

Cross References

Determination of place of residence, see Government Code § 244.

Prima facie evidence, see Evidence Code § 602.

Residence requirement in actions for dissolution of marriage, see Family Code § 2320.

§ 2093. Application of title; full faith and credit

The application of this chapter is limited by the requirement of the Constitution of the United States that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. (*Stats.1992, c. 162 (A.B.2650), § 10, operative Jan. 1, 1994.*)

CHAPTER 9. DISCLOSURE OF ASSETS AND LIABILITIES

Section

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§ 2100. Legislative findings and declarations; disclosure of assets and liabilities

The Legislature finds and declares the following:

(a) It is the policy of the State of California (1) to marshal, preserve, and protect community and quasi-community assets and liabilities that exist at the date of separation so as to avoid dissipation of the community estate before distribution, (2) to ensure fair and sufficient child and spousal support awards, and (3) to achieve a division of community and quasi-community assets and liabilities on the dissolution or nullity of marriage or legal separation of the parties as provided under California law.

(b) Sound public policy further favors the reduction of the adversarial nature of marital dissolution and the attendant costs by fostering full disclosure and cooperative discovery.

(c) In order to promote this public policy, a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of a proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties. Moreover, each party has a continuing duty to immediately, fully, and accurately update and augment that disclosure to the extent there have been any material changes so that at the time the parties enter into an agreement for the resolution of any of these issues, or at the time of trial on these issues, each party will have a full and complete knowledge of the relevant underlying facts. (*Added by Stats.1993, c. 219 (A.B.1500), § 107. Amended by Stats.1993, c. 1101 (A.B.1469), § 3, eff. Oct. 11, 1993, operative Jan. 1, 1994; Stats.2001, c. 703 (A.B.583), § 2.*)

Application

For application of Stats.2001, c. 703 (A.B.583), see § 8 of that act.

§ 2101. Definitions

Unless the provision or context otherwise requires, the following definitions apply to this chapter:

(a) "Asset" includes, but is not limited to, any real or personal property of any nature, whether tangible or intangible, and whether currently existing or contingent.

(b) "Default judgment" does not include a stipulated judgment or any judgment pursuant to a marital settlement agreement.

(c) "Earnings and accumulations" includes income from whatever source derived, as provided in Section 4058.

(d) "Expenses" includes, but is not limited to, all personal living expenses, but does not include business related expenses.

(e) "Income and expense declaration" includes the Income and Expense Declaration forms approved for use by the Judicial Council, and any other financial statement that is approved for use by the Judicial Council in lieu of the Income and Expense Declaration, if the financial statement form satisfies all other applicable criteria.

(f) "Liability" includes, but is not limited to, any debt or obligation, whether currently existing or contingent. (*Added by Stats.1993, c. 219 (A.B.1500), § 107. Amended by Stats.1993, c. 1101 (A.B.1469), § 4, eff. Oct. 11, 1993, operative Jan. 1, 1994; Stats.1998, c. 581 (A.B.2801), § 5.*)

§ 2102. Fiduciary relationship; length and scope of duty; termination

(a) From the date of separation to the date of the distribution of the community or quasi-community asset or liability in question, each party is subject to the standards provided in Section 721, as to all activities that affect the assets and liabilities of the other party, including, but not limited to, the following activities:

(1) The accurate and complete disclosure of all assets and liabilities in which the party has or may have an interest or obligation and all current earnings, accumulations, and expenses, including an immediate, full, and accurate update or augmentation to the extent there have been any material changes.

(2) The accurate and complete written disclosure of any investment opportunity, business opportunity, or other income-producing opportunity that presents itself after the date of separation, but that results from any investment, significant business activity outside the ordinary course of business, or other income-producing opportunity of either spouse from the date of marriage to the date of separation, inclusive. The written disclosure shall be made in sufficient time for the other spouse to make an informed decision as to whether he or she desires to participate in the investment opportunity, business, or other potential income-producing opportunity, and for the court to resolve any dispute regarding the right of the other spouse to participate in the opportunity. In the event of nondisclosure of an investment opportunity, the division of any gain resulting from that opportunity is governed by the standard provided in Section 2556.

