



DIVORCING COUPLES THE LAW AND YOUR PROPOSED AGREEMENT

In the event that you cannot agree on a parenting plan, the court is likely to award physical custody of the children to one of you and establish a strict visitation schedule. That schedule may include a portion of weekends, holidays, and school vacations in a variety of patterns depending upon the age of the children, the needs of the children, and the relationship of each parent with the children, the ability of the parents to communicate with each other and the living situation and life style of each parent. A court-imposed custody and visitation plan will probably be less flexible than an agreed-upon plan and less likely to meet the needs and desires of the children and parents.

Child Support: Child Support Guidelines in effect in Massachusetts generally define the percentage of gross income which one parent is required to pay the other parent towards the ordinary costs of raising children. The income of both parents as well as the cost of medical/dental insurance, daycare and the amount of parenting time for each parent is used in calculating the amount of child support pursuant to the Guidelines. A formula is available for you to make your own calculations. The payment of extraordinary expenses such as day care, private school, psychotherapy, or orthodontics and college has to be carefully examined in each case, as well as the income tax effects.

Alimony: The Alimony Reform Act of 2011 (M.G.L. c. 208, section 48 to 55) defines the type of alimony and establishes formulas for determining the amount and duration of the alimony (spousal support). The amount of the parties' income, length of marriage and the obligation to pay child support are major factors in calculating alimony. While the statute establishes useful guidelines. The statute also provides for deviation, under certain circumstances, from the amount and duration of alimony as calculated by the guidelines.



Division of Marital Property: Under Massachusetts law (M.G.L. c. 203, section 34), the court “may assign to either the husband or the wife all or any part of the estate of the other.” This law authorizes a judge, based on various factors, such as the length of the marriage, amount and source of income, opportunity for future income and acquisition of assets, the parties’ health and ages and the needs of minor children of the marriage, to treat all the property owned by you and your spouse as “marital property” to be divided between the two of you as the judge considers equitable. While a judge may preserve the ownership of property which was yours or your spouse before the marriage or inherited by one of you during the marriage, there is ample precedent for a judge to award some or all of the property to the other person.

Marital property (property available for division by the Probate Court) is all property, including real estate and personal property, owned by you and your spouse no matter when or how acquired or how owned. Personal property includes tangible property such as household furniture and furnishings and intangible property such as bank accounts, investment accounts (stock and bonds), pension and retirement plans and businesses. We encourage you to resolve, as much as possible, the division of tangible property by allocating to each other the items most important to each of you and as may be desirable because of minor children.

Within a divorce agreement, the Parties are free to divide the marital property to meet all the unique circumstances of their family as long as it is equitable. Mediation leaves you in control of the division of assets and liabilities and removes it from the hands of a judge.



Tax Consequences of the Divorce: Money paid periodically by one spouse as alimony for the support of the other is generally deductible by the paying spouse and taxable to the receiving spouse. Child support payments are not deductible to the paying parent and not taxable to the receiving parent. The tax exemption for a child is available to the parent with whom the child lives unless otherwise agreed or ordered by the court. The divorced parent with whom a child primarily lives can usually claim the advantageous tax status of “head of household”. Property transferred from one spouse to the other will generally not result in a capital gains tax at the time of transfer, but may cause the receiving spouse to incur a greater capital gains tax when and if she or he sells the property to a third person. Likewise, transfer of retirement accounts or plans from one spouse to the other generally will not result in a taxable transaction but may cause the receiving spouse to pay a tax at the time the money is withdrawn from the retirement account or plan. The application of these and other complex provisions of the Internal Revenue Code to your divorce may have a significant effect on your finances following the divorce. Consultation with your tax consultant may be advisable depending upon your situation.