



Divorce Digest

April 2011

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Greetings! In this month's newsletter, we have included articles written by attorneys David E. Rickett, Kale K. Heiman, and James P. Reape regarding retirement accounts, domestic violence restraining orders, and community and separate property issues. Mr. Rickett's article provides information regarding the importance of dividing parties' retirement plans, while Ms. Heiman's article defines and discusses domestic violence and other restraining orders. Mr. Reape's article analyzes and defines the distinctions between separate and community property as well as the effects of transmutation. We hope you find these articles informative and we encourage you to visit our website, www.divorcedigest.com to review other articles written by attorneys at The Reape - Rickett Law Firm. You can also find our articles in The Magazine of Santa Clarita and periodically in The Signal's "It's the Law" section.

Sincerely,
James Reape and David Rickett
The Reape-Rickett Law Firm

Remember Retirement Plans In Divorce Proceedings



Staff Spotlight



Anna Thursland,
paralegal/caseworker, has
been with the firm since

I have consulted with men/women who, after their divorce proceeding has concluded, are surprised to learn that even though their divorce is final, and in fact has been final for many years, there is still the retirement plans that need to be divided. First, retirement plans generally involve two types of plans: 1) a defined benefit plan or 2) a defined contribution plan. The first generally is in the form of a pension, where upon retirement, the participant will receive a defined monthly amount. The second type of retirement is generally in the form of a 401(k), 403(b) or the like. The participant will, while working, contribute a defined monthly amount to the plan.

It is odd to me that something so valuable sometimes gets so little attention. Many times I will see a Judgment of Dissolution (the final decree in a divorce case) wherein the Judgment will have general boilerplate language dealing with the retirement plan. Either of these types of retirement plans can be extremely valuable. Sometimes the participant has participated in the plan for 10, 20, or 30 years. These are extremely valuable community assets, sometimes worth hundreds of thousands of dollars, yet only get brief mention that the court will reserve its jurisdiction (authority) to divide the plans. This means that while you may be divorced, the retirement plan still needs to be divided! Not a pleasant thought to be faced with: reopening an emotionally sensitive time in one's life.

Further, this type of general boilerplate treatment may be jeopardizing a spouse's community interest in the retirement plan. What do I mean? As mentioned, there are many different types of retirement plans: 401(k), 403(b), California State Teachers Retirement System (CalSTRS), Los Angeles County Employee Retirement Association (LACERA), Motion Picture Industry Pension and Health Plans, as well as various union retirement plans, federal retirement plans, and military retirement plans, to name a few. What is extremely important to note is that some of these plans, after a Judgment of Dissolution is granted, do not have any protection for a former spouse as to their community interest. In other words, if there is a Judgment of Dissolution, and the participant spouse predeceases the former spouse, the former spouse may lose his/her right to their interest.

These types of risk can easily be eliminated by getting the proper order (usually called a Domestic Relation Order) in place at the time of the Judgment of Dissolution. Thus, don't risk your interest in a community retirement plan, hire the right attorney so your future financial security is protected.

has over 20 years of professional office experience in various fields, including accounting, labor relations and real estate financing. She received her associate's degree in Paralegal Studies from College of the Canyons in August 2009 and is a member of the Los Angeles Paralegal Association. She is currently attending Liberty University with plans to obtain a Bachelors of Science in Psychology and Religion. Ms. Thursland has lived in Santa Clarita since 1997.

Hot Topics on the Interactive Forum

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When Can I Get a Domestic Violence Restraining Order?

By Kale K. Heiman, Esq.



The Domestic Violence Prevention Act (DVPA) was established in order to prevent acts of domestic violence and sexual abuse as well as to allow the parties involved to separate for a period sufficient to allow them to attempt to resolve the causes of such violence (California Family Code § 6220). California Family Code Section 6200 et seq. lists the necessary provisions of the Act including the categories of persons protected, the types of abuse required to qualify for a protective order, as well as the types of protective orders which may be sought.

In order to determine whether you qualify for a domestic violence restraining order it is important to ask the following questions:

How would you define your relationship with the person you seek to restrain?

Pursuant to California Family Code Section 6211, the restrained person must be a spouse, cohabitant, or other person with whom you are involved in a "dating or engagement" relationship. Further, the relationship could be one between the alleged perpetrator of violence and his or her child, a co-parent, or a close blood relative.

What type of abuse or "showing of abuse" necessitates a domestic violence restraining order?

