

Basic Information About Divorce and Separation

Reviewed June, 2014

1. What is a divorce?

A divorce is a court judgment ending a marriage. The court requires a "legal reason" for the divorce. Grounds or reasons for a divorce are discussed starting at question 13. In addition to legally ending your marriage, the court looks at other issues which need to be decided before the divorce becomes final.

2. Is divorce my only option?

No. Married couples may choose to live apart from each other, but remain married, for religious, personal, or financial reasons or for the sake of the children. You may decide to seek a Judgment of Separate Support or a Judgment of Support. A Judgment of Separate Support can decide custody.

3. What is the difference between a divorce and separate support?

The main difference is that a judgment of divorce ends the marriage; a judgment of separate support does not end the marriage.

Although there are differences between them, a separate support judgment can address some of the same issues as a divorce, such as custody, [parenting time, visitation](#), child support, support for one of the spouses.

You file different kinds of papers in court if you are seeking [separate support](#), [support](#), [divorce where your spouse was at fault](#) or [divorce where neither spouse was at fault](#).

For more information about divorce and separation, see these articles in our [Self-Help Guide](#).

4. What is legal separation?

There is no "legal separation," in Massachusetts. You do not have to get court permission to live apart from your spouse. It is legal to live apart from your spouse.

We do have "separate support" cases in Massachusetts. To get a Judgment for Separate Support or a Judgment for Support, you file a [Complaint for Separate Support](#) or a [Complaint for Support](#).

In Massachusetts, spouses can make "separation agreements." A "separation agreement" is a written agreement signed by the husband and wife.

If you complete a "Separation Agreement" (discussed in more detail in question 8) without filing it with the court, it is a contract between you and your spouse. It is not a court order. While it may not be a bad idea to have a contract, it may be difficult to enforce; therefore, you probably will want to file your agreement with the court and ask the judge to order you and your spouse to obey it.

5. What issues are decided in a divorce case or separate support case?

Some of the issues that need to be decided in a divorce judgment are:

- custody of children
- support of children
- [parenting time or visitation](#) with the children
- division of assets (for example, pensions, bank accounts or stocks)
- [alimony](#) (or support for the spouse)
- division of personal property (that is, who will get which personal property, such as the car or furniture)
- division of real property (what will happen to any real estate including the marital home)
- who gets to live in the marital home
- division of debts (for example, credit cards or electric bills)
- taking back the name you had before you got married
- possibly, an order for protection from abuse.

If these issues are not resolved by agreement of the parties, the judge decides the issues. You get a chance to present evidence that helps her decide.

6. When should I consult a lawyer?

You should speak with an attorney for advice and more information on the differences between divorce, separate support, and support. You may decide to have a written "Separation Agreement" between you and your spouse detailing the decisions and arrangements you have made while you are living apart.

7. Does it cost money to file for divorce or separate support?

Yes, the Probate and Family Court charges fees for filing and handling certain documents. If you are on welfare or your income is 125% or less of the current poverty threshold, the court is supposed to let you file without paying the filing fee or other basic costs. That is called **waiving fees and costs**.

In order to get the fees and costs waived, you must fill in and file [An Affidavit of Indigency](#). If your fees and costs are waived this way, you will not have to pay the fee that the deputy sheriff or constable charges to serve the court papers - the state pays. Depending on your situation, the court may require additional information and documents from you. The court forms tell you what information is required. See [How much will it cost to file my divorce?](#) and [I cannot afford the fee, can I still file for divorce?](#)

8. What is a Separation Agreement?

If you are getting divorced, you and your spouse can make a written Separation Agreement that says how matters relating to the end of your marriage will be handled. The agreement should deal with custody of children, parenting time or visits, support of children, your support ([alimony](#)), dividing your assets (including pensions), what will happen to the marital home, including who will own the real estate, who will live in the marital home, dividing your debts, and taking back the name you had before you got married. A Separation Agreement is good only if both spouses sign it. It usually is made part of the divorce judgment.

