

# **A Guide to Navigating Your Successful Divorce**



**Protect Your Rights and  
Tailor an Agreement  
Specific to Your Family’s Needs**

## This Guide

My goal at Falmouth Mediation is to help make divorce, one of the most difficult life transitions, an easier, more peaceful process for everyone involved. I am passionately committed to making divorce as easy and harmonious as possible for couples who are receptive to working together.

Focused on providing an affordable forum for assisting families and individuals, I help my clients to develop their own fair and lasting solutions outside the courtroom. The mediations take place without the large investment of time and money or the antagonism and stress that adversarial litigation almost always requires.

I can assist in resolving a host of matters including:

- Divorce: separation agreements, alimony/spousal support, division of property, post-decree modifications.
- Parenting: parenting plans, child support, child custody, and visitation issues.

Working without any professional help and engaging in an all-out litigation war are two ends of the spectrum, neither of which is desirable by the vast majority of people.

*A Guide to Navigating Your Successful Divorce* is designed to provide you and your spouse with sufficient information to understand your rights and make knowledgeable decisions, gather the information necessary to complete the divorce mediation process amicably, and obtain a 1A – No Fault, Uncontested - Divorce.

If you or someone you know could benefit from assistance in decision making during a divorce, contact me at 508-566-4159 or [Alan@FalmouthMediation.com](mailto:Alan@FalmouthMediation.com) for a **FREE, no-obligation, private, confidential consultation.**

I will be happy to discuss the key details of your situation, address any concerns, and help you decide if divorce mediation would be beneficial.

This information is provided by Falmouth Mediation for your reference to help you understand, collect, and file the documentation necessary to present to the Massachusetts Probate and Family Court for a 1A divorce. This information does not constitute legal advice nor is intended to be a source of legal advice or a substitute for legal counsel. Falmouth Mediation assumes no liability for the use or interpretation of information provided through this guide. This guide and its contents (including the materials, its accuracy and completeness) are provided “as is” without warranty of any kind, either expressed or implied, including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement.

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## Introduction

Divorce can be one of the most difficult times in your life. You are going through a total upheaval that affects nearly every part of your day-to-day existence. It is disorienting to have everything suddenly uncertain. It can be hard to think clearly, understand how things will affect you in the long run, and know what questions to ask in order to get the information you need.

*A Guide to Navigating Your Successful Divorce* is designed to be your companion through all of this and to help you think through issues and concerns that may affect you. This guide is meant to offer you information so that you have a sense of the path your divorce will take and the issues with which you need to deal.

Divorce is emotional. Whether you want the divorce, are opposed to it, or really don't know what you want right now (which is not unusual), you're probably worried about your financial security, your children, and your entire life plan. A divorce is a major change and has the added double whammy of being not only a complicated emotional transition, but also a detailed legal proceeding. It is natural to feel a bit lost,

confused, angry, hurt, and sad all at once as you try to come to grips with your situation and work through everything that must be done.

It may seem now as if there are millions of things to decide, all of them complicated. As you work through your divorce, you will probably find, however, that a lot of the decisions make themselves. Try to stay relaxed and calm as you work through the choices and situations ahead. While divorce might seem like a huge upheaval, you will come out on the other side and be able to move forward with our life in a positive way.

I hope that this guide will help you gather some basic information and point you in the right direction as you make the important decisions in front of you. You will undoubtedly experience a lot as you progress through your divorce; however, this is also an opportunity for a new beginning. I wish you the best as you move forward with your life.

## Divorce in the Time of COVID-19

The decision to get a divorce and the proceedings that follow can be emotionally draining, even under the best of circumstances. Now, as the nation grapples with the coronavirus (COVID-19) pandemic, it has pushed many divorcing spouses to the breaking point. This is a trying time for everyone, and it is especially hard on individuals who were already dealing with other major difficulties.

Couples who are planning a divorce, or have started process already, face uncertain futures, but now have several other issues to deal with as well. For starters, everyone is trying to practice good hygiene and follow social distancing guidelines to help prevent the spread of this virus, which for most of us means a radical disruption to our regular routines.

For many people, schedules have changed drastically, and they are scrambling to try to make everything work while they are in trying to proceed with their divorce. Finances are suddenly getting tighter, the courts are closed or have limited hours, and major schedule changes often necessitate revisiting co-parenting plans.

### Teleconference and on-line video mediation

The effective lock-down of the courts in the face of the COVID-19 pandemic does not need to deter couples who have been planning to resolve their divorce through divorce mediation. I offer teleconference and on-line video mediation to quickly and effectively start or continue the divorce process and resolve urgent financial and child-related issues resulting from the coronavirus crisis while the courts are closed. Challenging issues such as visitation and parenting time and the impact of layoffs on financial support orders, including child support and alimony, can be resolved swiftly.

### Co-parenting and custody agreements

The coronavirus pandemic has many divorce parents wondering how to continue to abide by their co-parenting and custody agreements. Recently, however, leaders from the American Academy of Matrimonial Lawyers and Association of Family and Conciliation Courts have released guidelines for co-parenting during the COVID-19 pandemic.

Titled, “Suggested Guidelines for Parents Who Are Divorced/Separated And Sharing Custody of Children During the COVID-19 Pandemic,” the document provides simple guidelines for co-parents to follow in this time of social distancing and states of emergency. The seven rules provide practical advice and some clarity for how to handle custody agreements and court orders. Here are the guidelines.

