

DIVORCE AND THE ALTERNATIVES



**NEIGHBORHOOD
LEGAL SERVICES**

**A FAMILY LAW HANDBOOK SERIES PRODUCED BY
NEIGHBORHOOD LEGAL SERVICES
THROUGH THE GENEROUS SUPPORT OF THE
MASSACHUSETTS BAR FOUNDATION**

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The information provided in this booklet does not constitute legal advice and is based on the laws of Massachusetts as of the publication date.

It is always advisable to seek legal advice from an attorney.
A list of resources for is on the last page.

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This brochure is designed to provide you with information on divorce and the alternatives to divorce. The separation of a married couple creates several issues which must be addressed such as: child custody, child support, visitation, and property division. Although divorce is the most common way married couples resolve these issues, there are alternatives.

Included in this brochure is material on the following:

- ◇ **Annulment**
- ◇ **Separate Support**
- ◇ **Divorce**
- ◇ **Protection from Domestic Violence**
- ◇ **Mediation**

If, after reading this brochure, you are interested in learning more about the filing process in court, please read the Neighborhood Legal Services brochure entitled [Information about How to File Papers in Essex Probate and Family Court.](#)

Annulment

Annulments “undo” a marriage by treating the couple as if no marriage had ever occurred. If one party was not legally able to enter a marriage because, for example, they were already married to someone else, the marriage is “void” from the beginning. If there is some other reason why the marriage should not be recognized, such as fraud, then the marriage is “voidable.” Annulments are *rarely* granted by the courts and should only be sought when the facts clearly show that the marriage is invalid. The laws governing annulments can be found in Chapter 207 of Massachusetts General Laws.

Annulments for “Void” Marriages:

If the marriage is void, the parties are not required to file for an annulment. However, to be on the safe side, it is highly recommended that you do. A marriage can be void for three reasons:

- ⇒ The parties are too closely related by blood (consanguinity). For example, a sister can not marry her brother.
- ⇒ The parties are too closely related through marriage (affinity). For example, a step-mother cannot marry her step-son.
- ⇒ One person was married to someone else at the time they married the second person (bigamy). However, if the person now seeking an annulment knew at the time of the marriage about the prior marriage, they cannot seek an annulment.

<p>Note: The reason you give for claiming that the marriage was void must be the actual reason you left your spouse.</p>

Annulments for “Voidable” Marriages

An annulment is also available for voidable marriages. The party *must* file a “Complaint for Annulment” in the Probate and Family Court in order to undo the marriage. Voidable marriages occur when:

- ⇒ One spouse lacked the mental capacity to marry. This includes cases where one spouse was not of legal age to be married and did not seek parental or judicial consent for the marriage. The legal age in Massachusetts for marriage is 18.
- ⇒ There was fraud going to the essence of the marriage contract. For example, one party entered the marriage solely to avoid deportation and led the other party to believe otherwise.
- ⇒ One spouse was under the influence of drugs or alcohol during the marriage ceremony such that he or she did not have the capacity to consent to the marriage.

To file for an annulment, you follow the same procedure as for a divorce. The effect of an annulment is that the parties are treated as if they were never married.



If you are considering an annulment, it is advisable to speak with an attorney about your situation. Annulment has complicated legal consequences.

It is important to note that in the absence of a separate paternity action, the children born to the parties may be considered illegitimate and unable to inherit from the other party. Additionally, alimony is not available in an annulment action.

If the parties were not married in Massachusetts, the party seeking the annulment must reside in the state for 5 years prior to the annulment or the party seeking the annulment must have resided in Massachusetts at the time of the marriage and at the time of filing the Complaint for Annulment. The rules in the state where the marriage took place govern the annulment.

Separate Support

An action for separate support alleges that one spouse has the ability to support the family but is not doing so. An action for separate support can be brought by a spouse, a guardian of a minor child, or the Department of Transitional Assistance if the family receives public benefits. It provides for the enforcement of legal duties of the couple while the marriage continues. See the statutory provisions for separate support in M.G.L. c.208 §§ 30 et. seq.

