

How to Start a Case for Divorce, Legal Separation or Nullity

Step 1	<p>Complete the following forms in blue or black ink:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> FL-110 Summons <input checked="" type="checkbox"/> FL-100 Petition—Marriage <input checked="" type="checkbox"/> Local form FM-1051 Declaration of Residence <input type="checkbox"/> Other: _____ <p>Only fill out the following forms if you have children with your spouse:</p> <ul style="list-style-type: none"> <input type="checkbox"/> FL-105 Declaration Under Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) <input type="checkbox"/> FL-311 Child Custody and Visitation Application Attachment
Step 2	<p>Copies: Make 2 copies, in addition to the original.</p>
<p>Step 3</p> <p>There is a filing fee unless the fee is waived.</p>	<p>File:</p> <ul style="list-style-type: none"> <input type="checkbox"/> If you are not asking for a fee waiver, turn your forms into the Clerk's Office. You will pay the filing fee and get copies back with a file-stamp. <input type="checkbox"/> If you are asking for a fee waiver, turn your forms into the "Document Examiner-Court Specialist" window. Your file-stamped copies may be returned immediately, OR you may be asked to return in up to 24 hours, OR your file stamped forms may be mailed to you. Please check with the clerk who takes your forms. <p>File in the courthouse located at, Monday-Friday from 8:30am to 4:00pm:</p> <ul style="list-style-type: none"> <input type="checkbox"/> 170 Park Avenue, San Jose, CA <input type="checkbox"/> 99 Notre Dame Ave., San Jose, CA <input type="checkbox"/> 605 W. El Camino Real, Sunnyvale, CA <input type="checkbox"/> 301 Diana Ave., Morgan Hill, CA
Step 4	<p>Service: After the filed copies are returned to you:</p> <ul style="list-style-type: none"> • Keep for your records—1 filed copy • Serve 1 filed copy and a blank <input checked="" type="checkbox"/> FL-120 <i>Response—Marriage</i>, <input checked="" type="checkbox"/> Local form FM-1021 <i>ADR Options</i>, <input checked="" type="checkbox"/> Local form FM-1050 <i>Family Law Notice</i> and <input type="checkbox"/> FL-105 <i>UCCJEA</i> on the other party. "Service" means: someone, NOT YOU, who is at least 18 years old, must hand-deliver the filed copies to your husband/wife. <p>Whoever serves the forms must complete the attached <i>Proof of Service of Summons</i> form (FL-115) and give it back to you. You must file the original and a copy of this form at the Clerk's Office. The clerk will file stamp the copy and give it back to you. Keep this copy for your records. Wait 30 days for the other party to have a chance to respond.</p>
Step 5	<p>Wait: Your husband/wife has 30 days to respond after the forms are served on them.</p> <p>A) If your husband/wife files a <i>Response</i> with the court, the court will notify you and your husband/wife to come to court for a court hearing called a "Status Conference" (STC) to discuss the next steps in your case.</p> <p style="text-align: center;">OR</p> <p>B) If your husband/wife does not file a <i>Response</i> with the court, on the 31st day from the day the forms were served to them, you can return to our office to sign up for a workshop to get help with the next step which is called "entering their default". To sign up, you must bring a filed copy of everything you have filed in your case so far.</p> <p>**Note: You do NOT need to arrive early in the morning to sign up for the workshop.**</p>
NOTE	<ul style="list-style-type: none"> ▪ Read Page 2 for important deadlines ▪ You will NOT automatically be divorced. You must complete other steps to finish your divorce and get a Judgment.

Please turn over for important information

WHAT ARE THE IMPORTANT DEADLINES?

The court has important things you should do to keep your case on track. The first 2 are:

1. You should **serve your filed Petition and Summons on your husband/wife within 60 days of filing.**
2. You should **file and serve your “Preliminary Declaration of Disclosure” within 60 days** of opening your case. For help with these forms, you can pick-up the packet and sample from the Self-Help Center (address below) and fill it out on your own or come to the Center’s drop-in help session every Friday at 1:45 pm at the Self-Help Center.

There are additional deadlines you can read about in the court’s Local Rules and the California Rules of Court. You can find both Rules on our website (www.scscourt.org) or at the Santa Clara County Law Library. If you do not follow the Rules and deadlines your case may be dismissed.

WHAT IS A “CONTESTED” DIVORCE?

If your spouse files a *Response* your case is considered a “contested” divorce. Don’t be alarmed!! Your spouse may file a *Response* even if you are in agreement about the terms of your divorce. Filing of a *Response* allows both parties to participate in the process and finish their case by agreement. Couples who are unable to reach agreement will get a final decision from the Judge at a Trial. When a *Response* is filed, the court will automatically assign you a court date for a “Status Conference”. Both you and the other party will get a notice in the mail to appear in court for that hearing to tell the Judge or other court staff about the issues in your divorce case and whether you and the other party have any agreements. For information regarding how to go forward with your case, get temporary support and custody orders, and finalize the case, please come to our office in person or visit our website at www.scscourt.org.

WHAT DOES “DEFAULT” MEAN?

If your spouse does not file a *Response* within 30 days of being served you can ask the court to let you finish the case without the participation of the other party. This is called “default”. In some cases, couples decide to go this route because they are in agreement. In other cases, the other party ignores the process for various reasons or has lost contact. Please note that there are two steps to getting a default *Judgment*. First, you file a *Request to Enter Default*. If your *Request to Enter Default* is granted, you must submit a proposed *Judgment* for the Judge to review and sign. This *Judgment* can be based on a written agreement that you attached or, if no agreement, based on what you requested in your *Petition*.

HOW LONG DOES IT TAKE TO FINISH THE DIVORCE?

You can be divorced 6 months and a day from the date your spouse was served with the divorce forms provided that a proof of service was filed, or 6 months from the date he/she filed a *Response*, whichever is earlier. However, you will not automatically be divorced after 6 months. Petitioner and/or Respondent must complete and file the necessary forms and documents to finish the case.

HOW CAN I GET THE FORMS?

There are a few ways that you can get the forms:

- hire an attorney;
- contact a legal services agency (Read our Do-It-Yourself Resources flier for names and contact information)
- get the forms online at the state’s website, (<http://courts.ca.gov/forms.htm>);
- use legal self-help websites and books
- visit the Self-Help Center/Family Law Facilitator’s Office in person, Monday through Thursday, starting at 8:30 am. Please go to www.scscourt.org (and click on the self-help section of the site) for details on how to sign up for help at our office or at our workshops. We are now offering workshops for starting and responding to divorce cases. **Please note: we cannot help people who have attorneys.**

Self-Help Center/Family Law Facilitator’s Office
Superior Court, County of Santa Clara
99 Notre Dame Avenue, San Jose, CA 95113
(408) 882-2926

www.scscourt.org

Superior Court, County of Santa Clara

www.courts.ca.gov/selfhelp

State of California Courts Self-Help