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Family Law

OBTAINING A DIVORCE AND PROTECTING YOURSELF IN THE PROCESS

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UNDER CALIFORNIA LAW, THERE ARE THREE WAYS to obtain a Divorce or Judgment for Dissolution of Marriage. This can be done by way of a standard dissolution, a default dissolution or a summary dissolution. No matter which avenue is chosen, it is important that both spouses take adequate steps to protect themselves and their assets during the divorce proceedings, in order to assure the best possible outcome.

With a Standard Dissolution, the spouse who initiates the proceeding, the Petitioner, files a petition. The other spouse, the Respondent, must file a response to the petition. Once the response is filed, all further proceedings related to the divorce will be heard by the Court. The Judgment of Dissolution cannot be final until at least six months have elapsed from the date of filing the petition. According to court statistics, 85% of all cases will settle without the necessity of trial. However, 89% of these cases are settled at the courthouse steps, either at a Settlement Conference or on the date of trial.

A Default Dissolution occurs when the Respondent fails to respond timely to the dissolution petition. A Respondent has 30 days from date of service of the petition to file a response. If a response is not filed within 30 days, the Petitioner may enter a default on the 31st day. However, such a default judgment may be set aside upon showing that the party in default, or his or her attorney, allowed the default to be entered through "inadvertence, mistake, or excusable neglect." Under such circumstances, the default will be set aside as long as the motion is made within a "reasonable time," deemed to be no later than six months from the date of the judgment.

The third method of obtaining a divorce is known as Summary Dissolution. This method may be employed when both parties are in agreement, and the following criteria are met: there are no children of the marriage and the wife is not pregnant; the length of the marriage does not exceed five years; neither party has an interest in any real property; debts acquired during the marriage, excluding automobile debts, do not exceed \$4,000.00; the total value of the community assets do not exceed \$25,000 (excluding automobiles); the parties have entered into an agreement stating the fair division of the community property assets and debts; and the parties agree to waive their rights to spousal support.

The Summary Dissolution process is a relatively easy and inexpensive divorce procedure for those spouses who have not

been married for long, have minimal assets and debts, and who have no children.

No matter which divorce procedure you pursue, it is important that you take certain basic steps to protect yourself in the weeks and months prior to and subsequent to filing the dissolution petition. Gather and organize all of your financial information, including copies of bank statements and credit card statements, and make copies for yourself and your attorney. Keep a written list of all expenses, both joint and separate. Invoices documenting these expenses will also be helpful. Any joint accounts that were opened during the marriage should be closed or frozen prior to or immediately following separation.

Prepare a written statement of your net worth. This can be a handwritten document itemizing all of the assets and debts acquired during the marriage. Also, make a list of any separate property debts and liabilities that you and your spouse acquired before and during the marriage. If your spouse maintained all the financial records and transactions during the marriage, and/or runs a personal business, there may be an issue of hidden assets. This may require hiring an expert accountant to determine the net worth of such assets. Also, when assessing your settlement options, identify those assets and tangible or intangible items or benefits that may be important to your spouse, whether for financial, emotional or personal reasons. These may be used as leverage or bargaining power during settlement discussions, to exchange for something you want.

The business of divorce is not for the faint hearted. Obtaining a fair result during the dissolution proceeding takes tenacity and fortitude; it is best to enter into the proceedings well prepared, armed with knowledge and a plan. This becomes all the more necessary when emotions take over and objectivity fades. However, with some advance planning and good legal counsel, a fair and equitable resolution is attainable. **GT**

Nicole Whyte is founding principal of Bremer Whyte Brown & O'Meara LLP, in Newport Beach. Admitted to the California State Bar in 1991 and the Nevada State Bar in 2000, Ms. Whyte has extensive litigation experience, including general liability, premises liability, construction defects, personal injury, intellectual property and family law.