9. What if I don't want to sign the Separation Agreement?

No one can be forced to sign a Separation Agreement. If you are being pressured to sign any document, walk away and consult your own attorney. At the divorce hearing, the judge can refuse to accept an agreement if she believes it is unfair under the circumstances, that you did not have the opportunity to talk to a lawyer, or signed as the result of intimidation or duress.

10. I don't have a separation agreement, but I think I may need one. Can I write it myself?

If you are considering a Separation Agreement, it is better to consult an attorney. Some of the issues in a Separation Agreement can have far-reaching implications, including tax consequences. It is important that you spend some time on your own thinking about your particular situation and your needs and your children's needs if you are a parent. Keep in mind that circumstances change over time. Focus on the "best interests of the children" for now and in the future since the "best interests of the child" is the standard used by the courts in Massachusetts and in most other states.

You can try to write up your own agreement using the list of issues in question five, but separation agreements are technical, so writing your own is difficult.

11. If I think I want to divorce, how can I prepare for it?

Divorce is a **big** decision and should not be made impulsively, recklessly or without a good deal of thought and investigation. As you probably know statistics show that 1 in 2 marriages end in divorce. Gather as much information as you can about divorce. Talk to friends. Ask questions. Read books. Look at other articles on this website. Go to the Probate and Family Court in your county to observe hearings and trials. Most family court proceedings are open to the public.

12. What about counseling?

Divorce cases can be emotionally charged, so it may be a very good idea to seek counseling and support before and/or during the process. Don't wait for your spouse to agree to participate in counseling. Individual counseling can help.

If it is safe and there is no violence in the relationship, parents and children can attend sessions together to help reduce the effects of a divorce or custody dispute on the children and to help the family heal emotionally.

Divorce is often a lonely and emotionally draining experience. By getting support from other people and information (such as the legal information on this website), you can gain some control in the process and the experience can be less painful.

13. Do I need to have a reason to divorce my spouse?

Yes and no. You do need to choose a "grounds," or legal reason, for the divorce that fits your situation. It is sufficient that you and your spouse don't get along any more and don't want to be married any more.

14. What are the different reasons you can use in your divorce?

There are seven "fault" grounds or reasons and also a "no fault" grounds. The "fault" grounds, as the name implies, mean that one person was considered at fault in causing the marriage to end.

15. What is a "no fault" divorce?

A "no fault" divorce is a divorce in which the marriage is broken beyond repair but where neither spouse blames the other. In Massachusetts, the no fault divorce grounds is called "Irretrievable Breakdown of Marriage." There are two kinds of "irretrievable breakdown" divorces. They are often referred to as "1A" and "1B", referring to the section of the law under which they are found, Massachusetts General Laws Chapter 208, sections 1A and 1B.

1A--Irretrievable Breakdown, both parties participate:

By Agreement each party swears in an affidavit (a written statement made under oath that the marriage has irretrievably broken down), and files that affidavit with a [Joint Petition for Divorce](#), and a notarized Separation Agreement.

For more information about the process see these articles in our [Self-Help Guide](#) for victims of domestic violence.

1B--Irretrievable Breakdown, only one party files:

One spouse files a Complaint for Divorce claiming "Irretrievable Breakdown of Marriage." **Whether or not the other party agrees**, the plaintiff (the person filing for divorce) can have a hearing no sooner than six months after filing the Complaint. No affidavit or Separation Agreement is required.

For more information about the process see these articles in our [Self-Help Guide](#).

16. What are the most commonly used fault grounds?

Cruel and abusive treatment

This is the most common fault ground for divorce. You need to show that something your spouse knowingly did or didn't do caused you harm or upset. Acts of physical abuse are cruel and abusive treatment. Sometimes certain forms of mental cruelty may be enough. You have to show it caused you physical harm, for example, your spouse's drinking and staying out all night caused you headaches and stomach problems. How long it takes to complete a divorce varies with each case. (See question 23 for time line information.)

