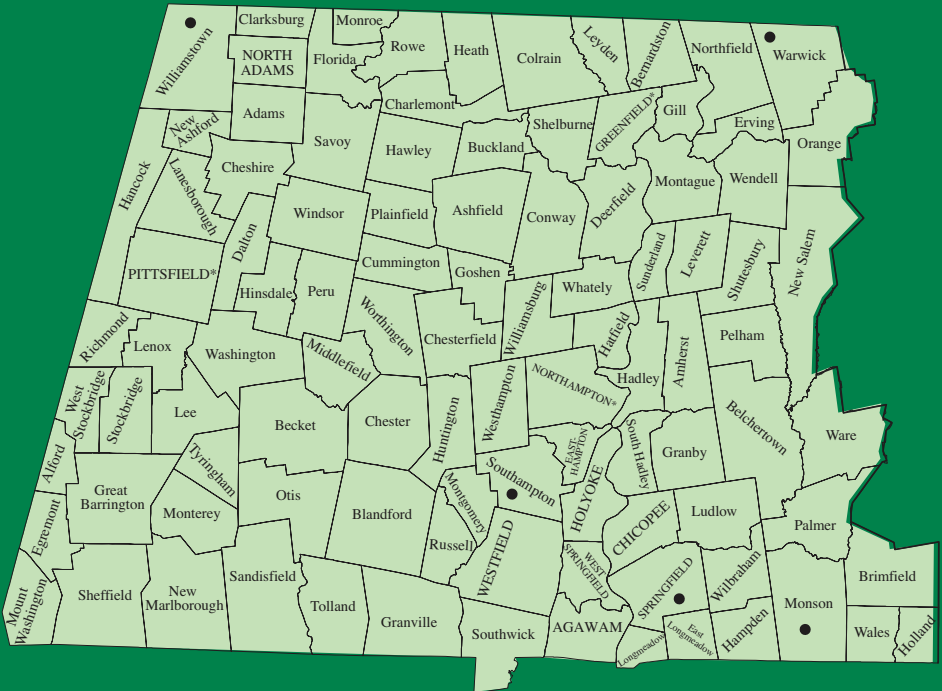


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THE AUTHORITATIVE WESTERN MASSACHUSETTS DIVORCE GUIDE

What You Need to Know in the
Hampden, Hampshire, Berkshire and Franklin
County Probate & Family Courts



BY ATTORNEY
IRWIN M. POLLACK



 **THE**
Massachusetts Family Law
GROUP

***Divorce Lawyers and Family Law Attorneys
Dedicated to Protecting You!***

My name is Irwin Pollack. Not only am I a divorce attorney, but I'm a divorced parent myself. Years ago, I founded the Massachusetts Family Law Group in hopes of making the process and transition easier for men and women who are going through what I did.

The mere fact that you're reading this tells me that you're going through a tough time right now. You have questions – lots of them. I've got the answers you're looking for, and I'm confident this Special Report will give you the head start you need as you and your family face the weeks and months ahead.

This Guide has been prepared with you in mind. As you begin doing your divorce homework, focus on the law – what really happens in court – and get rid of the popular myths that you've heard about from your friends or those that you've seen on television.

No matter where your case will be heard – Springfield (Hampden County), Pittsfield (Berkshire County), Northampton (Hampshire County) or Greenfield (Franklin County) – issues such as how to handle assets and debt, which spouse gets the children, how spousal support (alimony) and child support are calculated, and what happens in court will be addressed in this Special Report. We also address residency requirements, how to hire a divorce attorney, must-know information relating to discovery in family law cases, and lots more.

As you go through our website, and concentrate on this Report, you should never forget one of the most important aspects about the Massachusetts Probate & Family Court: the law is same across Massachusetts, but the judges in Western Massachusetts interpret the statutes and handle procedures a little differently from the others. For

that reason, you want a lawyer who knows each of the courts, and the individual judges' likes, dislikes, preferences, and prejudices.

At The Massachusetts Family Law Group, our attorneys are assigned to specific courts in order to familiarize themselves with the ins-and-outs of their specific region. Our Senior Attorney, Clarissa Wright, spends half her time (if not more!) in the Springfield court or at our office in Monarch Place – less than five minutes away from court. And when she's not in the office, she's most likely in dealing with another family law matter – in neighboring Pittsfield, Northampton, or Greenfield.

We are here to help. A free, no-obligation consultation will show you what we're all about. Let us help you protect your rights and emerge more knowledgeable, stronger, and more confident than when you first walk in our door.

To schedule your appointment, call us at (800) 941-LAWYER (5299). If you'd like to speak with me personally, call (800) 331-IRWIN... *rings right at my desk*. Let us help you move on to the next stage in your life.

