FREE GUIDE

Divorce Over 50 in California

What a Later-Life Divorce Does to Your Retirement, Your Health Coverage, and Your Home — and What the Law Allows

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A Note Before You Begin

A divorce at 32 is mostly about the future. A divorce at 62 is mostly about arithmetic that has already happened. The money is already earned, the pension is already accrued, the house has already appreciated, and the working years available to fix a mistake are few. That is the whole difference, and it is why the advice that circulates among younger divorcing couples is close to useless here.

This guide is about the parts of a later-life divorce that are easy to get wrong and expensive to fix: retirement accounts that require the right kind of court order, a spouse's Social Security record you may still have a claim on, health coverage that can disappear on a deadline nobody tells you about, and a home whose property-tax basis is worth more than most people realize.

What this guide covers

- Why divorce after 50 is rising, and what the research says it costs
- How California characterizes and divides a thirty-year marital estate
- Retirement plans, pensions, and the order each one actually requires
- Spousal support after a long marriage — and what retirement does to it
- Social Security benefits on a former spouse's record
- Health insurance before 65, and Medicare after
- The house, Proposition 19, and the capital gains math
- Estate planning, beneficiary designations, and the ERISA gap
- Choosing a process, and a realistic timeline

Two things to know about the sourcing.

First: where this guide states a legal rule, it names the California statute, federal regulation, or agency the rule comes from, so you can read it yourself. Where a number is an estimate or an illustration rather than a fixed rule, it says so in the text.

Second: this is general educational information about California law, not legal advice, and reading it does not create an attorney-client relationship. Every case turns on its own record. Tax questions in particular should go to a CPA — several of the rules described here changed recently. Please consult a qualified California family law attorney before you act.

Warm regards,
Mock Law, APC

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A note on the word "grey divorce."

It is a researcher's term, coined to describe divorce among adults 50 and older, and it has stuck because the pattern it names is real. It is not a legal category. Nothing in the Family Code turns on your age as such — but a great deal turns on the length of the marriage, the size of the retirement estate, and how close you are to no longer earning. Those three things travel together after 50, which is why the term is useful shorthand.

PART 1

Why Divorce After 50 Is Rising — and What It Costs

Divorce is falling in this country for almost everyone except people over 50. Researchers at Bowling Green State University, who maintain the longest-running series on this, put the change in per-1,000-married-persons terms:

Divorce rate per 1,000 married persons	1990	2010	2019
Age 50 and older	4.87	10.05	9.64
Age 65 and older	1.79	4.84	5.60

Source: Brown & Lin, *Journals of Gerontology: Series B* (2022). National figures, not California-specific.

The table says something more precise than the usual headline. The rate for people 50 and older roughly doubled between 1990 and 2010 and has been flat since; the rate for people *65 and older* tripled and is still climbing. The share of all divorcing Americans who are 50 or older has gone from fewer than 1 in 10 in 1990 to close to 4 in 10 today.

Why it happens

- **The marriage outlasts its structure.** Couples who organized thirty years around raising children reach the far side of that project and find little underneath it.
- **Longer life expectancy changes the math.** Twenty-five more years is a long time in a marriage you have stopped wanting.
- **Financial independence.** More women in this cohort have their own earnings history, retirement account, and practical ability to leave.

What the research says it costs

The consequences are well documented, and not symmetrical:

Effect of a divorce after age 50	Women	Men
Standard of living (income-to-needs)	down about 45%	down about 21%
Household wealth	down about 53%	down about 57%

Source: Lin & Brown, *Journals of Gerontology: Series B* (2021), using Health and Retirement Study data.

Read that second row again — it is the one people get wrong.

Wealth falls by roughly half for *both* spouses — that is what happens when one household becomes two. The asymmetry is in the first row: a woman's standard of living falls more than twice as far, and men's tends to recover while women's does not. The implication is that fighting over the last 5% of the estate matters less than whether the lower-earning spouse ends up with enough *income* to live on.

PART 2

Dividing a Thirty-Year Marital Estate

California is a community property state. Under Family Code section 760, everything either spouse acquired during the marriage while living in California is presumed community property, and under section 2550 the court must divide the community estate equally, absent a written agreement or a stipulation on the record. Whose name is on the account does not matter. Who earned the money does not matter.

