

Filing a Complaint for Divorce

1. **Choose a "grounds"** (legal reason) for your divorce. One grounds for getting divorced is called "[Irretrievable Breakdown of the Marriage](#)." It means that you do not get along with your spouse and you do not want to be married anymore. Simply put: the marriage is broken down and cannot be fixed.
2. Get the correct form and instructions for the kind of divorce you need.
 - a. If your grounds for divorce is "[Irretrievable Breakdown of the Marriage](#)", get the form [Complaint for Divorce under G.L. c. 208, Section 1B](#), and [instructions](#) from the [Probate and Family court website](#) or from any probate and family court in Massachusetts.
 - b. If your grounds for divorce is **other than** irretrievable breakdown of the marriage, you need the form [Complaint for Divorce](#) and [instructions](#) on the [Probate and Family court website](#) or from any probate and family court in Massachusetts.
 - c. If you need child support you will also need a copy of the [Child Support Guidelines Worksheet](#).
3. Use the **sample** Complaint for Divorce under G.L. c. 208, Section 1B or a **sample** Complaint for Divorce to help you fill in the form you need. (See samples?)
4. Check out the [Probate and Family Court Department Uniform Fee Schedule](#) to find out how much it will cost. As of July 9, 2012, it cost \$220 to file a divorce case (\$200 filing fee + \$15 surcharge + \$5 for a summons). There are also fees, about \$35-\$45 to have a deputy sheriff or constable serve the papers on your spouse.
5. Fill out the [Joint Petition for Divorce](#)
6. Get a certified copy of your marriage certificate.
7. If you and your spouse have children together,
 - a. fill out an Affidavit of Care and Custody form.
 - b. If you need child support, fill out the [Child Support Guidelines Worksheet](#).

8. Fill out a [Certificate of Absolute Divorce or Annulment Statistical Information form](#).
9. **File the Complaint.** Take your Complaint for Divorce, a certified copy of your marriage certificate, and your [Certificate of Absolute Divorce or Annulment form](#) to the clerk's office in the Probate and Family Court. Ask the clerk to file it. If you filled out the Affidavit of Care and Custody or the [Child Support Guidelines worksheet](#), also remember to give these to the clerk to file. 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. When you file the Complaint and other documents:
 - a. Fill out an [Affidavit of Indigency form](#) if you cannot pay for a summons or the cost or the costs to file the case and serve the papers. If you can check either box A or box B on the form, check the box, the clerk will approve the form, stamp it, and give you a copy. This means the court will cover your costs.
 - b. File a [motion](#) to "impound" your address if you need to keep your address secret from your spouse to stay safe. Write on the [motion form](#) why it is not safe for your spouse to find out where you live. Look at a sample [Motion to Impound Address and attached Affidavit](#).
 - c. File a [motion for temporary orders](#) if you need the court to order something right away (like child support or custody, or that your spouse has to let you stay in the house). File the motion when you file the complaint and Affidavit of Indigency. Ask the clerk for a date for a hearing on your motion. Write the date on the motion form. There is a place on the form to put the date. You can also file a motion later, if you need to. Read more about this in Chapter 7 [Custody](#) and Chapter 8 [Visitation](#).
10. **Serve the papers:** The clerk will give you a Summons. This is an official paper that tells your spouse when he must

file his Answer to your case. The court can only decide your case after your spouse is served with the Summons. Bring or send the Summons and a copy of all the papers that you filed to a [sheriff](#) or [constable](#) to deliver to your spouse. If the court approved your [Affidavit of Indigency](#), use a deputy sheriff to serve the papers. Be sure to give a copy of the [Affidavit of Indigency](#) to the deputy sheriff so the state can pay his or her fees. When the deputy sheriff gives the papers to your spouse, it is called "service of process."

11. **Wait for the sheriff or constable to return the Summons and "Proof of Service" to you.** After the sheriff or constable serves the papers, he or she returns the original Summons to you. On the summons the sheriff or constable fills out, dates, and signs the section called "Proof of Service". Remind the deputy sheriff or constable to send the summons with the "proof of service" back to you.
12. **Make a "return of service"** Return the signed original Summons to the court. This is called making "return of service." Be sure to make a copy of the signed original summons for your records.

What happens after I return the Summons to the court?

You may have to wait some time before you get a trial date. The time you have to wait before you get a trial date, depends on how you file for divorce:

The reason (or "grounds") you have for getting a divorce make a difference to what happens after you file your Complaint. It also makes a difference if your spouse files an Answer to your Complaint.

If you filed a complaint for "fault" divorce

(see Question 16, below), when you return the summons to the court, the court clerk looks at the case to see if any court date has been scheduled. If no court date has been scheduled, the clerk will schedule; a "Case Management Conference" and send you notice of it. The Case Management Conference will be at least 30 days after you file the return of service.

At the Case Management Conference, the next court date will be assigned or the judge can hear the case and make a decision if the case is uncontested.

If you filed a complaint for a "no fault" divorce

(a complaint where you say that the marriage has irretrievably broken down), the court clerk looks at the case 120 days after you filed the case to see if any court date has been scheduled. If the return of service or an answer has been filed, but no court date has been scheduled, the clerk will schedule a "Case Management Conference" and send you notice of it. The Case Management Conference will be at least 30 days after you file the return of service.

At the Case Management Conference, the next court date will be assigned. If you filed a complaint for a "no fault" divorce, you must wait at least 6 months for a hearing.

If your spouse files an Answer, and no future court date has been scheduled, the court will schedule a Case Management Conference to talk about your case.

If your spouse does not file an Answer, the court will schedule a Case Management Conference to talk about your case. The court will only do this if you have returned the summons to the court.

What happens at a Case Management Conference?

At a Case Management Conference, the judge can hear the divorce case and grant the divorce if your spouse has not filed an Answer to your case or if you and your spouse have settled the case. "Settling" means that the two of you have agreed in writing about all the things that must be decided in a divorce case, like who will have custody and how much support for you, how much support for your children, what kind of health insurance you or your children should have and who should pay for it, and how your property will be divided.

If the court does not grant the divorce at the Case Management Conference, the next court date must be assigned. The next court date could be a Pre-Trial Conference or a trial date.

Going to trial – Getting a Judgment of Divorce

There will be a final hearing, also called a trial. At the trial the judge will decide your divorce case. Even at a trial, the parties can settle the case with a written agreement that they sign and ask the judge to approve. After your trial if the court grants your divorce, it will issue what is called a "Judgment of Divorce Nisi." If the trial took a day or less, the judge must issue the judgment within 30 days of the trial. Your divorce will become "absolute" (final) 90 days after Judgment of Divorce Nisi.