

STATE OF MASSACHUSETTS

DIVORCE PACKAGE

MINOR CHILDREN
With or Without Property

Control Number MA-006 -D

This packet contains the following:

1. Information about Divorce;
2. List of Forms Included;
3. Form Explanations;
4. Instructions;
5. Checklist;
6. Access to Law Summary.

You and your spouse must agree to all terms of the divorce to use this packet.
All forms to be filed with the Court must be printed on Bond paper.

INFORMATION ABOUT DIVORCE

1. **WHO CAN USE THESE FORMS:** You may use this divorce package only if all of the following conditions are met:
 - (a) You and your spouse's marriage has suffered an irretrievable breakdown and both parties agree to file jointly for divorce;
 - (b) There are minor children;
 - (c) You and your spouse agree to all issues of property and debts, etc.
 - (d) You and/or your spouse are a bona fide resident of Massachusetts.

2. **RESIDENCY REQUIREMENTS:** If the cause of the divorce occurred outside of Massachusetts, the plaintiff must have resided in Massachusetts for at least one year prior to the filing of the action. If the cause of the divorce occurred within Massachusetts, at least one of the parties must be a Massachusetts resident.

3. **GROUND FOR DIVORCE:** A divorce may be granted in the Massachusetts on the following grounds:
 - (a) Adultery.
 - (b) Impotency.
 - (c) Desertion for at least one year.
 - (d) Addiction to drugs/alcohol.
 - (e) Cruel and abusive treatment.
 - (f) Refusal to support spouse when able.
 - (g) Confinement for period of 5 years or more in penal institution.
 - (h) Irretrievable breakdown of the marriage.

This divorce package is based upon the irretrievable breakdown of the marriage. An action for divorce on the ground of an irretrievable breakdown of the marriage may be commenced with the filing of:

- (a) A petition signed by both joint petitioners or their attorneys;
- (b) A sworn affidavit that is either jointly or separately executed by the petitioners that an irretrievable breakdown of the marriage exists; and
- (c) A notarized Separation Agreement executed by the parties except as hereinafter set forth and no summons or answer shall be required.

After a hearing on a separation agreement which has been presented to the court, the court shall, within thirty days of said hearing, make a finding as to whether or not an

irretrievable breakdown of the marriage exists and whether or not the agreement has made proper provisions for custody, for support and maintenance, for alimony and for the disposition of marital property, where applicable. In making its finding, the court shall make no inquiry into, nor consider any evidence of the individual marital fault of the parties. In the event the notarized separation agreement has not been filed at the time of the commencement of the action, it shall in any event be filed with the court within ninety days following the commencement of said action.

If the finding is in the affirmative, the court shall approve the agreement and enter a judgment of divorce nisi. Thirty days from the time that the court has given its initial approval to a dissolution agreement of the parties which makes proper provisions for custody, support and maintenance, alimony, and for the disposition of marital property, where applicable, notwithstanding subsequent modification of said agreement, a judgment of divorce nisi shall be entered without further action by the parties.

4. **WAITING PERIOD:** No earlier than six months after the filing of the complaint, there shall be a hearing and the court may enter a judgment of divorce nisi if the court finds that there has existed, for the period following the filing of the complaint and up to the date of the hearing, a continuing irretrievable breakdown of the marriage. Said six month period shall be determined from the filing of a complaint for divorce.

Judgments of divorce shall in the first instance be judgments nisi, and shall become absolute after the expiration of ninety days from the entry thereof, unless the court within said period, for sufficient cause, upon application of any party to the action, otherwise orders.

5. **LEGAL SEPARATION:** The court may issue an order of legal separation of the parties and make provisions for the reasonable separate maintenance and support of the party seeking separation from the other. If you desire a legal separation do not use this package.

6. **MEDIATION:** When the parties file for divorce under the no-fault provisions of irretrievable breakdown of the marriage, the court may at any time prior the issuance of the judgment of divorce require the parties to participate in family or marriage counseling. Mediation is generally not required in an agreed uncontested divorce.

