

FAMILY LAW HANDBOOK

**THIS HANDBOOK COVERS THE
FOLLOWING SUBJECTS:**

- DIVORCE STRATEGY**
- SPOUSAL SUPPORT**
- CHILD SUPPORT**
- CHILD CUSTODY AND VISITATION**
- HOW TO HIRE A LAWYER**

By

David T. Pisarra, Esq.

A PUBLICATION OF

DAVID T. PISARRA, ESQ

**ATTORNEY AT LAW
SANTA MONICA, CA**

DPISARRA @PISARRA.COM

310/664-9969 Tel

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FOREWORD

This handbook is written as a starting point in the discussion of Family Law issues. It is not meant to be a comprehensive study of all possible situations. It is merely a guidebook for the general rules of the law.

Everyone's life situation is going to be different and there are as many variations as there are couples. Most people however will fall into broad categories and for those people this book is written.

If after reading this handbook you still have questions, and it is likely you will, please feel free to contact me.

Yours,

David T. Pisarra, Esq.

PISARRA & GRIST

Attorneys At Law

1305 Pico Blvd.

Santa Monica, Ca 90405

310/664-9969 Tel.

DPISARRA@PISARRA.COM

Chapter One

A SHORT COURSE ON COMMUNITY PROPERTY LAW

The basics of what you need to know if you are planning a divorce.

When someone comes in to meet with an attorney regarding a Pre-Nuptial Agreement, or if they are considering a divorce the first thing they say is, “ I know California is a community property state, but what does that mean?”. The short answer is all assets that a married couple acquires, is to be shared equally upon divorce, with few exceptions.

COMMUNITY PROPERTY

The practical meaning of this is that if you are a legally married couple, all your income and all your assets are to be divided if you divorce. If you buy a house, and that house goes up in value, you are entitled to 50% of the value of the home, less its mortgage.

If you are married and you have a pension plan, whether it is a traditional plan or a 401(k), and you are putting money away for your retirement, your spouse is entitled to 50% of that money.

The way in which money and assets is held is not the determining factor. If you take your paycheck, and you put it into a separate checking account that is in your name only, your spouse is still entitled to 50% of the value of the money that you deposit. The fact that they are not allowed to withdraw it from that checking account does not mean that all that money is yours.

SEPARATE PROPERTY

There are exceptions to the general rule that all income and assets acquired during marriage are to be shared, if you inherit money from your father, that is not Community Property. It is Separate Property and yours to keep alone.

The other exception to the general rule is that, if you have an asset that you owned before you got married, and there is income from that asset, for example an apartment house, the income from the apartment house is considered to be separate property, so long as you keep it in a separate account.

CONCLUSION

Community property is a simple concept, any money earned is to be shared. For most people this makes dividing the assets they acquire during marriage easy. Only rarely does the need really exist for a big fight over community property. Separate property can be tricky, but again, it doesn't need to be.

If you have been married for any length of time, you will have community property, and if you have questions about whether something is or is not community property, you should always seek the review of a competent attorney in the area of Family Law.

Chapter Two

DIVORCE – A MAN'S SURVIVAL GUIDE

What men need to know before getting divorced.

California is a community property state, which means that everything you've been earning, buying and accumulating is 50% your soon to be ex-wife's. As a soon to be divorced person you need to know how to protect yourself through a divorce, and even more so, after the divorce.

The state likes people to be married, it promotes stability in our economy and that is good for taxes, the governments' main interest. Which means that the government is going to make it harder to get divorced than it is to get married. It is also more costly to get divorced than it is to get married, certain celebrities aside.

If you are considering a divorce you need to be aware of the following laws and general guidelines in the state of California. A married person has the right to be maintained in the custom to which they have become accustomed to living, even after they are no longer married. This translates into one thing – Spousal Support. As a man, if you make more than your wife, you can expect to pay something in Spousal Support. If you make less than her, you can expect to get spousal support.

