



MASSACHUSETTS FAMILY LAW

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Air Force attorneys are prohibited from representing Air Force members and dependents in civilian courts.

GENERAL DIVORCE LAW

Overview

Massachusetts permits no-fault divorce based on irreconcilable breakdown of the marriage as well as at-fault divorce for adultery, impotency, cruel and abusive treatment, cruel or wanton neglect, desertion for one year, and excessive intoxication from drugs or alcohol. The divorce action may be contested or uncontested. There is no required waiting period for an uncontested mutually agreed upon no-fault divorce. For a contested no-fault divorce, there is a six month waiting period which begins when the complaint for divorce is filed with the court. At the conclusion of the six-month waiting period for a contested irreconcilable breakdown divorce, or immediately upon filing for one uncontested, a hearing is scheduled before the judge to discuss the divorce petition and terms of separation, including child custody and support, property divisions and alimony.

Court Location

In Massachusetts, almost all divorces are heard in the Probate and Family Court of the county where you and your spouse last lived together. However, if neither you nor your spouse still lives in the county where you both lived together, the case will be heard in the county where either you or your spouse currently lives.

Who May File

In order to be able to file for divorce in Massachusetts, you must satisfy any one of the following four conditions:

- (1) If the grounds for divorce occurred **in** Massachusetts,
 - a. You are a legal resident of Massachusetts (see our handout on state residency)—residency established for the sole purpose of obtaining a divorce in Massachusetts will not qualify, or
 - b. Both spouses lived together **in** Massachusetts as a married couple at some point.

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- (2) If the grounds for divorce occurred **outside** Massachusetts
 - a. **One spouse** lived in Massachusetts **when** the grounds for divorce occurred and **both spouses** lived in Massachusetts as a married couple **before** the grounds for divorce occurred, or
 - b. You have lived **in** Massachusetts for **one year** prior to filing for divorce.

Initiating a Divorce Action

A divorce action is initiated by filing a complaint or petition with the clerk of the probate court. The complaint or petition states the grounds for divorce and what “relief” (i.e. child custody, alimony, child support) if any, is sought in addition to a divorce. A statistical report must accompany the complaint and must include the following:

- (1) the name, residence, date of birth and social security number of each of the parties,
- (2) the name of the plaintiff,
- (3) the number of times each of the parties had been married before, if any,
- (4) the date of the marriage being dissolved,
- (5) the number of children born of such marriage, if any,
- (6) the name and date of birth of each child,
- (7) the number of minor children in the care and custody of the parties, if any, and
- (8) any additional information the commissioner of public health deems useful for statistical and research purposes.

Divorce Proceeding Length

The fastest divorce in Massachusetts takes approximately 90 days if you and your spouse agree on all issues. On average, however, divorces take at least a year. Therefore, the law provides for temporary support, custody, restraining orders, and other domestic relations issues while the divorce is pending.

The court’s initial judgment is called a judgment nisi and is **NOT** final. The judgment nisi becomes final after 90 days upon issuance of the final judgment, unless the court orders otherwise after petition from any party to the action. You will be considered legally divorced as of the day written on the final judgment.

Important Questions

Can I be represented by an Air Force attorney?

This office and its attorneys are here to provide general guidance on divorce procedures only.

Should I hire a civilian attorney?

It depends; this office highly recommends that you seek civilian legal counsel if you are contemplating filing for divorce. While it is fairly easy to file for divorce *pro se* (representing yourself) in Massachusetts, an attorney could save you an enormous amount of time, money, and frustration.

PROPERTY DIVISION

As an “equitable division” state, Massachusetts equitably divides all assets whenever and however acquired. Factors that courts consider in evaluating equity are the following:

- (1) The length of the marriage;
- (2) The conduct of parties during the marriage;
- (3) The age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and need of each;
- (4) The opportunity for future acquisition of capital assets and income;
- (5) The present and future needs of dependent children; and
- (6) Contributions, if any, of each to acquisition, preservation or appreciation of the property.

Examples of assets that a court will divide include, but are not limited to, retirement benefits, pensions, profit-sharing, annuities, deferred compensation, insurance, and military retirement benefits if qualified under and to the extent provided by federal law.

