parties fail to reach their own agreement, the court will divide your property by awarding each party their own separate property and one half of the community property. You, however, are saving a lot of time and money by reaching your own agreement concerning the division of property. The court will adhere to whatever agreement you reach as long as it is clear that you each knowingly and voluntarily entered into it. “Community Property” is defined as assets acquired during the course of the marriage prior to separation, except those assets that are Separate Property. Separate property is defined as property each spouse owned prior to marriage or property that each spouse acquired after the separation. Gifts (including inheritances) made to one member of the community during the course of the marriage, remain separate property unless the spouse or third party specifically made a gift of the asset to the community.

**DIVISION OF DEBTS:** A debt arising before the marriage is a separate debt and will remain with the party who incurred it. Debts incurred by either spouse during the marriage and prior to separation are usually community debts and are divided as property is divided. Remember, however, that your Marital Settlement Agreement is between you and your spouse; your creditors are not bound by your agreement. Therefore, if your spouse fails to pay a community debt as agreed, the creditor can still take collection action against you. Each creditor should be notified of the divorce, once it is final, so that neither spouse will be able to re-open a line of credit that you shared in both names after the divorce. Request a creditor remove one party from the loan, or one party refinances the loan, with or without co-signer or use the hold harmless clause in paragraph three of example Marital Settlement Agreement.

## **CHILD CUSTODY AND VISITATION:**

1. Physical Custody is a term that refers to the individual with whom a child actually lives. The court is concerned with the “best interests of the child” and will go along with any living arrangement agreed to by you and your spouse, provided, that you two are looking out for the best interests of your child. It is usually in the child’s best interest to maintain a healthy relationship with each parent and to spend as much time as possible with each parent. Physical custody may be either joint physical custody or sole physical custody, and can be reflected in percentages.
2. Legal custody refers to who makes decisions about major issues of health, education, and welfare and includes such things as schooling, religious training, summer camp, birth control information, medical care, and getting a driver’s license. Joint legal custody is most common, but a court can award sole legal custody to one parent.
3. Joint custody merely means “shared” custody between the two parents.
4. Visitation rights are granted to the parent who does not have physical custody of the child. Visitation agreements should help ensure frequent and continuing contact with both parents. Parents can agree to any schedule. A provision for payment of travel expenses should be included. A parent cannot deny visitation because of nonpayment of child support.

Custody and visitation can be modified, although it may be difficult and expensive. Modification by the court is allowed, if there is a change of circumstances that necessitates a modification in the best interests of the child.

**CHILD SUPPORT:** California child support law assumes that each parent will provide their child with an established percentage of their income. The non-custodial parent pays a share of the support to the custodial parent.

Child support amounts in California are set by state law that sets a standard formula for calculating child support (*see* California Family Code section 4053). The formula produces an amount referred to as the “Guideline Amount” and a judge will ask what the Guideline Amount is in your case. That amount is presumed to be the required amount that should be awarded. The presumption may be rebutted, and therefore the child support adjusted, under limited circumstances. In addition to the Guideline Amount, the court has the power to order what the law calls “child-support add-ons.” Some add-ons are mandatory while others are discretionary. Calculators are available online for California Guideline Amount calculations. There is one available at <https://childsupport.ca.gov/calculate-child-support/> or the Monterey County Family Law Facilitator, (831) 647-7724 can compute the California guideline amounts using commercial software.

Note that net income is generally gross income (from all sources **including Basic Allowance for Housing (BAH)** and other entitlements) less actual taxes, social security, and medical insurance premiums. BAH is not the amount of child or spousal support that should be written into your Marital Settlement Agreement, it is merely another source of income to determine net

income. **Note:** Whether a servicemember continues to receive BAH at the with-dependent rate, depends on whether or not the member has legal and at least 51% physical custody written into the Marital Settlement Agreement, pays child support, and/or lives in single-type Government quarters. If a member has legal and 51% physical custody of children, then the member is authorized BAH at the with-dependent rate (if not assigned adequate family-type Government quarters). If the member's former spouse has custody and the member is paying child support (at least in an amount exceeding the member's BAH-DIFF rate) the member is authorized BAH at the with-dependent rate if not in Government quarters or BAH-DIFF if assigned single-type Government quarters.