VERY TRULY YOURS,

A handwritten signature in black ink that reads "Irwin M. Pollack". The signature is written in a cursive, flowing style with a large initial "I" and "P".

Irwin M. Pollack

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Residency Requirements and Where to File

No matter where you live in Western Massachusetts, if the grounds for divorce occurred in Massachusetts, one spouse must be a resident. If the grounds occurred outside of the state, the spouse filing must have been a resident for one year. The divorce should be filed in the county in which the spouses last lived together. If neither spouse currently lives in that county, the divorce may be filed in a county where either spouse currently resides.

Hiring a Divorce Attorney

You should make it a top priority to hire zealous, competent and compassionate legal counsel for your divorce or family law matter.

Once you do that, you are entitled to a hard-working, experienced, assertive attorney who focuses on the details of divorce. The attorney must be both diligent and competent so you are prepared for either settlement or trial.

Experience is a relative term. Your attorney won't need as much if your case is straightforward, but how do you know he or she has enough for your case? Once you disclose to the attorney the problem areas of your case, you want someone with the experience in divorce or family law to help you accomplish your goal. It's always better to err on the side of experienced rather than inexperienced. You'll be served well by an attorney who is licensed in other states, has tried and true experience before the Judge assigned to your case, one who teaches, and has many years of litigation experience.

Assertiveness is mandatory, but don't confuse assertiveness with theatrics. A calm, methodical approach accomplishes more than a lot of meaningless noise.

You also need an attorney who will be reasonably available to you to answer questions. Don't expect your attorney to be available every time you call. In fact, if he or she doesn't have any other clients to meet with or court proceedings to attend, you should begin to wonder why not. However, your calls should be returned within 24 hours.

You want an attorney with whom you can have a harmonious, attorney-client relationship. Your attorney is not your buddy, particularly at these hourly rates. Expect to have disagreements when your attorney advises you of the alternatives available and then makes a recommendation for you to evaluate. You might decide to disregard your attorney's advice, in spite of the known consequences, in order to do things the way you are the most comfortable. However, if you have a good relationship with your attorney, these difficult decisions will be much easier to make.

An attorney who is helpful and supportive is preferable to one who sticks to a preset agenda. If you find empathy, your divorce process will be positive and growth oriented – it can accelerate the pace at which you retake personal responsibility and clarify the issues in your life. Does this attorney listen attentively to what you say? Is this attorney able to identify and respond to the emotion in your statements?

You must have confidence in your attorney. He or she should be well organized and in full control of the situation. Your attorney should be sympathetic to your concerns, responsive to your needs and interested in your well-being.

Do you want an attorney of the same gender as you? You may feel more comfortable with your attorney, or more like you are a part of a team, if you are of the same gender.

Do you want your attorney to be the same gender as your spouse to defuse that gender barrier? Sometimes a woman may prefer a strong male figure to deal with an intimidating spouse, and a man might prefer a female attorney to deal with an exasperating spouse.

What personality traits are needed for your case? Tenacity? Understanding? Compassion? Boldness? A bulldog to deal with your out-of-control spouse? Review your own situation to see what you want in your team's legal leader.

Add to your list any other factors that improve your comfort level. Perhaps you would prefer an attorney of 40-50 years of age, an attorney who has experienced divorce firsthand or an attorney who concentrates in child-related divorce and custody disputes.

Once you have decided that you want a divorce, the earlier you retain an attorney, the better prepared you will be for your case.

Filing Your Complaint for Divorce

To start a case, you file a complaint. A complaint is a document you create that identifies who the parties are, what your reasons are for bringing the case, what the facts are in your case and what you want the court to do.

Once you hire an attorney, let them work zealously on your behalf. Since you must file on specific forms in a specific way, the attorney's guidance is essential at this stage to make sure your complaint is in the proper format.

After the complaint is filed, your attorney will likely receive a summons. That official document notifies the defendant that a case has been filed against them and how long they have to file their answer in response to the complaint.

The next step after filing and receiving the summons is to give (serve) a copy of the summons and complaint to the defendant – your spouse. Since there are rules for how to do this, this is another reason that using an attorney to represent you is in your best interest.

Rule 411 – Asset Restraining Order

As per Massachusetts General Laws, the following automatic restraining order shall apply to both parties to a complaint for divorce. This automatic restraining order shall be effective with regard to the plaintiff upon the filing of the complaint by the plaintiff or the plaintiff's counsel and with regard to the defendant upon service of the summons and complaint or any other acceptance of service by the defendant:

The following restraining order shall remain in effect for the duration of the action, unless it is modified by agreement of the parties or by further order of the court.

