

FAMILY LAW RESOURCE GUIDE



STAGES OF DIVORCE

	Type 1A	Type 1B
Joint Petition	✓	
Complaint for Divorce		✓
Service		✓
Temporary Orders		✓
Pretrial		✓
Status Hearing		✓ <i>(Usually)</i>
Trial		✓ <i>(If no settlement in Negotiations)</i>
Negotiate	✓ <i>(before filing)</i>	✓ <i>(attempt)</i>
Get Divorced	✓	✓

WHAT ARE THE DIFFERENT TYPES OF DIVORCE?

Contested or Uncontested Divorce?

1A Divorce:

With 1A divorces, the following needs to be filed:

- joint petition
- a signed and notarized separation agreement
- a financial statement of each party
- a certified copy of the marriage certificate
- an affidavit of irretrievable breakdown signed by both parties
- a record of absolute divorce.
- If there are marital children under 18 the parties will also have to file
 - o the child support guidelines worksheet
 - o an affidavit disclosing the care and custody of the children.

Once all of this is filed the parties will get a hearing date. Both parties must attend the hearing unless a waiver of attendance is granted prior. At this hearing the judge will decide if there in fact has been an irretrievable breakdown and then they will read the filed separation agreement. If the judge finds the agreement to cover the necessary issues and to be fair, they will sign off on it. After the judge signs off on the agreement an order will be entered and 120 days after that order the parties will be officially divorced.

1B Divorce:

With a 1B divorce you start by filing a complaint for divorce initiated by only one party. Below are the stages of a 1B proceeding and a basic overview of what the stages are.

SERVICE

After you have filed your 1B complain with the court you will have the other party served with the complaint for divorce. After they are served they will have 20 days exclusive of the date of service to file an answer in response to the complaint.

TEMPORARY ORDERS

Temporary orders often contain who will continue living in the marital home, temporary parenting, and child support arrangements, essentially the things that need some sort of an agreement, even if temporary, immediately to keep the parties from fighting or confusion of the children. If the parties can reach agreement, these temporary orders can be entered as a stipulation between the parties, otherwise one party can file a motion for temporary orders.

SEPARATION AGREEMENT

At any point in the process the parties can, and likely will, come to a separation agreement which encompasses all issues for settling their divorce. Once they have come up with an agreement, they will inform the court that they have a separation agreement. Their next court date the judge will then look over the agreement. If the judge finds the agreement fair to all parties and that none of the provisions violate public policy, the judge will sign off on the agreement. After the judge signs off on the agreement an order will be entered and 120 days after that order the parties will be officially divorced. The 120 days after the judge signs the separation agreement applies even if the separation agreement is entered as a result of trial.

PRETRIAL

A pretrial conference is where counsel, if applicable, and the parties are seen before the judge prior to setting a trial date. At this conference the progression of the case is set, such as simplifying the issues if necessary, limiting the number of experts etc. This conference also allows the parties to get a sense of the courts view of the case. Getting the courts view of the case will often help to push parties to settlement, at least regarding some issues, especially in divorce case. The Pretrial conference allows for the parties to request guidance from the judge which will likely help to direct future action on the case.

STATUS HEARING

After the pretrial conference, if the parties have still not come to an agreement the court will hold a status conference. At this conference they will essentially ask the parties what is holding up negotiations and what would help to move negotiations forward. If the parties have only been negotiating through attorneys at this point the judge may suggest attempting mediation or conciliation.

TRIAL

If the parties still cannot come to an agreement a judge will hold a trial. They may limit this trial to only the issues that the couple cannot agree on, such as who gets the house. Courts generally do not like to hold trials for separation agreements, so judge encourage parties to negotiate and then come to court with a signed agreement for the court to sign off on.

How is child support decided?

Child support is decided using the Child Support Guidelines, which is a formula that considers how the parties split parenting time, the parties' gross income, and deductions for medical, dental, and vision insurance, and daycare. The Guidelines are in effect to help lessen the income disparity between the parents and to alleviate some of the financial challenges that stem from spreading one family's income over two households. These Guidelines are presumptively correct. Parties can, however, agree to deviate from this amount.

If you would like more details on the most recent changes to the child support guidelines, please visit [website](#) that outlines the most recent changes.

How is alimony decided?

Whether or not a spouse is entitled to alimony is based on the following factors and all these factors are fact-specific and vary from case to case:

- Length of the marriage
- Age of the parties
- Health of the parties
- Income
- Employment and employability including
 - Employability through reasonable diligence
 - Additional training if necessary
- Economic and Noneconomic marital contributions, such as
 - Child rearing
 - Home making
- Marital lifestyle
- Ability to maintain the marital lifestyle
- Lost economic opportunity as a result of the marriage

Gross income that has been used to calculate a child support order is also excluded from the alimony calculation, so a person won't have to pay with the same money twice for two different types of support.

