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Separation, Divorce and Marriage Equality

In November of 2003, the Massachusetts Supreme Judicial Court ruled 4-3 in favor of ending the exclusion of same-sex couples from marriage. With that decision, over 13,000 gay and lesbian couples have married in Massachusetts.

Marriage is not only a profound expression of love and commitment between two people, but also an enormous legal institution touching on nearly every area of life and death. Marriage entails responsibilities as well as privileges. Few couples enter into marriage lightly. By the same token, most couples who choose to end their marriage do so only after a great deal of thought, discussion and soul-searching.

According to the Center for Health Statistics of the federal Centers for Disease Control, almost half of all marriages between people of the opposite sex will end in divorce. Marriages between people of the same sex are subject to the same challenges and pressures as all marriages. There are differences, too. The marriages of same-sex couples are contested political terrain and have been under attack from various quarters before they even began. Beyond the lack of community support that otherwise attends marriages, some gay and lesbian couples experience social and familial disapproval as well. Married gay and lesbian couples also face discrimination by the federal government; they are denied the 1,138 federal protections and benefits of marriage due to a 1996 federal law. In addition, they face laws and constitutional amendments from other states disrespecting their legal and personal commitment.

Many couples use counseling to overcome difficulties, strengthen their marriages and resolve their problems. Certainly counseling is a good first step for couples considering separating or divorcing. But when couples are unable to reach lasting resolutions, they may turn to separation or divorce. While accurate statistics are hard to discover, the *Boston Globe* reported in January 2006 that between 35 and 45 divorce actions had been filed by same-sex couples to date.¹ In a USA Today article in April 2008, Joyce Kauffman, a Massachusetts family law attorney, said that she thought that well over 100 divorces had been granted as of that date.²

¹ Matt Carroll, "The Gay Divorcees," *Boston Globe*, January 29, 2006.

² "Divorce Hard To Get For Some Gay Couples," *USA Today*, April 15, 2008.

Understanding Divorce

When couples are thinking about marrying, we urge them to understand and consider the complexities of the institution (see GLAD's publications: *How to Get Married in Massachusetts*, *Marriage Tips and Traps*, *Same-Sex Spousal Health Benefits in Massachusetts after Goodridge*) and to seek professional advice. By the same token, we also strongly encourage couples who are considering separating or divorcing to seek professional assistance, whether that is counseling, mediation, or legal consultation. **Any of these can be accessed by calling GLAD's Legal InfoLine at 800-455-GLAD(4523). Resources for couples considering divorce are listed at the end of this document.**

Married same-sex couples in Massachusetts may seek to separate or divorce under Massachusetts law (with some federal complications). When a marriage breaks down irretrievably, divorce provides a couple with the legal means of dissolving their union, dividing their property, and addressing the custody and support of their children. For some families, divorce may provide a better environment for both spouses and their children.³ Recognizing that each family is unique, we encourage people to consider all of their options to protect their families.

Same-sex couples who are contemplating divorce also need to be aware that federal discrimination can affect their ability to divide fairly the assets of their marriage. Some of the federal protections available for married couples allow the couple's house and some other assets to be transferred or sold without tax consequences, allow a court to split a pension earned by one party during the marriage without tax consequences, and allow a person to continue receiving health insurance coverage through a former spouse. These protections are not available to same-sex couples.

Filing for Divorce

When filing for divorce, you must provide the court with legal reasons called the grounds for the divorce. In Massachusetts, virtually all divorces use the "no-fault" ground of "irretrievable breakdown of the marriage".⁴ The benefits resulting from the use of this ground for divorce is essentially that neither spouse is required to allege fault or blame the other spouse for the breakdown of the marriage. The Court also does not require either spouse to give testimony to prove the other spouse at fault for the breakdown of the marriage.

³ George J. Cohen, MD and Committee on Psychosocial Aspects of Child and Family Health, *Helping Children and Families Deal with Divorce and Separation*, PEDIATRICS Vol. 110 No. 5 (November 2002) (explaining that divorce may be "a solution to a discordant marriage."), p. 1019, available at <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;110/5/1019>.

⁴ Mass. Gen. Laws, Chapter 208, Sections 1A & 1B.

