

FREE DOWNLOAD

THE MASSACHUSETTS DIVORCE HANDBOOK

The **2010** Comprehensive Guide
to Getting Divorced in
Massachusetts



BY ATTORNEY
IRWIN M. POLLACK



 **THE**
Massachusetts Family Law
GROUP

THE LAW OFFICES OF IRWIN M. POLLACK

***Divorce Lawyers and Family Law Attorneys
Dedicated to Protecting You!***

My name is Irwin Pollack. I am a divorce lawyer, family law attorney and a divorced parent myself.

The Massachusetts Family Law Group has offices in Norwood, Woburn, Worcester, Springfield, and Plymouth. Our attorneys meet with clients over the weekend – even as early as 5 a.m. when necessary.

Since so much has changed (including the most recent child support revisions with the 2009 Guidelines), this **Special Guide to Getting Divorced in Massachusetts** has been prepared with you in mind. As you do your divorce homework, it's important that you are able to separate truth from the popular myths surrounding Massachusetts divorces. No matter which county your divorce will be filed in, issues such as who keeps the children, how to support them, and whether one of you will be paying (or receiving) alimony are all important issues. We're here to help you make the right steps and avoid common mistakes.

If you are facing a divorce, it makes sense to arm yourself with high-quality information before you call us – or any other divorce law firm.

As the founder of the Massachusetts Family Law Group, I am a zealous advocate. I know how to be aggressive and assertive, but I also know there are times when a softer touch is required. Sometimes it is easier to go over, under or around an obstacle. I evaluate each case on its merits and choose the best course of action for my client.

It is very important to me to get the particular results our clients want. We work from early in the morning until late at night to do that. We don't ever want to find a case where we were out-prepared by another attorney. That is my commitment to you.

There's one particular area in my law practice where I stand out as a zealous, yet compassionate lawyer. This area relates to Fathers' Rights. Here, I make myself perfectly clear: "I Represent the Underdog."

Children need both parents. In difficult situations, many moms can forget this. They let their anger cloud their judgment. My job is to remind them and protect a father's relationship with his children.

In cases like these, many wives do not like me because I fight for husbands and fathers. I make the process a lot more uncomfortable than anticipated. Many wives are advised either by their attorneys, family members or girlfriends that they will automatically end-up with the children, the house, and all of the money and that their husband will be working to support her for the rest of his life. My job is to shatter that perception and dispel those inflated expectations.

Make no mistake about it –I focus on much more than fathers' rights. The attorneys at this firm and I represent clients relating to matters of both contested and uncontested divorce, same-sex divorce, custody and parenting plans, child support and alimony issues, and many others.

In addition to me, all of the lawyers and paralegals at the Massachusetts Family Law Group are good listeners. We learn more by listening than we do by speaking. Sometimes the information we need to represent a client is deeply buried within a mountain of facts. In one case, we reunited a father with his young daughter when he had been estranged from regular parenting for close to a year by sifting through the facts and creating the strongest argument possible.

We are all totally accessible to our clients. We welcome and encourage clients to e-mail us so we can offer a thoughtful written reply at any time, day or night. Responding by e-mail allows us to compose our thoughts and give clients a considered response.

Many of our divorce clients remain close to us for months or years after their divorce. Our mailboxes are clogged with holiday cards every year. We love divorce work and work hard for the results we obtain for clients.

Here's something I'd like to share. At our firm, we offer our clients a **"No Legalese Guarantee."** My colleagues and I promise to communicate with you in plain English. We may refer to certain documents, procedures, or hearings by their legal name, but we

promise to tell you what's happening with your case in everyday language free of legal jargon. If you catch any of us using unnecessary jargons in e-mails, letters or phone calls with you, call me personally and I'll send you to dinner for two at my favorite restaurant!

Read this Special Report, then when you're ready to give yourself the gift of zealous and competent representation, call us. We offer prospective clients no-obligation consultations that will allow you to protect your rights and emerge more knowledgeable, stronger and more confident than when you first walked in our door.

We'll explain both your legal rights and your obligations. You'll understand the entire process from start to finish. The one thing we won't do is guarantee a particular result if you decide to retain us. No attorney can or should for that matter.

Our offices are conveniently located all over Massachusetts. Parking is always free and so is the coffee! Call my office to schedule your appointment – (800) 910-DIVORCE.

Let us help you get the upper hand on your case. Read on for more information.

We're here to help you move on to the next stage in your life.