Types of Alimony:

GENERAL TERM

General term alimony is likely what most people think of when they think of alimony payments. These payments are paid to a former spouse who was economically dependent during the marriage. The Massachusetts statute provides presumptive maximum lengths for alimony based on the length of time the marriage lasted.

According to the statute if the marriage lasted:

- Less than five years, alimony is available for a time equal to half of the months married.
- Between five and ten years, alimony is available for a time equal to 60% of the months married.
- Between ten and fifteen years, alimony is available for a time equal to 70% of the months married.
- Between fifteen and twenty years, alimony is available for a time equal to 80% of the month married.
- Longer than 20 years, there is no presumptive maximum.

The statute defines length of marriage as being from the time of legal marriage to the time which a divorce complaint is served.

General term alimony terminates when the first of the following occurs:

- The date upon which the court has deemed alimony should stop
- Remarriage of the recipient party
- Full retirement age of the payor party
- Death of either party
- Cohabitation of the recipient party, if it is deemed, they are holding out as a common household (could also suspend or reduce alimony)

REHABILITATIVE

Rehabilitative alimony is a periodic payment to the recipient spouse for a short term to allow them to become economically independent. This type of alimony has a maximum time period of 5 years. Rehabilitative Alimony is appropriate where:

- One spouse is unemployed at the time of divorce but is employable based on
 - o Age
 - o Earning Capacity

This type of alimony provides the recipient spouse with a safety net while attempting to reenter the workforce and allows them to attend training or educational programs to assist in this. While Massachusetts does not recognize professional degrees as divisible upon asset division, the court may use rehabilitative alimony as repayment in situations, for example, where one spouse assisted the other in paying for a professional license and possibly forfeited their chance to increase their learning capacity.

TRANSITIONAL

This alimony is the most restrictive in terms of situations that it can be ordered in. Transitional alimony is meant only to transition the recipient spouse to the adjusted lifestyle of no longer being married. It is only available in divorces resulting from marriages of less than 5 years and has a maximum term limit of 3 years. Transitional alimony unlike the other forms can only be awarded at or near the time of divorce.

REIMBURSEMENT

Reimbursement alimony is available in short term marriages of less than 5 years. This is a periodic or one-time payment meant to reimburse the recipient spouse to compensate for economic or non-economic contributions to the marriage. There is a general rule that alimony may not exceed the recipient spouses needs or 30-35% of the difference between the party's income. This rule does not apply to reimbursement alimony, which allows this type of alimony to be ordered even when the recipient spouse is self-supporting.

Discovery:

Discovery is exactly what it sounds like. In discovery we have multiple vehicles the court allows us to use to find out information from the other party that would be helpful in further divorce proceedings or negotiations.

INTERROGATORIES

Interrogatories are written questions about things we may want to know. These questions can encompass many things that are involved in your divorce that will help you prove your case. The answers to these questions are signed under the pains and penalties of perjury.

DEPOSITION

A deposition is similar to interrogatories in that it is questions asked to the opposing party (generally), but it's different in that depositions are oral. Depositions are recorded by a stenographer and are taken under oath, instead of just signed under the pains and penalties of perjury.

REQUEST FOR PRODUCTION OF DOCUMENTS

Requests for Production of Documents (RPDs) are written requests to the opposing side for production of certain documents.

REQUEST FOR ADMISSIONS

In Requests for Admissions, you send statements to the opposing party and request that they either admit the statement or deny it.

SUBPOENAS

A Subpoena is a way to get documents from a person who is not a party to the litigation. It serves as an order for a third-party to produce the requested items.

Other Common Questions:

If parties are unmarried, the main issues will be child support and legal and physical custody. Child support applies to unmarried parents in the same as it applies to divorcing parents and custody decisions are still made with the "best interest of the child" standard. However, legal custody is different when it comes to unmarried parents. In these cases, instead of a complaint for divorce being filed, a 209C Paternity case is filed. Paternity is established either through the father having his name listed on the birth certificate, the mother admitting to paternity, or through further court process. Until paternity is established there is a presumption that the mother has legal custody until a court decides otherwise.

How do things work if parents are unmarried?

