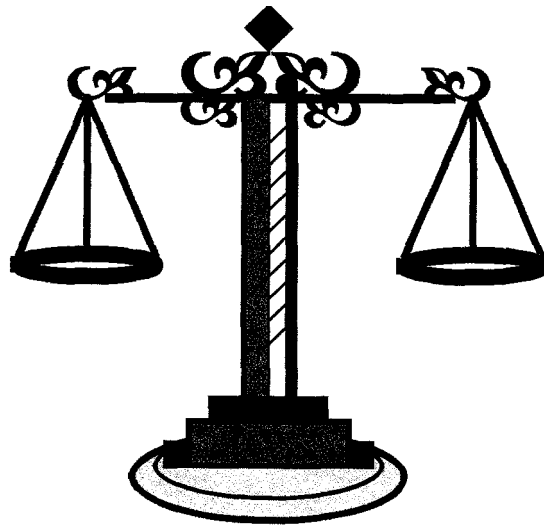


(REVISED 5/01)

# HAMPSHIRE PROBATE AND FAMILY COURT

## 3

# FOUNDATIONS FOR DIVORCE



(REVISED 5/01)

## HAMPSHIRE PROBATE AND FAMILY COURT



### GROUND FOR DIVORCE

When you file for divorce, you will need to choose a legal reason for the divorce which fits the facts of your situation. Legal reasons for divorce are called the "grounds for divorce."

There are two "no fault" grounds and seven "fault" grounds for divorce in Massachusetts. Most divorces in Massachusetts are filed under "no fault" grounds.

#### **"No Fault" Divorces**

A "no fault" divorce is a divorce in which the marriage is broken beyond repair but neither party wants to blame the other. The legal term for a "no fault" divorce is an irretrievable breakdown of the marriage." There are two ways to file a divorce based upon an irretrievable breakdown of the marriage. These are often referred to by the section of Massachusetts General Laws Chapter 208 in which they are found. They are as follows:

## **1A - Irretrievable Breakdown of the Marriage:**

In this type of divorce both parties participate in the filing of a document called a Joint Petition for Divorce, In order to file for this type of divorce, you must have reached an agreement as to all issues (for example, custody, visitation, child support, alimony, division of property and debts, and health insurance coverage.) This agreement is called a Separation Agreement (a sample Separation Agreement is available on the General Information Board located outside the Registry Office). When you file the Joint Petition for Divorce, you file your Separation Agreement (which each of you sign before a separate notary) and a document called an Affidavit of Irretrievable Breakdown of the Marriage. An "Affidavit of Irretrievable Breakdown" is a statement made under oath which states the reasons the marriage is irretrievably broken down and states whether or not there is any chance you will reconcile. You should list any efforts you have made at reconciliation in this Affidavit.

There are other documents required to be filed with the Joint Petition for Divorce. These documents will be provided to you in your Joint Petition packet which is available in the Registry Office.

As soon as all of the required documents are filed, the court will schedule a hearing before the judge.

See Sample A for an example of a Joint Petition for Divorce and an Affidavit of Irretrievable Breakdown of the Marriage.

## **1B- Irretrievable Breakdown of the Marriage**

In this type of divorce, one party files a document called a Complaint for Divorce claiming "irretrievable breakdown of the marriage." This type of no fault divorce is used where you do not have an agreement. It may be used if you are unable to reach an agreement as to all issues (for example, custody, visitation, child support, alimony, division of property and debts and health insurance coverage,) or if the other party does not agree that there is an irretrievable breakdown of the marriage. There is a six month waiting period before a final hearing on this type of divorce can be held.

A Separation Agreement and Affidavit are not required at the time of filing the Complaint for Divorce and you will be required to have a summons "served" (which means "delivered") on the other party by a sheriff.

There are other documents which must be filed with the Complaint for Divorce. These documents will be provided to you in your Complaint for Divorce packet which is available at the Registry Office.

See Sample B for an example of a Complaint for Divorce on the ground of an irretrievable breakdown of the marriage.

## "FAULT" GROUNDS FOR DIVORCE

There are seven "fault" grounds for divorce in Massachusetts. They are seldom used. They are as follows:

### CRUEL AND ABUSIVE TREATMENT

This is the most common "fault" ground for divorce in Massachusetts. In order to be divorced on this basis, you need to prove to the judge that your spouse did something which caused you harm. This ground for divorce is sometimes used in situations of domestic violence.

### UTTER DESERTION CONTINUED FOR ONE YEAR

In order to be divorced on this basis, you need to prove to the judge that your spouse left home voluntarily, that she or he has no intention of returning home and that she or he has not lived with you for a least one year prior to the date the complaint for divorce was filed.

*The following grounds are rarely used and may be complicated to file and difficult to prove. You should obtain legal advice if you are considering filing under any of these grounds.*

### SENTENCE OF CONFINEMENT IN A PENAL INSTITUTION

In order to be divorced on this basis you need to prove that your spouse has been sentenced to prison for life or for five years or more. This ground is based upon the length of the sentence, not the actual time spent in prison.

GROSS AND CONFIRMED HABITS OF INTOXICATION CAUSED  
BY VOLUNTARY AND EXCESSIVE USE OF INTOXICATING  
LIQUOR, OPIUM OR OTHER DRUGS

In order to be divorced on this basis you need to prove your spouse has voluntarily and excessively used drugs or alcohol in such a way that it has become a pattern.

GROSS OR WANTON AND CRUEL REFUSAL OR NEGLECT TO  
PROVIDE SUITABLE SUPPORT AND MAINTENANCE FOR THE  
OTHER SPOUSE

In order to be divorced on this basis you need to prove that your spouse has refused or neglected to provide support or maintenance for you and that she or he has the ability to provide said support

ADULTERY

In order to be divorced on this basis you need to show that your spouse had sexual intercourse during the marriage with someone other than you. You will have to prove that sexual intercourse occurred, which makes this a difficult ground on which to obtain a divorce.