7. **ALIMONY/SUPPORT:** Either party to a divorce may be ordered to pay alimony to the other spouse. Since this is an agreed divorce you will decide if alimony is to be paid or waived. If the case were contested, then in determining the amount and nature of the alimony award, the court will consider the following factors:

- (a) The length of the marriage;
- (b) The conduct of the parties during the marriage;
- (c) The age, health, station, occupation, amount and sources of income;
- (d) The vocational skills and employability of the parties;
- (e) The estate, liabilities and needs of each party;
- (f) The opportunity of each party for future acquisition of capital assets and income;
- (g) The present and future needs of any dependent children of the marriage;
- (h) The contribution of each party to the acquisition, preservation or appreciation in value of their respective estates.
- (i) The contribution of each of the parties as a homemaker to the family unit.

In addition, the court shall also determine whether the spouse ordered to pay alimony has health insurance or whether health insurance is reasonably available. If so, the court will order that health insurance be extended to cover the other spouse or purchased for the other spouse when reasonably available.

8. **DISTRIBUTION OF PROPERTY:** Since this is an agreed divorce you will decide on property distributions. In a contested case, the court may assign to either spouse all or part of the estate of the other spouse after consideration of the following factors:

- (a) The length of the marriage;
- (b) The conduct of the parties during the marriage;
- (c) The age, health, station, occupation, amount and sources of income;
- (d) The vocational skills and employability of the parties;
- (e) The estate, liabilities and needs of each party;
- (f) The opportunity of each party for future acquisition of capital assets and income;
- (g) The present and future needs of any dependent children of the marriage;
- (h) The contribution of each party to the acquisition, preservation or appreciation in value of their respective estates.
- (i) The contribution of each of the parties as a homemaker to the family unit.

9. **FINANCIAL STATEMENT:** Unless otherwise ordered by the court, each party to a divorce action in Massachusetts must file with the court and deliver to the other party a complete and accurate financial statement showing the assets, liabilities and current income and expenses of the parties. Depending upon the annual income of the parties, either the "Long Form" or "Short Form" Financial Affidavit must be used.

10. **CHILD CUSTODY:** In making an order or judgment relative to the custody of children, the rights of the parents shall, in the absence of misconduct, be held to be equal, and the happiness and welfare of the children shall determine their custody. When considering the happiness and welfare of the child, the court shall consider whether or not

the child's present or past living conditions adversely affect his physical, mental, moral or emotional health. Where the parents have reached an agreement providing for the custody of the children, the court may enter an order in accordance with such agreement, unless specific findings are made by the court indicating that such an order would not be in the best interests of the children.

11. **CHILD SUPPORT:** In determining the amount of the child support obligation or in approving the agreement of the parties, the court shall apply the child support guidelines, and there shall be a rebuttable presumption that the amount of the order which would result from the application of the guidelines is the appropriate amount of child support to be ordered. If, after taking into consideration the best interests of the child, the court determines that a party has overcome such presumption, the court shall make specific written findings indicating the amount of the order that would result from application of the guidelines; that the guidelines amount would be unjust or inappropriate under the circumstances; the specific facts of the case which justify departure from the guidelines; and that such departure is consistent with the best interests of the child. When a court makes an order child support, the court shall determine whether the obligor under such order is responsible for the support of any other children of the obligor, even if a court order for such support does not exist, or whether the obligor under such order is under a preexisting order for the support of any other children from a previous marriage, or whether the obligor under such order is under a preexisting order for the support of any other children born out of wedlock. If the court determines that such responsibility does, in fact, exist and that such obligor is fulfilling such responsibility such court shall take into consideration such responsibility in setting the amount to pay under the current order for support.
12. **PARENT EDUCATION PROGRAM:** All parties to an action for divorce that involve minor children shall attend and participate in an approved Parent Education Program. No trial will be held in the matter until both parties file Certificates of Completion with the Court.
13. **NAME CHANGE:** Upon the granting of a divorce, the court may allow a woman to resume the use of her former or maiden name.
14. **COMPUTER GENERATED FORMS:** By Court rule, computer forms must meet certain requirements. This package will identify the forms which have special requirements. Most of the forms in this package will be available from the Clerk except the Property and Settlement agreement but they will require that you complete them by hand or on a typewriter, unlike the forms contained in this package.