(3) The operation or management of a business or an interest in a business in which the community may have an interest.

(b) From the date that a valid, enforceable, and binding resolution of the disposition of the asset or liability in question is reached, until the asset or liability has actually been distributed, each party is subject to the standards provided in Section 721 as to all activities that affect the assets or liabilities of the other party. Once a particular asset or liability has been distributed, the duties and standards set forth in Section 721 shall end as to that asset or liability.

(c) From the date of separation to the date of a valid, enforceable, and binding resolution of all issues relating to child or spousal support and professional fees, each party is subject to the standards provided in Section 721 as to all issues relating to the support and fees, including immediate, full, and accurate disclosure of all material facts and information regarding the income or expenses of the party. *(Added by Stats.1993, c. 219 (A.B.1500), § 107. Amended by Stats.1993, c. 1101 (A.B.1469), § 5, eff. Oct. 11, 1993, operative Jan. 1, 1994; Stats.2001, c. 703 (A.B.583), § 3.)*

Application

For application of Stats.2001, c. 703 (A.B.583), see § 8 of that act.

§ 2103. Declarations of disclosure; requirements

In order to provide full and accurate disclosure of all assets and liabilities in which one or both parties may have an interest, each party to a proceeding for dissolution of the marriage or legal separation of the parties shall serve on the other party a preliminary declaration of disclosure under Section 2104 and a final declaration of

disclosure under Section 2105, unless service of the final declaration of disclosure is waived pursuant to Section 2105 or 2110, and shall file proof of service of each with the court. *(Added by Stats.1993, c. 219 (A.B.1500), § 107. Amended by Stats.1998, c. 581 (A.B.2801), § 6.)*

Cross References

Declarations of disclosure, remedies for noncompliance, see Family Code § 2107.

§ 2104. Preliminary declaration of disclosure

(a) After or concurrently with service of the petition for dissolution or nullity of marriage or legal separation of the parties, each party shall serve on the other party a preliminary declaration of disclosure, executed under penalty of perjury on a form prescribed by the Judicial Council. The commission of perjury on the preliminary declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury.

(b) The preliminary declaration of disclosure shall not be filed with the court, except on court order; however, the parties shall file proof of service of the preliminary declaration of disclosure with the court.

(c) The preliminary declaration of disclosure shall set forth with sufficient particularity, that a person of reasonable and ordinary intelligence can ascertain, all of the following:

(1) The identity of all assets in which the declarant has or may have an interest and all liabilities for which the declarant is or may be liable, regardless of the characterization of the asset or liability as community, quasi-community, or separate.

(2) The declarant's percentage of ownership in each asset and percentage of obligation for each liability when property is not solely owned by one or both of the parties. The preliminary declaration may also set forth the declarant's characterization of each asset or liability.

(d) A declarant may amend his or her preliminary declaration of disclosure without leave of the court. Proof of service of any amendment shall be filed with the court.

(e) Along with the preliminary declaration of disclosure, each party shall provide the other party with a completed income and expense declaration unless a current income and expense declaration has already been provided and is current and valid. *(Added by Stats.1993, c. 219 (A.B.1500), § 107. Amended by Stats.1993, c. 1101 (A.B.1469), § 6, eff. Oct. 11, 1993, operative Jan. 1, 1994; Stats.1998, c. 581 (A.B.2801), § 7.)*

Cross References

Declarations of disclosure, remedies for noncompliance, see Family Code § 2107.

Summary dissolution, declaration requirements, see Family Code § 2109.

§ 2105. Final declaration of disclosure of current income and expenses; execution and service; contents; waiver; perjury or noncompliance with chapter

(a) Except by court order for good cause, before or at the time the parties enter into an agreement for the resolution of property or support issues other than pendente lite support, or, if the case goes to trial, no later than 45 days before the first assigned trial date, each party, or the attorney for the party in this matter, shall serve on the other party a final declaration of disclosure and a current income and expense declaration, executed under penalty of perjury on a form prescribed by the Judicial Council, unless the parties mutually waive the final declaration of disclosure. The commission of perjury on the final declaration of disclosure by a party may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury.

