

COMMON QUESTIONS ON DIVORCE IN MASSACHUSETTS

How is the Divorce Process Started?

Divorce can proceed by one of two ways - a joint petition under the no-fault provisions or a complaint for divorce filed by one person.

What Exactly is No-Fault?

A no-fault divorce is one in which it is alleged that the marriage is irretrievably broken down and neither party is accused of being at fault.

What is a Joint Petition?

Under Massachusetts law, both parties can join in a petition to the court asking that the marriage be dissolved due to irretrievable breakdown. A joint petition must be accompanied by a divorce agreement, which resolves the marital issues of custody/visitation, support, distribution of property and other matters.

Are there any Guidelines for Custody/Visitation?

Traditionally, the husband is the primary breadwinner and the wife is the primary homemaker. Husbands as the primary physical custodial of the child or children are becoming more prevalent. The best interests of the child is the criteria which the court will follow there is a custody dispute. A typical visitation schedule would cover weekends, holidays (religious and non-religious), vacations, birthdays, Mother's and Father's Days, and any unique needs or desires of either party.

What is Legal Custody?

This is a terminology which recognizes the continuity of dual parenthood despite living arrangements, which are physically separate. When legal custody is specified as joint, it indicates that both parents have access to school and medical records, both have the authority to authorize medical treatment and both have input to important decisions throughout the child's life.

Can Physical Custody be Joint?

Yes, as a general rule, the courts will accept whatever parenting arrangement the parties want. Joint physical custody is the term applied to a sharing of custodial care. It has been done by alternating time periods as, e.g., midweek with one parent, weekends with the other. Oftentimes one or both of the parties will find the terms "custody" and "visitation" repugnant. In this instance agreements generally will refer to a "joint parenting plan" which specifies the time the child or children spend with each parent. It is generally preferable to consider one of the parents as having the "primary residence" of the child or children.

How is Property Divided?

In a short-term marriage, the general rule is that the parties take back what they brought in and split equally what was acquired during the marriage. In a long-term marriage, assets are divided equally unless circumstances dictate otherwise. There are statutory criteria that the court considers in making the distribution but the decision is primarily based on the needs of the parties and the nature of the assets.

What Property Gets Divided?

In the long-term marriage, all property is "on the table" subject to division. This includes items standing in the name of either party as well as jointly held assets. It includes pension rights, stock options, cash value in insurance policies, interests in businesses and out of state property. Inheritances and loans from family members are unique and may be treated as a personal asset/liability.

What About Taxes?

Child support is not income to the receiver and not deductible by the payer. In general, the custodial parent is entitled to the dependency deduction unless the parties negotiate otherwise. Alimony (provided it meets the IRS criteria) is taxable income to the recipient and deductible by the payer. If real property is transferred incident to a divorce, this is not a taxable event; however, the party receiving the property may have full responsibility for capital gain taxes when it is subsequently sold.

Is There a Guide to Determine Child Support?

Yes, all states now have guidelines, which use the parents' income to determine child support. In Massachusetts, there is a chart which yields the basic support based upon the gross income of the non-custodial parent and the quantity of children. This figure is then modified based

upon the age of the oldest child and the income of the custodial parent. There are also adjustments for day care expenses and medical insurance premiums.

What About Alimony?

There is no clear answer as to when alimony will be awarded, how much or for how long. It depends upon the need of the party requesting it and the funds available. Some criteria used by the courts include the length of the marriage; whether a spouse gave up a career for the marriage and need supplemental funds temporarily to get back on track; whether the spouse is unable to properly support herself or himself; how much is needed relative to any child support already being paid; etc. The sum total of alimony and child support will generally not be less than 25% nor more than 38% of the gross income of the noncustodial parent.

Can I Date Others Before the Divorce is Final?

The conduct of a party during the course of the marriage is evidence a judge may consider in dividing property. As a practical matter however, once the parties have separated, each may live his or her life independent from the other as long as the chosen lifestyle has no adverse effect upon minor children.

Can a Non-Working Spouse Remain Covered by Medical Insurance?

Upon divorce, an ex-spouse generally remains covered under an existing family plan. However, if either party remarries or there is a job change, coverage for an ex-spouse may terminate. Generally, decrees provide that the spouse with a group-type policy will continue the coverage for such time as there is no added cost. When and if there is added cost, the spouse without a policy would have the option of paying the cost to retain coverage.

What About My Will?

A divorce (in Massachusetts) will void any bequest to a former spouse but the preparation of a new Will is highly recommended.

Does Divorce Terminate My Social Security Benefits?

Generally, a divorced spouse is eligible for benefits based on the supporting spouse's earning history if the marriage has lasted at least ten (10) years.