

CHAPTER 15

CHANGE OF NAME

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GENERAL OVERVIEW

You do not have to go to court to change your name. Anyone can choose to use any name as long as it is not for an illegal or dishonest reason. This is known as a common law name change. However, there are ways to legally change your name. Legally changing your name creates a public record of the new name and may make it easier to change your driver's license and other forms of identification. Legally changing your name requires you to go to court.

The most common way to change your name or your child's name is by filing a petition for a change of name. Changing your child's name may be more complicated if the other parent does not give consent. As a spouse, you can also change your name when you get divorced by requesting to resume your birth or former name. You do not need permission of a spouse to change your name, you just need to get an order from the court authorizing the change. When you adopt a child you can request a change of name for the adoptive child and amend that child's birth record.

PETITION FOR CHANGE OF NAME

The statute governing change of name in Massachusetts is G.L. c. 210, §§ 12, 13, and 14. You must file a petition for change of name in the Probate and Family Court in the county where you live. The change of name will be granted unless it is "inconsistent with public interests." G.L. c. 210, § 12. In addition to filing the petition for change of name, you must file a certified copy of your birth record, or any prior judgment or record amending your name. G.L. c. 210, § 13. There is a \$150 fee plus a \$15 surcharge for filing a change of name petition. If you believe you cannot pay the filing fee because you are indigent, you can file an affidavit of indigency. The court will decide whether you qualify under the federal poverty guidelines to have the fees waived. A copy of the change of name petition is included as **Exhibit 15A**.

Your current first, middle, and last name must appear on the petition and must be signed exactly as it appears on the birth certificate, unless your name was changed by a prior court order or by marriage. Birth certificates from other countries must be translated by an authorized translator. When the petition is filed, the Probate and Family Court sends a request for information to the commissioner of probation for the Commonwealth. This request lists your name and your vital statistics (such as your address, date of birth, place of birth, and Social Security number) and gives notice of your request to change your name. The notice is returned to the court by the commissioner of probation and states whether there is a record on file with the Department of Probation. In some counties, the request for record information is made for anyone over age ten; in others it is made for anyone over age fourteen.

The court may also require public notice of the petition, which requires you to publish notice in a newspaper. You do not need to give notice to your spouse or former spouse if you are changing your own name. You must publish if you are filing a name change petition for a minor child if one of the parents has not signed the petition and has not agreed to the change. This requirement can be waived for “good cause.” In this case, you must file a motion to waive publication and an affidavit (i.e., a sworn statement) stating why you do not wish to have this information published. You may have to go before the judge personally to explain your reasons. If a citation is required you will need to pay an additional \$15 fee.

You must then appear in person in the Probate and Family Court on the date set by the court. On that day you will appear in front of a judge and ask for your petition to be allowed. At that time the judge will read your petition and may ask why you are changing your name. If it is allowed, the court will issue a certificate of the new name.

DIVORCE

The statute governing change of name in divorce is G.L. c. 208, § 23. This statute allows a spouse to resume a birth or former name in the event of divorce. You cannot change the name of your children in a divorce case; for that, you must file a separate petition for change of name.

If you are requesting to resume your birth or former name, you must list your entire former name on the complaint, including your full middle name. If you are not sure if you want to resume a former name when you file a complaint for divorce, you can file a motion later, asking the court to allow you to resume your birth or former name. You will have to present this motion before the case is concluded, which is usually at or before the pretrial conference or trial date.

You will be allowed to resume your birth or former name when the divorce judgment is entered by the court. If the divorce is by agreement, you will state to the judge that you want to resume your birth or former name and you have listed it in the separation agreement. If the divorce is contested and goes to trial, you must state your request to resume your birth or former name to the judge at the conclusion of the trial and you should include it in any proposed judgment filed with the court. If you decide later, before the divorce is final, that you want to resume your birth or former name, you can present a motion to the court. There is a \$100 filing fee for this motion.

DECREE OF ADOPTION

The statute allowing a change of name through a decree of adoption is G.L. c. 210, §§ 6 and 6A.

If you are filing to change a child’s name as a result of an adoption, you will be required to list the names by which the child is currently known, as well as the name by which the child will be known after the adoption. There is also an affidavit that must be signed and notarized. The affidavit should include

- your name (the names of the parties seeking adoption);
- a statement that you are eighteen years of age or older;
- a statement that you wish to adopt the child;
- the name of the child;
- where the child was born;
- how long the child has resided with you, the petitioners; and
- a statement that you, the petitioners, have provided for the child’s support and are able to care and provide for the child.

The affidavit should also list the requested name change of the child.