1. **Be Healthy.** Comply with all CDC and local and state guidelines and model good behavior for your children with intensive handwashing, wiping down surfaces and other objects that are frequently touched, and maintaining social distancing. This also means BE INFORMED. Stay in touch with the most reliable media sources and avoid the rumor mill on social media.
2. **Be Mindful.** Be honest about the seriousness of the pandemic but maintain a calm attitude and convey to your children your belief that everything will return to normal in time. Avoid making careless comments in front of the children and exposing them to endless media coverage intended for adults. Do not leave CNN on 24/7, for instance. But, at the same time, encourage your children to ask questions and express their concerns and answer them truthfully at a level that is age-appropriate.

3. **Be Compliant** with court orders and custody agreements. As much as possible, try to avoid reinventing the wheel despite the unusual circumstances. The custody agreement or court order exists to prevent endless haggling over the details of timesharing. In some jurisdictions there are even standing orders mandating that, if schools are closed, custody agreements should remain in force as though school were still in session.

4. **Be Creative.** At the same time, it would be foolish to expect that nothing will change when people are being advised not to fly and vacation attractions such as amusement parks, museums and entertainment venues are closing all over the US and the world. In addition, some parents will have to work extra hours to help deal with the crisis and other parents may be out of work or working reduced hours for a time. Plans will inevitably have to change. Encourage closeness with the parent who is not going to see the child through shared books, movies, games and FaceTime or Skype.

5. **Be Transparent.** Provide honest information to your co-parent about any suspected or confirmed exposure to the virus and try to agree on what steps each of you will take to protect the child from exposure. Certainly, both parents

should be informed at once if the child is exhibiting any possible symptoms of the virus.

6. **Be Generous.** Try to provide makeup time to the parent who missed out, if at all possible. Family law judges expect reasonable accommodations when they can be made and will take seriously concerns raised in later filings about parents who are inflexible in highly unusual circumstances.

7. **Be Understanding.** There is no doubt that the pandemic will pose an economic hardship and lead to lost earnings for many, many parents, both those who are paying child support and those who are receiving child support. The parent who is paying should try to provide something, even if it cannot be the full amount. The parent who is receiving payments should try to be accommodating under these challenging and temporary circumstances.

Adversity can become an opportunity for parents to come together and focus on what is best for the child. For many children, the strange days of the pandemic will leave vivid memories. It is important for every child to know and remember that both parents did everything they could to explain what was happening and to keep their child safe.

## Topics to Think About

The following are topics you and your spouse should prepare to discuss during mediation. During the divorce process, spouses often find it helpful to have and share information on the following topics.

### Property Division

- Bank accounts – checking, savings, money markets.
- Marital home – use and possession, responsibility/liability for expenses, purchase by one spouse, sale to a third party, tax consequences.
- Retirement benefits – pension plans, IRA, 401(k), SEP, KEOUGH, etc.
- Securities – stocks, bonds, mutual funds, certificates of deposit, stock options.
- Other assets – vehicles, valuable personal property, household furnishings, real estate, cash value of life insurance.
- Debts and liabilities – mortgages, home equity loans, credit card, student loans, vehicle loans, real property leases, promissory notes, judgments.

### Insurance

- Medical and dental insurance.
- Uninsured medical and dental expenses.
- Life insurance.
- Medical savings accounts.

### Taxes

- Pending refunds or liabilities.
- Deductions.

### Additional Topics

- Alimony/spousal support.
- Family business and partnerships.
- Trusts.
- Inheritances.



## When Children Are Involved

This list of topics is helpful for couples with minor children.

### Parenting

- Custody – legal and physical.
- Parenting plan – weekly schedule, vacations, and holidays.
- Travelling.
- Moving.
- Emergency care.
- Relationships with relatives.
- Religion.
- Extra-curricular activities.

### Education

- School tuition and fees – day care, primary and secondary school, college, graduate school.
- Books and supplies.

- Sports.
- Lessons – music, art, sports.
- Summer school and camp.

### Child Support

- Massachusetts Child Support Guidelines.
- Deviations.
- Form and timing of payments.
- Termination of payments.
- Health insurance.
- Uninsured medical and dental expenses.
- Income withholdings.
- Dependent tax exemption.
- Life and disability insurance.
- Future adjustments.

## Divorce in Massachusetts

There is not just one way to divorce. The differences can be in the law, like fault or no-fault, or in the way you and your spouse approach it, like mediated or contested.

How expensive and time-consuming your divorce is depend largely on how well you and your spouse are able to work together. The most important variable is how well you and your spouse are able to put aside your anger and grief and cooperate on the big issues of money and children. The better you are at working together to make decisions for your changing family structure, the better for your bank account and for your chances of emerging from the divorce with a decent relationship with your ex.

### Fault and No-Fault Divorce

In the old days, someone who wanted a divorce had to show that the other spouse was at fault for causing the marriage to break down. When both people were equally eager to get out of the marriage and the divorce was uncontested, they had to decide which of them would take the legal blame, and decide which of the fault grounds they would use in asking the judge to grant the divorce. Adultery was the most popular choice, but abuse, abandonment, extreme cruelty, and the physical inability to engage in sexual intercourse that was not disclosed before marriage also made the list.

Now, Massachusetts offers the option of a 1A – No Fault, Uncontested – divorce. In a no-fault divorce, instead of proving that one spouse is to blame, you merely tell the court that you and your spouse have “irreconcilable differences” or have suffered an “irremediable breakdown” of your relationship.

It is unlikely you would choose to file for divorce on any of the fault grounds if your divorce is uncontested. The only reasons you might choose a fault divorce are if you anticipate a major fight over property or support.

### Uncontested, Mediated Divorce

The best choice, if you can make it happen, is an uncontested, mediated divorce. In divorce mediation, a neutral third party, called a mediator works with you and your spouse to try to help you resolve all of the issues in your divorce and file the court papers cooperatively to make the divorce happen. The mediator does not make any decisions: that is up to you and your spouse. Instead, the mediator helps you communicate with each other until you can come to an agreement.