Presumed community property	Separate property (Fam. Code § 770)
Wages and salary earned during the marriage	Property owned before the marriage
Real property purchased during the marriage	Gifts and inheritances to one spouse
Retirement and pension benefits accrued during marriage	Rents, profits, and appreciation from separate property
Brokerage accounts funded with earnings	Anything acquired after the date of separation
A business built during the marriage, and debts incurred during it	Property transmuted to separate by written agreement

After thirty years, the categories have bled together

This is the defining feature of a long-marriage estate. A premarital down payment sits inside a house refinanced twice. An inheritance from 2004 went into the joint account and paid for a kitchen. A brokerage account opened before the wedding has been taking payroll contributions ever since. California handles this through **tracing**, and the burden is on the spouse claiming the separate interest. Two rules do most of the work:

Family Code § 2640 — reimbursement of separate contributions

A spouse who contributed separate property toward a community asset is reimbursed off the top, before the rest is divided — but only if the funds can be traced, and subject to three limits: reimbursement is **dollar-for-dollar, with no interest and no appreciation**; it is **capped at the net value of the property**; and it is waived only by a **writing**.

Moore/Marsden — the premarital home

Where one spouse owned the home *before* marriage and community earnings later paid down the mortgage, a different rule applies: the community acquires a proportionate interest in the home's appreciation, based on the fraction of the purchase price each estate funded. Section 2640 does not govern that, and mixing the two up is a costly error.

Records are the whole game.

A tracing claim is only as good as the documents behind it. The 1996 escrow statement proving the down payment came from a premarital account is often the most valuable piece of paper in the case — and the one most likely to have been thrown out. Start pulling records before you file. Where records are gone, a forensic accountant can sometimes reconstruct the chain, at a cost, and not always successfully.

The date of separation is a number, and it is worth money

Family Code section 70 defines the date of separation as the date of a complete and final break in the marital relationship, shown by *both* an expressed intent to end the marriage and conduct consistent with that intent. The Legislature added this definition specifically to abrogate *In re Marriage of Davis*, which had required living in separate residences. Under current law you can be separated while still under the same roof — a common arrangement in this age group, where selling the house immediately is not practical.

The date matters because it is the line where community earnings stop accruing. With a high earner and a pension still building, eighteen months of difference can be worth six figures. It is also the endpoint used to measure the length of the marriage for support purposes.

Disclosure is mandatory, and the penalty for hiding assets is real

Under Family Code section 2100 and following, each spouse must serve a **preliminary declaration of disclosure** identifying every asset and liability in which they have or may have an interest — community, quasi-community, or separate — under penalty of perjury, along with the prior two years of tax returns (§ 2104). A **final declaration** follows before settlement or trial, though the parties may mutually waive it (§ 2105). The preliminary declaration is not waivable.

The teeth are in section 1101. A spouse who breaches the fiduciary duty owed to the other is liable for **50 percent** of any undisclosed or improperly transferred asset plus fees and costs — and where the conduct amounts to fraud, oppression, or malice, the award is **100 percent** of the asset. *In re Marriage of Rossi* (2001) is the case everyone cites: a wife concealed lottery winnings and lost all of them.

Why this section matters more in a long marriage

Thirty years generates accounts that one spouse has never seen. An old 401(k) from a job in the 1990s. A deferred compensation plan. A brokerage account at a firm the other spouse has never heard of. If you have been the spouse who did not handle the finances, the disclosure process is not a formality — it is the mechanism the law gives you to find out what you own, and the consequences for the other side of doing it badly are severe.

What to gather before your first meeting with a lawyer

- Three years of joint and individual tax returns, with all schedules and K-1s
- Most recent statement for every retirement account, pension, and annuity — including plans from former employers
- Annual benefit statements from CalPERS, CalSTRS, or any other public pension
- Your Social Security statement and your spouse's, if available (ssa.gov)
- Mortgage statements, the original escrow and closing documents, and any refinance paperwork
- Life insurance and long-term care policies, and all current beneficiary designations
- Estate planning documents: will, trust, powers of attorney, health care directive
- Documentation of any premarital asset, inheritance, or gift you intend to claim as separate

PART 3

Retirement Accounts and Pensions

For most couples over 50 this is the largest asset in the case — often larger than the house. The portion of any retirement benefit earned between the date of marriage and the date of separation is community property, regardless of whose name is on it. Family Code section 2610 requires the court to make whatever orders are necessary to ensure each spouse receives their full community share of any retirement plan, public or private, **including survivor and death benefits**.