If you live apart from your spouse, or if you are still living with your spouse but you have “justifiable cause” for living apart, you can start an action for separate support by filing a Complaint for Separate Support in the Probate and Family Court.

There is a filing fee for an action for separate support, but the filing fee can be waived if the Court finds you eligible for a fee waiver. Check with the court personnel to determine if you are eligible for a fee waiver based on your income.

No other actions for annulment or divorce or separate support can be pending at the time you file for separate support. Your spouse must be personally served with the complaint. This means that (s)he is hand-delivered the summons by a disinterested third party, such as a sheriff or constable.

In order to be granted separate support, you *must* be able to prove **one** of three grounds:

- 1) The other spouse has failed to provide suitable support without justifiable cause; or
- 2) The other spouse has deserted the person filing the action; or
- 3) There is justifiable cause for living apart even if the spouses are not currently living apart.

The separate support action *does not* result in a divorce. A person or couple can later file for a divorce which will replace the separate support order. In a separate support action, a judge can enter orders concerning minor children, spousal support, and the equivalent of a restraining order. The judge can also order one spouse to vacate the marital home for 90 days if it is in the children’s best interests. The division of property and any debts of the two parties cannot be finalized through a separate support action (there are exceptions to this in cases of abandonment).

Divorce

One way to legally end a marriage and be able to marry again is to file for and obtain a divorce in the Probate and Family Court. There is a \$220 filing fee (subject to change) unless the court finds you eligible for a fee waiver. Check with the court personnel to determine if you are eligible for a fee waiver based on your income.

There are two different types of divorce: a **no-fault divorce** pursuant to M.G.L. c. 208 § 1A and 1B or a **fault-based divorce** pursuant to M.G.L. c. 208 § 1.

No-Fault Divorce

A no-fault divorce pursuant to M.G.L. c. 208 § 1A or 1B is a marriage that ended in irretrievable breakdown, which means that at least one spouse believes the marriage can't be fixed.

No-Fault Divorce Pursuant to M.G.L. c. 208 § 1A (Joint Petition for Divorce)

If a couple is in agreement on all divorce related issues including child custody, support, visitation, alimony, and division of assets and debts, they can file a no fault divorce together under M.G.L. c. 208 § 1A. The parties file a "Joint Petition for Divorce" along with an "Affidavit of Irretrievable Breakdown of the Marriage," and a fully executed separation agreement. Both parties must then appear in court for a hearing where a Judge determines if the agreement is fair and equitable.

No-Fault Divorce Pursuant to M.G.L. c. 208 § 1B (Complaint for Divorce)

If the parties are unable to come to an agreement, or if one party is unavailable or unwilling to sign a joint petition for divorce, the other party may file a no-fault divorce alone, pursuant to M.G.L. c. 208 § 1B. S/he files a "Complaint for Divorce" and is referred to as the "plaintiff" in the divorce proceedings. The other spouse is referred to as the "defendant." The plaintiff files a no-fault divorce under the grounds of "irretrievable breakdown of the marriage." There is a statutory six month minimum waiting period from the date the 1B Complaint for Divorce is filed until the earliest date a divorce can be granted.

Fault Based Divorce

If the person filing for divorce alone (the plaintiff) would like to attribute a fault ground for the divorce, the plaintiff can file a fault-based divorce pursuant to M.G.L. c.208 § 1. According to M.G.L. c.208 § 7, there are seven fault grounds under which a plaintiff can file. If filing under a fault ground, the ground must be proven with evidence. The grounds are as follows:

- ❶ *Cruel and abusive treatment.* This is the most common fault ground. If filing under this ground, be prepared to testify regarding the abuse. It is also helpful to provide supporting documentation such as police reports, restraining orders, medical records, etc.
- ❷ *Adultery.* Proof of sexual intercourse outside the marriage is required.
- ❸ *Impotency.* This refers to the inability to perform sexually and not merely the inability to have children.
- ❹ *Nonsupport.* You must prove that your spouse had the ability to support you and that his or her refusal to provide the necessities of life is gross, wanton, and cruel.
- ❺ *Desertion for at least one year.* Your spouse must have abandoned you without justification or provocation.
- ❻ *Gross and confirmed habits of intoxication* caused by voluntary and excessive use of alcohol or drugs.
- ❼ *Prison sentence for at least five years* even if the actual time spent in jail is less than five years. You should file a certified copy of the conviction with the court.