Utter desertion continued for one year

Your spouse left the marital home voluntarily and without your forcing him to leave. He or she left, has no intention of returning home, and has not lived with you for at least one year before the date of your filing the complaint for divorce.

17. If I use desertion as a ground, what do I have to show?

You will have to show that you did not consent to your spouse's leaving the home, that he left a year ago and has never returned. You may be deserted even though your spouse never physically left the marital home. The judge will have to consider the circumstances of each case in order to decide whether desertion occurred where the other spouse never physically left the home.

18. What are the other fault grounds?

Adultery: This means sexual intercourse outside the marriage. You will have to **prove** that your spouse had sexual intercourse with someone else. This makes adultery a difficult ground for obtaining a divorce.

Impotency: This means inability to have sex. This ground for divorce is rarely used.

Gross and confirmed habits of intoxication caused by voluntary and excessive use of intoxicating liquor, opium, or other drugs: There must be a voluntary and excessive use of drugs or alcohol which has become a pattern.

Gross or wanton and cruel refusal or neglect to provide suitable support and maintenance for the other spouse: This means that your spouse has refused or neglected to provide support and maintenance for you. To use this ground, you will have to show that your spouse has the ability to pay support but has refused or neglected to do so. You will also have to show that the refusal or neglect will cause injury to your life, limb or health or create a danger of such injury.

Sentence of Confinement in a Penal Institution: This means your spouse has been sentenced for life, or for five years or more. This ground is based on length of sentence, not how much time he actually spent in prison.

19. Where do I file for divorce?

You may file a divorce in Massachusetts:

- if you have lived here for a year, or
- if the conduct that is the reason for divorce occurred in Massachusetts and you have lived as a married couple in Massachusetts, regardless of where your spouse now lives, or even if his address is unknown.
- You file a divorce in the Massachusetts Probate and Family Court in the **county** where you and your spouse last lived together if either of you still lives in that county. If neither of you lives in the county where you last lived together, you may file in the county where **you** live, or you may file in the county where he or she lives.

20. How do I start the divorce process?

You file the Complaint for Divorce and other documents at the appropriate Probate and Family Court. If there is an Affidavit of Indigency in proper form, the clerk should approve it and stamp it, and give you a copy. You will also get a Domestic Relations Summons. Arrange for the sheriff to give a copy of the complaint to your spouse. When the sheriff does this, it is called "service of process," meaning that the sheriff has served (legally delivered) the papers to the spouse.

Before trial, either party may request that the court make **temporary orders**, for example concerning custody, child support, parenting time or visitation. Either party must request a pre-trial conference, and then there is a final hearing, the trial.

21. When should I go to court?

Going to court too quickly can sometimes make the case take longer and be more complicated, contested, and expensive. In making your decision to live apart, to divorce or to contest certain issues, weigh the price you will pay with your time, emotion: pain and money.

Every case is unique. When children are involved, your relationship with your spouse does not end with the separation or divorce. You probably, but not necessarily, will continue to have contact with him regarding support, parenting time or visitation and other parental responsibilities. You both will be grandparents of your children's children. If it is appropriate in your situation, for the sake of your children, keep the lines of communication open, but only if it is safe to do so. If possible, put your children's welfare ahead of continuing conflicts.

22. Can I keep my address a secret?

Yes, if you need to keep your address a secret from your spouse because he has been abusive, you can file a motion asking that the court impound your address. You will need to tell the court why it is necessary that your abusive spouse not learn your address.

23. Once I file with the court, how long is it before I get a trial date?

Every case is unique. The answer to this question depends on many factors like:

- the grounds you are using,
- how rapidly or slowly you are able to complete each step in the process,
- how long it takes to find and serve your spouse (if your spouse's address is unknown, serving him will take longer),
- how complete and accurate your papers are,
- how busy and back logged the court is,
- if your spouse contests or disagrees any part of the divorce, and
- if there are temporary orders or negotiations in process.