Two points of law worth knowing. First, vesting is irrelevant: *In re Marriage of Brown* (1976) 15 Cal.3d 838 holds that an unvested pension is community property, not a mere expectancy. Second, section 2610(b) bars a court from ordering a plan to pay earlier or more than the plan itself allows — the order divides your interest, it does not rewrite the plan.

Every account type needs a different instrument

This is where cases go wrong. A "QDRO" is not a generic divorce document, and using the wrong mechanism on an IRA can create a fully taxable distribution to the account holder.

Account type	What actually divides it	Watch for
401(k), 403(b), private pension	A **Qualified Domestic Relations Order** (QDRO) served on the plan administrator	Plans have their own required language; get pre-approval before entry
IRA (traditional or Roth)	A **transfer incident to divorce** under IRC § 408(d)(6) — trustee-to-trustee	Not a QDRO. Withdrawing cash and handing it over is taxable to you
CalPERS	A CalPERS-specific **domestic relations order**, after CalPERS is joined as a party (Fam. Code §§ 2060–2065)	Joinder is a separate step from the order
CalSTRS	A certified order naming CalSTRS, again after joinder	Choose between segregation and the time rule — see below

A planning point most people never hear.

Under IRC § 72(t)(2)(C), a distribution paid directly to an *alternate payee* under a QDRO from a qualified plan is exempt from the 10% early-withdrawal penalty. Ordinary income tax still applies, but the penalty does not. **This exception disappears the moment those funds are rolled into an IRA**, and it never applied to IRAs in the first place. If you are under 59½ and will need cash from the settlement, that decision has to be made before the rollover, not after.

California public pensions: CalPERS and CalSTRS

If either spouse worked for the State, a city, a county, a school district, or a public university, the pension is likely the most valuable asset in the marriage — and it comes with its own procedure.

Joinder comes first

Neither system is bound by any order until formally joined as a party to the dissolution. CalSTRS says so plainly in its own Community Property Guide. Skipping joinder is the most common way these divisions fail.

Two ways to divide a public pension

OPTION 1 **Segregation.** The nonmember spouse's community share is carved out into a separate account in their own name. Available only before the member retires. The nonmember spouse gains independent control and can act on their own timeline.

OPTION 2 **Time rule.** The nonmember spouse receives a percentage of the member's benefit when the member retires — service credit earned during the marriage divided by total service credit, multiplied by the community share. Available whether or not the member has retired, but payments then depend on the member's choices.

Which is better is case-specific. Segregation buys independence; the time rule usually captures more value if the member keeps working and final compensation rises. Decide with a lawyer and, in a large case, an actuary.

CalPERS will freeze part of the benefit.

CalPERS places a hold on a member's account once a community property claim exists — for a retiree, it holds **one-half of the monthly allowance** until the claim is resolved. CalSTRS does the same at the account level, though a member already in pay status keeps receiving payments. CalPERS imposes no administrative deadline for submitting a claim. That is not the same as unlimited legal rights — a claim still requires an underlying community interest and a court order — but it does mean an unresolved pension division can surface many years after judgment.

Survivor benefits are a separate asset — do not forget them

Section 2610 expressly reaches survivor and death benefits, and in a grey divorce they can matter as much as the monthly check. If the plan permits a survivor annuity election, who is named — and who absorbs the reduction in the monthly benefit that election causes — belongs in the settlement, in writing. A former spouse who was counting on a survivor benefit and was never named has very limited options once the member dies.

The offset alternative

Sometimes the cleaner answer is not to divide the account at all: one spouse keeps the retirement plan and the other takes assets of comparable value, often the house. That avoids the QDRO process entirely. The risk is valuation. A $500,000 pre-tax 401(k) and $500,000 of home equity are not equal — the 401(k) is taxed on withdrawal, and the house carries costs and a possible capital gain. An offset done on face value quietly favors whoever took the tax-free asset.

