Three California Divorce Scenarios:

A divorce case in California begins with the Petitioner or his/her divorce attorney files a Petition For Dissolution Of Marriage in the Superior Court asking the court to dissolve the marriage and to deal with any issues between the parties arising out of the marital relationship such as child custody, child support, spousal support, property division, debt division, payment of attorney fees and court costs, etc. How the case is subsequently handled depends on whether the other party – the "Respondent" – 1) fails to file a Response to the Petition or, 2) cooperates to settle the case by way of agreement or, 3) files a Response and contests the issues in the case.

Thus – depending on what the Respondent decides to do - there are three ways to resolve the issues in the case:

1. **California Default Divorce**: The Respondent in the case fails to timely file a response to the petition for divorce or legal separation; in which case the Respondent's "default" is entered by the court clerk and the matter proceeds without the Respondent's participation.
2. **California Uncontested Divorce**: A case is "uncontested" when the parties work together to settle the issues by way of written agreement. This may be the case where the Respondent initially defaults or where the Respondent files a Response and the parties later decide to settle.
3. **California Contested Divorce**: A case is "contested" when a Response to the petition is filed, the parties are unable to agree on the issues, and the court must resolve them for the parties in a trial.

Procedural Overview For Default Or Uncontested Divorces In California:

If your divorce is either uncontested or default matter, the following 12 steps must be taken to obtain your California divorce.

Step 1: Choose The Proper Court
You will begin by answering a series of questions to make sure that the State of California has "jurisdiction" over the parties and issues in your case, that the case is filed in the proper county, and that you comply with local "venue" rules.

Step 2: Prepare, Download, And Print The "Initial Document Package"
After we have determined which is the proper court for your case, we will prepare the initial documents to be filed with the court.

Step 3: File The Initial Document Package With The Court
After your initial papers have been prepared and signed, we will file them with the court clerk.

Step 4: Serve The Initial Documents
After the documents have been filed with the court, they must be properly served on the opposing party. There are two ways to meet these “due process” requirements. Either your spouse can choose to accept service by signing an*Acknowledgement Of Service* or he/she must be formally served with the documents.

Step 5: Entry Of Default (If No Response Is Filed)
If your spouse has either signed a *Acknowledgment Of Receipt* or has been formally served with the *Summons* and *Petition* and has failed to respond within 30 days, he/she is “in default” and his/her default may, on your application, be entered by the court clerk. Once the default has been entered, the Respondent will be foreclosed from responding or appearing in the case unless he/she is able to successfully move to have the default vacated.

Step 6: Financial Disclosure
It is the policy of the State of California to insure a proper division of community property and to further insure that child and spousal support awards will be fair and equitable. To this end, California Family Code Section § 2100 et seq. mandates the exchange of prescribed "preliminary" and "final" declarations of disclosure, along with current income and expense declarations, in all marriage dissolution, legal separation and nullity actions. We'll prepare the financial disclosures for you and carefully review the disclosures coming from the other party.

Step 7: Prepare And Notarize A Marital Settlement Agreement
If we have served the Respondent with the Summons and Petition and he/she has defaulted (failed to file a Response) and your case is not going to settle by way of an agreement, you will skip this step and move to Step 8. However, if you are your spouse are going to settle the case by way of agreement, we will prepare an agreement which resolves all of the issues in your case. Generally these issues include:

- Child Custody
- Child Support
- Child Visitation
- Spousal Support
- Division Of Community Property\
- Division Of Community Property Debts
- Payment Of Attorney Fees & Costs Of Suit

Step 8: Prepare Order To Withhold Income For Child Support (Wage Garnishment)
Whenever a support order is made or modified, the court must include in the order an *Order/Notice To Withhold Income For Child Support* that directs the paying spouse's employer to pay to the party receiving support that portion of the paying spouse's earnings due or to become due as will be sufficient to pay (a) the support amount ordered by the court, and (b) an amount ordered to be paid toward liquidation of any arrearage.

Step 9: Prepare And File The "Judgment Package"
The end result and the final goal of the action for dissolution or marriage, legal separation, or nullity is to obtain a Judgment from the court. The Divorce Judgment dissolves the marriage and is a court order which resolves the issues between the parties such as child custody and visitation, child support, spousal support, property division, debt division, and the payment of attorney fees and costs. Whether you obtain that judgment with the agreement of the other party or after the other party's default or after hearing of the matter at trial, a proposed "Judgment package" of documents must be prepared for submission to the court.

Step 10: Serve The Judgment
Where there are orders in the Judgment enforceable by contempt (such as child & spousal support orders or restraining orders) it is important that a conformed copy of the Judgment be personally served on the opposing party and that you obtain a proof of service of the Judgment. Failure to properly serve notice of any order enforceable by contempt on the other party may make it impossible for you to bring a contempt action later to enforce it.

Step 11: File The Child Support Case Registry Form (If Applicable)
If the court makes a child support order or a "family support" order containing child support orders, both parties must complete and file with the court a *"Child Support Case Registry Form"* (Form FL-191) containing information concerning the order to be placed on file with the State of California. This document is received by the court but not filed in the court file. It is sent to the State.

Step 12: Serve The Order To Withhold (Wage Garnishment) On Spouse's Employer
In cases involving child or spousal support, the last step in the process is to serve your *Order/Notice To Withhold Income For Child Support* on your spouse's employer so that the support can be withheld and paid to you.

Additional/Alternate Steps In Contested Divorce Cases:

If your case is contested by the other party, depending on the issues involved and the complexity of the case, the following additional steps may need to be taken:

Motions For Preliminary Orders:
You may not be able to wait until the end of the case - a process which takes a minimum of 6 months - to obtain certain orders. In such cases, it may be necessary to file an Order To Show Cause "OSC" to obtain temporary orders to remain in place until the final Judgment is entered. Such orders include:

- Child custody, visitation, and support orders
- Spousal support orders
- Property possession orders
- Payment of attorney fees and costs
- Restraining orders against domestic violence
- Move-out orders

Discovery:
"Discovery" is the process by which evidence is gathered by both sides to present to the court at the trial of the matter. Discovery may or may not include:

- Interrogatories: Written questions which must be answered under penalty of perjury.
- Depositions: The parties and 3rd parties may be compelled to appear in the attorney's office to answer questions under oath in front of a court reporter.
- Subpoenas: Documeents may be subpoenaed from 3rd parties.
- Motions: If the other party fails to answer or respond to discovery, it may be necessary to make a "motion to compel" answers and responses.

Trial:
If your case does not settle, it may be necessary to try the issues before the court.