Mediation is much less expense than going to trial, but more important is the fact that mediation is a wonderful way to preserve and even improve your relationship with your spouse. Working with a mediator to make decisions that work for everyone is a powerful, and often very positive, process.

Depending on how many issues you and your spouse have to resolve, the mediation could take as few as one two-hour session or as many as five or six. And in a mediated divorce, just as in every other divorce, you may need the help of actuaries, appraisers, and other professionals to value your assets.

There will be no formal trial. Instead, you file court forms and a “Separation Agreement” that details the agreements you’ve made about how you want to divide your property and debts, what your custody arrangements for your children will be, and whether support payments will change hands. Your settlement, and your final divorce, will have to be approved by a judge, which should not be any problem. The judge will usually approve a settlement agreement unless it is clear that the terms are completely unfair to one person or were arranged when one person was under duress.

Many couples who are mediating also use “consulting attorneys” to coach them through the process and review the settlement agreement. All in all, you might expect to pay between \$2,000 and \$6,000 for your share of a mediated divorce. This is far less expensive than a contested divorce that settles before trial, and much, much cheaper than a case that goes all the way to trial.

## **Contested, Litigated Divorce**

If you and your spouse argue so much over property or child custody that you can't come to an agreement, and instead take these issues to the judge to decide, you have what's called a contested, litigated divorce. The judge and court clerks will be the main players in your divorce case. There is no jury in the probate and family court and the judge assigned to your case will decide both the facts and how the law applies to the facts of your case. Most divorce trials are not long, drawn-out affairs like trials you may have seen on television. Many take a day or two, or even just a morning.

The trial itself may be short, but the entire process is long and hard. It will take a huge emotional toll on you, your spouse, and certainly your kids, and also cost you in dollars and cents. A contested divorce, even one that ends in a settlement rather than a trial, can cost each spouse many tens of thousands of dollars. Assuming each side's lawyer charges \$350 per hour, and assuming an ordinary amount of information-gathering and pretrial court proceedings, an average divorce might run each of you \$30,000 – and that figure could easily go higher with a few added complexities.

Which brings us back to our initial advice: take the high road whenever you can. The rewards are not only monetary but choosing compromise will definitely improve your bottom line. And less stress about money makes it easier to work out other issues, now and later. It will also expedite things – a contested divorce, especially if you are fighting over custody, can take years to resolve.

# Obtaining a 1A – No-Fault, Uncontested – Divorce

## Papers needed in all 1A Divorces

As part of my service, I will ensure all of the required forms are completed and acceptable to the court. Copies of the Probate and Family Court forms are available at <http://www.mass.gov/courts/forms/pfc/pfc-forms-gen.html#4>.

1. Separation Agreement – signed by both parties with each signature notarized. This must address the issues of the division of marital property, proper provisions for alimony (even if it is not requested by either party), custody, support, and maintenance of any minor children.
  2. [Joint Petition for Divorce](#) – signed by both parties.
  3. [Affidavit of irretrievable Breakdown](#) – signed by both parties. This says your marriage has broken down and cannot continue.
  4. [Certificate of Absolute Divorce or Annulment Statistical Information Form \(R-408\)](#)
  5. Request for Assignment Form
  6. [Financial Statements](#) – Each party must file a separate statement listing all financial information sworn to under the pain and penalties of perjury and all lines must be filled out completely. Even if there are no children, these forms must be completed by both parties.
  7. Certified Copy of Marriage Certificate – From the town/city where you were married.
  8. Court Filing Fee of \$215.00 – Payable by Money Order or Bank Check. Personal Checks and Cash will not be accepted.
- Additional Requirements in 1A Divorces with Minor Children (under 18 years of age)
9. [Affidavit Disclosing Care and Custody of a Child](#)
  10. [Child Support Guidelines Worksheet](#).  
Exceptions:
    - a. Cases where combined gross income of both parties exceeds \$250,000.00 and where the income of the non-custodial parent exceeds \$75,000.00.
    - b. Cases where there is Shared or Split Physical Custody

## Filing

You can file for divorce in Massachusetts if:

- you have lived in the state for a year, or
- you lived together as a married couple in Massachusetts and the irretrievable breakdown of the marriage happened in Massachusetts.

If either of these two things is true, then you can file for divorce in Massachusetts, even if your spouse lives in another state, or you do not know where (s)he lives.

For divorce purposes, Massachusetts is divided into counties. If your spouse still lives in the county where you last lived together, you have to file for divorce in the Probate and Family Court in that county. If your spouse has moved out of that county, then you can file in the county where you live or in the county where your spouse lives now.

Once you file all your papers with the Court, these papers must be processed. Processing your petition and other papers means that your case needs to be indexed, assigned a docket number, file stamped, docketed into the official court docket, and money needs to be documented and forwarded into the State's Account.

The request for assignment then goes to the Trial Department to be scheduled for a hearing. All papers **MUST** be filed in order for the Trial Department to schedule a hearing. If any paper is not filed, including the Parent Education Certificate, your request for assignment will be

returned to you and no hearing will be scheduled. If all papers have been filed, you should receive a hearing notice in the mail stating your Uncontested Trial date.

The Notice of Uncontested Trial will tell you when your court date will be. It generally takes approximately 2 to 4 weeks for a Court Date, provided all papers and certificates are received by the Court. If you do not receive your Notice for a court date within 2 weeks after you file, and you have filed all the appropriate papers, including the Parent Education Certificates, you should contact the court.

## Final Hearing

Both spouses must attend the court hearing, unless there is a motion filed and the courts accept the appearance waiver.