SPOUSAL SUPPORT

Spousal Support and Child Support are based on guidelines, which can be overcome by the parties agreement, but in general the guidelines are starting place. The guidelines are determined by a computer program, commonly known as Dissomaster. What this does is calculate what one party should pay the other, based on a formula.

As a working rule, Spousal Support is granted for one half the duration of the marriage, for marriages under 10 years, so if you are married 8 years plan on paying your wife for four years. For marriages over 10 years, the parties or the court determine an amount of time, but it could go on for life.

The purpose of Spousal Support is to get the party receiving it, back on their feet and taking care of themselves.

THE CHILD SUPPORT TRAP

If you have children together, you will be paying child support. It will be between 20-33% of your net disposable income.

As a parent who is ordered to pay child support, you must maintain your records that you have actually paid the child support due. Judgments for child support do not expire, and they do earn interest.

If you do not keep your records, AT ANY TIME IN THE FUTURE, your ex-wife can come into court, say you haven't paid your support, and you will be liable, unless you can prove otherwise. If you cannot prove that you have paid your child support you will be subject to having your driver's license suspended, your professional credentials suspended, your bank account seized, your tax refunds garnished, your lottery winnings taken and your life destroyed.

SPLITTING UP YOUR PROPERTY

This part of the process usually goes easier for men, as they just take a few things, and leave her the rest. This is not wise, and it is here that many men do themselves a great disservice. You should be willing to fight for what is rightfully yours.

The following are questions you should ask:

1. Where are all the bank accounts? Hers, Mine, Ours, her company account if she owns a business.
2. Where are all the stock accounts?
3. Where are all the statements for the bank, credit cards, charge accounts, company accounts if he owns his own company, pension and 401(k)'s.
4. Where are all the check registers?
5. What property do we own?

GET THE DOCUMENTS

Make sure you have a separate set of copies to give your attorney, before you serve your spouse with divorce papers. It is much easier to make copies, BEFORE one of you has moved out.

The credit card statements can give you a great view of where the money is going, and how much of it there is. Phone bills also are important to find out if there is a second business, or home.

KNOW HER BUSINESS

If she runs her own business, you need to know how much money it REALLY makes. Business owners have excellent ways of hiding their income and you need to know where she's going to hide the money.

You want to find out who her top clients and vendors are. Vendors are the people from whom she buys her products. This is important because an attorney

and a forensic accountant can work backwards to find out how much money she SHOULD be making, based on what the company is buying.

BE READY FOR THE TRAUMA

The emotional damage a divorce causes can be extreme. Men don't like to deal with their feelings, hell half the time, they don't even know they have them. You should have a good support network in place to deal with the inevitable feelings of loss, grief, anger, hurt, and sadness.

Understand that your lifestyle is going to go down, it has to. You will change friends and acquaintances, you might live somewhere different, eat in new restaurants and shop in new stores. This could be a good thing if you take this opportunity to grow and change for the better. Talk to your friends, find a good counselor who can understand your hurt.

HAVE AN ESCAPE HATCH

Divorce is costly. The basic divorce is going to cost between \$5,000 and \$10,000 if both parties have a lawyer. If there are child or spousal support issues, or if there is property being fought over, the cost of divorce can increase no end.

You need a savings account before starting a divorce. Even though the money in it is community property, you should have quick and easy access to cash. In case you need to rent an apartment quickly, buy a new car, or meet other expenses.

Be prepared for your attorney to ask for a sizable amount of money for a retainer. Some attorneys require a \$10,000 retainer, others as low as \$500, it simply depends on your case, the amount of property to fight over, and your spouses' ability to fight.

Chapter Three

WHAT HAPPENS WHEN I SIGN A QUITCLAIM DURING MARRIAGE?

How Post Marriage Transfers of Property Effect Your Rights

Under the Family Code in the State of California the signing of a quitclaim deed has very important AND DRASTIC consequences. A quitclaim is as simple as “I’m giving up all interest I have in this property as of today.” The effect of that simple sentence is that the courts in California have interpreted this to mean that the party granting the quitclaim gives up all interest they have in the property (the “Grantor”) which they have acquired up to the date of the quitclaim.