After the divorce hearing, the judge enters a Judgment of Divorce Nisi which becomes final in 90 or 120 days depending on the type of divorce. You cannot remarry until the end of the nisi period. The court order can include spousal support, child custody, child support, visitation, health insurance and/or a division of property assets and debts. You can also request an order to resume a former name through the divorce process.

Protection from Domestic Violence

Massachusetts enacted the Abuse Prevention Act, Massachusetts General Laws Chapter 209A to allow protection for someone abused by a person close to him or her.

Abuse, for purposes of this law, means:

- ⇒ attempting to cause or causing physical harm;
- ⇒ placing another in fear of imminent serious physical harm; or
- ⇒ causing another to engage involuntarily in sexual relations by force, threat or duress.

Protection is available for people who:

- ⇒ are or were married to one another (spouses or former spouses);
- ⇒ are or were living together in the same household;
- ⇒ are or were related by blood or marriage (in-laws and other relatives);
- ⇒ have a child in common; or
- ⇒ are or have been in a substantive dating relationship.

If the court finds that the requirements of the law have been met, it can:

- ⇒ order the defendant to stop abusing the plaintiff;
- ⇒ order the defendant not to contact the plaintiff;
- ⇒ order the defendant to stay away from the Plaintiff and any minor children
- ⇒ order the defendant to leave and stay away from the family home, the plaintiff's workplace and the children's schools;
- ⇒ award the plaintiff temporary custody of any minor child;
- ⇒ order the defendant to turn in any firearms and FID card;
- ⇒ order the defendant to pay child support;
- ⇒ order the defendant to pay monetary compensation for losses suffered as a direct result of the abuse;
- ⇒ order the plaintiff's address to be sealed (impounded) so that the defendant cannot get it from the court;
- ⇒ order the defendant not to abuse or contact the minor children or children; and
- ⇒ recommend that the defendant attend a batterer's treatment program.

You can file for an Abuse Prevention Order under M.G.L. c. 209A (commonly known as a restraining order) in District Court, Probate and Family Court, or Superior Court. If you moved because of the abuse, you should ask that your address be *impounded* (kept confidential) so that the abuser will not know where you are currently living. There is no filing fee to obtain a restraining order.

Typically, after filing an order, you will see a judge for a hearing. This is called an “ex parte” hearing if the Defendant is not present. A second hearing is scheduled within 10 days of the first hearing and both parties are notified and may attend. At the second hearing, the court can enter an order lasting up to one year. On the expiration date of that order, you can reappear at court for a renewal hearing and may ask the judge to make the order permanent or to extend the order for any additional time necessary.

The District Court cannot make visitation orders. If the restraining order was issued by the District Court, the parties must go to Probate and Family Court in the event they would like to modify the order to include visitation rights.

In a divorce case, pursuant to M.G.L. c.208 §§18 and 34D, the Probate and Family Court has the power to issue a restraining order during the pendency of the divorce or at the time of a divorce hearing or any renewal hearing. Probate and Family Court can additionally enter an order regarding the child custody, visitation, spousal and child support.

Harassment Prevention Orders (MGL c.258E)

The Harassment Prevention Order is a law that went into effect May 10, 2010 and allows victims of stalking, sexual assault and/or harassment to obtain a harassment prevention order against his/her perpetrator. There is no requirement of a relationship between the victim and the perpetrator and violation of the order can be prosecuted criminally. “Harassment” is defined as: (1) Three or more acts of willful and malicious conduct aimed at a specific person committed with the intent to cause fear, intimidation, abuse or damage to property and that does in fact cause fear, intimidation, abuse or damage to property; OR (2) One act that by force, threat or duress causes another to involuntarily engage in sexual relations; OR (3) One act that constitutes a violation of certain specifically enumerated criminal statutes.