PART 4

Spousal Support After a Long Marriage

There is no formula for permanent spousal support in California. Unlike child support, the court weighs the statutory factors in Family Code section 4320 and exercises discretion. Local guideline calculators are used for *temporary* support while the case is pending; they do not control the judgment.

What section 4320 actually directs the court to consider

Factor	What it means in a long-marriage case
Earning capacity	Marketable skills, the job market for them, and what retraining would cost. At 58, "she can go back to work" often does not survive contact with the evidence.
Impaired earning capacity	Periods out of the workforce devoted to domestic duties — the central factor in most grey divorce support cases.
Contributions to the other spouse's career	Supporting an education, a license, or a series of relocations.
Ability to pay	Earning capacity, earned and unearned income, assets, and standard of living.
Marital standard of living	The benchmark for need — and it includes savings habits, not just spending.
Assets and obligations	Of each party, including separate property.
Duration of marriage	Long duration changes both the analysis and the court's jurisdiction.
Age and health	Carries real weight here and is frequently underdeveloped in the record.
Documented domestic violence	All documented evidence of a history of abuse, plus a separate rule for a convicted abusive spouse.
Taxes, hardships, and any other just and equitable factor	The statute closes with an express catch-all.

The "half the length of the marriage" rule is not a rule here.

Section 4320(l) sets a goal that the supported spouse become self-supporting within a reasonable period, which it describes as generally one-half the length of the marriage — and then **expressly carves out marriages of long duration**, and gives the court discretion to order a period longer or shorter in any case. Anyone applying the half-the-marriage guideline to a thirty-year marriage is applying it to the one situation the statute excludes.

The ten-year rule, stated correctly

Family Code section 4336 is widely described as guaranteeing lifetime alimony after a ten-year marriage. It says something narrower:

- The court **retains jurisdiction** indefinitely where the marriage is of long duration — *except* on written agreement of the parties, or a court order terminating support.
- Ten years creates a **presumption** that the marriage is of long duration, measured from marriage to the **date of separation**. It affects only the burden of producing evidence — the weakest kind of presumption, and it disappears once contrary evidence comes in. A marriage under ten years can still be found long in duration.
- Nothing limits the court's discretion to **terminate** support later on a change of circumstances.

Retained jurisdiction means the court keeps the power to revisit support. It is not a guarantee of payment, and it can be bargained away in writing — which a settlement sometimes does deliberately, in exchange for a larger property award.

What retirement does to support

This is the question that makes grey divorce different. *In re Marriage of Reynolds* (1998) 63 Cal.App.4th 1373 holds that no one may be compelled to keep working past the usual retirement age of 65 to pay the *same level* of support as when employed. That is not a right to retire and stop paying, and it does not automatically end support. It makes a good-faith retirement at customary age a change of circumstances supporting modification, after which the court runs the full section 4320 analysis again.

Two refinements matter. *Shimkus* (2016) treated a firefighter's retirement at 61 as normal, because the customary retirement age for that occupation is 55 — the number is occupation-specific, not fixed at 65. *McLain* (2017) applied the same principle to a *supported* spouse. A retirement taken early and in bad faith to shed an obligation gets no protection, and income can be imputed to a spouse who is voluntarily underemployed.

The practical consequence for your settlement.

If you will be the supported spouse and the payor is within a few years of retiring, a support order is a depreciating asset. A larger share of the property — particularly income-producing property — is worth more than a support number likely to be modified downward on a motion you must defend at 67. That trade is one of the central negotiations in a grey divorce.

Cohabitation, and the tax change you need to know about

Under Family Code section 4323, cohabitation with a nonmarital partner creates a **rebuttable presumption of decreased need**, affecting the burden of proof. It is a presumption about need, not an automatic termination. The statute also provides that the income of a supporting spouse's new partner is not considered.

On taxes: for any instrument executed after 2018, spousal support is **not deductible** by the payor and **not taxable** to the recipient federally. California did not conform for instruments executed from 2019 through 2025, allowing a state deduction and inclusion through a Schedule CA adjustment. **That changed on January 1, 2026.** Per the Franchise Tax Board, California now conforms: for agreements executed on or after that date, no deduction and no inclusion. Confirm the treatment of a *modified* pre-2026 order with a CPA.