As an illustration lets assume that you and your spouse have owned real property for ten years. At the end of the 10 years you sign a quitclaim deed to your spouse. Once you sign a quitclaim deed all the interest and principal that has been paid into that asset becomes owned by them. You no longer have a financial interest in that real property.

If you sign a quitclaim deed you are giving up all ownership and right of reimbursement of monies that you had in the real property, EVEN IF YOU ARE LEGALLY MARRIED.

In California married parties making contributions after a quitclaim deed has been signed, obtain an interest in relation to the amount of money contributed. However, the new amount of ownership for the quitclaim signer is only the principal amount paid, **without interest.**

For illustration purposes assume the same married couple, after signing of the quitclaim deed they stay together for another 5 years. At the end of 5 years they separate. As of that date, the Grantor has an interest of $\frac{1}{2}$ of the principal paid during the past 5 years. The Grantee on the other hand has 10 years of separate interest and $\frac{1}{2}$ of 5 years interest. It does not take a mathematician to see that the party who signed the quitclaim deed has a substantially smaller interest.

The most common situation asked about, is where one party has good credit and the other has bad credit. In order to receive the best possible interest rate the party with the bad credit signs a quitclaim on the real property. If once the loan gets funded, and after a few years the parties separate, the party who signed the quitclaim deed has now lost a substantial financial asset.

What this demonstrates is that there are big consequences to signing a quitclaim. It may seem like just a simple piece of paper and only take a second to sign, but the implications and financial repercussions are substantial.

Therefore, it is always best to consult an attorney before signing any legal document.

CHILD CUSTODY

I want my kids, can I be a full time dad?

Many men are under the false impression that they cannot be a full-time dad. They have heard the horror stories in the locker rooms about how the courts are stacked against men and that a woman is going to get custody. These stories are definitely true, historically.

Twenty years ago, it was true that there was a definite bias towards the mom in court. There were no really good reasons for it then, other than it was what society expected of women. They will stay home and be the homemaker, and Dad will go out, slay the dragons and bring home the paycheck, so he was never expected to be at home.

Today, the world has changed. Many women work just as hard as their jobs, and put in long hours and bring home equal, and sometimes greater, pay. This is great news for the Dad who wants to be a real player in their children's lives.

Courts are no longer looking at the mom as the automatic best parent to raise the children. Certainly they frequently get custody of the children more, but frankly that is a result of the Dads not wanting to sacrifice their career, or their play time, to be with their kids.

When a father makes the decision to be a consistent, reliable, resource in his children's lives, the courts are more than willing to let him step up to the plate.

We have represented many fathers who wanted more time with their kids, or even wanted to be the primary parent, and give mom just a few hours of visitation a month. We have proven track record of representing fathers and getting them more time with their kids than just every other weekend and a Wednesday dinner. We have engaged in custody battles where the mom has been proved to be an unfit parent and the father was objectively evaluated to be the more stable, loving and appropriate home.

Fathers today can be the primary parent, and moms today can be the deadbeat moms. It happens. We've seen it, we've fought for it. And we've won.

UNMARRIED FATHERHOOD

*Congratulations on being a Dad.
Welcome to Child Support Payments.*

Dad, Pop, Father, the words we use to describe our male parents all evoke sounds and feelings of security, protection and safety. That's your job as a parent.

As an unmarried male parent, you are in a dangerous place though, when it comes to your rights, and when it comes to your responsibilities. The law recognizes mothers immediately for the obvious reason that a child was brought forth from her, but not so with fathers. A man must take some action to secure his place in a child's life. He must make sure that the mother puts his name down as the father.

Depending on your relationship with the mother of your child you can may find that co-parenting is the greatest pleasure in the world, to being an exercise in war. Some couples work really well together as co-parents who are not married. They have no problems with money or visitation, no disagreements about medical care or schooling, some get along great in dealing with religious issues. Other couples might not have an easy a time. It is for those couples, that this article is written.

