

Debunking California's Family Law Myths

Domestic Violence requires violence: FALSE Domestic violence can include conduct that is not necessarily violent such as harassment, stalking, threats of violence or placing people in circumstances where they fear for their safety. It could even include surveillance by a private investigator.

Premarital Agreements are hard to enforce: FALSE If properly prepared with full financial disclosure and the right to consult with an attorney, premarital agreements are favored and are typically enforceable.

If you are not married but live together for 10 years, you have a common law marriage: FALSE Common law marriage does not exist in California.

If you sign a Premarital Agreement within seven days of the wedding, it is invalid: FALSE The seven-day rule has nothing to do with when the wedding takes place. The seven-day rule requires a party to have a premarital agreement for at least seven days before he/she signs it. This is to provide time for individuals to obtain advice from an attorney.

The 10-year rule means if you are married for 10 years or more, you must pay lifetime spousal support, but if you are married less than 10 years, you pay spousal support for half the length of the marriage: FALSE Marriages of less than 10 years are not considered "long-term marriages," and it is expected that people will become self-supporting in a reasonable period of time presumed to be one-half the length of the marriage. This can be refuted, however. Courts can cut off spousal support rights for people who have been married for more than 10 years and can extend spousal support rights for more than one-half the length of the marriage for people who have been married for less than 10 years.

The parties are legally separated when one party files for divorce (or for legal separation): FALSE The parties are not legally separated until the court issues a Judgment/Order for legal separation, based upon the parties' mutual agreement or after a hearing on the issue of the date of separation. In the event of a hearing, the court will consider such factors as whether the parties continue to reside together, have marital relations, share joint finances, file joint tax returns and hold themselves out to others as though they are still a married couple.

If one party has assets, the other party does not have to pay that party's attorney's fees: FALSE Having money or assets is not a bar to requesting attorney's fees. The relative financial position of the parties and each party's access to funds is considered. If the other party has far more income (after payment of support) or significantly more assets, the party will have to contribute toward the other party's attorney's fees and costs.

If you acquire an asset during marriage in your own name, it is not community property: FALSE There is a presumption that assets acquired during marriage are community property. This presumption can be refuted by evidence that the asset was acquired from a separate property asset owned before the marriage or from a gift or inheritance before, during or after the marriage.

You can provide for child support and child custody in premarital agreements: FALSE Provisions regarding child support and child custody in premarital agreements are void as a matter of public policy.

You can't waive or limit spousal support in premarital agreements: FALSE Spousal support waivers or limitations in premarital agreements do not violate public policy. These provisions are looked at by courts at the time of the enforcement of the provision/agreement to determine whether enforcement would be unconscionable (term is undefined but clearly means something more than unfair).

If you cohabit but do not marry, you cannot be sued for financial support or property division: FALSE Palimony lawsuits (otherwise known as a Marvin lawsuit, named after the actor Lee Marvin) are permissible and permit someone to claim that there exists a verbal contract to pool assets and/or support the other party. Cohabitation Agreements are a great mechanism for prohibiting such a claim from being made.

If you have any questions about these laws, please contact partners:

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Scott N. Weston



A Certified Family Law Specialist by the State Bar of California's Board of Specialization, Scott has more than 20 years of experience representing celebrities and high net worth clients in family law matters, particularly the enforcement of premarital agreements, child support

and spousal support, custody and complex property division and business valuation. Scott is listed in *Los Angeles Magazine* as one of Southern California's "Super Lawyers."

Practice Areas

Entertainment & Sports Law
Family Law
Litigation

Bar Admissions

California

Education

J.D., cum laude, Loyola School of Los Angeles, 1987
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Memberships

Beverly Hills Bar Association
Los Angeles County Bar Association
State Bar of California
American Bar Association

Joel D. Schwartz



Joel concentrates his practice in a wide variety of family law matters, including divorce; legal separation; annulment; child custody, visitation and visitation modifications; child and spousal support and support modifications; paternity; cohabitation; prenuptial and postnuptial agreements; domestic partnerships and same-sex cohabitation living agreements; domestic violence restraining orders; and guardianships.

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Education

J.D., cum laude, Southwestern University School of Law, 1992
B.A., California State University Northridge, 1989

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