The rule with notes provides:

Mass Rules of Domestic Relations Procedure
§ 1.3(9) Computer Generated Forms
Unif.Pract.Prob.Ct. Practice XXXIII
Adopted effective Jan. 1, 1992, Amendment effective September 4, 2007

Preamble: This Uniform Practice governs the use of computer-generated forms by counsel and parties.

Definition: For the purposes of this Uniform Practice XXXIII, the "official form" shall be defined as either: (i) the paper form promulgated and distributed by the Administrative Office of the Probate and Family Court or (ii) the electronic form most recently posted on the Massachusetts Judiciary web site, www.mass.gov/courts and approved by the Administrative Office of the Probate and Family Court.

I. Use. The Use of computer-generated forms is hereby permitted, except where the Court blank ("official form") is a multi-part form, such as the G.L. c. 209A Complaint for Protection from Abuse form.

II. Specifications.

A. Paper. Twenty-pound, 8 1/2 X 11, acid free paper shall be used for all computer-generated forms. Acid free paper is specified to ensure archival quality and permanence.

B. Paper and Ink Color. A computer-generated form shall be printed with black ink on white paper.

C. Printing. All computer-generated forms shall be printed with "letter quality" or "near letter quality" output. "Draft" quality output is not acceptable.

III. Consequences of Failing to Follow These Standards. The Register of Probate may reject any form that fails to comply with these standards. In the event that a Register deems a submitted form to be outside these standards, such determination may be reviewed by the Chief Justice of the Probate and Family Court at the request of the submitting counsel or party. It is the responsibility of the submitting party to ensure that the form adheres to the above standards. If the form is rejected, the submitting party shall forfeit the filing fee. The submitting party's attorney shall not be allowed to pass this cost on to his/her client, but shall bear the financial burden personally. Accordingly, the submitting party's attorney shall either reimburse the client for the forfeited fee or the attorney shall personally pay the filing fee when he/she refiles the form.

FORMS LIST

1. Joint Petition for Divorce. (**MA-CJ-D-101A**)
2. Joint Affidavit in Support of Divorce (**MA-801D**)
3. Separation and Property Settlement Agreement (**MA-DO-11A**)
4. Financial Statement (short form) (**MA-CJ-D-301S**)
5. Financial Statement (long form) (**MA-CJ-D-301L**)
6. Request for Trial (**MA-804D**)
7. Statistical Reporting Form (**MA-R-408**)
8. Affidavit Disclosing Care or Custody Proceedings (**MA-805D**)
9. Child Support Guidelines Worksheet (**MA-CJ-D-304**)

FORM EXPLANATIONS

All forms included in this package are identified and described below.

1. **Joint Petition for Divorce (MA-CJ-D-101A)** - The Joint Petition for Divorce is the document in which you and your spouse are asking the court to grant the divorce along with any other relief requested.
2. **Joint Affidavit in Support of Complaint for Divorce (MA-801D)** - This document is used to state that the allegations contained in the Petition are true, and that a judgment may be entered according to the information stated in the Petition, Separation Agreement and Decree.
3. **Separation and Property Settlement Agreement (MA-DO-11A)** – This document provides for the final distribution of any assets and debts of the parties and any other matters reached between the parties. This form can be modified to include all matters that need to be resolved between the parties.
4. **Financial Statement (Short Form) (MA-CJ-D-301S)** – This document is used to identify the income and expenses and the assets and debts of the parties. This form may only be used if the party completing the form has an annual income of *less than* \$75,000.
5. **Financial Statement (Long Form) (MA-CJ-D-301L)** – This document is used to identify the income and expenses and the assets and debts of the parties. This form is for use by parties with an annual income *equal to or greater than* \$75,000.
6. **Request for Trial (MA-804D)** – This document is used to notify the Court that all documents necessary for judgment have been filed and requests that the matter be set for trial.
7. **Statistical Information Form (MA-R-408)** – This form is required by the State department of health. The form will be provided by the Clerk.
8. **Affidavit Disclosing Care or Custody Proceedings (MA-805D)** – This form is used to provide the Court with information regarding any previous custody proceedings involving the children of the marriage and to also inform the Court of any other party who may have a claim to custody of the children.
9. **Child Support Guidelines Worksheet (MA-CJ-D-304)** – This worksheet is designed to

assist the parties in determining the correct amount of child support to be paid.