If the service member is living in the barracks or any single quarters on base and paying child support, he/she will only receive the difference between the "with dependents" rate and the "without dependents" rate (about \$100 to \$250). However, service members are generally not entitled to this "BAH differential" if the amount of child support they pay is less than the amount they would receive in BAH differential for their rank. An exception would be where the service member chooses to pay more than the court-ordered support and at least the BAH differential as evidenced by a finance allotment. If living off post and paying court-ordered child support, the divorced service member may draw BAH at the single rate plus the BAH differential.

**FAMILY SUPPORT:** Until a court order is in place, regulations of each service require a service member to support his or her family. In the absence of a court order or agreement between spouses, those regulations specify how much the service member should pay. Military service will not be used to evade family support obligations. Service regulations are as follows: Army, AR 608-99; Air Force, SECAF INST. 36-2906; Navy, MILPERSMAN art. 1754-030 and 5800-10 (paternity); Marines, LEGALADMINMAN, ch. 15; COMDTINST M1000.6A, ch. 8M.

**CHILD CARE COSTS:** California can order as additional child support the childcare expenses that are incurred so that one of the parents can work or obtain reasonably necessary education or training for employment skills. The expenses must be shared equally unless agreed otherwise. You should address this item in your agreement.

**UNINSURED HEALTH CARE COSTS FOR CHILDREN:** The court can order as child support a parent to reimburse the other parent a share of the uninsured health care costs within a specified time. The parent incurring the costs must provide the other parent with an itemized statement of costs, proof of any payment made, and a request for payment of the other parent's share within a reasonable time. The other parent must make the reimbursement or payment within a reasonable time. Address these issues in your agreement.

#### **CONTINUING HEALTH CARE FOR NONMILITARY SPOUSE**

A civilian spouse generally loses military medical care upon divorce. Military benefits vary depending upon how long a spouse has been married to the servicemember, and how long that marriage has been concurrent with military service.

**SPOUSAL SUPPORT:** Spousal support (alimony) depends on the needs of each spouse. The longer you were married, the longer support can last. Support lasts the reasonable amount

of time it would take for the spouse to become self-supporting. The longer you were married, the longer it's assumed this will take.

The judge starts with some basic assumptions:

- For marriages less than ten years, support will last half the length of the marriage.
- For marriages more than 10 years, there's no assumption about what's reasonable. For these long-term marriages (lasting more than ten years) support may last for as long as the one spouse needs the support, and the other spouse can pay. This could be for many years.

There are points when support will end. Support can end when you agree in writing about the date it will end and the court signs off on the agreement, or the court orders that it ends, or the supported spouse remarries, or either spouse dies

The length and amount of support is based on a set of factors. There's no math formula or easy way to figure this out. Basically, the judge takes a big picture look at your situation. They're trying to figure out:

- How long it would take for the supported spouse to become self-supporting.
- How much money they'll need until they get there

To figure this out, the court uses a set of factors that can be found in Family Code section 4320, including:

- 1) How long you were married.
- 2) Your age and health.
- 3) Your incomes.
- 4) What you're capable of earning (called earning capacity). This means each person's skills and education along with the job market for those skills. They also consider the time and cost it might take to gain skills and education.
- 5) Your standard of living while married. Standard of living is basically your lifestyle. It means things like the type of house you lived in, the kind of car you owned, what kind of vacations you took and how often, whether you used credit cards a lot.
- 6) How much property or debt you each have.
- 7) Whether one of you helped the other get an education, training, career, or professional license.
- 8) Need and ability to pay. This means how much money the person asking for support would need to have the same lifestyle during their marriage and whether the person paying can pay that amount.
- 9) The impact of tax laws on spousal support.
- 10) If there was a history of abuse during your marriage.
- 11) If you have children together:
  - a) How caring for children impacted either of your careers.
  - b) How working now will impact your children.