PART 5

Social Security on a Former Spouse's Record

Social Security is federal and cannot be divided by a California court. But a former spouse's earnings record may still be worth tens of thousands to you, and the expectation of those benefits shapes how the rest of the estate is divided.

Benefits on a living former spouse's record

Under 20 C.F.R. § 404.331, you may claim on a former spouse's record if all of these hold:

Requirement	Detail
Length of marriage	At least 10 years, immediately before the divorce became final
Your age	62 or older
Your marital status	Currently unmarried
Comparison	Your own benefit is less than the spousal benefit
If your ex has not filed	You may still claim if your ex is 62 and insured and you have been divorced two years

The benefit is up to **50 percent of your former spouse's primary insurance amount** — what they would receive at *their* full retirement age, not what they collect. If your ex delayed to 70, those credits do not increase yours.

The 62 decision is permanent.

Claim before your own full retirement age and the reduction is locked in for life — it does not step back up to 50 percent later. For a spouse who will depend on this income for twenty-five years, the gap between claiming at 62 and at full retirement age is one of the larger financial decisions in the divorce, and it belongs in settlement planning.

Three rules people get wrong

Claiming takes nothing from your ex

SSA is unambiguous: payments to family members do not decrease the worker's benefit or a current spouse's benefit. Your ex need not consent and in most cases will never be notified.

Remarriage cuts you off — but only while it lasts

Remarrying generally ends entitlement on a former spouse's record. If that later marriage ends, you are unmarried again and the condition is met again. *That is our reading of the regulation; SSA's manual does not say it in those words, so confirm before relying on it.*

Survivor benefits follow the opposite rule

If your former spouse dies, a **surviving** divorced spouse may claim under 20 C.F.R. § 404.336 at age 60 (or 50 if disabled), on a marriage of at least 10 years — and **remarriage after 60 does not disqualify you**. The survivor benefit can reach 100 percent of the deceased ex's benefit, not 50. Those who assume remarriage ends everything give up a great deal.

Pull both Social Security statements from ssa.gov early — it is free, and it changes what a fair division looks like.

PART 6

Health Insurance Before 65, Medicare After

For a spouse between 50 and 65 who is covered on the other spouse's employer plan, this is the most urgent practical problem in the case — and it runs on deadlines that are shorter than the divorce.

The 60-day COBRA trap

For divorce or legal separation, COBRA gives the spouse and dependent children up to **36 months** of continued coverage. But the U.S. Department of Labor rules put the notice obligation on **you**, not the employer: the qualified beneficiary must notify the plan of the divorce or legal separation, and the plan must allow at least **60 days** to do so. Miss it and the plan is not required to act. A separate 60-day window then runs to elect coverage after the election notice arrives. Premiums can be up to **102 percent** of the plan's full cost, which for a couple in their sixties is frequently $700–$2,000 a month. *Those premium figures are illustrative market ranges, not a legal rule — get the actual number from the plan administrator and put it in the budget before you settle.*

Your realistic options before 65

Option	How it works	Main drawback
COBRA	Continue the same plan, same doctors, up to 36 months	Full unsubsidized cost; hard stop at 36 months
Covered California	ACA marketplace plan; subsidies depend on your post-divorce income, which is often far lower	Network may not include your current physicians
Your own employer	If you work, usually the cheapest coverage available	Requires benefit-eligible employment

One correction worth making, because it appears everywhere.

Divorce by itself is **not** a qualifying life event for Covered California. HealthCare.gov states it directly: divorce or legal separation without losing coverage does not open a special enrollment period. What qualifies is **losing coverage** because of the divorce — which then opens a 60-day special enrollment window. If you are on your own plan and stay on it, nothing opens. This matters for sequencing: if bifurcation or a judgment will end your coverage, the marketplace window starts from the loss, and you need to know the date.

Medicare at 65

Divorce does not affect Medicare eligibility, and you may qualify for premium-free Part A on a former spouse's work record even if you did not earn enough credits yourself. The Social Security Administration's own manual confirms one point people find surprising: neither the worker nor the spouse needs to have actually filed for monthly benefits — the worker need only be 62 and insured.