At the hearing you ask the judge to approve the agreement and “incorporate” it in the divorce judgment. “Incorporating” the agreement in the divorce means that the judge grants the divorce and orders you and your spouse to obey the agreement.

Thirty days after the Judge approves the separation agreement, a Judgment of Divorce Nisi will issue. The NISI is automatically entered by the trial court. Ninety days later, the divorce judgment is final, and this is the actual date of the divorce, called the date of Absolute Divorce.

## Child Custody

Divorce is stressful for everyone, but when you have children, the stakes are higher, and you are responsible for protecting these most vulnerable participants in the divorce process.

Massachusetts General Laws, Chapter 208, Section 31 describes two forms of custody: physical custody, which refers to the time that a child is residing with or is under the care and supervision of a parent; and legal custody, which refers to a parent's authority to participate in major decisions regarding a child's education, health care, and emotional, moral, or religious development.

Parents can agree to either sole or joint (shared) physical and/or legal custody for each child. Joint physical custody does not necessarily require an equal division of time between parents, so any parenting schedule that works for the family could be considered appropriate.

Parents in divorce mediation can work together to create a cooperative or co-parenting plan. Co-parenting plans may include visitation schedules, descriptions of how parents will communicate in the future, and expectations regarding care for the children.

Even if you and your spouse are never going to see eye to eye about money matters, you should try extremely hard to come to an agreement about child custody. A custody fight will harm your children more than any other kind of dispute that might come up in the divorce process. Do everything you can to avoid it.

The children's "happiness and welfare" are the main determinants of their custody. In general, consideration of the child's physical, mental, moral, and emotional needs guides an arrangement most likely to meet the child's "best interests." Each individual child's happiness and welfare is important and different custody arrangements can be created for each child of the same family.

Either parent can have physical or legal custody. Neither parent begins with any greater right to custody than the other; the rights of parents are equal in the absence of misconduct. Misconduct, such as domestic abuse, substance abuse, and abandonment of the child might convince a judge to give custody to the other parent.

When a judge finds that a parent has been abusive, an order of visitation will include whatever provisions are necessary to ensure the safety of the child or of the other parent. A court may require that an abusive parent's visitation be supervised or may impose conditions for the parent prior to visitation, such as entering mental health counseling or a drug treatment, violence prevention, or parenting skills program.

# Child Support

In Massachusetts, both parents have a duty to support their child. Child support is money paid by a parent to assist with the financial needs of a child – for basics like food, shelter and clothing and health care, including insurance premiums and out-of-pocket expenses – when the parents no longer live together.

Typically, only the *noncustodial parent* makes child support payments. The *noncustodial parent* is the parent who lives outside the child's primary home. The *custodial parent*, who has primary care of the child, remains responsible for child support too, but the law assumes that this parent spends the required amount directly on the child.

The amount of support depends on a set of factors that make up the [child support guidelines](#). Parents can agree to pay more than the guideline amount with court approval, but rarely less. In any case, a court can deviate from the guidelines, meaning, adjust the amount of support either up or down if a judge determines that it is in the child's best interest to do so.

## How to Calculate Child Support Payments

To get a general idea of what a court would order as your fair share of child support, you can use the [child support guidelines worksheet](#) provided by the Massachusetts Courts System. However, I like to use the [child support guidelines worksheet](#) prepared by Kelsey & Trask P.C as it greatly simplifies the calculations necessary to account for parenting time (see below.)

The worksheet requires the available weekly incomes of both parents to determine a baseline of support, which is split proportionally between the parents based on their respective incomes. To this amount, parents must also cover the child's health insurance and educational costs. A court may also order payment for extracurricular activities like summer camp or private school if it is in the child's best interest and the parents can afford it.

Available income is gross income minus deductions for childcare costs, health, vision, and dental insurance costs, and any support paid to a former spouse or child not covered by the current request.

Gross income is income from almost every source. For a list of what to include and what you can leave out, see pages four through six of the [child support guidelines](#). Notice that unreported income, or money made "under the table," is also included. Even if it is impossible to know the exact amount of unreported income, a court can impute a reasonable amount. Also, a parent cannot avoid child support payments by failing to work. In that case, a court may assign a potential income that this parent should be making.

If you and your spouse agree to an amount of support that is different from the guidelines, a court will usually accept the agreement. You are free, within limits, to make whatever decision you want. Your agreement should briefly state the reasons that the support amount agreed on is way outside of the guidelines and say that you both believe that the amount is fair and is in your children's interests.

Child support guidelines are designed to provide children with the basic support needed to feed, clothe, and care for them. It will account for things like one parent paying for the children's health insurance or child support. Baseline child support does not take into account things like tutoring, sleep away summer camp, music lessons, or snowboarding trips. If you and your spouse are trying to calculate support yourselves, do not leave out those extra expenses. Remember your child is going to keep growing, and you need to anticipate events and expense like sports uniforms and equipment, a bar or bat mitzvah, braces, SAT and college prep

expense, driving lessons (maybe even a vehicle), graduation gift, and college tuition. Address those issues either by stating what you will do about them or stating that you will discuss them at a specified time and try to agree what to do then. Include a provision that if you cannot agree, you will go to mediation.

## Parenting Time

The guidelines use different calculations depending on how the parents share custody or parenting time. There is a general formula for computing payments, but it is based on an assumption that the child has a primary residence with one parent and spends roughly one-third of the time with the other parent.

As mentioned above, I like to use the [child support guidelines worksheet](#) prepared by Kelsey & Trask P.C as it greatly simplifies the calculations necessary to account for other parenting time arrangements.

## How Long Support Lasts

Generally, parent's support obligations end when their youngest child is emancipated.