In order to file for divorce in Massachusetts, residency requirements must be met for the court to accept the case. If the court discovers it does not have jurisdictional rights to hear the case, it will not be accepted or it will eventually be dismissed. The requirements are as follows:

- If the grounds for divorce occurred in Massachusetts, then one of the spouses must reside in Massachusetts.
- If the grounds for divorce occurred outside the state of Massachusetts, then one spouse must be a resident of the state for at least 1 year.⁵

A divorce complaint must be filed in the Massachusetts Probate and Family Court in the county where you and your spouse last lived together. If neither of you lives in that county, you may either file in the county where you live or where your spouse lives. In the event of hardship or inconvenience to one of the spouses, the court having jurisdiction may transfer the hearing to the court in the county in which that spouse resides.⁶ There are expenses involved in filing for a divorce, but there is a process for waiving these fees if there is financial hardship.

What's Addressed in a Divorce Proceeding?

Once married, you remain married until divorced by the state. A divorce is a court judgment ending a marriage and deciding issues such as:

- The grounds for the divorce (virtually all divorces are “no fault”)
- Child support, custody and visitation
- Division of assets, property and debts
- Alimony or support for the spouse
- Name change
- In domestic violence situations, orders providing protection from abuse.

A person may not remarry until his or her divorce is complete. In addition to divorce, couples in Massachusetts also have the option of living apart, or living apart and petitioning the court for a Complaint for Separate Support or a Complaint for Custody. For couples who do not wish to divorce, this is a way to resolve the issues listed above without formally ending the marriage. You should seek advice from both counseling and legal professionals about which of these options is best for you and your family.

⁵ Mass. Gen. Laws, Chapter 208, Sections 4 & 5

⁶ Mass. Gen. Laws, Chapter 208, Section 6

Caring for Children Throughout a Divorce

Special care and thought needs to be given in dissolving relationships where children are involved. The well-being of children in a divorce is of paramount importance to the court. It is often wise to seek counseling or additional support for children (see resources below). If the couple has children, the judge will sort out parental rights and responsibilities (including child support obligations) based on the child's best interest.

Resources

If you or someone you know is going through a divorce or separation, the following websites may be helpful:

Legal

- A Q & A about the divorce and separation process in Massachusetts:
http://www.neighborhoodlaw.org/page/58659&cat_id=600.
- The Massachusetts laws that govern divorce:
<http://www.mass.gov/legis/laws/mgl/gl-208-toc.htm>
- A set of resources to help understand Massachusetts divorce law:
<http://www.lawlib.state.ma.us/divorce.html>
- In addition to getting referrals to LGBT-friendly attorneys by calling **GLAD's Legal InfoLine at 800-455-GLAD (4523)**, the following have listings for legal professionals:

<http://www.divorcenet.com/states/massachusetts> (listings for traditional attorneys, mediators, and collaborative law attorneys)

The Massachusetts Bar Association Lawyer Referral Service
866-627-7577 or <http://www.massbar.org/lawhelp>

The Boston Bar Association Lawyer Referral Service
800-552-7046 or <http://www.bostonbar.org/lrs/index.htm>

If you qualify for low-income legal assistance, the Legal Advocacy and Resource Center can help you find an appropriate legal referral
800-342-LAWS or <http://www.larcma.org>

Children and Divorce

- Guide to Shared Parenting:
<http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/afccsharedparenting.pdf>
- Child Support Guidelines:
<http://www.mass.gov/courts/formsandguidelines/esg2006.html>
- Child Custody and Support:
http://www.neighborhoodlaw.org/page/58295;cat_id=2
http://www.massbar.org/lawhelp/legal_info/?sw=3124&full_id=209
- Children and Divorce:
http://www.aamft.org/families/Consumer_Updates/ChildrenandDivorce.asp
- Helping Children and Families Deal With Divorce and Separation:
<http://aappolicy.aappublications.org/cgi/content/full/pediatrics;110/5/1019>

This fact sheet offers some basic general information and resources and cannot provide guidance or legal advice as to one's specific situation. For guidance on your particular situation you should consult professionals. Divorce or separation involves a major change in your family and so you should consider both professional counseling and legal advice. You should not act independently on the information presented in this fact sheet.

If you have questions or need lawyer referrals, please call GLAD's Legal InfoLine weekdays between 1:30 and 4:30 pm at 800-455-GLAD (4523) or 617-426-1350. You can also obtain information and access GLAD's publications at www.glad.org.

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