These are also good things to keep in mind if you and your spouse try to agree before you go to court. This tells you what a judge would consider if you can't agree.. You can use the *Spousal or Domestic Partner Support Declaration Attachment* ([form FL-157](#)) if you need to ask the



judge to make a decision about long-term spousal support.

**PENSIONS:** Military retirement pay, like other pension plans and annuities, is subject to division as community property. All states divide the pension. There are two components of your spouse's retirement pension that are impacted by separation and/or divorce. They are your **Marital Share** and your spouse's **Disposable Retired Pay Amount**. First, your marital share of retired pay, or the percentage of your spouse's pension to which you are entitled is calculated as follows:

**Marital Share** = Years of creditable service while married (date of marriage to date of divorce)  
**Divided by** total years of servicemember's creditable active-duty service on date of divorce  
**Multiplied by** 50% (spouse's share)

Under California law, the marital economic community ends on the date of separation (if there is a separation), otherwise it ends on the date of divorce. If you decide to separate, your marital share will stop on the date of separation. If you remain married without a separation, it will continue until your date of divorce.

**Disposable Retired Pay** is what the servicemember would have received had the servicemember retired on the date of divorce with their average salary for the three years prior to the date of divorce. This is referred to as the "frozen" benefit rule that was enacted as part of the 2017 National Defense Authorization Act. The amount is unaffected by separation, but is instead governed by the date of divorce. Note that it is "disposable" retired pay because the amount is reduced by any VA disability payment offset and payments to the Survivor Benefit Plan. If a servicemember is less than 50% disabled upon retirement, he may receive VA disability payments, but he receives those payments in lieu of retired pay. This reduces the amount of retired pay the servicemember actually receives from DFAS, and correspondingly the amount of disposable retired pay. If he is over 50% disabled, the servicemember can receive VA disability payments in addition to retired pay, i.e. the disability pay does not replace the retired pay, it is an additional payment. This correspondingly makes for more disposable retired pay.

Note also that the rule from a California Supreme Court case (*In re Marriage of Gillmore* (1981) 29 Cal. 3d 418) applies to divorces granted in California. This rule allows the divorced spouse to begin collecting retired pay from the servicemember as soon as the servicemember is retirement eligible, if the spouse elects to do so. This means that once the servicemember has 20-years of active-duty service, the divorced spouse may require him to pay her share of the retirement, even though the servicemember has not actually retired, and may not retire for several more years. Some use this as a bargaining chip in working out divisions of property and assets with a spouse, foregoing the immediate payments in trade for some other benefit.

Either party may waive their interest in the other's retirement benefits in the agreement, or agree to payment of a lump sum in exchange for a waiver of the party's interest in the other's retirement benefits.

**SURVIVOR BENEFIT PLAN:** The parties may also agree to award the Survivor Benefit Plan

to a soon-to-be former spouse or the court could make such an order. Retirement checks end after a military retiree dies. To enable retirees to provide for their families after their deaths, the government offers a low-cost annuity program. Even before retirement but after 20 years of service, spouses and children automatically receive full SBP benefits. At retirement, service members opt to continue participation in SBP, reduce to a lower amount of coverage, or withdraw. Both spouses must agree in writing to choose less than the full rate. The monthly costs of SBP are deducted from the retirement paycheck. For more information on SBP consult DFAS's Web Page at <http://www.dod.mil/dfas/retiredpay.html>

**MILITARY BENEFITS:** Generally a non-service member spouse loses his or her military benefits when the divorce is final. There are special provisions, however, for non-military spouses when there has been a lengthy marriage and a lengthy service career.

Check the DFAS website at <http://www.dod.mil/dfas/militarypay/garnishment.html> concerning the Uniform Former Spouses Protection Act and the possibility of continued benefits for 20/20/20 and 20/20/15 former spouses and the Legal Assistance Office client handout on retired pay division and former spouse benefits. Children of a service member remain military dependents even if they do not live with the service member, and so they retain service-connected benefits.