There are five main areas that people fight over, money, visitation, medical care, schooling and religion.

MONEY – Child Support

This is the area where most men protect themselves the least, get into the most trouble and yet it is probably the easiest to handle.

The law works this way, if the mother of your children goes to court to get a child support order, and you do not have a custody arrangement with her, in writing, she can tell the judge that you make however much money she wants, and the judge will decide how much child support you must pay, and not listen to your side of the story. Period. She wins, and gets a judgment against you.

Now she takes that judgment and goes to the District Attorney's office, they take the judgment, and garnish your wages, tax refund, drivers license and lottery winnings. Additionally, if she has said there is back child support owed, they will charge you for that. All of this will accrue interest, meaning you are paying interest on a child support award, you did not agree to, and there is nothing that can be done to stop it unless you go back into court, get an agreement with her for child custody, show how much you really make and then hopefully get her to reduce down the amount of money she claims was owed her.

MONEY – Welfare

If at any time she should go on welfare and collect relief for herself and your child, you will be forced to repay that money. The district Attorney will open a child support case and come after your paycheck, tax refund, driver's license, and lottery winnings. This money must be repaid, and no one can waive the repayment, or the interest on it.

The best way to avoid all of this is to be a responsible dad, have a written custody agreement with a realistic child support payment that you can make, and be sure to keep a payment history with supporting documents.

VISITATION, MEDICAL CARE, SCHOOLING AND RELIGION.

The remaining four areas people fight over are decided for the most part by a negotiation between the parties. Only in extreme cases, does the court get forced to make decisions in these areas. Most people are able to work out a program in the best interests of the child.

In the worst case, where the parties cannot work something out that outside people are called in to do evaluations. In the case of visitation and custody, a Child Custody Evaluation can be ordered by the court. This is a person who meets state mandated criteria for qualifications to make an evaluation and recommendation as to where the child should live based on the living conditions, quality of home life, stability of the parties, emotional maturity and best interests of the child.

Medical care is likewise determined by going to outside sources only in the rarest of cases. When one parent refuses to acknowledge or treat a known condition, or perhaps the treating physician isn't doing a good job, the court may order independent evaluations by new doctors.

Schooling and religion are two areas the court avoids getting involved in as much as possible. The parties should try to work out a reasonable solution, otherwise the court is likely to make a decision that no one wants.

CHILD SUPPORT COLLECTION

Child Support was ordered, now how do I collect?

Frequently when a party is ordered to pay child support they fail to pay anything, and sometimes they fall behind in their payments. Once someone is behind on their payments, it is difficult to bring them to current status. The dollar amounts of child support add up quickly, they continue to accrue interest and since they are not dischargeable in Bankruptcy, they never go away.

When the custodial parent is owed child support, but is not receiving it, there are several options to be pursued, Contempt orders, Income and Expense Examinations, District Attorney collection, and Pension Plan / 401(k) orders are all available to collect on back child support.

CONTEMPT ORDERS

Once a Child Custody and Support order has been filed with the court it is enforceable. If a party is not in compliance, they can be brought back into court to answer to the judge why they have not complied, and they must show proof as to what they are doing to rectify the situation.

Failure to comply with a court order is a criminal offense and is punishable by jail, and that alone is usually enough to make some compliant.

INCOME AND EXPENSE EXAMINATIONS

As part of the process of determining whether the amount of child support is adequate, the parties must exchange Income and Expense Declarations, which allow the collecting party to find out how much the other party making, where they are spending it and with a little detective work, can determine where the money is being hidden.

DISTRICT ATTORNEY COLLECTIONS

The district attorney will open a collections case and force a party to comply with their child support by way of a wage garnishment, suspension of a California Drivers' license, suspension of a lawyers ability to practice law and again, criminal contempt.

This does not work very well however for people who are self employed, change jobs often or are determined to avoid their child support obligations.