ALIMONY

In addition to property division, Massachusetts courts can award "alimony," also known as spousal support, to former spouses based either on an agreement between the couple or a decision by the court itself. The purpose of alimony is to limit any unfair economic effects of a divorce by providing a continuing income to a non-wage-earning or lower-wage-earning spouse. Alimony awards in Massachusetts are based on the same factors considered for property division (see directly above—property division). Alimony is available only while necessary and can be periodically adjusted upon motion by either party.

CHILD CUSTODY AND SUPPORT

Courts that May Determine Custody

Jurisdiction rules for custody differ from those for divorce. The federal Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) controls this issue in 48 states. Massachusetts, however, has yet to pass the UCCJEA but instead follows the Massachusetts Child Custody Jurisdiction Act (MCCJA). Consult an attorney for specifics concerning a court’s jurisdiction to decide custody.

Custody Determinations

Child custody decisions are based on the best interests of the child. When considering the best interests of the child, the court will consider whether or not the child’s present or past living conditions adversely affected his physical, mental, moral, or emotional health.

Custody Forms

There are two types of child custody, legal and physical, both of which can be sole or shared as follows:

- (1) **Sole legal custody:** One parent has the sole right to make major decisions concerning the child’s welfare, which includes educational, medical, emotional, moral, and religious matters.

- (2) **Shared legal custody:** Both parents share responsibility to make major decisions concerning the child's welfare, which includes educational, medical, emotional, moral, and religious matters.
- (3) **Sole physical custody:** The child resides with and is under the supervision of one parent. The other parent will be granted reasonable visitation unless the court determines that such visitation would not be in the best interests of the child.
- (4) **Shared physical custody:** The child has periods of residing with and being under the supervision of both parents. The child is assured frequent and continued contact with both parents.

For example, the court may grant sole legal custody to the mother, but sole physical custody to the father (this is extremely unlikely but possible), or the court could give the mother sole legal custody but grant shared physical custody. (This example does not list all potential custody orders.)

CHILD SUPPORT

Both parents are expected to contribute financially to the welfare of their children regardless of which parent is awarded custody. Usually, the non-custodial parent must pay between 25 and 33 percent of his or her gross weekly income in child support. The exact percentage depends on gross weekly income and the number of supported children. The Massachusetts Child Support Guidelines, which carry a presumption of validity in a court divorce proceeding, are found at <http://www.mass.gov/courts/formsandguidelines/csg2006.html>.

AIR FORCE POLICIES REGARDING SUPPORT OF FAMILY MEMBERS

Members are expected to pay financial obligations in a proper and timely manner. Support of family members, direct or in-kind, is a primary element of an individual's personal financial obligations. Specific obligations require the following:

- (1) When there is a **court order or written agreement for support**, the member is expected:
 - a. To fulfill his or her obligations; and,
 - b. To engage the civil courts or the other parties to resolve issues concerning the validity of an order/agreement, when such an issue arises.
- (2) In the **absence of court order or written agreement**, a member is expected to provide an adequate amount of support, based on the dependents' needs and the member's ability to pay.

Failing to provide adequate support may subject the member to disciplinary or administrative action, but the Air Force has no authority to unilaterally deduct money from a member's pay to ensure dependent support. There are, however, two methods of involuntarily collecting military pay from a military member for child support and alimony: allotments and garnishment.

Allotments

An allotment allows DFAS to withhold money from a member's paycheck. There are two types of allotments: voluntary and involuntary.

- (1) A voluntary allotment is at the member's discretion. Members may start and stop a voluntary allotment at any time.

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- (2) An involuntary allotment allows the custodial parent to receive pay involuntarily withheld from a member and is available **only pursuant to COURT ORDER**. This type of allotment is only available only to satisfy child support and/or alimony. The allotment may be initiated when child support and alimony payments are at least two months behind.