**SGLI AND COMMERCIAL LIFE INSURANCE BENEFICIARIES:** People on active duty have the option from \$50,000 to \$500,000 for life insurance. Service members are reminded that they may want to change the name of the beneficiary for their SGLI and commercial life insurance proceeds. Spouses may agree on the selection of beneficiaries and amount of coverage. Such agreement can make the beneficiary designation irrevocable.

When members designate their government insurance to be paid “by law,” an ex-spouse is automatically excluded as beneficiary. The ex-spouse may be designated by name as a beneficiary (for example, to guarantee her an income after the termination of alimony upon his death) but there are hidden hazards in this practice. There is a natural tendency for a member to forget about court-required insurance and revert back to the “by law” designation. Unlike commercial insurance, SGLI will be paid to the “by law” beneficiary even if a court order says otherwise.

If a party is required to maintain SGLI coverage for the children, it’s a good idea to require that he also execute a special power of attorney authorizing the other party to examine his military records to ensure that the beneficiary election does not, through choice or mistake, revert to a “by law” election.

**TAXES:** You may want to address in your agreement which parent will receive the tax exemption for children. If it is not addressed in the agreement, only one person can claim the tax benefits related to a dependent child. Parents cannot share or split up the tax benefits for their child on their respective tax returns.

It is important that each parent understands who will claim their child on their tax return. If two people claim the same child on different tax returns, it will slow down processing time while the

IRS determines which parent's claim takes priority. The custodial parent generally claims the qualifying child as a dependent on his or her return. The custodial parent is the parent with whom the child lived for the greater number of nights during the year. The other parent is the noncustodial parent. In most cases, because of the residency test, the custodial parent claims the child on his or her tax return. If the child lived with each parent for an equal number of nights during the year, the custodial parent is the parent with the higher adjusted gross income. People should carefully read Publication 504, Divorced or Separated Individuals to understand who is eligible to claim a qualifying child.

Child support payments are not taxable to the recipient (and not deductible by the payer). When you calculate your gross income to see whether you're required to file a tax return, don't include child support payments received.

Alimony - Alimony (including separation or maintenance payments) may be subject to tax depending on several factors, including the execution date of the divorce or separation instrument. In general, the term, "divorce or separation instrument" means your divorce decree, separation agreement or decree, or order of temporary maintenance. Under divorce or separation instruments executed on or before December 31, 2018, alimony payments are taxable to the recipient (and deductible by the payer).

**HOUSING AND PAID MILITARY MOVES:** The local privatized housing operates differently than military housing. If the service member moves out of the family residence, family members may be able to stay as long as the service member pays the rent. If the family member(s) move out, the service member can stay. The U.S. government will not pay the expenses for moving household goods and/or family members unless the service member is on reassignment or end- of-service orders out of the area. Check with the Transportation Office about a "split shipment," any associated additional cost, and temporary storage of household goods. Put in your Marital Settlement Agreement who will pay for specific costs that the Government does not pay.

**WILLS AND OTHER DOCUMENTS:** Divorce alters the legal effect of wills made during the marriage. Both wills should be rewritten. This is a good time to review all your documents, including life insurance beneficiaries, "transfers on death" beneficiaries on certificates of deposit, emergency data cards at work, and powers of attorney.

**Use the parts below that apply to you. Change wording to meet your needs; disregard what does not fit, but do not leave out paragraphs 13 to 21. Use clear and specific wording because vague terms with more than one possible meaning cannot be enforced. Your marital settle agreement will become the terms of your Court order, so make sure it is right.**

### **MARITAL SETTLEMENT AGREEMENT**

This Marital Settlement Agreement is hereby entered into between \_\_\_\_\_, hereinafter referred to as "Husband," and \_\_\_\_\_, hereinafter referred to as "Wife."

The parties were married on **(Date)**.