The ninety day period is governed by the following code section:

CHAPTER 208. DIVORCE.

Chapter 208: Section 21. Divorce judgments; entry.

Section 21. Judgments of divorce shall in the first instance be judgments nisi, and shall become absolute after the expiration of ninety days from the entry thereof, unless the court within said period, for sufficient cause, upon application of any party to the action, otherwise orders. After the entry of a judgment nisi, the action shall not be dismissed or discontinued on motion of either party except upon such terms, if any, as the court may order after notice to the other party and a hearing, unless there has been filed with the court a memorandum signed by both parties, wherein they agree to such disposition of the action.

INSTRUCTIONS AND STEPS

- STEP 1:** The parties complete the *Joint Petition for Divorce (MA-CJ-D-101A)* and *Sworn Affidavit (MA-801D)* stating that an irretrievable breakdown of the marriage has occurred.
- STEP 2:** A *Statistical Report (MA-R-408)* form must be obtained from the Office of Register of Probate. A sample has been provided to assist you.
- STEP 3:** A certified copy of the parties' *Marriage Certificate* must be obtained.
- STEP 4:** Both parties complete the *Separation and Property Settlement Agreement (MA-DO-11A)* and attach the *Agreement (MA-DO-11A)* to the *Petition (MA-CJ-D-101A)* as Exhibit "A".
- STEP 5:** Each party must complete a *Financial Statement*. The *Financial Statement "Short Form" (MA-CJ-D-301S)* for use by parties whose income is less than \$75,000. If either party's income is greater than \$75,000, the *"Long Form Financial Statement" (MA-CJ-D-301L)* must be used. The *Financial Statement* must be filed with the court and delivered to the other party.
- STEP 6:** Each party should next complete the *Affidavit Disclosing Care or Custody Proceedings (MA-805D)*.
- STEP 7:** Each party should next complete the *Child Support Guidelines Worksheet (MA-CJ-D-304)* using the *Child Support Guidelines Document (MA-CJ-D-304B)*.
- STEP 8:** The *Petition (MA-CJ-D-101A)*, *Affidavit (MA-801D)*, *Marriage Certificate*, *Statistical Report form (MA-R-408)*, *Separation and Property Settlement Agreement (MA-DO-11A)*, *Financial Statement (MA-CJ-D-301S /301L)*, *Affidavit Disclosing Care or Custody Proceedings (MA-805D)*, and *Child Support Worksheet (MA-CJ-D-304)* for each party are then filed with the Clerk of the Circuit court in your County. A filing fee is paid.
- STEP 9:** Each party must make arrangements to attend and complete an approved Parent Education Program. Upon completion, each party must file the

Certificate of Completion with the Court.

- STEP 10:** In order to schedule a hearing in the matter, the parties must complete and file the *Request for Trial (MA-804D)* form. This form is enclosed but may be completed by the Clerk on their own form. You may complete this form at the Clerk's office when you file the other papers. Both parties must attend on the hearing date to answer any questions from the judge.
- STEP 11:** Both parties attend the hearing date and answer any questions from the Court.
- STEP 12:** If the Judge approved your divorce, a *Findings* will be signed by the Judge and copies will be sent to both parties. Thirty days after the findings are entered; the Court will enter the *Judgment of Divorce Nisi* automatically. Copies of the *Judgment Nisi* will be sent to both parties. The divorce is final 90 days after entry of the divorce nisi. The Court will complete the *Judgment Nisi*.
- STEP 13:** Obtain a *Certificate of Divorce* from the Clerk showing that the divorce is final. You must request this from the Clerk after the ninety days has past. It will not be issued automatically. There is a fee charged for this form.