Garnishment

If an Air Force member fails to make child support or alimony payments, a garnishment order allows the U.S. Government to seize up to 50, 60, or 65 of the member's pay depending on the circumstances. The procedure to obtain a garnishment order is determined by state law. To initiate a garnishment, **one must obtain a garnishment order from a state court with jurisdiction over the debtor**. All military pay after taxes is subject to garnishment for family support; this includes base pay, special pay, reenlistment bonuses, incentive pay, accrued leave payments, and Survivor Benefit Plan payments (SBP). Military pay allowances and reimbursements like BAS, BAH, VHA, and family separation are not subject to garnishment.

Uniformed Services Former Spouses' Protection Act (USFSPA)

The USFSPA provides benefits to qualifying former spouses of military members. In particular, it allows state courts, if they desire, to treat military disposable retired pay as marital property and divide it between the spouses. In some circumstances, a former spouse may receive a portion of the member's retired pay directly from the federal government. Generally speaking, direct payment to former spouses is possible if a final decree provides for child support, alimony, or a division of retired pay as property settlement. In order to receive direct payments particular procedures must be followed.

Types of Pay Subject to the USFSPA

If a court apportions retired pay between the member and spouse, only disposable retired pay (DRP) may be divided. DRP is defined as the member's monthly retirement pay, minus certain deductions, such as income tax withholdings, recoupments for overpayment, and forfeitures due to courts marshal. Disability pay does not qualify as DRP.

Qualifying for Payment Directly From the Government

Direct payments are available only if the spouse was married to the active duty member for at least 10 years, and during which the member performed at least 10 years of retirement-creditable service. A spouse not qualifying for direct payment from the government can still be awarded retired pay in a divorce proceeding; the spouse would have to seek payment, however, from avenues other than direct payment.

Limitations

The USFSPA caps property division direct payment from retired pay at 50 percent. If combined with alimony and child support award the threshold rises to 65 percent. The actual computation of a retired-pay award is complex and varies by state. See an attorney for information concerning retired-pay awards.

Spousal/Child Abuse

Congress has recognized the plight of victims of spousal and child abuse and the hardship imposed on them by discharge of the member as a result of the abuse. Former spouses may be entitled to direct

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payment of retired pay even if the former member is no longer entitled to retired pay. To do so requires the following:

- (1) A state court order provides for the payment of an amount from the DRP of the member;
- (2) The member, after becoming eligible to be retired on the basis of years of service, has eligibility terminated as a result of misconduct involving abuse of a spouse or dependent child; and
- (3) The spouse was the victim of abuse and was married to the member at the time of the abuse or is the parent of the dependent child who was the victim of the abuse; or, in the case of the dependent child, if the other parent died as a result of the abuse.

ADDITIONAL BENEFITS

Commissary and Exchange Privileges: The Secretary of Defense is required to provide un-remarried former spouses the same benefits extended to surviving spouses of retired members. The law requires the former spouse to have been married to the member or former member for at least 20 years during which time the member performed at least 20 years of retirement-creditable service. Remarried former spouses do not have BX or commissary privileges.

Medical Benefits: Former spouses are entitled to receive full medical benefits provided that

- (1) they are not remarried,
- (2) do not have medical coverage under an employer sponsored health plan,
- (3) were married for at least 20 years, and
- (4) the member or former member performed at least 20 years of retirement-creditable service during that time.

This is known as the 20/20/20 rule. If the marriage coincided with active duty for less than 20 years, but more than 15, the former spouse is still entitled to full medical benefits if the divorce occurred before 1 April 1985. This is known as the 20/20/15 rule. Former spouses who do not qualify will be entitled to continued health benefits coverage comparable to those provided former civilian employees of the Federal government under a plan implemented by the Secretary of Defense. The continued health care benefits coverage is a premium-based temporary transitional program.

SURVIVOR BENEFIT PLAN (SBP) AND FORMER SPOUSES

The SBP is a government-subsidized annuity that provides continued financial security for dependents after the member dies and retirement pay stops. For retired members participating in SBP, premiums are deducted from their retired pay. SBP beneficiaries may include a former spouse who has not remarried prior to the age of 55. The former spouse may be designated an SBP beneficiary by court order or by a voluntary, written agreement with the member. Once a member becomes SBP eligible and makes an election to provide an annuity for a specific eligible beneficiary, the election very difficult to revoke.

The Survivor Benefit Plan also allows a former spouse and child allocation.

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