



## California Marital Settlements February 2011 Update

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### Legal Developments

New Law & Strategy added to following questions:

- Q140 Known Debts Prior To Separation
- NEW Q141 Forgiveness Of Debt
- Q265 How Divide Private Plan
- NEW Q325-327 Requirement To Release Other Party From Loan
- NEW Q399 Effect Of Receipt Of Pension On Support
- NEW Q401 Factor Considered In Modification Of Spousal Support
- NEW Q414 Duty To Manage Estate Prudently
- NEW Q470-472 Effect Of Termination Of Child Support On Spousal Support
- NEW Q485 Private Child Support Collector
- NEW Q781-788 Who Gets Dependent Tax Exemption?

To view the Law & Strategy see information on how to access the flag file “**Up\_Feb11.flg**” at bottom of this update letter.

### Updated Product Features

#### **New Forgiveness of Debt Option**

If a debt is forgiven, the obligated party will usually receive a Form 1099-C from the creditor and be liable for income taxes on the amount forgiven. (26 U.S.C. §61 (a)(12).) The fact that the liability was assigned to the party's spouse in a dissolution judgment does not change this result. *Jensen v. C.I.R.* (2010) T.C. Memo. 2010-77. This provision clarifies that should this occur, the party assigned the obligation will indemnify the other for the resulting tax liability.  
*New Question 141*

#### **New Option To Release Other Party From Loans Secured By Deed Of Trust**

When one party receives the family residence, or any other encumbered real property, in the property division, the other party will still be liable on the encumbrance. The obligation will also appear on the non-owning spouse's credit report and the impact his or her ability to acquire a replacement residence. If the former spouse in possession is late with payments or loses the

residence, the impact on the non-owner's credit rating will be adverse and dramatic. One way to ameliorate this adverse effect/risk is to require the acquiring spouse to obtain a new loan within a specified period of time. This provision requires him or her to obtain a novation, new loan or sell it by a specific date. If the residence must be sold, an additional question asks if the costs of sale should be split. *New Questions 325-327*

### **New Effect of Receipt of Pension on Support Option**

If support is being paid by the member of a retirement plan, the court may include his/her income received from the community property share of a retirement plan assigned to the member in the property division as available for support. This is true even if the member "purchased" the benefit with other community property. (In re Marriage of White (1987) 192 Cal.App.3d 1022, 237 Cal.Rptr. 764.) *New Question 399*

### **New Option to Include Changes in Value in Modification of Spousal Support**

You may now opt to include (or exclude) changes in value of formerly community from consideration in future motions to modify spousal support. *New Question 401*

### **Duty to Manage Estates Prudently Optional**

The program provides the option of adding the provision requiring that the parties manage their estates prudently. *New Question 414*

### **New Option To Include Effect Of Termination Of Child Support On Spousal Support**

You may now specify whether the reduction or termination of child support shall be deemed a change of circumstances for modification of spousal support. You may also specify whether there shall be a time limit within which to make a motion to modify spousal support based on the termination and/or modification of child support. *New Questions 470-472*

### **New Option For Money Judgment In Favor Of Private Child Support Collector**

Pursuant to Fam. Code §5616, every court order for child support issued on or after January 1, 2010, and every child support agreement providing for the payment of child support approved by a court on or after January 1, 2010, shall include a separate money judgment owed by the child support obligor. You may also specify whether you want to add an additional provision providing that the obligor shall be responsible for payment of collection fees and costs of a private child support collector. Note: The language in this provision is phrased utilizing the exact language of the statute and not personalized. The reason for this is that the provisions must apply bilaterally should custody be modified or the parties' status as obligor/obligee becomes reversed. *New Question 485*

### **New Option To Limit The Noncustodial Parent's Right To Dependency Tax Exemption**

Normally, the parent who has physical custody of a minor child for more than half of the year gets the dependency exemption and any associated tax deductions or credits. Parties can change this by agreement. New options permit the user to do this and to establish conditions based on whether current on child support, which children, tax years, attorneys fees, among others. *New Questions 781-788*

### **Additional Text Revisions:**

1. **Retirement Rights Text Added** - if select "Assign ALL benefits to party earning them; no division of benefits" at *Question 247* following text has been added:

*"[ Husband/Wife ] is advised after entry of the judgment incorporating this Agreement to change any beneficiary forms with said Plan."*

2. **Private Plan, Military and PERS/STRS Text Omitted** - if select "Assign plan benefits to Member; no division of benefits" option, following text is omitted:

*"In making any future determination regarding the amount or duration of support, the Parties agree that the court shall not consider what would have been the community portion of either's retirement benefit."*

*Questions 265, 266, 289, 290, 298, 299*

3. **Is Support Guideline Text Clarified** for Above Guideline, Guideline and Below Guideline choices - *Question 460*

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To view those questions that are new in this update, or where Law & Strategy, choices, or default answers have changed, use the "**Up\_Feb11**" flag file. From inside Lawgic, open any existing answer file; on the **Flags** menu, click **Open Flags**, select the appropriate Title (click **OK**), and next select the "**Up\_Feb11**" flag file (and click **OK**). To view all flagged questions, click **Expand All** on the **Answers** menu and scroll the Navigator. Flagged questions will be indicated with bold text.

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