Due to irreconcilable differences, Husband and Wife separated on **(Date)**, and are currently living apart from and have agreed to continue living separate and apart from each other. Husband and Wife desire to outline their mutual rights and duties arising as a result of the marital relationship. Husband and Wife therefore agree to the following:

#### **1. Property (General)**

Each party has independently determined to his or her satisfaction the extent of property owned by the parties jointly and individually. Each is satisfied that this agreement divides all property and assets that should be divided between the parties. Notwithstanding contrary provisions of law, any property, asset, or expectancy, be it real or personal, tangible or intangible, vested or contingent, that is not addressed in this agreement is the separate property of the party who now owns or possesses it. Henceforth, both parties shall have, own and enjoy, independently of any claim or right of the other, all personal property, including insurance policies and choses in action, which are now owned or held by or which may hereafter be acquired by either party, with full power to dispose of the same as fully and effectually, in all respects and for all purposes, as if he or she were unmarried.

#### **2. Division of Personal Property**

Husband and Wife have divided the property of the community to their mutual satisfaction as outlined below. Each party hereby waives any and all claim to any property in the possession or control of the other, except as listed below.

To Husband:

To Wife:

### **3. Division of Debts**

Husband shall pay the following debts promptly when due, and indemnify and hold Wife harmless therefrom:

Wife shall pay the following debts promptly when due, and indemnify and hold Husband harmless therefrom:

**(LIST ACCOUNTS AS FOLLOWS, NUMBERING EACH DEBT. GIVE NAME, ACCOUNT NUMBER, BALANCE, AND AMOUNT TO BE PAID, GENERALLY MONTHLY. IN THE EVENT THERE ARE NO DEBTS, OR THAT ONE PARTY WILL NOT BE PAYING ON THE DEBTS, WRITE NONE.)**

**[ALTERNATE FOR CASES WITH LITTLE OR NO SIGNIFICANT PROPERTY OR BILLS:]** Husband and Wife agree that their community property and debts are minimal, and that they have already divided it to their mutual satisfaction. Each hereby transfers and quitclaims to the other any and all interest in any property in the possession of the other, and agrees that whatever property they may possess is now the sole and separate property of the other.

Husband and Wife each promise the other that they shall not incur any debt or obligation for which the other may be liable, including medical and dental expenses, and each agrees that if any claim be brought seeking to hold one liable for the subsequent debts of the other, or for any act or omission of the other, then each will hold the other harmless, and defend such claim.

### **4. Spousal Support**

Spousal support will not be provided, and henceforth, both parties relinquish and waive any right or claim to spousal support from the other from the date of this agreement. This waiver specifically applies to any action and law concerning either party, more specifically any action in divorce, dissolution, or separation.

**OR**

Spousal support from Petitioner to Respondent, OR Respondent to Petitioner shall be provided in the amount of \$ \_\_\_\_\_ per month commencing on \_\_\_\_\_ until \_\_\_\_\_.

**[More options:** Such payment shall be paid by military allotment; **OR** There will be no spousal support at this time, but the court shall retain jurisdiction over spousal support. **Note:** You may adjust the amount at set times, for increases or decreases in spouse income, or for other events you specify.]

## **5. Military Retirement Pay**

The non-military spouse agrees to give up forever any right she/he may have to the military member's retirement benefits including pension and survivor benefit plan. She/he is aware that the retirement pension is a community asset.

**OR**

### **“Typical” formulas for dividing retired pay:**

$\frac{1}{2}$  times (length of time the that marriage overlaps with military service divided by length of military service) x 100 = Spouse's %.

### **Fractional or Percentage Share**

The parties hereby agree that the nonmilitary spouse is awarded [**specify fraction, e.g., “1/2” or specify percentage, e.g., “50%”**] of the military member's disposable military retired pay (calculated from the military member's base pay as of the date of divorce), as his/her separate property. [If the nonmilitary spouse qualifies for a direct payment from the appropriate finance center, the military member/retiree agrees to provide any necessary forms or other information necessary to accomplish this designation. The military finance center is hereby directed to initiate a direct payment from (husband's) (wife's) retired pay. **[To qualify for direct finance center payments, there must be at least 10 years of marriage which overlap with 10 years of service creditable toward retirement.]**

**Set Dollar Amount. This provision establishes a set dollar amount as an alternative to the fractional or percentage share.**

The parties hereby agree that the nonmilitary spouse is awarded (\$\_\_\_\_\_ ) of the military member's or retiree's disposable military retired pay as his/her separate property.