If granted, the court may order the perpetrator of the harassment to: refrain from abusing or harassing the victim; refrain from contacting the victim; stay away from the victim’s home or workplace; and/or pay monetary compensation for the losses suffered as a result of the harassment.

You may request a Harassment Prevention Order in the District Court, Superior Court, or Juvenile Court (if the defendant is under 17) that has venue over your residence.

Mediation

Mediation may be an option for you if you feel it can be done safely. A mediator can help the parties reach an agreement on all issues. Such agreements commonly include arrangements for the care of children, provisions for spousal and/or child support, and a division of marital property and debts. It is advisable for both parties, though, to see separate attorneys before signing the divorce agreement.

The agreement must be presented to a judge in order for it to become a court order or a judgment.

Helpful Resources

Many Probate and Family Court Forms Can be Found at:
<http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/forms.html>

General Information on family law issues can be found at: www.masslegalhelp.org

Lawyer-for-the-Day

Provides free assistance at the Courthouse in preparing forms and documents for those who are income eligible.

Probate and Family Court-Salem Division
36 Federal Street, Salem, MA 01970
Call the court at (978) 744-1020

*Monday, Tuesday, Wednesday
and Thursday mornings*

Probate and Family Court-Lawrence Division
Fenton Judicial Center, 2nd Floor
2 Appleton Street, Lawrence, MA 01840
Call the clerk's office at (978) 686-9692

Call the Court for the Schedule

Legal Services

Provides free legal services to those who are eligible.

Neighborhood Legal Services, Inc.
37 Friend St, Suite 300 Lynn, MA 01902
170 Common St, Suite 300 Lawrence, MA 01852
(781) 599-7730 and (978) 686-6900
www.neighborhoodlaw.org

*Provides direct representation, Pro Se
Divorce Clinic, and Helpline advice
to Southern Essex County*

Merrimack Valley North Shore Legal Services, Inc.
35 John Street, Suite 302
Lowell, MA 01852
(978) 458-1465
www.mvlegal.org

*Provides family law services to
Essex and Northern Middlesex Counties*

Reduced Fee Lawyer Referral Programs

Provides referrals to lawyers who may charge reduced fees. Call for eligibility requirements:

Boston Bar Association (*Greater Boston*)
16 Beacon St., Boston, MA 02108
(617) 742-0625
www.bostonbar.org/lrs/index.htm

Mass. Bar Association (*statewide*)
20 West St., Boston, MA 02111
(617) 542-9103, (866)-627-7577
www.massbar.org/lawhelp/need_lawyer/

National Lawyer's Guild
14 Beacon Street, Suite 407
Boston, MA 02108
(617) 227-7008
www.nlgmass.org/lrs

Essex County Bar Association
Shetland Office Park
45 Congress St, Ste. 4100
Salem, MA 01970
(978) 741-7888
www.essexcountybar.org

The Child Support Enforcement Division (CSE) of the Department of Revenue (DOR)

Provides assistance in establishing paternity and establishing, enforcing, and collecting child support.

Probate and Family Court-Salem Division
36 Federal Street
Salem, MA 01970
(978) 744-1020

Probate and Family Court-Lawrence Division
Fenton Judicial Center, 2nd Fl.
2 Appleton St., Lawrence, MA 01840
(978) 686-9692 (*open only Mon. & Wed. 8-1*)

The Family Law How-to Series includes:

Copies of these booklets are available at the Lawyer for the Day Office and Legal Services programs listed inside this booklet.

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- ◆ How to Fill Out a Financial Statement (Short Form)
 - ◆ Divorce and the Alternatives
 - ◆ The Department of Children and Families: Seeking Services, the 51A Investigation and Consumer Rights During an Investigation
 - ◆ Name Changes
 - ◆ Grandparent Visitation
 - ◆ How to Get Child Support
 - ◆ What Is Best for Your Child: Working Through Child Custody and Visitation Issues
 - ◆ Information about How to File Papers in Essex Probate and Family Court
 - ◆ Obtaining Child Support when Getting a Restraining Order: What You Need to Know
 - ◆ Information About How to Establish Paternity
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