## Insurance

You have an obligation to support your kids until they are adults, but what if something happens to you in the meantime? You should have a disability insurance policy that replaces your income if you become unable to work (especially if you are self-employed). You should also have life insurance that names your children as the beneficiaries and names someone to manage the policy proceeds for your kids until they are adults. Your former spouse would be the natural choice, but if you do not feel comfortable with that, at least try to choose someone who will be able to get along with your ex.

## If Circumstances Change

It is a given that as your kids grow, their needs – and the cost of meeting them – will change.

There will no doubt be unexpected changes, too, and you may find yourself wondering how to pay for tutoring for a child with reading problems or music camp for a child who shows promise.

Your own circumstances can also change. You may lose your job or get a better one or get hit with a huge hike in the premiums for your kids' insurance. It is also possible that your custody arrangements may change over time, so that the children spend a lot more time with you than when the court order was entered.

The bottom line is that whatever the reason, if there is a change in circumstances, you can always seek a change in the amount of child support that was ordered when you divorce became final. The court has the power to change child support until your kids reach adulthood. Include a provision that if you cannot agree, you will go to mediation.

## Taxes and Your Children

You are probably used to taking your kids into account when you do your taxes each year. With your divorce, there is more to think about including how you will share exemptions, credits, and deduction and how you and your former spouse will file.

When you file your personal income tax return, you are allowed one exemption for each person you claim as a dependent. Your child qualifies as a dependent if all three of these conditions are met:

- the child is under 19 at the end of the year, is under 24 and a full-time student, or is disabled,
- the child lived with you for more than half the year, and
- the child did not provide more than half of his or her own support during the tax year.

This means that most children living at home qualify as dependents – and that most children are the dependent of the parent who has physical



custody, because the child lives with that parent for more than half the year.

However, you can agree that the noncustodial parent may take the dependent exemptions for your children, or for some of them. If you are the noncustodial parent, you can take the exemption under the following circumstances:

- you and your spouse are legally divorced, are separated under a written separation agreement, or lived apart for the last six months of the tax year,
- your child lived with you or your spouse, or both, for at least half the year,
- you and your spouse paid more than half of your child's support during the year (the rest can be paid by other relatives or public benefits), and
- your divorce order or separation agreement says that you can take the exemption, or your spouse signs a declaration giving up the exemption.

Your settlement agreement will be incorporated into your final divorce order, so saying what you want to do about the exemptions in the settlement agreement will take care of the last requirement. The custodial parent can give up the exemption for one year, all future years, or specified future years. Divorcing parents with more than one child sometimes consider splitting exemptions, with each parent taking the exemption for one child. If you are not sure what to do about your exemptions, have a tax professional calculate what your taxes would look like under different scenarios.

If you and your spouse make a decision about the exemptions, include it in your settlement agreement. If you later agree that you want to change your decision, you can shift the exemptions by using IRS Form 8332. Because of the requirement that your agreement about dependent exemptions be in writing, be sure to use the form – do not just make the change yourselves.

## Taxes and Child Support

If you pay child support, you cannot deduct it. If you receive it, it is not income. In other words, child support payments are tax-neutral.

## Health Insurance

These days, health insurance can be an important part of child support. Very often, a parent's employer provides medical insurance for the entire family through a group insurance plan. There is no reason the kids cannot stay on the same plan they have been on during the marriage if that is what you and your spouse agree to. If the parent whose plan it is must pay for the insurance, the other parent may kick in something toward the cost or factor the cost into the child support calculations. Make sure that your settlement agreement also addresses the issue of who will pay for uninsured medical expenses – if it does not, the parent with primary custody may end up getting stuck with those expenses.

## Property Division

All divorcing couples must divide their marital property and assign marital debts as part of the divorce process.

“*Marital property*” is the collection of assets you and your spouse have gathered during your marriage, including money, real estate, investments, pension plans, and so on. Marital debts are obligations you took on together during your married life. Both the property and the debts belong to both of you, and part of the divorce process will be to divide them up between you.

Assets or debts that either of you had before your marriage, or that you acquired after the permanent separation, are called “*separate property*” or “*separate debts*.”

Massachusetts law requires the division of property in a divorce to be *equitable*, meaning that it must be fair, though not necessarily equal. While only property that a couple acquires during marriage is “marital property,” Massachusetts law allows a judge to divide all of a couple’s property in any manner that seems fair, regardless of when it was acquired or which spouse actually owns it. In other words, the judge can divide both marital and separate property. Generally, in Massachusetts, the courts will usually, but not always, award separate property to the original owner in a divorce.

The spouses – or the court if the spouses cannot agree – generally assign a monetary value to each item of property. Appraisals can help a couple determine the value of real property as well as items like antiques or artwork. Retirement assets can be exceedingly difficult to evaluate and may require the assistance of an actuary, C.P.A., or other financial analyst.

Spouses can divide assets by assigning certain items to each spouse, or by selling property and dividing the proceeds. They can also agree to hold property together. Most couples do not do this, because they want a clean break rather than an ongoing financial entanglement, but there are

some circumstances where it makes sense. For example, some couples agree to keep the family home until children are out of school. Others may keep investment property that is at a low ebb, hoping it will increase in value.

Couples usually also assign all debt accrued during the marriage to one spouse or the other. Again, however, especially with mortgages on the marital home, they can also agree to both be responsible for the debt.

If the couple cannot agree on how to divide property and debts, a judge will decide, taking into account each spouse’s:

- age, health, and station in life,
- occupation, vocational skills, and employability,
- amount and sources of income,
- liabilities and needs,
- opportunity for future acquisition of capital assets and income, and
- estate.