The Collaborative Law Process is a dispute resolution technique where both sides have an attorney trained in Collaborative Law and a coach/facilitator to lead the negotiations. There may also be other experts such as a financial neutral. If the matter resolves through the Collaborative Law Process, a separation agreement is prepared, and a joint petition is filed. However, if the matter cannot resolve through the Collaborative Law Process, both attorneys and all the neutrals involved are disqualified from representing either party in litigation of the matter.

What are my choices to get to a separation agreement?

There are a few different ways to come to a separation agreement. Which way works best for you will often come down to your relationship with the person you are separating from. Some options only really work when the parties are amicable. All separation agreements no matter how the terms were arrived at, require judicial approval.

“KITCHEN TABLE” AGREEMENT

This type of negotiation of an agreement is the simplest and only really comes into play if the parties are amicable. To come to a “Kitchen Table” agreement the parties just talk amongst themselves about what is important to them to be in the agreement and then they draft (or have an attorney draft) the agreement that includes the terms they have come to. Since this type of agreement does require the parties to do almost everything themselves, it requires a lot of cooperation between the people. If the parties don't have an attorney look over an agreement that there's a chance a judge might reject the agreement. If the judge rejects the agreement, you and the other party have come to, your best option will likely be to consult an attorney to figure out what the judge likely disliked in the first version. After getting rid of and editing language the judge didn't like the parties can go back to court and attempt to get the judge to sign off on it the second time.

MEDIATED AGREEMENT

In mediation a neutral third party is used to assist the parties in coming to an agreement regarding the terms of their separation. Since mediation is voluntary, either party can stop the mediation process at any point. If mediation is unsuccessful, the parties can either try again with a different mediator or using a different type of negotiation method as discussed in a later section.

ATTORNEY NEGOTIATED AGREEMENT

This allows for the attorney(s) to talk and relay the parties' position to one another through counsel which may streamline the process and/or reduce animosity between the parties.

What is a financial statement and why do I need to fill it out?

A financial statement is a court-required form that sets out your income, assets, expenses, and liabilities. This statement assists in making decisions about how assets are divided and how child support and alimony are calculated. The court requires financial statements from both parties at every hearing where financial issues are being addressed and they must be updated as of the date of filing.

How are assets divided?

Massachusetts is an equitable division state. This means that assets are divided fairly, but not necessarily even down to the dollar. The marital estate is everything that is in the name of either party of the marriage. The same factors that are used to determine whether or not alimony is awarded also are used in asset division.

Below is an example of how marital assets could be divided in a divorce assume all assets are jointly titled unless otherwise noted.

Asset	Party A and Party B Asset Division					
	Total Value	Notes	Party A	Percentage	Party B	Percentage
Real Estate						
Home A	\$ 500,000.00	Party A buyout of Party B	\$ 250,000.00	50%	\$ 250,000.00	50%
Home B	\$ 325,000.00		\$ -	0%	\$ 325,000.00	50%
Subtotal	\$ 825,000.00		\$ 250,000.00	30%	\$ 575,000.00	70%
Bank Accounts						
Bank of America (Party B)	\$ 7,000.00		\$ 4,000.00	57%	\$ 3,000.00	43%
TD Bank (Party A)	\$ 2,000.00		\$ -	0%	\$ 2,000.00	100%
Subtotal	\$ 9,000.00		\$ 4,000.00	44%	\$ 5,000.00	66%
Retirement						
Vanguard IRA (Party A)	\$ 978,000.00		\$ 978,000.00	100%	\$ -	0%
Fidelity (Party B)	\$ 653,000.00		\$ -	0%	\$ 653,000.00	100%
Subtotal	\$ 1,631,000.00		\$ 978,000.00	60%	\$ 653,000.00	40%
Vehicles						
Car A	\$ 2,000.00		\$ 2,000.00	100%	\$ -	0%
Truck B	\$ 4,000.00		\$ -	0%	\$ 4,000.00	100%
Subtotal	\$ 6,000.00		\$ 2,000.00	33%	\$ 4,000.00	67%
Other						
Livestock	\$ 5,200.00		\$ -	0%	\$ 5,200.00	100%
Subtotal	\$ 5,200.00		\$ -	0%	\$ 5,200.00	100%
Total	\$ 2,476,200.00		\$ 1,234,000.00	50%	\$ 1,242,200.00	50%

What is a Prenuptial/ Postnuptial Agreement? Why do they matter?

A Prenuptial or Postnuptial agreement can be a very helpful tool. A Prenuptial agreement is signed before the marriage, a postnuptial is signed after the marriage. Both types of agreements help set out what happens in the event of a divorce. This helps to protect both parties and simplifies separation if it occurs. These agreements also set out how assets are distributed when the marriage ends with the death of a party.

We're here to help you.
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