VERY TRULY YOURS,

A handwritten signature in black ink that reads "Irwin M. Pollack". The signature is written in a cursive, flowing style with a large, prominent "I" and "P".

Irwin M. Pollack

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Residency Requirements and Where to File

If the grounds for divorce occurred in Massachusetts, one spouse must be a resident. If the grounds occurred outside of the state, the spouse filing must have been a resident for one year. The divorce should be filed in the county in which the spouses last lived together. If neither spouse currently lives in that county, the divorce may be filed in a county where either spouse currently resides.

Legal Grounds for Divorce

No-fault: Irretrievable breakdown of the marriage (may be filed for either with or without a separation agreement.)

Statutory authority comes from Massachusetts General Laws Annotated; Chapter 208, Section 1, 1A, and 1B.

Fault Grounds: There are seven ways to file on fault grounds. They are:

1. Impotence
2. Imprisonment (for over five years)
3. Adultery
4. Alcoholism and/or drug addiction
5. Desertion for one year before filing for divorce
6. Cruel and inhuman treatment
7. Nonsupport whereby a spouse is able to provide support but grossly, wantonly, or cruelly refuses or neglects to provide suitable maintenance for the complaining spouse.

The above comes from Massachusetts General Laws Annotated; Chapter 208, Sections 1, 1A, 1B, and 2.

Hiring a Divorce Attorney

You should make it a top priority to hire zealous, competent and compassionate legal counsel for your divorce or family law matter.

Once you do that, you are entitled to a hard-working, experienced, assertive attorney who focuses on the details of divorce. The attorney must be both diligent and competent so you are prepared for either settlement or trial.

Experience is a relative term. Your attorney won't need as much if your case is straightforward, but how do you know he or she has enough for your case? Once you disclose to the attorney the problem areas of your case, you want someone with the experience in divorce or family law to help you accomplish your goal. It's always better to err on the side of experienced rather than inexperienced— either a lawyer who is licensed in other states, teaches at a local law school, or has many years of experience.

Assertiveness is mandatory if your side of the case is to be presented, but don't confuse assertiveness with bluster or theatrics. A calm, methodical approach accomplishes more than a lot of meaningless noise.

You also need an attorney who will be reasonably available to you to answer questions. Don't expect that your attorney to be available every time you call. In fact, if he or she doesn't have any other clients to meet with or court proceedings to attend, you should begin to wonder why not. However, your call should be returned within 24 hours.

You want an attorney with whom you can have a harmonious, attorney-client relationship. Your attorney is not your buddy, particularly at these hourly rates. Expect to have disagreements when your attorney advises you of the alternatives available and then makes a recommendation for you to evaluate. You might decide to disregard your attorney's advice, in spite of the known consequences, in order to do things the way you are the most comfortable. However, if you have a good relationship with your attorney, these difficult decisions will be much easier to make.

An attorney who is helpful and supportive is preferable to one who sticks to a preset agenda. If you find empathy, your divorce process will be positive and growth oriented. It can accelerate the pace at which you retake personal responsibility and clarify the issues in your life. Does this attorney listen attentively to what you say? Is this attorney able to identify and respond to the emotion in your statements?

You must have confidence in your attorney. He or she should be well organized and in full control of the situation. Your attorney should be sympathetic to your concerns, responsive to your needs and interested in your well-being.

Do you want an attorney of the same gender as you? You may feel more comfortable with your attorney, or more like you are a part of a team, if you are of the same gender.

Do you want your attorney to be the same gender as your spouse to defuse that gender barrier? Sometimes a woman may prefer a strong male figure to deal with an intimidating spouse, and a man might prefer a female attorney to deal with an exasperating spouse.

What personality traits are needed for your case? Tenacity? Understanding? Compassion? Boldness? A bulldog to deal with your out-of-control spouse? Review your own situation to see what you want in your team's legal leader.

Add to your list any other factors that improve your comfort level. Perhaps you would prefer an attorney of 40-50 years of age, an attorney who has experienced divorce firsthand or an attorney who concentrates in child-related divorce and custody disputes.

Once you have decided that you want a divorce, the earlier you retain an attorney, the better prepared you will be for your case.

Filing Your Complaint for Divorce

To start a case, you file a complaint. A complaint is a document you create that identifies who the parties are, what your reasons are for bringing the case, what the facts are in your case and what you want the court to do.

Once you hire an attorney, let them work zealously on your behalf. Since you must file on specific forms in a specific way, the attorney's guidance is essential at this stage to make sure your complaint is in the proper format.