(b) The final declaration of disclosure shall include all of the following information:

(1) All material facts and information regarding the characterization of all assets and liabilities.

(2) All material facts and information regarding the valuation of all assets that are contended to be community property or in which it is contended the community has an interest.

(3) All material facts and information regarding the amounts of all obligations that are contended to be community obligations or for which it is contended the community has liability.

(4) All material facts and information regarding the earnings, accumulations, and expenses of each party that have been set forth in the income and expense declaration.

(c) In making an order setting aside a judgment for failure to comply with this section, the court may limit the set aside to those portions of the judgment materially affected by the nondisclosure.

(d) The parties may stipulate to a mutual waiver of the requirements of subdivision (a) concerning the final declaration of disclosure, by execution of a waiver under penalty of perjury entered into in open court or by separate stipulation. The waiver shall include all of the following representations:

(1) Both parties have complied with Section 2104 and the preliminary declarations of disclosure have been completed and exchanged.

(2) Both parties have completed and exchanged a current income and expense declaration, that includes all material facts and information regarding that party's earnings, accumulations, and expenses.

(3) Both parties have fully complied with Section 2102 and have fully augmented the preliminary declarations of disclosure, including disclosure of all material facts and information regarding the characterization of all assets and liabilities, the valuation of all assets that are contended to be community property or in which it is contended the community has an interest, and the amounts of all obligations that are contended to be community obligations or for which it is contended the community has liability.

(4) The waiver is knowingly, intelligently, and voluntarily entered into by each of the parties.

(5) Each party understands that this waiver does not limit the legal disclosure obligations of the parties, but rather is a statement under penalty of perjury that those obligations have been fulfilled. Each party further understands that noncompliance with those obligations will result in the court setting aside the judgment. (*Added by Stats.1993, c. 219 (A.B.1500), § 107. Amended by Stats.1993, c. 1101 (A.B.1469), § 7, eff. Oct. 11, 1993, operative Jan. 1, 1994; Stats.1995, c. 233 (A.B.806), § 1; Stats.1996, c. 1061 (S.B.1033), § 7; Stats.1998, c. 581 (A.B.2801), § 8; Stats.2001, c. 703 (A.B.583), § 4.*)

Application

For application of Stats.2001, c. 703 (A.B.583), see § 8 of that act.

Cross References

Declarations of disclosure, remedies for noncompliance, see Family Code § 2107.

Summary dissolution, declaration requirements, see Family Code § 2109.

§ 2106. Entry of judgment; requirement of execution and service of declarations; exceptions; execution and filing of declaration of execution and service or of waiver

Except as provided in subdivision (d) of Section 2105 or in Section 2110, absent good cause, no judgment shall be entered with respect to the parties' property rights without each party, or the attorney for that party in this matter, having executed and served a copy of the final declaration of disclosure and current income and expense declaration. Each party, or his or her attorney, shall execute and file with the court a declaration signed under penalty of perjury stating that service of the final declaration of disclosure and current income and expense declaration was made on the other party or that service of the final declaration of disclosure has been waived pursuant to subdivision (d) of Section 2105 or in Section 2110. (*Added by Stats.1993, c. 219 (A.B.1500), § 107. Amended by Stats.1993, c. 1101 (A.B.1469), § 8, eff. Oct. 11, 1993, operative Jan. 1, 1994; Stats.1995, c. 233 (A.B.806), § 2; Stats.1996, c. 1061 (S.B.1033), § 8; Stats.1998, c. 581 (A.B.2801), § 9; Stats.2001, c. 703 (A.B.583), § 5; Stats.2002, c. 1008 (A.B.3028), § 15.*)

Application

For application of Stats.2001, c. 703 (A.B.583), see § 8 of that act.

§ 2107. Noncomplying declarations; requests to comply; remedies

(a) If one party fails to serve on the other party a preliminary declaration of disclosure under Section 2104 or a final declaration of disclosure under Section 2105, or fails to provide the information required in the respective declarations with sufficient particularity, and if the other party has served the respective declaration of disclosure on the noncomplying party, the complying party may, within a reasonable time, request preparation of the appropriate declaration of disclosure or further particularity.