Other factors a judge will consider include the length of the marriage; the present and future needs of any dependent children of the marriage; and any spousal misconduct that caused the breakdown of the marriage. Courts are especially likely to consider misconduct that resulted in the waste or dissipation of marital assets available for distribution (gambling, for example, or giving away large amounts of money without the other spouse’s consent). A court may also consider each spouse’s contributions to the acquisition, preservation, or increase in value of their respective estates, and either spouse’s contributions to the family unit as a homemaker.

There is no fixed formula for determining what is equitable; every case depends on the individual facts and circumstances. In general,

the shorter the marriage, the more likely a court will be to try to put the parties back into roughly the same situations they were in prior to the marriage; in a very long marriage, the court is more likely to order a roughly equal distribution of property and to ensure that both spouses can maintain a standard of living similar to what they had during the marriage.

## Gathering Financial Information

As soon as you can, begin to inventory what you and your spouse own and owe. This is important not only to facilitate later decisions, but also to protect against worst-case scenarios in which one spouse runs off with, or hides, property.

Include all of your property and debts, even the ones you think belong only to you or only to your spouse. In fact, it is particularly important that you list any debts that you believe are solely your spouse's responsibility. You want to make sure that your final divorce order makes clear that you are not responsible for them. Include anything that you owned before you were married and anything that you think is yours alone.

## Your Inventory: What to Include

### Assets

- Checking and savings accounts,
- Stocks, bonds, mutual funds, and money market accounts,
- Certificates of deposit,
- Real estate (house, condo, or any other property you own, such as a vacation house),
- Retirement plans, including pensions, 401(k)s, IRAs, SEP IRAs, profit-sharing, and any other deferred compensation plans,
- Stock options,
- Medical savings accounts,
- Cars and other vehicles, including boats or other recreational vehicles,

- Valuable personal property, such as works of art, jewelry, or collections,
- Household furniture and furnishings,
- Life insurance policies with cash value,
- Tax refunds you expect,
- Inheritance you expect.

### Debts

- Mortgages,
- Home equity line of credit,
- Credit cards,
- Vehicle loans,
- Promissory notes,
- Student loans,
- Any other obligation.

In addition to making a list, make copies of important financial documents, including:

- Deeds,
- Recent mortgage statements,
- Insurance policies,
- Retirement plan documents,
- Business interests,
- Tax returns for the past five years,
- Wills and trusts, and
- Bank, brokerage, and retirement account statements.

Something else you should take care of right away is getting information about you and your spouse's retirement plans. You need to find out from the human resources department the address of the plan administrator or trustee or the retirement plan. Request:

- A "summary plan description" for all deferred compensation plans that you or your spouse participate in,
- Copies of benefit statements,
- Information about company stock or stock options that you or your spouse hold, including vesting or exercise dates, and
- Names and addresses of plan administrators if you do not already have them.

## Alimony / Spousal Support

Alimony, also called spousal support, is money or other assets one spouse provides to the other.

Alimony is determined by first looking at each spouse's future needs and resources, and then by deciding if one spouse should pay money to support the other. If parties decide that there should be alimony, they will discuss the amount and timing of payment.

Chapter 124 of the Acts of 2011 (An Act Reforming Alimony in the Commonwealth) amended G. L. c. 208 includes a list of factors for the judge to consider when deciding whether to award alimony – and if so, how much and for how long. These factors include:

- the length of the marriage,
- the age and health of each spouse,
- each spouse's income,
- each spouse's employment and employability (including whether additional training is necessary for a spouse to become employed),
- each spouse's economic and non-economic contributions to the marriage,
- the couple's lifestyle and standard of living when married, and
- any economic opportunities either spouse lost as a result of the marriage.

In addition, the court may consider any other factors it deems relevant.

### General Term Alimony Limits

Massachusetts law also sets general term alimony limits:

- *Marriages of 5 years or less*: No longer than 50% of the number of months of marriage.
- *Marriages of 10 years or less but greater than 5 years*: No longer than 60% of the number of months of marriage.
- *Marriages of 15 years or less but greater than 10 years*: No longer than 70% of the number of months of marriage.

- *Marriages of 20 years or less but greater than 15 years*: No longer than 80% of the number of months of marriage.
- *Long term marriages* (more than 20 years): The court can award alimony for as long as the judge thinks is fair.

General term alimony terminates upon the remarriage of the recipient or the death of either spouse; provided, however, that the court may require the payor spouse to provide life insurance or another form of reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony years.

Alimony ends with the remarriage of the alimony recipient and is suspended, reduced, or terminated if the alimony recipient cohabitates (i.e., maintains a common household) with another person for a continuous period of at least three months.

### Other Types of Alimony

In addition to general term alimony, there is also:

- **Rehabilitative Alimony**: payments of support to a spouse who is expected to become economically self-sufficient by a predicted time, such as by obtaining reemployment or completion of job training. The alimony term for rehabilitative alimony shall be not more than 5 years.
- **Reimbursement Alimony**: payments of support to a spouse after a marriage of not more than 5 years for the purpose of compensating the recipient for economic or non-economic contribution to the financial resources of the payor spouse, such as enabling the payor spouse to complete an education or job training.

## Alimony Limits

Massachusetts law provides that alimony generally should not exceed the recipient spouse's need or 30% to 35% of the difference in income between the spouses. This rule of thumb does not apply to reimbursement alimony or to situations in which a deviation from the ordinary rules is appropriate.

## Child Support and Alimony

Massachusetts law prohibits the use of gross income which the Court has already considered in making a child support order from being used again in determining an alimony order. In other words, for most families – where the combined available annual gross income of the parties is less than \$250,000 – the payor of child support will not, at the same time they are being required to pay child support, be required to pay spousal support.

## Modification of Alimony

Spousal support can be modified. Unless the parties decide the spousal support agreement is final, if there is significant change in circumstances, such as an unexpected inheritance, a large raise, or job loss, the courts probably will allow modifications to spousal support. Agreements can be written so some changes happen automatically. For example, the agreement could say that after three years, payments shall stop.