After the complaint is filed, your attorney will likely receive a summons. That official document notifies defendants that a case has been filed against them and how long they have to file their answer in response to the complaint.

The next step after filing and receiving the summons is to give (serve) a copy of the summons and complaint to the defendant – your spouse. Since there are rules for how to do this, this is another reason that using an attorney to represent you is in your best interest.

Rule 411 – Asset Restraining Order

As per Massachusetts General Laws, the following automatic restraining order shall apply to both parties to a complaint for divorce. This automatic restraining order shall be effective with regard to the plaintiff upon the filing of the complaint by the plaintiff or the plaintiff's counsel and with regard to the defendant upon service of the summons and complaint or any other acceptance of service by the defendant:

The following restraining order shall remain in effect for the duration of the action, unless it is modified by agreement of the parties or by further order of the court.

(1) Neither party shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of any property, real or personal, belonging to or acquired by, either party, except: (a) as required for reasonable expenses of living; (b) in the ordinary and usual course of business; (c) in the ordinary and usual course of investing; (d) for payment of reasonable attorney's fees and costs in connection with the action; (e) written agreement of both parties; or (f) by Order of the Court.

(2) Neither party shall incur any further debts that would burden the credit of the other party, including but not limited to further borrowing against any credit line secured by the marital residence or unreasonably using credit cards or cash advances against credit or bank cards;

(3) Neither party shall directly or indirectly change the beneficiary of any life insurance policy, pension or retirement plan, or pension or retirement investment account, except with the written consent of the other party or by Order of the Court.

(4) Neither party shall directly or indirectly cause the other party or the minor child(ren) to be removed from coverage under an existing insurance policy, including medical, dental, life, automobile, and disability insurance. The parties shall maintain all insurance coverage in full force and effect.

Financial Statement

A financial statement is the Probate & Family Court form on which each party sets out his or her financial situation. When you fill out the form, you must list all your income, expenses, debts and assets. You are required to file a financial statement in any case where support, alimony or any financial matter may be an issue.

Filing your financial statement is a very serious matter. After you fill it out, you must sign it "under the penalties of perjury." This means that if you deliberately do not tell the truth, or you leave out information, a judge could send you to jail. Moreover, your credibility is lost and the judge will be less likely to believe you on other matters in the case.

Your attorney will likely help you with your financial statement. If your gross income (income before taxes and other deductions) is under \$75,000, you'll complete the "short form." If it is \$75,000 or higher, you'll complete the "long form."

You must attach either a W-2 or 1099 tax form to your statement. If you earn other income from self employment, rental income, or your own business, you will need to supplement your statement with those records as well.

Parenting Class

All parties in a divorce action in which there are minor children, are ordered to attend and participate in an approved Parent Education Program. Attendance at an approved program is mandatory for parties to a divorce action unless waived by the court. Both parties to the complaint must register with an approved provider in order for the court to move the case forward.

A list of class providers is found at:
www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt.providerlist.pdf

Temporary Orders

If your scheduled hearing date is a long way off and you need a court order sooner than that, you can always file a Motion for Temporary Orders if you cannot reach agreement between you and your spouse.

Once you retain a divorce lawyer or family law attorney, take the opportunity to identify everything that worries you. List and then discuss your concerns with your attorney. Together you'll identify specific issues and attempt to discuss these concerns with opposing counsel to seek some level of an agreement without having to go to court.

The most common concerns, relating to finances, are covered by Rule 411. This rule prevents either party from conveying or dissipating any marital asset, making any changes relating to insurance coverage, or spending any extraordinary amount of money without judicial order or agreement between the parties – unless said expenditures are viewed as everyday living expenses, in the ordinary course of business or for attorney fees.

Some issues relating to temporary orders are necessary during the period of a divorce action. The Massachusetts Probate and Family Court refers to it as "establishing the status quo."

The following suggestions can inform your thinking; when your spouse agrees, submit them to the court for an enforceable order that:

1. The minor children shall not be removed from the Commonwealth without first obtaining written consent from the other parent, or a court order;

2. No change shall be made under any retirement or pension plan without first getting written consent from the other spouse;
3. The named spouse shall pay a stated amount of alimony or child support on a specific day of each month (alimony is tax deductible once it becomes a court order);
4. Custody and visitation with the minor children shall follow a clear, simple plan that you lay out in the agreement;
5. Each spouse shall be responsible for certain specified bills;
6. One named spouse shall have the exclusive right to use and occupy the family residence;
7. Specified accounts shall be blocked against withdrawal by one spouse alone (or the sums on deposit shall only be used for specified purposes);
8. All joint credit cards will be canceled, after paying the joint debt and giving a non-employed spouse a chance to keep the old account as an individual; and
9. Each spouse shall have the exclusive use of an automobile as specified.