### **Lump Sum**

The parties can also agree to a lump sum payable by a certain date in lieu of a claim of entitlement to military pension benefits.

## **6. Survivor Benefit Plan Provisions**

**Husband or Wife** agrees to name **husband or wife** as **sole** beneficiary of his/her Military Survivor Benefit Plan (SBP) or an annuity of equal or greater value for **husband or wife**.

**The following paragraph elects the spouse as the irrevocable beneficiary of the Survivor Benefit Plan benefits at the full base amount.**

The spouse is and shall be deemed as the irrevocable beneficiary of the Survivor Benefit Plan through the military member's retirement at the full base amount

**7. Child Custody**

[This section concerns the health, care, and welfare of the children born of the marriage.]

The following children were born of the marriage: \_\_\_\_\_ born on \_\_\_\_\_; \_\_\_\_\_, born on \_\_\_\_\_; \_\_\_\_\_ born on \_\_\_\_\_;

Both Father and Mother agree to the custody arrangements set out below for the children named above.

**a. Legal Custody [2 options]**

Father and Mother will be jointly entitled to legal custody of the children. Father/Mother will have sole legal custody.

**b. Physical Custody [2 options]**

Father and Mother will have joint physical custody. Father/Mother will have primary physical custody.

**8. Visitation Rights**

Father and Mother have agreed to the visitation rights set out below. **[Consider holidays, weekends, summer vacations, who pays for visitation, and removal of the child from the residence with these options:** Neither parent may remove, or cause to be removed, the minor children from California without 30 days prior written notice to the other parent. **[option:** This provision applies to vacations and trips outside California.] **Also:** Neither parent may change his or her residence or the residence of the minor children without 60 days prior written notice to the other parent.**[Consider:]** Notification upon receipt of reassignment orders.

**9. Child Support**

We, the Father and Mother each declare that: (A) We are fully aware of our rights and obligations concerning child support under California Family Code, sections 4053 to 4076. (B) We make this agreement freely without coercion or duress. (C) This agreement for support is in the best interest of our CHILD(REN). (D) Our CHILD(REN)'s needs will be adequately met by the agreed amount. (E) The right to support has not been assigned to any county, and no public assistance application is pending. (F) We understand that if we have stipulated to a child support award below the amount established under California Family Code, sections 4053 to 4076, no change of circumstances need be demonstrated to obtain a modification of the child support order to the applicable guideline level or above. We declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. The Guideline Amount calculated per California Family Code section 4053 is \_\_\_\_\_ payable by Husband/Wife to Husband/Wife as primary custodian of the children.

Support arrangements made between Father and Mother for the children of their marriage are as follows:

[Husband/Wife] shall pay to [Husband/Wife] a total of \$\_\_\_\_\_per month, **[per child?]** payable on the \_\_\_\_\_day of each month, beginning on the \_day of \_\_, 20\_\_, and continuing until further order of this court or until said child marries, dies, becomes self-supporting, or reaches the age of 18, [except that support shall continue until said child reaches the age of 22,

so long as said child is enrolled in a college or post-secondary school as a full-time student.] This child support agreement was based upon Mother's gross income of \_\_\_\_\_, including Basic Allowance for Housing (BAH), if applicable; and Father's gross income of \_\_\_\_\_, including BAH, if applicable. **[Consider the military spouse's reduction or loss of BAH after divorce.]**

#### **10. Real Property**

Neither Husband nor Wife currently has any interest in any real property. Both agree to waive any and all interest in any real property acquired by the other after the date of this agreement.

**OR**

Husband and Wife agree to divide real property as follows:

**WRITE IN YOUR OWN AGREED UPON TERMS. GIVE ASSESSOR'S PARCEL NUMBER AND LEGAL DESCRIPTION.**

Both agree to waive any and all interest in any real property acquired by the other after the date of this agreement.