PENSION PLAN & 401(k) QDRO's

A very useful tool for someone who is trying to collect on past or current child support is the Qualified Domestic Relations Order, (QDRO). As a collection tool, the QDRO allows a party to take advantage of the retirements savings of the non-paying deadbeat parent.

There are many ins and outs to the use of the QDRO, but if you are owed back child support, or have an ex-spouse who is not paying their current child support, but has a good job that provides retirement savings, the QDRO is a great way to get your money.

LEVIES AND WRITS

As a judgment, a Child Support order with arrearages, can be the basis for a levy on someone's bank account, certificates of deposit, stock portfolios and home. It can also be the basis for a writ if the debtor spouse has assets that are not liquid, like a car collection, or inventory in their sole proprietorship business.

CONCLUSION

Child support is an obligation that cannot be avoided, it cannot be discharged in bankruptcy and it continues to accrue interest at the legal rate. As a parent who is owed money for back child support, the benefits of the judicial system are in your favor, but you must work hard and be diligent in collecting your money.

A good attorney can assist in collecting back due child support and the more money at stake, the more important it is to stay on top of the non-paying parent.

PREMARITAL AGREEMENTS

Are they really worth it?

Premarital Agreements are a very useful tool for older people who acquired assets, have children from a prior marriage or have business reasons to avoid commingling their property. Generally they are not useful for young couples, couples who have few assets, or couples who want to have children.

The point of a Premarital Agreement is to keep separate property, separate. The goal of a Premarital is to reduce the costs of a divorce, in terms of legal fees, and to minimize the agony if the marriage shouldn't work out. They are also good to use when there are estate planning issues to be dealt with, such as a child from a prior marriage.

They are very easily broken in the State of California unless you have followed a very strict set of procedures to ensure that both parties have entered into the agreement with a clear understanding of what they are giving up by signing a Premarital.

A good Premarital can cost between \$1,000 and \$5,000, depending on how much property is involved, and what the specific issues are that need to be addressed.

AS a contract, it can deal with most issues such as division of assets, Spousal Support, Pensions, Current income. What it cannot deal with, is child support and child visitation.

Child Support is a right "OF THE CHILD" to be supported. Thus, the husband and wife in a marriage, cannot waive the rights of the child, when they are getting married.

In the right situation a Premarital Agreement is an excellent tool for preparing for a possible divorce, however, in most cases, they are not that useful.

HOW TO HIRE AN ATTORNEY

I've never hired a lawyer before, what do I do?

The Big Problem with Hiring a Lawyer

Hiring an attorney is one of the most confusing things you will likely ever do. The reason is that you often don't know what you don't know. So you need to hire someone to handle a problem that you cannot handle yourself, mostly because you do not know what to ask or do. The obvious difficulty in this is that you have no way of confirming, when you ask an attorney about what needs to happen, how it is to be done or what it will cost, if what they are saying is correct, because if you knew that, you probably would not need the attorney in the first place.

The hardest part for most people is the inherent mistrust of attorneys, and most everyone will normally speak with their friends and co-workers about what they should be spending. The problem with this is that every situation is different and even ones that look the same, can have a "little" different fact which causes the entire case to change, and that changes what needs to be done, what it will cost and what the end result of the case will be.

What to Ask, Who to Believe

When you are seeking a lawyer, don't forget that you are the customer. They are the seller and you are the buyer. They are looking at you, as someone who is bringing them business. You need to remember this so that you are not intimidated by them. Frequently, a client does not feel comfortable asking questions of a lawyer's experience, past history, past successes, and past failures.

Clients often feel that they are being disrespectful or untrusting by asking questions, THIS IS NOT THE CASE. Please remember that a divorce is your life. To a lawyer, it is their livelihood, not their life.

At the end of an interview, you should feel comfortable telling your lawyer your deepest secrets. If you don't have the confidence in this lawyer, go to another until you find the one with whom you feel confident.

Any lawyer you interview should be able to provide you with a list of their current and past clients, who are willing to speak with you about the representation they received and their satisfaction levels.