Temporary orders such as these are common. Once allowed, these temporary orders stay in effect, by their own terms, until modified by agreement or by the judgment of the court.

Your spouse will likely have temporary order issues as well. These issues can determine which spouse shall remain in the family home, mandate the payment of bills, the custody and support of the children, payment of attorney's fees, production of documents and other matters such as living arrangements for the children, spousal support, use and possession of property and other assets and possible restrictions on contact with the other parent.

If your spouse is not willing to work with you on temporary orders, it may be necessary for you to move quickly to get a court order on your own.

It's not realistic to expect to get everything you want, at least in legal negotiations. Be ready to give on some issues and to trade on others. Hearings for temporary orders are costly and emotional. If you find that you can get most of what you want by agreement, let a few minor points slide. One or two of your temporary orders for the next few months are usually not worth the considerable expense of a court hearing.

What Happens on the Day of Court?

Most judges in Massachusetts require that motions first be dealt with by the Probation Department (sometimes called the Family Service Office).

When you go to the Probation Department, a probation officer will meet with you and your lawyer (along with your spouse and their attorney) to hear what you are both asking the court to do. The officer will then make a recommendation to both of you about how the situation can be resolved.

It is important to know that the probation officer is not the judge. The officer makes recommendations, not orders. If you do not agree with what the probation officer recommends, you have the right to present your requests to the judge.

Child-Related Issues

If there are children involved in the divorce, the court must deal with all child issues at the same time.

Custody: In Massachusetts, when the parents cannot agree on custody or parenting plan arrangements, the court will make the decision for them after considering the circumstances, with the overriding consideration being the child's best interest.

In making that determination, the court will view both parents' and child's physical and mental health, their lifestyles, the emotional bond between each, each parent's ability to give guidance and the basic necessities to the child, the child's routine, willingness of each parent to encourage an ongoing relationship between the child and the other parent, and in some cases, the preference and motivation for any preference stated by the child.

When it comes to razor-sharp drafting of Separation Agreements, the following points are included in our custody and parenting plan section: living arrangements, the terms for future modification and review, each parent's access to the children when they are with the other parent, relocation out of state, notification of illness, access to child(ren)'s medical and school records, emergency decisions, religion and religious training, and contact of the child(ren) with each parent's new partners.

Child Support: Massachusetts General Laws contain guidelines for the computation of child support. In general, it is assumed that these guidelines apply in all cases seeking the establishment or modification of a child support order. A specific, written finding that the guidelines

would be unjust or inappropriate and that the best interests of the child have been considered in a particular case shall be sufficient to rebut the presumption in that case.

There are certain situations where a divorce lawyer or family law attorney may zealously argue to the court that a particular case is not a guidelines case. Factors often viewed favorably in such an argument include:

- Extraordinary medical expenses
- Prior orders of support from past families
- The non-custodial parent spending an inordinate amount of time with the child

Sometimes, attorneys make the argument that one parent is earning substantially less than he or she could through reasonable effort. If that argument is viewed successfully, the court may consider *potential* earning capacity rather than *actual* earnings.

In making this determination, the court shall take into consideration the education, training, and past employment history of the party. These standards are intended to be applied where a finding has been made that the party is capable of working and is unemployed, under-employed or is working a job, trade, or profession other than that for which he/she has been trained.

Relocation: Relocation cases are difficult and mostly depend on the facts of the individual case. In parental relocation cases, the court considers many factors in deciding whether the child will move or not, including the motives behind the proposed move, the distance, the quality of the child's relationship with the stay-behind parent, how the move will affect the child, and ways to keep up the relationship with the left-behind parent after the move.

In long-distance move cases, a parenting plan should address telephone contact, virtual contact and travel arrangements among other considerations.

Discovery

In order for the court to make informed rulings, both parties need to be able to present accurate evidence in support of their claims. Therefore, when there are contested issues in a divorce, discovery is a valuable tool when properly utilized. It can be the instrument with which critical facts and issues come to light.