## The Tax Cuts and Jobs Act of 2017

The Massachusetts Legislature used the tax treatment of alimony when drafting the 2011 Alimony Reform Act which stated that alimony should not generally be more than 30% to 35% of the difference between the parties' incomes.

As of December 31, 2018, the federal Tax Cuts and Jobs Act of 2017 completely upended the way alimony is treated for federal tax purposes and eliminated the prior rule that alimony

payments were deductible from the payor's income and includable in the recipient's income. This change in the federal tax code has made the percentages in the current Massachusetts Alimony Statute no longer fair or appropriate. The law is, however, still in force and theoretically the Probate and Family Court judges could use it in support of setting an order based on these old percentages.

The current consensus among most practitioners is that the new percentage range is likely somewhere between 23% and 28% of the difference in the parties' incomes, but it is not yet clear that the family court judges are in agreement with these parameters.

The Alimony Reform Act also contains language that says alimony should be based on the need of one party and the ability of the other to pay. Despite the fact that need has always been the touchstone of any alimony order the percentage guidelines provided an ascertainable standard that many litigants and lawyers relied on in resolving cases without the need of a trial on the issue of need.

This area of law which was previously settled is now in a time of upheaval and uncertainty. It is not entirely clear how judges will handle these issues. You need to make sure that you align yourself with a mediator and tax professional who understand the state of the law and how to develop a strategy that will ensure that the result is fair and equitable in light of these new changes.

## Why Divorce Mediation Works

Divorce mediation gives you the option to privately negotiate a settlement without the large investment of time, money, and emotion that adversarial litigation almost always requires. I will sit down for a series of meetings with you and your spouse to help you reach an agreement on all of the issues in your divorce. The rights and interests of both of you are protected. Most couples arrive at agreements they can live with – which means they do not have to fight about any of these issues in court. Mediation offers many advantages over court battles.

**You stay in control.** You have greater control over your decisions as the parties – not the mediator, judge, or lawyers – determine the outcome. Decisions stay where they belong: in your hands. After all, you know best the condition of your finances, the needs of your children, and your plans for the future.

**You can do what works best for your family.** In mediation, you do not have to go by what the law would say about dividing your property or dealing with your kids – you can be creative about solutions and what works best for you. Working together, mediation participants craft creative solutions that address the particular nuances of *their* conflict. These solutions are much more satisfying than 50-50 compromises or court-imposed remedies. For example, a court might order that you get half of your spouse's pension, which you would not receive until you spouse reached retirement age. But if you would actually much rather keep the house and let your spouse keep the pension, in mediation you can do it that way.

**You will save a ton of money.** Even if you and your spouse both hire consulting lawyers and use other professionals to help you negotiate your divorce, the cost of mediation is much less than that of a contested divorce as resolutions can be achieved within hours or weeks, rather than months or years.

**You protect your privacy.** Mediation sessions are held in private; nothing that happens in the mediation session goes into the public records. There is no public docket, so no one else need learn about your personal issues. You avoid the drama and public spectacle of a divorce trial. Also, Massachusetts law protects the

confidentiality of communications made by parties in mediation and prohibits use of these communications in subsequent formal proceedings such as arbitration or trial. Mediation is private, except the ultimate outcome.

**You will have fewer disputes later.** Because you remain in control of the decision, you and your spouse are much more likely to be satisfied with the result and to comply with all the terms of your negotiated agreement. Parties are able to create agreements with enough structure for predictability and enough flexibility to adapt to change. Their agreements can even address how they intend to deal with future problems. [Research](#) shows that the majority of people who mediate rather than go to court are satisfied with the process as well as the outcomes. Mediated agreements have a higher rate of compliance than litigated settlements and court orders.

**Conflict is dampened, not fueled.** Mediation reduces the hostility, tension and misunderstandings that are ordinarily experienced when people are engaged in conflict. I am trained to help you communicate effectively and keep you focused on the present and future, not on what happened in the past. You each have the opportunity to share your concerns, belief, and desires and have them listened to (and maybe even understood) by the other person in a neutral setting, so resentments and misunderstandings can be eased.

**You can still get legal information and advice.** I can provide information that helps you make informed decisions, though I will not give legal advice to either of you (that is because I am

neutral and do not represent either of you). But you and your spouse can both hire lawyers if you wish to get legal advice and be sure your rights are protected.

**You set your own pace.** You keep control over when and how often you meet and how much help you get from advisers. Parties can arrange their mediation sessions according to personal scheduling needs and emotional and logistical requirements for pacing and time frame.

**What have you got to lose?** Deciding to try mediation does not mean that you are stuck with it if it does not work for you. You can stop at any point and go on with a contested divorce. From a financial perspective, you have little to lose by trying mediation. Even if it does not work, the information sharing and negotiation you do will make your contested divorce process more efficient.

## Overcoming Your Fears About Mediation

When you are considering whether or not to mediate, you will probably confront some of these common fears. But for every fear there is a resolution.

**I think we are just going to end up having huge fights.** Mediation is a safe zone where you are allowed to discuss all of your concerns, but you are not allowed to belittle, insult, threaten, shout at, or swear at the other person.

**I am concerned that I will be bullied into agreeing to things.** You have complete free will in mediation. I am there to make sure you think through all options before agreeing to anything. I will not take either side.

**I am afraid I will not get what I deserve in the financial settlement.** Because you have complete decision-making power, you are free to accept or reject any proposal. You also will be able to talk to your attorney and get advice about what a court would probably give you, which should help you gauge what is reasonable for you to ask for.