Assumption stated plainly: premium-free Part A on another person's record derives from qualifying as a spouse or divorced spouse under Title II, so the standard conditions — a marriage of at least 10 years and currently unmarried, with you age 65 or older — should carry over. We confirmed the age-62-and-insured rule on SSA's manual but could not confirm the divorced-spouse overlay on a Medicare or CMS page. Verify your own situation directly with SSA.

Medicare also does not cover everything, and the gaps are exactly the expenses that rise with age. Budget for them rather than assuming 65 solves the problem.

What Medicare covers	What it largely does not
Hospital care (Part A) and physician and outpatient services (Part B)	Routine dental, vision, and hearing care, including dentures, glasses, and hearing aids
Prescription drugs, through Part D or a Medicare Advantage plan	Long-term custodial care — assisted living, and most nursing home stays
Limited skilled nursing and home health after a qualifying hospital stay	Deductibles, coinsurance, and the Part B 20% share, unless you buy Medigap

Long-term care is the exposure nobody puts in the spreadsheet

A married couple has a built-in first caregiver. Divorced, each of you is buying that service. If either spouse holds a long-term care policy, whether it can be kept, split, or replaced — and at what premium at your current age — is worth resolving during the case rather than discovering afterward that the policy was tied to a spousal rider.

PART 7

The House, Proposition 19, and Capital Gains

In a long California marriage the home is both the most emotionally charged asset and the one carrying the largest embedded tax consequences. Keeping it is a financial decision, and it should be made on the numbers.

Keep, sell, or buy out — the four questions

- Can you carry the mortgage, taxes, insurance, and maintenance on one income?
- What does a buyout cost, and what do you give up to fund it?
- What is the capital gains exposure if you sell later, alone, rather than now?
- Is the equity better deployed as retirement income than as a place to live?

Proposition 19 is worth real money if you are 55 or older

Effective April 1, 2021, a homeowner 55 or older (or severely disabled, or a disaster victim) may transfer the taxable base year value of a primary residence to a replacement primary residence **anywhere in California**, up to **three times**. For someone who has owned since the 1990s, the Proposition 13 base is often a small fraction of market value, and carrying it to a smaller home can be worth thousands a year indefinitely. If the replacement costs more, it is not fully reassessed — only the difference is added. The Board of Equalization's own example:

Step	Amount
Taxable (base year) value of the original home	$300,000
Market value of the original home at sale	$1,000,000
Market value of the replacement home	$1,100,000
Excess over the original's market value	$100,000
New taxable value of the replacement home	**$400,000**

Source: California State Board of Equalization, Publication 801. The BOE's illustration, not a projection for any particular home.

Capital gains: the $250,000 problem

Under IRC § 121, a single filer excludes up to **$250,000** of gain on the sale of a principal residence; a couple filing jointly excludes **$500,000**. Both must satisfy ownership and use tests of 24 months within the prior five years. On a California home bought decades ago the gain frequently exceeds $250,000, so selling as a married couple before judgment and selling alone afterward can produce very different tax bills. Put that timing question to a CPA before the judgment is entered.

Two rules that protect the spouse who moves out

IRC § 121(d)(3) — use and ownership tacking

Under IRC § 121(d)(3), if your former spouse is allowed to live in the home under a divorce or separation instrument and uses it as their main home, **you may count that period as your own use** — which preserves your exclusion when you are the one who left. And where the home was transferred to you by a spouse or former spouse, you may count their ownership as yours. Both depend on the language in the instrument. That is a drafting matter, not an afterthought.

Equal value is not equal after tax.

Under IRC § 1041, transfers between spouses incident to divorce are nonrecognition events — no gain or loss, and the recipient takes the transferor's carryover basis. That defers the tax; it does not erase it. Two assets with the same number on the balance sheet can carry very different embedded liabilities. Insist the division be run on after-tax values.