#### **11. Life Insurance**

Both husband and wife hereby agree to waive any and all rights concerning the designation of beneficiary on any insurance policy of the other.

**OR**

(Husband) (Wife) agrees to pay the premiums on and maintain insurance on his/her life payable to the children in the amount of \_\_\_\_\_. The designation of the children as beneficiary under the policy shall be irrevocable, and (Husband/Wife) agrees to execute the necessary documents to make such irrevocable designation. No party shall encumber or borrow against such policy without the prior written consent of the other.

#### **12. Tax Matters**

Both Husband and Wife hereby acknowledge that they understand the benefit of filing under the status of being married and filing a joint tax return. Their agreement in handling tax matters is set out below:

**In the event that one party is releasing a Claim to Exemption for the Child(ren) of the Parties, IRS Form 8332 should be completed and signed. This form is required if the parent with whom the child resides the majority of the year agrees to allow the parent with whom the child does not reside the majority of the year to claim the Child(ren) for income tax purposes. If such a release is to be signed, add the following:**

Parties agree to co-operate in the signing of IRS Form 8332, Claim to Exemption for Child of Divorced or Separated Parents for releasing the primary custodial parent's right to claim the exemptions on income tax returns.

#### **13. Separation and No Interference**

Husband and Wife shall hereafter be free to live separate and apart from each other anywhere either party chooses. Neither party will interfere with the decision of the other party regarding



his or her choice of abode, nor coerce or attempt to coerce the other to cohabit or have sexual relations with him or her.

#### **14. Additional Instruments**

Husband and wife shall from time to time, at the request of the other, execute, acknowledge and deliver to the other party, any and all instruments that be required to give full force and effect to the provisions of this agreement.

#### **15. Entire Agreement and Binding Effect**

This is the entire agreement between husband and wife. Any amendment or change to this agreement must be in writing and must also be signed by both husband and wife. Except as otherwise stated herein, all provisions in this agreement shall be binding upon the respective heirs, next of kin, executors, and administrators of both husband and wife.

#### **16. Partial Invalidity and Construction**

In the event that any provision of the agreement is held to be invalid or unenforceable, all other provisions of this agreement shall nevertheless continue in full force and effect. This agreement shall be construed and governed by the laws of the State of California.

#### **17. Addresses of the Parties**

Both parties shall keep each other informed of the addresses and location of their residences and shall notify each other of any change thereof.

#### **18. Mutual Release and Actions of Law**

Subject to the provisions of this agreement, Husband and Wife mutually release each other from any and all claims and demands, in law or in equity, which either has against the other. If either party institutes an action in divorce or dissolution, or legal separation, both parties hereby stipulate to offer this agreement to the court for incorporation into any decree, interlocutory or final, of divorce, dissolution, or legal separation. Notwithstanding the language and terms of this section, this agreement is understood to have binding effect upon execution by both parties.

#### **19. Revocation and Disclosure**

This agreement may only be revoked or modified by a subsequent written agreement and the replacement of this agreement by a similar written agreement or court order. Both husband and wife warrant that they have made no promise, agreement, or understanding, except as set forth above, which was relied upon as an inducement to enter into this agreement.

#### **20. Opportunity to Consult With Counsel**

Both parties acknowledge their right to consult with counsel, of the availability of free legal counsel if they could not afford to obtain counsel, and of the desirability of consulting with counsel before executing this agreement because it affects important personal and financial rights. Each party has read and fully understands each and every provision of this agreement.

**21. Signatures**

IN WITNESS WHEREOF, Husband and Wife hereto affix their signatures, both thereby acknowledging the free and voluntary nature of the decision to enter into this agreement. These signatures also acknowledge that Husband and Wife were aware of their right to seek and be advised by an independent attorney in the preparation and review of this agreement.

\_\_\_\_\_  
Husband

\_\_\_\_\_  
Wife

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

STATE OF CALIFORNIA COUNTY OF MONTEREY

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_(Seal)

**\*\*\* NUMBER EACH PAGE CONSECUTIVELY \*\*\***