**I am worried that my spouse will not disclose all financial information and will hide things.** Massachusetts legally requires complete disclosure. Both of you will need to sign statements that you are fully disclosing all financial information.

**I do not want to break down and cry in front of my spouse or the mediator.** People express emotions in mediation all the time. I am trained to handle these situations and can give you time and space to regain your composure if needed. Mediation is normally less emotionally tolling than courtroom proceedings and I am sensitive to the strong emotions involved in divorce.

**I do not think I can stand up for myself.** I am there to help both of you voice opinions and consider solutions. But you are the only one who can stand up for yourself, and I will urge you to do so.

**It is going to be too hard to talk about all of this.** Divorce is difficult no matter how you do it, but mediation offers a softer and more bearable approach to dealing with the issues. I am trained to help you work through the difficult emotions you will be experiencing and to give you time and space to talk about all the issues that you have.



## What to Expect at Falmouth Mediation

The mediation process begins with a **FREE, no-obligation, private, confidential consultation**.

During this conversation we will jointly determine whether your case is appropriate for mediation with me.

Most individuals do not have the specific knowledge necessary for making fully informed decisions about the financial and legal aspects of divorce. I will provide you with the information that is required to reach the best settlement for your particular situation and have a divorce agreement drafted that is acceptable to the court and insures that your interests and goals are reflected in that settlement.

Further, even in the best of circumstances, the end of a significant relationship involves such intense emotions that it is sometimes difficult for two people to resolve issues on their own. Divorce mediation allows each person to have their feelings, without those feelings spilling over and jeopardizing your ability to reach fair agreements.

In a mediated divorce you and your spouse make the final decisions and have the security of my professional help to protect your rights and tailor an agreement specific to your family's needs while saving you time and money.

Once the mediation begins, all parties will be present. During the course of mediation, I will meet with the parties either together or individually as required. Meeting times are flexible.

In the working sessions the particular area or areas of conflict will be determined. I will objectively help you work out a solution that meets the needs of both parties.

The process can entail one session, or it may require multiple sessions based on the needs of the parties.

You are free to consult with a lawyer or other advisor during the process.

If an agreement is reached, I will have all of the paperwork drawn up to present to the court for approval. When approved by the judge, the agreements reached through mediation are then legally binding and enforceable.

Bear in mind that you are under no obligation to come to an agreement. If the mediation does not resolve the dispute, the traditional approach of settling a conflict through the court system is still available.

## About Me – Alan Jacobs – Mediator

I am a member of the Academy of Professional Family Mediators, the Massachusetts Council on Family Mediation, and a founder and past director of the Cape & Islands Mediation Collaborative, Inc. I currently assist families and individuals in resolving conflicts and legal disputes as a private mediator through Falmouth Mediation and MWI and in the Barnstable and Nantucket County Courts with Cape Mediation.

As the founder of Falmouth Mediation, I bring over 30 years of experience helping individuals and organizations resolve conflict. I professionally trained with MWI (formerly Mediation Works, Inc.) of Boston in 1997 and later with Cape Mediation. I have also completed advanced Divorce Mediation Training and the Barnstable County Bar Association's Family and Probate Conciliation Training.

Through my relationships with MWI, Cape Mediation, and adjunct professionals on the Upper Cape, I work in partnership with other experienced mediators and experts with diverse backgrounds including legal proficiency in family law, divorce, litigation and probate

matters, accounting and tax advising, financial planning, real estate, business evaluation, and mental health counseling to help my clients make their own responsible decisions to resolve matters and find the best solution for all concerned.



I hold a Master of Education and a Master of Regional Planning from the University of Massachusetts and have had special training as a Practitioner of Neuro-Linguistic Programming. I am the President of the [Falmouth Education Foundation](#), a former member and Chair of the Falmouth School District's School Committee, and former board member and Treasurer of the [Falmouth STEM Boosters](#). I am also a third-degree black belt in Tang Soo Do and teacher at the Seven Stars Academy of Martial Arts.

## What Makes Falmouth Mediation Unique?

Falmouth Mediation offers:

- **Experience** – Over 30 years of conflict resolution expertise as well as collaborative relationships with a wide range of adjunct professionals.
- **Affordability** – Fees on a sliding scale determined by your income level.
- **Convenience and scheduling flexibility** – daytime and evening hours available in our centrally located, handicapped-accessible office in Falmouth.

## Standards of Practice

As a member of the Academy of Professional Family Mediators (APFM), I subscribe to the APFM Standards of Practice for Professional Family Mediators. In summary, these professional standards of conduct state that a professional family mediator shall:

- recognize that mediation is based upon the principle of self-determination by the participants.
- be qualified by education and training to undertake the mediation. A family mediator shall acquire and maintain professional competence in mediation.
- facilitate the participants' understanding of what mediation is and assess their capacity to mediate before the participants reach an agreement to mediate.
- conduct the mediation process in an impartial manner and disclose all actual and potential grounds of bias and conflicts of interest reasonably known to the mediator.
- fully disclose and explain the basis of any compensation, fees, and charges to the participants.
- structure the mediation process so that the participants make decisions based on sufficient information and knowledge.
- maintain the confidentiality of all information acquired in the mediation process, unless the mediator is required to reveal the information by law or permitted to reveal the information by agreement of the participants.
- acquire specialized training and be competent in order to mediate disputes between parents regarding the special needs and circumstances of their children.
- acquire special training to screen, set protocols, and mediate when domestic violence is at issue for either party.
- suspend or terminate the mediation process when the mediator reasonably believes that a participant is unable to effectively participate, or for other compelling reason.
- be truthful in advertising and soliciting for mediation.
- act in a manner that advances the professional practice of family mediation.

## Legal Disclaimers

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and until we reach an agreement on terms of representation.

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