What "$500,000 each" can actually mean

An illustration of the same problem. Four assets, each worth $500,000 on the balance sheet, and what each is plausibly worth to the spouse who receives it:

Asset	Embedded tax	Value to the recipient
Cash or money market	None — already taxed	$500,000
Roth IRA	None on qualified withdrawals	$500,000
Pre-tax 401(k)	Ordinary income tax on every withdrawal	Materially less
Brokerage account with a $350,000 unrealized gain	Capital gains tax on sale, at the carryover basis	Less, by the tax on the gain

Stated assumption: the right-hand column is directional, not calculated. The actual reduction depends on your marginal rate, when you withdraw or sell, and your state tax position — which is why these numbers should come from a CPA working on your real figures rather than from a rule of thumb.

PART 8

Estate Planning and the Beneficiary Trap

California law undoes some of your former spouse's rights automatically at judgment. It does not undo all of them, and the gap is where the damage happens.

What the law revokes on its own

Probate Code § 6122 — unless the will provides otherwise, dissolution or annulment revokes any disposition of property to the former spouse, any power of appointment conferred on them, and any nomination of them as executor, trustee, conservator, or guardian. The property passes as though they had not survived you. A legal separation that does not terminate marital status is *not* a dissolution for this purpose.

Probate Code § 5040 — a nonprobate transfer to a former spouse generally fails on dissolution. The exceptions matter: it does not fail where the transfer was not revocable at death, where clear and convincing evidence shows you meant to preserve it, or where a court order preserving it is in effect. And § 5040 expressly excludes **life insurance** from its own definition of a nonprobate transfer.

The ERISA gap — the single most expensive oversight in this guide

State revocation-on-divorce statutes do **not** reach beneficiary designations on ERISA-governed plans — your 401(k), your pension, your employer group life insurance. In *Egelhoff v. Egelhoff* (2001) 532 U.S. 141, the U.S. Supreme Court held that ERISA preempts exactly that kind of state statute, because the plan administrator must pay according to the plan documents. The practical result is blunt: **if your former spouse is still named on the form, the plan pays your former spouse** — years after the divorce, regardless of what your will says and regardless of what you intended. Filing new designations with every plan administrator and every insurer is not housekeeping. It is the most consequential hour of paperwork after your judgment.

Your post-judgment checklist

- New will, and a new or restated trust — with the community property trust divided
- New beneficiary designations on *every* retirement plan, IRA, annuity, and life policy — filed with the administrator and confirmed in writing
- New durable power of attorney for finances
- New advance health care directive and HIPAA authorization — think carefully about who now makes medical decisions for you
- Transfer-on-death and payable-on-death designations on bank and brokerage accounts
- Title to real property conformed to the judgment

Adult children are not bystanders

There are no custody orders in a grey divorce, but there is often a blended-family estate plan built over decades, and children from a prior marriage whose expectations rest on a trust that no longer says what everyone assumed. Reviewing the plan alongside the settlement prevents a second dispute after your death, paid for out of the estate.

PART 9

Choosing a Process and a Realistic Timeline

Four paths, and the honest version of what each costs in time. The ranges below are our practical estimate for complex California dissolutions, not a statutory schedule, and your county's calendar will move them.

Process	Suited to	Typical duration
Mediation	Spouses who can still be in a room together and want to control outcome and cost	6–12 months
Collaborative divorce	Those who want professional support, including financial neutrals, without litigating	6–12 months
Negotiated settlement through counsel	The most common path — each side represented, resolved by agreement	9–18 months
Litigation	High conflict, hidden or complex assets, a business to value, or a power imbalance	12–24 months+

The six-month clock, correctly stated

Under Family Code § 2339, no judgment is final for purposes of terminating the marriage until six months have run from **service of the summons and petition, or the respondent's appearance, whichever comes first** — not from filing, and not from separation. It is a minimum, not a target, and nothing dissolves automatically: a judgment still has to be entered.

Status-only dissolution, and its price

Family Code § 2337 allows the court, on noticed motion, to sever the issue of marital status and end the marriage while the financial issues remain open. With a complicated estate this can take years off the wait — but it is not free. The court may impose conditions to protect the other spouse: requiring the moving party to **maintain existing health coverage**, indemnify for tax consequences and for lost retirement, survivor, deferred compensation, and Social Security benefits, preserve nonprobate beneficiary designations, and post security. The plan must generally be joined first.

Those are conditions the court *may* impose, not automatic protections. If you are *not* the moving party, the survivor-benefit and health-coverage conditions are the ones to insist on: the risk of terminating status while a pension division is unfinished falls almost entirely on you.