(b) If the noncomplying party fails to comply with a request under subdivision (a), the complying party may do either or both of the following:

(1) File a motion to compel a further response.

(2) File a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

(c) If a party fails to comply with any provision of this chapter, the court shall, in addition to any other remedy provided by law, impose money sanctions against the noncomplying party. Sanctions shall be in an amount sufficient to deter repetition of the conduct or comparable conduct, and shall include reasonable attorney's fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(d) If a court enters a judgment when the parties have failed to comply with all disclosure requirements of this chapter, the court shall set aside the judgment. The failure to comply with the disclosure requirements does not constitute harmless error.

(e) Upon the motion to set aside judgment, the court may order the parties to provide the preliminary and final declarations of disclosure that were exchanged between them. Absent a court order to the contrary, the disclosure declarations shall not be filed with the court and shall be returned to the parties. (Added by Stats.1993, c. 219 (A.B.1500), § 107. Amended by Stats.1993, c. 1101 (A.B.1469), § 9, eff. Oct. 11, 1993, operative Jan. 1, 1994; Stats.2001, c. 703 (A.B.583), § 6.)

Application

For application of Stats.2001, c. 703 (A.B.583), see § 8 of that act.

§ 2108. Liquidation of community or quasi-community assets to avoid market or investment risks; authority of court

At any time during the proceeding, the court has the authority, on application of a party and for good cause, to

order the liquidation of community or quasi-community assets so as to avoid unreasonable market or investment risks, given the relative nature, scope, and extent of the community estate. However, in no event shall the court grant the application unless, as provided in this chapter, the appropriate declaration of disclosure has been served by the moving party. (Added by Stats.1993, c. 21 (A.B.1500), § 107.)

§ 2109. Summary dissolution of marriage; required disclosures

The provisions of this chapter requiring a final declaration of disclosure do not apply to a summary dissolution of marriage, but a preliminary declaration of disclosure is required. (Added by Stats.1993, c. 1101 (A.B.1469), § 11 eff. Oct. 11, 1993, operative Jan. 1, 1994.)

Cross References

Summary dissolution of marriage, see Family Code § 2400 et seq.

§ 2110. Default judgments; declarations of disclosure

In the case of a default judgment, the petitioner may waive the final declaration of disclosure requirements provided in this chapter, and shall not be required to serve a final declaration of disclosure on the respondent nor receive a final declaration of disclosure from the respondent. However, a preliminary declaration of disclosure by the petitioner is required. (Added by Stats.1993, c. 1101 (A.B.1469), § 12, eff. Oct. 11, 1993, operative Jan. 1, 1994. Amended by Stats.1994, c. 146 (A.B.3601), § 41; Stats.1998, c. 581 (A.B.2801), § 10.)

§ 2111. Attorney work product privilege; protective orders

A disclosure required by this chapter does not abrogate the attorney work product privilege or impede the power of the court to issue protective orders. (Added by Stats.1993, c. 1101 (A.B.1469), § 13, eff. Oct. 11, 1993, operative Jan. 1, 1994.)

§ 2112. Forms

The Judicial Council shall adopt appropriate forms and modify existing forms to effectuate the purposes of this chapter. (Added by Stats.1993, c. 1101 (A.B.1469), § 14, eff. Oct. 11, 1993, operative Jan. 1, 1994.)

§ 2113. Application of chapter

This chapter applies to any proceeding commenced on or after January 1, 1993. (Formerly § 2109, added by Stats.1993, c. 219, (A.B.1500), § 107. Renumbered § 2113 and amended by Stats.1993, c. 1101 (A.B.1469), § 10, eff. Oct. 11, 1993, operative Jan. 1, 1994.)

CHAPTER 10. RELIEF FROM JUDGMENT

Section

- 2120. Legislative findings and declarations; public policy.
- 2121. Authority of court to provide relief.
- 2122. Grounds for relief; limitation of actions.