

INSTRUCTIONS

SPOUSAL/PARTNER SUPPORT DECLARATION FAMILY CODE § 4320 FACTORS

Introduction

These instructions are intended to help you understand the factors the court will consider in establishing or modifying spousal/partner support. They are also intended to help you complete the *Spousal/Partner Support Declaration - Family Code § 4320 Factors*. The *Spousal/Partner Support Declaration* is designed to help you explain your position on support to the court and the other party.

The court determines the amount of spousal/partner support, and how long it will be paid, by weighing each of the factors listed in Family Code § 4320. There are many factors for the court to consider. In some cases a factor may not be applicable, for instance, whether there has been any domestic violence in the case. Other factors are applicable in every case, for instance, the length of the marriage or domestic partnership. You should carefully review every factor to determine if it is applicable in your case. Also, if you need more space to write, or if you have any documents that support your position, you may attach additional pages and/or other documents to the *Spousal/Partner Support Declaration*.

The statutory language of each factor listed in Family Code § 4320 is included below in *italics*. Also included are tips and suggestions to help you understand the factors, and to help you prepare the *Spousal/Partner Support Declaration*. Remember: the *Spousal/Partner Support Declaration* and any attachments must be filed with the court and served on the other party.

Each factor listed below is numbered to match the paragraph numbers in the *Spousal/Partner Support Declaration*. For instance, No.1 below explains what is meant by the “marital standard of living”. Likewise, paragraph No. 1 in the *Spousal/Partner Support Declaration* asks you to describe the marital standard of living in your case.

If you attach any documents to the *Spousal/Partner Support Declaration* be sure to label them so that they also match the correct paragraph number. For instance, “Attachment 1” would be documents related to the information contained in paragraph No. 1 in the *Spousal/Partner Support Declaration*; “Attachment 2” would be documents related to the information contain in paragraph No. 2 and so on.

FAMILY CODE § 4320 FACTORS

- 1) Describe the standard of living that the parties established during marriage.
 - a) This is a general description of the lifestyle the parties achieved prior to separating.
 - b) Characteristics may include income, expenses, and lifestyle (e.g., vacations, homes, cars, etc.)
 - c) To show the marital standard of living you may include photographs of cars, trucks, boats, horses, water craft or similar items.
 - d) Other facts include whether you routinely took vacations, or had hobbies, such as skiing, boating or horses.

- 2) *“The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage.” (Family Code § 4320(a).)*

Does each party earn enough money to keep up the same standard of living that was established during the marriage or domestic partnership?

- 3) *“The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.” (Family Code § 4320(a)(1).)*
 - a) Does the party receiving support have employment skills, e.g., a professional license (contractor, beautician), or a college education?
 - b) Is there a job market for those employment skills? If so, please describe. Attach copies of job postings, if available.
 - c) Does the party receiving support need additional education or training to develop his or her skills in order to find a job?

- 4) *“The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties.” (Family Code § 4320(a)(2).)*
 - a) Was the party receiving support unemployed for some period of time during the marriage because he or she was staying home to take care of the household and/or children?
 - b) If so, how long was the party receiving support unemployed?
 - c) Does the party's unemployed status make it more difficult for him/her to find a job?

- 5) *“The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party.” (Family Code § 4320(b).)*
 - a) Did one party help put the other party through school?
 - b) Does the party receiving support need to go back to school to get additional training or education?

- 6) *“The ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living.” (Family Code § 4320(c).)*
 - a) Does the party paying support have enough income to do so?
 - b) What are the supporting party's income, assets, and post-separation lifestyle?

- 7) *“The needs of each party based on the standard of living established during the marriage.” (Family Code § 4320(d).)*
 - a) This means more than the bare necessities of life. *Need* may be evaluated in light of the lifestyle the parties had during their marriage or domestic partnership.
 - b) Have the parties been separated for a long time?
 - c) Have the parties become financially independent since their separation?
 - d) Were the parties able to save significant parts of their incomes during the marriage or domestic partnership?
 - e) Should an annuity or life insurance policy be purchased for the supported spouse/partner?

- 8) *“The obligations and assets, including the separate property, of each party.” (Family Code § 4320(e).)*
 - a) Do the parties have sufficient assets (separate property or share of community property) such that spousal/partner support is not necessary?

- 9) *“The duration of the marriage.” (Family Code § 4320(f).)*
 - a) What is the length of time from the date of marriage to the date of separation?

- 10) *“The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party.” (Family Code § 4320(g).)*
 - a) Can the party receiving spousal support hold down a job without negatively impacting the care of minor children?
- 11) *“The age and health of the parties.” (Family Code § 4320(h).)*
 - a) Are there any medical conditions that keep a party from seeking or holding a job?
 - b) Does the age of a party negatively impact their ability to find a job?
- 12) *“Documented evidence of any history of domestic violence, as defined in Section 6211, between the parties, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party.” (Family Code § 4320(i).)*
 - a) Is there any history of domestic violence between the parties?
 - b) If so, how long ago was the domestic violence?
- 13) *“The immediate and specific tax consequences to each party.” (Family Code § 4320(j).)*
 - a) The parties should consult a tax professional for assistance with this issue.
 - b) Generally, the party paying spousal/partner support may take a tax deduction, while the party receiving the support pays taxes on the amount received.
 - c) The parties may designate spousal support as nondeductible to the party paying the support and nontaxable to the party receiving support
- 14) *“The balance of the hardships to each party.” (Family Code § 4320(k).)*
 - a) Will either party suffer harmful consequences if support is granted or denied?
- 15) *“The goal that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration as described in Section 4336, a “reasonable period of time” for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court’s discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section, Section 4336, and the circumstances of the parties.” (Family Code § 4320(l).)*
 - a) Does the party receiving support have a plan to become financially independent?
 - b) What things will the party receiving support do to become financially independent?
- 16) *“The criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award in accordance with Section 4325.” (Family Code § 4320(m).)*
 - a) Has either party been convicted in a criminal court for any act of domestic violence against the other party?
 - b) If so, how long ago was the conviction?
 - c) There a presumption against awarding support to a party who has a criminal conviction for domestic violence against the other party within the last 5 years.
- 17) *“Any other factors the court determines are just and equitable.” (Family Code § 4320(n).)*
 - a) Explain anything else that may help the court decide the spousal/partner support matter.