(1) Neither party shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of any property, real or personal, belonging to or acquired by, either party, except: (a) as required for reasonable expenses of living; (b) in the ordinary and usual course of business; (c) in the ordinary and usual course of investing; (d) for payment of reasonable attorney's fees and costs in connection with the action; (e) written agreement of both parties; or (f) by Order of the Court.

(2) Neither party shall incur any further debts that would burden the credit of the other party, including but not limited to further borrowing against any credit line secured by the marital residence or unreasonably using credit cards or cash advances against credit or bank cards;

(3) Neither party shall directly or indirectly change the beneficiary of any life insurance policy, pension or retirement plan, or pension or retirement investment account, except with the written consent of the other party or by Order of the Court.

(4) Neither party shall directly or indirectly cause the other party or the minor child(ren) to be removed from coverage under an existing insurance policy, including medical, dental, life, automobile, and disability insurance. The parties shall maintain all insurance coverage in full force and effect.

Financial Statement

A financial statement is the Probate & Family Court form on which each party sets out his or her financial situation. When you fill out the form, you must list all your income, expenses, debts and assets. You are required to file a financial statement in any case where support, alimony or any financial matter may be an issue.

Filing your financial statement is a very serious matter. After you fill it out, you must sign it "under the penalties of perjury." This means that if you deliberately do not tell the truth, or you leave out information, a judge could send you to jail. Moreover, your credibility is lost and the judge will be less likely to believe you on other matters in the case.

Your attorney will likely help you with your financial statement. If your gross income (income before taxes and other deductions) is under \$75,000, you'll complete the "short form." If it is \$75,000 or higher, you'll complete the "long form."

You must attach either a W-2 or 1099 tax form to your statement. If you earn other income from self employment, rental income, or your own business, you will need to supplement your statement with those records as well.

Parenting Class

All parties in a divorce action in which there are minor children, are ordered to attend and participate in an approved Parent Education Program. Attendance at an approved program is mandatory for parties to a divorce action unless waived by the court. Both parties to the complaint must register with an approved provider in order for the court to move the case forward.

A list of class providers is found at:
www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt.providerlist.pdf

Temporary Orders

If your scheduled hearing date is a long way off and you need a court order sooner than that, you can always file a Motion for Temporary Orders if you cannot reach agreement between you and your spouse.

Once you retain a divorce lawyer or family law attorney, take the opportunity to identify everything that worries you. List and then discuss your concerns with your attorney. Together you'll identify specific issues and attempt to discuss these concerns with opposing counsel to seek some level of an agreement without having to go to

court. The most common concerns, relating to finances, are covered by Rule 411.

Other issues relating to temporary orders in the Springfield, Pittsfield, Northampton, or Greenfield court are normally sought in order to establish the status quo. The following suggestions relate to points that you'll need to address. If you can work toward agreement with your spouse, that makes the process easier; if not, you'll need to seek judicial intervention on these points:

1. The minor children shall not be removed from the Commonwealth without first obtaining written consent from the other parent, or a court order;
2. No change shall be made under any retirement or pension plan without first getting written consent from the other spouse;
3. The named spouse shall pay a stated amount of alimony or child support on a specific day of each month (alimony is tax deductible once it becomes a court order);
4. Custody and visitation with the minor children shall follow a clear, simple plan that you lay out in the agreement;
5. Each spouse shall be responsible for certain specified bills;
6. One named spouse shall have the exclusive right to use and occupy the family residence;
7. Specified accounts shall be blocked against withdrawal by one spouse alone (or the sums on deposit shall only be used for specified purposes);
8. All joint credit cards will be canceled, after paying the joint debt and giving a non-employed spouse a chance to keep the old account as an individual; and
9. Each spouse shall have the exclusive use of an automobile as specified.

Temporary orders such as these are common. Once allowed, these temporary orders stay in effect, by their own terms, until modified by agreement or by the judgment of the court.

Your spouse will likely have temporary order issues as well. These issues can determine which spouse shall remain in the family home, mandate the payment of bills, the custody and support of the children, payment of attorney's fees, production of documents and other matters such as living arrangements for the children, spousal support, use and possession of property and other assets and possible restrictions on contact with the other parent.

If your spouse is not willing to work with you on temporary orders, it may be necessary for you to move quickly to get a court order on your own.

It's not realistic to expect to get everything you want, at least in legal negotiations. Be ready to give on some issues and to trade on others. Hearings for temporary orders are costly and emotional. If you find that you can get most of what you want by agreement, let a few minor points slide. One or two of your temporary orders for the next few months are usually not worth the considerable expense of a court hearing.