Discovery is the process by which a lawyer obtains information from

the opposing party. Each party is obligated to respond to discovery truthfully and, in some cases, certify their answers under the pains and penalties of perjury. Initial Financial Disclosure: Under Rule 410 of the Probate and Family Court, each party must submit to the other side the following:

- (a)** Federal and state income tax returns and schedules for the past three (3) years and any non-public, limited partnership and privately held corporate returns for any entity in which either party has an interest together with all supporting documentation for tax returns, including but not limited to W-2s, 1099s, 1098s, K-1s, Schedules C and Schedules E.
- (b)** Statements for the past three (3) years for all bank accounts held in the name of either party individually or jointly, or in the name of another person for the benefit of either party, or held by either party for the benefit of the parties' minor child(ren).
- (c)** The four (4) most recent pay stubs from each employer for whom the party worked.
- (d)** Documentation regarding the cost and nature of available health insurance coverage.
- (e)** Statements for the past three (3) years for any securities, stocks, bonds, notes or obligations, certificates of deposit owned or held by either party or held by either party for the benefit of the parties' minor child(ren), 401K statements, IRA statements, and pension plan statements for all accounts listed on the 401 financial statement.
- (f)** Copies of any loan or mortgage applications made, prepared or submitted by either party within the last three (3) years prior to the filing of the complaint for divorce.
- (g)** Copies of any financial statements and/or statements of assets and liabilities prepared by either party within the last three (3) years prior to the filing of the complaint for divorce.

Following submission of Rule 410 documents, the following discovery tools can be utilized by either side:

Interrogatories: Interrogatories are a list of questions that may inquire about specific legal or factual contentions as well as asking your spouse to state the legal theories and to describe in general the factual bases for the party's claims or defenses.

Requests for Production of Documents: In a divorce you are entitled to inspect, sample, test, photograph and copy documents or tangible

things that are within the scope of discovery and within the party's possession, custody, or control.

Documents and tangible things include papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, data, and data compilations. Possession, custody, or control of an item means that the person either has physical possession of the item or has a right to possession and access of the item.

Depositions: In an oral deposition, questions are usually asked directly to the person being deposed, whose answers are recorded by a stenographer or court reporter, or may be recorded by other means, including audiotape or videotape, and may be even be conducted over the phone.

Alimony and Property Division

Massachusetts adheres to the concept of Equitable Distribution of marital assets. Equitable Distribution doesn't mean equal; it means fair. There are a number of factors that the judge uses to determine what distribution is equitable. Marital property includes pensions, bank accounts, stocks, bonds, real estate, personal property, antiques, collections, automobiles, cash value of life insurance, and all other assets including those which were inherited or gifted. Just because an asset is included does not mean the other spouse will get a share of any part of it.

As it relates to alimony, a court order or written agreement requires one spouse to pay money to the other spouse for their support. Indetermining the amount of alimony, if any, to be paid, the judges in the Massachusetts divorce courts **MUST** consider the following sixteen factors:

- 1. Length of marriage**
- 2. Conduct of the parties during marriage**
- 3. Age of the parties**
- 4. Health of the parties**
- 5. Station of the parties**
- 6. Occupation of the parties**
- 7. Amount of income of the parties**
- 8. Sources of income of the parties**

- 9.** Vocational skills of the parties
- 10.** Employability of the parties
- 11.** Estate of the parties
- 12.** Liabilities of the parties
- 13.** Needs of the parties
- 14.** Opportunity of the parties to acquire future capital assets
- 15.** Opportunity of the parties to acquire future income
- 16.** The present and future needs of dependent children of the marriage

Settlement or Trial

The final phase of the case involves resolution of the case – either through settlement or trial. The vast majority of cases settle. A settlement depends more on the parties or their attorneys' willingness to settle, as than the actual issues involved. While some issues need to go to trial, such as significant issues involving custody, most issues can be resolved through compromise and common sense.

The judges encourage settlement whenever possible. Oftentimes four-way settlement conferences where the parties and lawyers meet to explore settlement options are required by the court.

Sometimes, where a legitimate dispute is involved, the Judge will meet with the lawyers in chambers to discuss the issues and to make settlement recommendations. This is called a settlement conference or a pretrial conference. These conferences are helpful because the judge who makes the recommendation will be the same person who will preside over the case if it goes to trial.

As a rule of thumb, a good settlement is equal to or better than what the Judge will order at trial, considering the cost of attorneys' fees incurred in trying the case. If the case does not settle, it goes to trial.

The average divorce case lasts approximately nine months. If one settles, the case is typically over six weeks after agreeing on the terms of settlement.