



FAQs About Divorce

By Eugene P. O'Donnell, Esq. and Marisa W. Higgins, Esq.

Q: *Can I get divorced in Massachusetts?*

A: If you and your spouse reside in Massachusetts, you may get divorced in Massachusetts. Even if you and your spouse have not resided in Massachusetts as a married couple, you may still obtain a divorce in Massachusetts if you have resided here for at least one year.

Q: *What is a no-fault divorce?*

A: In Massachusetts, a no-fault divorce is one in which it is alleged that there has been an irretrievable breakdown of the marriage. An irretrievable breakdown is predicated on the incompatibility of the spouses and their inability to work together to develop a mutually satisfactory marital relationship.

Q: *What is a fault divorce?*

A: Massachusetts recognizes fault divorces, although few complaints for divorce allege fault grounds as a basis for divorce. The most common fault grounds include adultery, cruel and abusive treatment, gross and confirmed habits of intoxication caused by drugs or alcohol, and utter desertion for at least one year.

Q: *I have been served with a complaint for divorce. What do I do?*

A: You have within twenty days of being served with a complaint to (1) file with the Court and serve a copy on your spouse or his or her attorney an answer in which you respond to each allegation made in the complaint. In addition to an answer, you may file a counterclaim for divorce if you also want to seek a divorce.

Q: *What happens after a complaint for divorce is filed?*

A: In many, but not all, contested divorce cases, motions for temporary orders are filed immediately after a complaint for divorce is served. Temporary Orders, entered by agreement of the parties or after hearing, are designed to maintain the status quo while the divorce action is pending. Temporary Orders address issues, including, if appropriate, temporary custody, child support, alimony, maintenance of health insurance, and payment of the carrying costs related to marital residence.

While the divorce is pending, the parties typically engage in discovery which is the exchange of information and documentation concerning their income, assets, liabilities

and other issues relevant to their divorce. Discovery can be conducted informally with cooperation from the parties or formally through interrogatories, requests for production of documents, and depositions.

Q: *How long will it take to get divorced?*

A: Contested divorces whether filed on the basis of fault or irretrievable breakdown of the marriage should proceed to trial, if necessary, within fourteen months. In reality, however, given the number of cases pending in the Probate & Family Courts and the unique considerations of each case, your divorce, if it proceeds to trial, may take longer than fourteen months.

If you and your spouse agree on all issues surrounding the marriage, you may proceed with an uncontested divorce by filing a Joint Petition for Divorce. The Joint Petition is presented to the Court with a written agreement addressing the relevant issues (i.e. division of property, custody of the children, child support, alimony). There is no waiting period before the parties may submit their Joint Petition for Divorce to the Court.

Although your case may originally be contested, you and your spouse may amend the Complaint to a Joint Petition for Divorce at any time.

Q: *How will the marital estate be divided upon divorce?*

A: All assets, no matter when or how acquired and no matter who holds title, are subject to division. If the parties are unable to reach an agreement of the division of the marital estate, the Court, after trial, will equitably divide the marital estate. Pursuant to M.G.L. Ch. 208, Sec. 34, the Court must consider the following factors:

- Length of marriage
- Conduct of parties during the marriage
- Age
- Health
- Station
- Occupation
- Amount and sources of income
- Vocational skills
- Employability
- Estate
- Liabilities and needs
- Opportunity for future acquisition of capital assets and income

- Present and future needs of dependent children of the marriage

In addition, the Court may consider:

- The contribution of each party to the acquisition, preservation and appreciation of the marital estate
- The contribution of each party as a homemaker to the family unit.

Q: Will I receive alimony?

A: Not necessarily. The fundamental purpose of alimony is to provide economic support for the dependent spouse. In determining whether to award alimony and if so, in what amount, the Court considers the same factors it considers when dividing the marital estate, including:

- Length of marriage
- Conduct of parties during the marriage
- Age
- Health
- Station
- Occupation
- Amount and sources of income
- Vocational skills
- Employability
- Estate
- Liabilities and needs
- Opportunity for future acquisition of capital assets and income
- Present and future needs of dependent children of the marriage

In addition, the Court may consider:

- The contribution of each party to the acquisition, preservation and appreciation of the marital estate
- The contribution of each party as a homemaker to the family unit.

Q: How is child support calculated?

A: In most cases, child support is determined based on the Massachusetts Child Support Guidelines. The Guidelines consider, among other things, the gross incomes of each party, the cost of health insurance and child care, and the number of children subject to support.

Q: My spouse is the wage earner in our family. Will he or she have to pay my legal fees?

A: Typically each party is responsible to pay his or her own legal fees. However, if your spouse controls the family's assets and income, you may file a motion with the Court requesting your spouse to provide you with funds sufficient to pay your legal fees. In most instances, the funds are treated as an advance against your ultimate share of marital assets. In addition, the Court may order your spouse to pay some or all of your legal fees if the Court finds your spouse has engaged in dilatory tactics and has acted unreasonably during the course of the litigation.

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