For more information about the time frames see [these articles in our Self-Help Guide](#).

24. How much will it cost to file my divorce?

There is a fee to file a divorce, and to get a summons. As of August 15, 2012, the filing fee is \$200.00, plus a \$15.00 surcharge, and a summons costs \$5.00. Notifying your spouse, called service of process, can cost around \$30.00 or more if he or she lives far away. (See [Does it cost money to file for divorce or separate support?](#))

25. I cannot afford the fee, can I still file for divorce?

Yes, if you receive TAFDC or other public assistance or your income is less than 125% of the federal poverty level, or you can show that paying the filing fee would keep you from being able to buy necessary food, shelter or clothing, you can file [An Affidavit of Indigency](#) where you swear to these things. If your Affidavit of Indigency is in the proper form, the court is supposed to waive the filing fee and you will not have to pay the costs for "service of process."

26. Can my spouse be made to pay any part of the fees?

Sometimes.

At the beginning of a divorce case, [you can ask the court to order your spouse to help pay for your attorney](#).

At the end of a case, the court can require your spouse to pay your attorney's fees, if your attorney can show that the legal work needed to be done and your spouse can afford to pay for it.

27. What about help from legal services?

Your local legal services program may be able to provide you with free assistance. [find a legal aid program and other referral information for getting a lawyer.](#)

28. I am not eligible for legal services and I need a lawyer. What then?

If money is a concern for you, do not hesitate to tell the attorney right from the start. Consider looking for a private attorney who will handle your case with little or no retainer. In certain cases, an attorney can seek attorney's fees from your spouse. (See question 26) Keep in mind that your attorney charges by the hour so the less time it takes her to gather information the less it will cost you. Whenever possible, offer to get needed information or documents. Keep your own file. Be prepared for meetings or telephone conversations with your attorney. If your attorney told you she would need certain information, have it ready for her. All these steps will help to keep the costs down.

29. Can I do my own divorce?

Under Massachusetts law you have the right to represent yourself in a courtroom in any legal matter including divorce. However, going "pro se" (literally, "for yourself") to get your divorce is advisable only under certain circumstances.

30. Should I represent myself?

It may be most appropriate to represent yourself when you and your spouse have no disagreements about any issue, about neither the grounds for divorce, nor about custody or support. It can be particularly appropriate to represent yourself if your spouse is also representing himself and you are sure that neither of you will contest any aspect of the divorce. It is very difficult to represent yourself if your spouse has a lawyer.

32. What if the case gets complicated?

If you and your spouse have custody disputes, if you are married and paternity of any of the children is in question, if you want support ([alimony](#)) or if there is any marital property which hasn't already been satisfactorily divided, it is a good idea to get an attorney to represent you. If the case is complicated, you do not know how to proceed, or you are unsure how to proceed, consult an attorney to protect your interests.

Links

Complaint for Separate Support => <https://www.mass.gov/courts/docs/forms/probate-and-family/cjd102.pdf>

Complaint for Support => <https://www.mass.gov/courts/docs/forms/probate-and-family/cjd107.pdf>

divorce where your spouse was at fault => <https://www.mass.gov/courts/docs/forms/probate-and-family/cjd101.pdf>

divorce where neither spouse was at fault => <https://www.mass.gov/courts/docs/forms/probate-and-family/cjd101b.pdf>

How much will it cost to file my divorce? => </print/children-and-families/divorce-separation-basic-info#howmuch>

I cannot afford the fee, can I still file for divorce? => </print/children-and-families/divorce-separation-basic-info#afford>

Joint Petition for Divorce => <https://www.mass.gov/courts/docs/forms/probate-and-family/cjd101a.pdf>

Does it cost money to file for divorce or separate support? => </print/children-and-families/divorce-separation-basic-info#cost>