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SPOUSAL SUPPORT CHECKLIST*

- 1 Waiver: Will support for either or both parties be waived and terminated? Will there be a one-time lump-sum buy-out of either party's support rights?
2. Spousal Support for Either Party: If support will be paid, then you must resolve the following issues.
 - a. Amount: What is the amount of monthly support.
 - b. Term: How long should the support continue? Should there be an absolute termination, indefinite support, a review of support on a particular date, or a date for termination unless a motion is brought to extend support. In the alternative, support can be set at \$0, but the court can still have the right to order support for either party for good cause for some transitional period.
 - c. Vocational Issues: Is either party under or unemployed? What is the requirement for that party to obtain training and employment? What are the income expectations for that party. Should reviews of that person's employment progress be scheduled?
 - d. Unpredictable Income: How should bonus, seasonal or other unexpected or unpredictable income be factored into support?
 - e. Tax Consequence of Support: Is one party a beneficiary of the other's medical insurance policy? How is that party going to be insured after the divorce is final, and who will pay for that coverage? Are there problems with insurability?
- 2 Future Modification of Support: Yearly reviews; required mediation; calendar important dates (Step-Downs, Termination, etc.)

*Adapted from Jordan & Miller, "Settlement Checklist" Reprinted with permission

Issues in Determining a Lump Sum Spousal Support Buy-Out

Determining an exact figure for a fair spousal support buy-out number is difficult because there are so many factors. To give you an idea of what needs to be considered, here is a list of some of the variables that go into a buy-out calculation:

- Amount of spousal support which would be paid is not absolutely clear unless there's already a court order;
- Chances that spousal support would be modified in the future:
 - Increase;
 - Decrease;
 - Anticipated retirement.
- Length of time spousal support would be paid;
- Early termination: death of either party, remarriage of recipient;
- Risk that spousal support is not paid:
 - Disability or decrease in income for person paying support;
 - Person paying support fails to pay or disappears.
- Earning capacity;
- Duty to be self-supporting;
- Tax ramifications: ordinarily spousal support is tax deductible by the person paying and included in the income of the recipient, but lump sums are not taxed;
- Time value of money:
 - Advantage to having the money in one lump sum;
 - Anticipated rate of return if lump sum was invested.

Non-Monetary Factors:

- Peace of mind and closure;
- No need to modify spousal support later;
- Privacy with regard to your financial situation in the future;
- Each party has incentive to prosper financially without penalty;
- Easier to co-parent when you're not worried about each other's earning capacity;
- Decreased anxiety associated with ongoing litigation.

Don't forget to add: the cost of litigation in order to find out what the spousal support order will be if you cannot settle on the terms.

CALIFORNIA FAMILY CODE: SPOUSAL SUPPORT LAW 4320. Circumstances to be considered in ordering spousal support

In ordering spousal support under this part, the court shall consider all of the following circumstances:

(a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following:

(1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.

(2) The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties.

(b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party.

(c) The ability to pay of the supporting party, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living.

(d) The needs of each party based on the standard of living established during the marriage.

(e) The obligations and assets, including the separate property, of each party.

(f) The duration of the marriage.

(g) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party.

(h) The age and health of the parties, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party where the court finds documented evidence of a history of domestic violence, as defined in Section 6211, against the supported party by the supporting party.

(i) The immediate and specific tax consequences to each party.

(j) The balance of the hardships to each party.

(k) The goal that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration as described in



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Section 4336, a "reasonable period of time" for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court's discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section, Section 4336, and the circumstances of the parties.

(l) Any other factors the court determines are just and equitable.