After the adoption is allowed by the court, the Registry of Probate prepares a certificate of adoption. The certificate states whether the adopting parents seek to have the child’s birth record amended. If so, the Registry of Probate will send a certified copy of the certificate of adoption to the city or town clerk where the child’s original birth record is filed, so the birth record can be changed to add the new name.

ISSUES REGARDING PARENTS NAMING CHILDREN OR CHANGING A CHILD'S NAME

The right to name a child under age eighteen belongs to the child's parents. If the parents cannot agree on the child's name, the court will decide based on what is in the best interest of the child. You must file a petition for change of name and an affidavit disclosing care and custody proceedings.

This rule applies whether the child is born to a married couple or to an unmarried couple. When presented with a petition to change the name of a child born out of wedlock, the court must consider the following:

- the effect of the change of the child's surname on the preservation and development of the child's relationship with each parent and other siblings;
- the length of time the child has used a given name;
- the age of the child as it may relate to his or her identification with the surname;
- the difficulties and embarrassment that the child may experience from bearing the present or proposed surname; and
- the personal preference of a child of suitable age and maturity.

Petition of Two Minors for Change of Name, 65 Mass. App. Ct. 850 (2006); *Richards v. Mason*, 54 Mass. App. Ct. 570, 572 (2002); *Jones v. Roe*, 33 Mass. App. Ct. 660, 664 (1992).

The court is not allowed to give greater weight to a father's interest in the child having his surname than the mother's interest in the child having her surname. *Jones v. Roe*, 33 Mass. App. Ct. 660 (1992). Absent objection from the putative father, the mother has the right to control the initial surname of her child born out of wedlock.

Sometimes after a divorce or separation one parent may try to change the name of the child by filing a petition for change of name. If the other parent does not agree, there will likely be a court hearing. The court can change the child's name if it is in the child's best interest. The court should consider as a factor which parent has legal and physical custody and who is responsible for major life decisions concerning the child. *Cormier v. Quist*, 77 Mass. App. Ct. 914 (2010).

Practice Note

The Administrative Office of the Probate and Family Court has drafted a proposed Uniform Practice XXXV for change of name actions in the Probate and Family Court in order to standardize the procedures and form requirements for change of name actions involving minors and adults. As of this writing, the court has not released a final version.

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EXHIBIT 15A—Change of Name Petition

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department
Change of Name(s)

Division Docket No.

Name of Petitioner
First Name Middle Name Last Name

(Street Address) (City/Town) (State) (Zip)

Date of Birth Place of Birth

Name of Spouse
First Name Middle Name Last Name

Date of Birth Place of Birth

Names of Minor Children

Reason for change

Have parties ever changed their names before? If answer is yes, explain

Petitioner(s) request(s) that his/her/their name(s) be changed as follows:

	Name at Present:		To be changed to:
Petitioner	<input type="text"/> <input type="text"/> <input type="text"/> <small>First Name Middle Name Last Name</small>		<input type="text"/> <input type="text"/> <input type="text"/> <small>First Name Middle Name Last Name</small>
Spouse	<input type="text"/> <input type="text"/> <input type="text"/> <small>First Name Middle Name Last Name</small>		<input type="text"/> <input type="text"/> <input type="text"/> <small>First Name Middle Name Last Name</small>
Child	<input type="text"/> <input type="text"/> <input type="text"/> <small>First Name Middle Name Last Name</small>		<input type="text"/> <input type="text"/> <input type="text"/> <small>First Name Middle Name Last Name</small>
Child	<input type="text"/> <input type="text"/> <input type="text"/> <small>First Name Middle Name Last Name</small>		<input type="text"/> <input type="text"/> <input type="text"/> <small>First Name Middle Name Last Name</small>
Child	<input type="text"/> <input type="text"/> <input type="text"/> <small>First Name Middle Name Last Name</small>		<input type="text"/> <input type="text"/> <input type="text"/> <small>First Name Middle Name Last Name</small>

Date

SIGNATURE OF PETITIONER

SIGNATURE OF SPOUSE (if joint petition)

SIGNATURE OF MINOR(S) AS SIGNED BY FATHER OR MOTHER AS NEXT FRIEND.

DECREE

Notice having been given according to the order of the Court, and no objection being made, it is decreed that the above name(s) be changed as requested, which name(s) he/she/they shall hereafter bear, and which shall be his/her/their legal name(s).

Date
JUSTICE OF THE PROBATE AND FAMILY COURT

Change of Name form instructions

SEE G.L. c. 210, §§ 12, 13 and 14

A certified copy of the birth certificate for each party must be filed with petition.

If a name has been previously changed by decree of court or at marriage, either a copy of record of birth so amended, a copy of such decree or, a copy of record of marriage must be filed with this petition.

SEE Uniform Fee Schedule for applicable filing fees.

Attorneys are required to file Uniform Counsel Certification form.