Family Code Section 6300 requires "reasonable proof of a past act or acts of abuse." Such abuse is evidenced by:

- 1) Recent physical violence or threats of violence
- 2) Harassment Behavior (i.e. - threatening, upsetting, and/or upsetting calls, emails or other correspondence)
- 3) Stalking behavior
- 4) Sexual abuse
- 5) Verbal abuse that is extremely severe

What types of protection can you request as part of the

***Testimonial of the Month**

Comment from a Current Client:

"I highly recommend this man [James Reape] for a smooth and painless divorce representation. Thanks Jim for your help ! Your the BEST!"

*This testimonial does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter.

A domestic violence restraining order not only functions to separate the restrained person from the alleged victim of domestic violence, it also may be used to obtain:

- 1) Child Abduction Prevention Orders: If certain criteria is met indicating this type of risk, the court can issue orders which prevent travel outside the state, as well as other orders to prevent possible abduction.
- 2) Child Custody/Visitation Support Orders: You can request that orders be made on these issues at your domestic violence restraining order hearing.
- 3) Exclusion from the Dwelling: You can request that the restrained person be removed from the property even if you have no title to or interest in the property.
- 4) Restitution: You can request reimbursements for costs which you incurred as a result of the domestic violence, such as medical bills and other costs.
- 5) Batterer's Treatment Program: After a hearing takes place, you may additionally request or the court may on its own order the restrained party to attend a batterer's program which includes classes, counseling, and lessons geared towards domestic violence prevention.
- 6) Child Sexual Abuse Protective Orders: If a child is allegedly sexually abused during a custody proceeding the court can protect the child by "any reasonable temporary steps" necessary under the circumstances presented. Courts may deem a child welfare services investigation appropriate here and will often order a custody evaluation under Family Code Section 3118.

Lastly, in order to obtain a domestic violence restraining order one must file either with the assistance of a family law attorney or on their own behalf, an application for a temporary restraining order with the Court. This temporary restraining order (TRO) will be available within two days of filing at which time you will receive your hearing date for a permanent restraining order which can last up to 5 years. At this hearing, the court will determine whether a permanent order should be issued based on the evidence presented and the above-described requirements. Once granted, if the restrained person violates the order, he or she may be held in contempt for this violation. However, this can only occur after the restrained party is properly served with the order. You may also file the application on an "ex parte" basis. An "ex parte" order is granted when the facts on which the order is based indicate that "great or irreparable injury would result to the applicant before the matter could be heard on notice." (Family Code Section 241) This type of order, if granted, takes effect immediately.

Property

by James P. Reape, Esq.



With certain exceptions all property, including real property or personal property, regardless of its location that is acquired by a married person during the marriage while living in California is community property. Married persons share equal interests in community property and exercise equal rights with respect to management and control of the community property. The separate property of the married person includes all property owned before the marriage, or acquired after the marriage by gift, bequest, devise, or descent. Additionally, the rents, issues, and profits on a spouses separate property are also separate property of that spouse. A married person may, without consent of their spouse, dispose of their separate property.

In analyzing any marital estate, be it for estate and tax planning, premarital planning or incident to a legal separation or dissolution, the assets of the parties need to be characterized as either community or separate. The general rules, as stated above, are referred to as presumptions and will determine the characterization of the property by time of acquisition. There are, however, other methods of determining the character of property that could overcome the presumption of characterization based upon time of acquisition. Regardless of time of acquisition, husband and wife are allowed to change the character of the property i.e., making community property the separate property of ones spouse, making a spouses separate property community property, or making one spouses property the separate property of the other spouse. Such changes in the character of the property is referred to as transmutation.

Any transmutation or attempted transmutation of property is subject to limitation imposed by the fiduciary duty each spouse owes to other. In requiring the highest degree of good faith and fair dealings between the spouses, any attempt to change community property to the separate property of one spouse is subject to a presumption of undue influence. Additionally, any attempt to transmutate property made on

unless the property is a gift between spouses of clothing, wearing apparel, jewelry or other tangible articles of a personal nature used solely or principally by the spouse receiving the gift and that the gift is not substantial in value taking into account the circumstances of the marriage. The writing must be signed by the spouse giving up their interest and must expressly state the characterization or ownership of the property being changed.[Read More...](#)

The Reape-Rickett Law Firm

Our mission is to provide Family Law legal services that are second to none. We conduct ourselves in accordance with the highest ethical standards and are committed to providing quality services.

Each firm member takes special care to understand the unique and individual concerns of our clients. Our team approach to each case ensures efficient and timely responses to simple or complex issues. We empower our clients with knowledge and information, enabling them to make reasoned and results-oriented decisions. The Reape-Rickett Law Firm is the firm of choice when results matter.