Notes:

When presenting Pleadings to the Clerk make sure you have at least 4 copies for the Clerk. The Clerk will return the copies to you that the Court does not need.

If a Certificate of Mailing is on any form, a copy of the form should be mailed to the person indicated.

CHECKLIST

- ☐ *Joint Petition for Divorce (MA-CJ-D-101A)* completed.
- ☐ *Affidavit in Support of Complaint for Divorce (MA-801D)* completed.
- ☐ *Statistical Report Form (MA-R-408)* obtained from the Office of Register of Probate and completed.
- ☐ *Separation Agreement (MA-DO-11A)* completed by the parties.
- ☐ Marriage Certificate obtained.
- ☐ Each party completes a copy of the appropriate *Financial Statement (MA-CJ-D-301S /301L)*.
- ☐ Each party should next complete the *Affidavit Disclosing Care or Custody Proceedings (MA-805D)*.
- ☐ Each party should next complete the *Child Support Guidelines Worksheet (MA-CJ-D-304)*.
- ☐ Above listed documents presented to Clerk of Court for filing and filing fee paid.
- ☐ Each party completes Parent Education Program and files *Certificate of Completion* with Court.
- ☐ *Request for Trial* form (MA-804D) completed and filed with Court.
- ☐ Findings approving the divorce entered by the Court. Copies are mailed to the parties by the Court.
- ☐ *Judgment of Divorce Nisi* entered by the court within 30 days of entry of the findings. Copies are mailed to the parties by the Court.
- ☐ After 90 days, *Certificate of Divorce* is issued by the Clerk upon your request.

NOTE ABOUT COMPLETING THE FORMS

The forms in this packet contain “form fields” created using Microsoft Word or Adobe Acrobat (PDF format). “Form fields” facilitate completion of the forms using your computer. They do not limit your ability to print the form “in blank” and complete with a typewriter or by hand.

If you do not see the gray shaded form fields in the forms available in Word format, go the View menu, click on Toolbars, and then select Forms. This will open the forms toolbar. Look for the button on the forms toolbar that resembles a shaded letter “a”. Click in this button and the form fields will be visible. To complete the forms click on the gray area and type the required information. Some forms are locked which means that the content of the forms cannot be changed. You can only fill in the information in the fields.

If you need to make any changes in the body of the forms available in Word format, it is necessary for you “unlock” or “unprotect” the form. **IF YOU INTEND TO MAKE CHANGES TO THE CONTENT, DO SO BEFORE YOU BEGIN TO FILL IN THE FIELDS. IF YOU UNLOCK THE DOCUMENT AFTER YOU HAVE BEGUN TO COMPLETE THE FIELDS, WHEN YOU RELOCK, ALL INFORMATION YOU ENTERED WILL BE LOST.** To unlock click on “Tools” in the Menu bar and then selecting “unprotect document”. You may then be prompted to enter a password. If so, the password is “uslf”. That is uslf **in lower case letters without the quotation marks**. After you make the changes relock the document before you begin to complete the fields.

If you have the Professional version of Adobe Acrobat and need to make any changes in the body of the forms available in PDF format, go to the Tools menu, click on Advanced Editing, and then select Touchup Text Tool. Once you have made the changes, click on the hand tool on your tool bar.

After any required changes and re-protecting the document (for documents in Word format), click on the first form field and enter the required information. You will be able to navigate through the document from form field to form field using your tab key. Tab to a form field and insert your data. If you experience problems, please let us know.

LAW SUMMARY

You may access the law summary for your State by using the link below:

<http://secure.uslegalforms.com/lawsummary/MA/MA-006-D.htm>

DISCLAIMER

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THESE FORMS WERE PREPARED FOR STATEWIDE USE FROM STATEWIDE OFFICIAL FORMS. HOWEVER, SOME COUNTIES OR JUDGES MAY REQUIRE CERTAIN MODIFICATIONS TO THE FORMS FOR USE IN YOUR PARTICULAR COUNTY AND MAY REQUIRE SPECIAL FORMS NOT INCLUDED.