Ask your family, friends and co-workers what their experiences are, and trust in their experiences. But in the end, you must believe in your own instincts.

Every case is different, and people love to be supportive of you, and "Monday Morning Quarterback" your lawyer. This is why you need to have confidence in what your lawyer is telling you.

How Do You Pay For A Lawyer?

Cases have traditionally been paid for in one of two ways. There is the Hourly case and the Contingency case. Each has their advantages. Depending on the type of law, the likelihood of recovery and the necessary expenses involved, will determine how the lawyer will want to be paid.

HOURLY BASED

In an hourly based case, which is what almost every Family Law case is like, the lawyer will bill for every minute they are working on the case. In reality, it is almost impossible to bill for every minute, and that is why attorneys will bill in pieces of an hour. Attorneys bill in 1/10ths of an hour or 1/6ths of an hour. So for every 6 minutes or 10 minutes the attorney is on the phone, you are billed. The clock starts from the time the attorney picks up the phone. This type of billing is designed so that you do not pay for more time than it actually takes do a job. This is to the clients advantage so that they can see how much they are spending.

CONTINGENCY BASED

A Contingency case is where the attorney takes a percentage of the recovery in exchange for financing the expenses of the case. Obviously this is not likely to work well in most family law cases, like a divorce, child support modification or child visitation matter.

It is possible, but not very likely that an attorney will take a Divorce on contingency, but it is highly unusual, and in 9 years of practice, I've never seen it happen.

RETAINERS AND ADVANCES

People like to say they have their attorneys on Retainer, it sounds quite classy, however, most people don't actually do this. What they really mean is that they have paid their attorneys an advance fee. Those funds are supposed to be kept in a special trust account, and the money is legally not the attorneys until they have done work.

A true retainer is paying an attorney to be "available" to you. It is guaranteed time that the attorney is giving you, and is turning down other work in order to be on call for you. This is why most people don't actually pay a retainer.

HOW MUCH IS USUAL AND CUSTOMARY AS AN ADVANCE?

Every law firm sets their own hourly rates and minimum advances. In major metropolitan areas like Los Angeles, San Francisco, Washington D.C., New York, attorneys are charging upwards of \$500 an hour, and some even cost \$1,000 per hour.

Most attorneys in Family Law cases are in the \$3-500 range in big cities, and generally ask to be paid an advance of anywhere from \$5,000 to 25,000, depending on the size of case, and how much work is expected to be done in regards to finding hidden assets, fighting over property and child support.

FAMILY LAW LIEN

Many people do not have large sums of cash available to them, even though they have assets such as a home, boat, cars, vacation homes etc. The existence of equity in a family home allows for someone who doesn't have a lot of cash, to hire effective counsel. In California there is a tool called the Family Law Attorneys Lien, it allows a person to use their Community Property Interest in a family home, to secure the fees of their lawyer. It provides a person with a way to get a good lawyer, and it protects the lawyer who needs to know that they are going to be paid for the work they do.

Think of it like an equity line on your home, but you use it to pay for your lawyer. Any good lawyer should be familiar with it, and how it operates.

FREE CONSULTATIONS

Most Lawyers will allow you to have a free consultation prior to actually hiring them. This is so that you can get to see them, and they can determine what your case is likely to be. You can expect however, that if you do end up hiring an attorney that you have spent some time with, that they will then charge you for that hour or so they spent with you. This is fair, because they are now up to speed on your case, and if you hadn't hired them, you would not have owed them any money.

This is the practice in our firm, if we spend an hour with you analyzing your case, we will tell you what we expect it to cost, how long it will take and what we will require from you. If you then do not hire us, you owe us nothing, however, if you do sign an Attorney Client Agreement with us, we will be charging you for the time we spent with you, learning about your case.

Chapter Nine

CONCLUSION

I hope that this handbook has been helpful to you. It is impossible to cover all topics and all situations, but should you have any questions please feel free to either write me at DPISARRA@PISARRA.COM or call me at 310/664-9969.

I wish you the best.

David T. Pisarra, Esq.