Discovery

In order for the court to make informed rulings, both parties need to be able to present accurate evidence in support of their claims. Therefore, when there are contested issues in a divorce, discovery is a valuable tool when properly utilized. It can be the instrument with which critical facts and issues come to light.

Discovery is the process by which a lawyer obtains information from the opposing party. Each party is obligated to respond to discovery truthfully and, in some cases, certify their answers under the pains and penalties of perjury. Initial Financial Disclosure: Under Rule 410 of the Probate and Family Court, each party must submit to the other side the following:

- (a)** Federal and state income tax returns and schedules for the past three (3) years and any non-public, limited partnership and privately held corporate returns for any entity in which either party has an interest together with all supporting documentation for tax returns, including but not limited to W-2s, 1099s, 1098s, K-1s, Schedules C and Schedules E.
- (b)** Statements for the past three (3) years for all bank accounts held in the name of either party individually or jointly, or in the name of another person for the benefit of either party, or held by either party for the benefit of the parties' minor child(ren).
- (c)** The four (4) most recent pay stubs from each employer for whom the party worked.
- (d)** Documentation regarding the cost and nature of available health insurance coverage.

(e) Statements for the past three (3) years for any securities, stocks, bonds, notes or obligations, certificates of deposit owned or held by either party or held by either party for the benefit of the parties' minor child(ren), 401K statements, IRA statements, and pension plan statements for all accounts listed on the 401 financial statement.

(f) Copies of any loan or mortgage applications made, prepared or submitted by either party within the last three (3) years prior to the filing of the complaint for divorce.

(g) Copies of any financial statements and/or statements of assets and liabilities prepared by either party within the last three (3) years prior to the filing of the complaint for divorce.

Following submission of Rule 410 documents, the following discovery tools can be utilized by either side:

Interrogatories: Interrogatories are a list of questions that may inquire about specific legal or factual contentions as well as asking your spouse to state the legal theories and to describe in general the factual bases for the party's claims or defenses.

Requests for Production of Documents: In a divorce you are entitled to inspect, sample, test, photograph and copy documents or tangible things that are within the scope of discovery and within the party's possession, custody, or control.

Documents and tangible things include papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, data, and data compilations. Possession, custody, or control of an item means that the person either has physical possession of the item or has a right to possession and access of the item.

Depositions: In an oral deposition, questions are usually asked directly to the person being deposed, whose answers are recorded by a stenographer or court reporter, or may be recorded by other means, including audiotape or videotape, and may be even be conducted over the phone.

Do All Divorces Go to Trial?

Whether it's with Attorney Wright (who leads our Springfield region), or any of our other attorneys, our favorite cases are those that we can either help the parties reach an agreement, or those where we can take an offensive strategy – file first, and take control of the case.

In an ideal world, all divorces would be uncontested – the parties keep contentiousness down, they speak in clear terms, they save time,

money, and prevent the harmful affect that divorce tends to have on children. But it isn't always that easy.

After the temporary order motion session, we go through the discovery process and head toward the Pretrial Conference. At that time, the judge listens to a summary of each party's viewpoint on the case. With a little input from the bench, it is the hope that the parties take that newfound knowledge and work toward settling their differences; but if that doesn't happen the parties prepare for trial.

The morning of trial, both parties present an opening statement and call witnesses. Based on General Laws Chapter 208, Section 34 the court considers the following factors in deciding who gets what as it relates to the division of marital property, debt, and future support:

1. Length of the marriage
2. Conduct of the parties during the marriage
3. Age of the parties
4. Health of the parties
5. Occupation of the parties
6. Amount of income of the parties
7. Sources of income of the parties
8. Station (status) of the parties
9. Vocational skills of the parties
10. Employability of the parties
11. Estate of the parties
12. Liabilities of the parties
13. Needs of the parties
14. Opportunity of the parties to acquire future capital assets
15. Opportunities of the parties to acquire future income
16. Contribution of the parties in their acquisition of their estate
17. Contribution of the parties in their preservation of their estate

18. Contribution of the parties in appreciation in value of their estate
19. Contribution of the parties as a homemaker to the family unit
20. Present and future needs of dependent children of the marriage
21. Opportunities of the parties to acquire health insurance through employment

If the case goes to trial, it typically takes six to eight weeks before the judge renders a ruling.

A Final Thought...

Often, family law and bankruptcy seem to go together. Either upon splitting up, the spouses can't pay the family debts, or one spouse seeks to use bankruptcy as a weapon against the other spouse, or the other spouse's lawyer.

If you or your spouse have questions relating to divorce and any potential bankruptcy issue, call us at (800) 941-LAWYER (5299). We handle both types of matters (family law and bankruptcy) and can zealously represent you as it relates to protecting you and your family.