What actually drives the timeline is rarely the court's calendar. It is the pension division — joinder, plan approval of the order language, the administrator's processing time — and the valuation of any business. Both can be started early, and neither improves by waiting.

This is also an emotional event, and treating it as only a financial one is a mistake.

Ending a thirty-year marriage means losing a shared history, an identity, a social world, and often the in-laws and friends who came with it. That grief does not track the litigation schedule. A therapist, a support group, and people who will take your call are not a luxury — they are also what keeps a hard case from becoming an expensive one.

PART 10

Frequently Asked Questions

We have been separated for years but never filed. Does that change anything?

It can change a great deal. Under Family Code § 70 the date of separation is when the break became complete and final, shown by expressed intent and consistent conduct — not the date of filing. Everything either of you earned after that date is separate property. Proving an old separation date is harder, but it is often worth six figures where a pension is still accruing.

My spouse handled all the money. I don't even know what we have.

Common, and the law accounts for it. The preliminary declaration of disclosure (Fam. Code § 2104) requires your spouse to identify every asset and liability under penalty of perjury, and § 1101 imposes real consequences for concealment — 50 percent of an undisclosed asset, or 100 percent where the conduct is fraudulent. You are not expected to arrive already knowing; you are expected to use the process.

Can I just keep the house and let him keep his 401(k)? They're about the same.

Only if they are the same after tax, and they usually are not. A pre-tax 401(k) is worth less than its balance because withdrawals are taxable, and a house carries transaction costs, upkeep, and possibly a capital gain above the $250,000 single-filer exclusion. Run the trade on after-tax values first.

He says he's retiring next year, so support will end. Is that right?

Not automatically. A good-faith retirement at customary age lets him *ask* the court to modify support (*Reynolds*), and the court then reruns the § 4320 analysis. A retirement taken early to shed the obligation gets no protection, and income can be imputed to a spouse who is voluntarily underemployed. What is true is that a support order is less durable when the payor is near retirement — an argument for weighting your settlement toward property.

I've already remarried. Did I lose my claim on my ex's Social Security?

On a *living* ex's record, yes, while the new marriage lasts. On a *deceased* ex's record, not necessarily — remarriage after 60 does not disqualify a surviving divorced spouse, and that benefit can reach 100 percent of your former spouse's benefit. Check both with SSA directly.

Do I really need a separate court order for the retirement accounts?

For a 401(k), 403(b), or private pension, yes — a QDRO drafted to the plan's requirements and ideally pre-approved before entry. For CalPERS or CalSTRS, a plan-specific order after joinder. An IRA is different: it is divided by a trustee-to-trustee transfer under IRC § 408(d)(6), and a QDRO is the wrong tool. A judgment that says "divide the 401(k) equally" and stops there divides nothing.

How long will this take?

Six months is the statutory floor, running from service or the respondent's appearance. A case with a pension, a house, and thirty years of commingling realistically runs 9 to 24 months. If the wait for a legal end to the marriage is what troubles you, ask about a status-only dissolution under § 2337 — and about the conditions the court can attach to it.

PART 11

Closing Thoughts

The hardest thing about a divorce after 50 is that the decisions are permanent in a way they were not at 35. Accept a support order that evaporates when he retires at 66 and there is no second career to make it up. Trade away a survivor annuity and you learn what it was worth on the day it would have started paying. Leave a former spouse named on a 401(k) and the plan pays them, whatever your will says.

None of that is a reason for fear. It is a reason for sequence. The work that protects you happens early: pull the account statements, get both Social Security records, find the original escrow file, price the health insurance, and start the retirement plan division first rather than last. Every problem in this guide is manageable during the case, and most are very hard to fix afterward.

If there is one sentence to take from it: **divide the estate on after-tax values, and make sure the lower-earning spouse ends up with income, not just assets.** Everything else is detail.

This guide is general educational information about California law. It is not legal, tax, or financial advice, it does not create an attorney-client relationship, and it is not a substitute for consulting a licensed California family law attorney about your own circumstances. Statutes change; the provisions described here are current as of publication in 2026. California's tax treatment of spousal support changed effective January 1, 2026 — confirm current treatment with a CPA.