IMPOTENCY

This ground is rarely used. In order to be divorced on this basis you need to prove that your spouse is incapable of having sexual intercourse.

***Deciding on a basis for your divorce can be very complicated. If you have questions about the grounds***

*for divorce and what you need to prove, you should seek legal advice from an attorney.*



THIS INFORMATION IS PROVIDED TO YOU AS A PUBLIC SERVICE AND DOES NOT CONSTITUTE LEGAL ADVICE. WHEN YOU SIGN A LEGAL DOCUMENT OR FILE ANY DOCUMENTS WITH THE COURT IT CAN SERIOUSLY AFFECT YOUR FUTURE. YOU SHOULD ALWAYS TRY TO GET LEGAL ADVICE BEFORE SIGNING ANY DOCUMENTS, FILING ANY DOCUMENTS WITH THE COURT OR APPEARING IN COURT.

Hampshire Division

Probate and Family Court Department

Docket No. \_\_\_\_\_

**Joint Petition For Divorce Under M.G.L. Ch. 208, Sec. 1A**

John M. Jones	and	Sarah K. Jones
_____		_____
Petitioner		Petitioner
of 440 Northwest Avenue		of 77 Thomas Street
_____		_____
(Street and No.)		(Street and No.)
Northampton, MA 01060		Northampton, MA 01060
_____		_____
(City or Town) (State) (zip)		(City or Town) (State) (ZIP)

- Now come the Husband and Wife in a joint petition for divorce pursuant to Massachusetts General Laws, Chapter 208, Sec. 1 A.
- The parties were lawfully married at Hadley, MA  
on 6/16/84 and last lived together at 77 Thomas St., Northampton, MA  
on January 1, 2000
- The minor child ren of this marriage and date(s) of birth is/are:  
John M. Jones, Jr. (d.o.b. 4-3-87)  
James K. Jones (d.o.b. 10-30-91)
- The parties certify that no previous action for divorce, annulment, affirmation of marriage, separate support, desertion, living apart for justifiable cause, or custody of child \_\_\_\_\_ has been brought by either party against the other except \_\_\_\_\_
- On or about January 1, 2000, an irretrievable breakdown of the marriage under M.G.L. Ch. 208, Sec. 1A occurred and continues to exist.
- Wherefore, the parties pray that the Court:
  - grant a divorce on the ground of irretrievable breakdown
  - approve the separation agreement executed by the parties
  - incorporate and merge said agreement executed by the parties
  - incorporate but not merge said agreement, which shall survive and remain as an independent contract
  - allow Wife to resume her former name of \_\_\_\_\_
  - \_\_\_\_\_

**SAMPLE**

Date January 23, 2001

Sarah K. Jones

\_\_\_\_\_  
SIGNATURE OF WIFE OR ATTORNEY

77 Thomas Street

\_\_\_\_\_  
(Print address if not pro so)

Northampton, MA 01060

John M.. Jones

\_\_\_\_\_  
SIGNATURE OF HUSBAND OR ATTORNEY

440 Northwest Avenue

\_\_\_\_\_  
(Print address if not pro so)

Northampton, MA 01060

Tel. No. (413) 586-0000

Tel. No. (413) 587-0000

B.B.O. # \_\_\_\_\_

B.B.O. # \_\_\_\_\_

**SAMPLE**

**SAMPLE - DO NOT USE**  
**THIS FORM FOR FILING**

COMMONWEALTH OF MASSACHUSETTS  
PROBATE AND FAMILY COURT  
HAMPSHIRE DIVISION

**SAMPLE**

Docket No. \_\_\_\_\_

John M. Jones  
Petitioner

and

AFFIDAVIT OF IRRETRIEVABLE BREAKDOWN

Sarah K. Jones  
Petitioner

I John M. Jones hereby affirm and state the following:

1. I was married to Sarah K. Jones on 6-16-84

2. I believe that our marriage has irretrievably broken down and that there is no possibility of reconciliation for the following reasons: On January 1, 2000 we separated. For approximately 3 years prior to our separation our marriage progressively broke down. We developed an inability to communicate. We no longer share joint interests. We participated in marriage counseling for approximately 2 years. During our counseling we concluded that our marriage was irretrievably broken down and that there was no chance of reconciliation.

**SAMPLE**

Signed under the pains and penalties of perjury.

1/23/01  
Date

John M. Jones  
Signature

**SAMPLE**

**SAMPLE - DO NOT USE**  
**THIS FORM FOR FILING**

COMMONWEALTH OF MASSACHUSETTS  
PROBATE AND FAMILY COURT  
HAMPSHIRE DIVISION

**SAMPLE**

Docket No. \_\_\_\_\_

John M. Jones  
Petitioner

and

AFFIDAVIT OF IRRETRIEVABLE BREAKDOWN

Sarah K. Jones  
Petitioner

I Sara K. Jones hereby affirm and state the following:

1. I was married to John M. Jones on 6-16-84

2. I believe that our marriage has irretrievably broken down and that there is no possibility of reconciliation for the following reasons: On January 1, 2000 we separated. For approximately 3 years prior to our separation our marriage progressively broke down. We developed an inability to communicate. We no longer share joint interests. We participated in marriage counseling for approximately 2 years. During our counseling we concluded that our marriage was irretrievably broken down and that there was no chance of reconciliation.

**SAMPLE**

Signed under the pains and penalties of perjury.

1/23/01  
Date

Sara K. Jones  
Signature

**SAMPLE**

**SAMPLE - DO NOT USE  
THIS FORM FOR FILING**

**Commonwealth of Massachusetts  
The Trial Court**

Hampshire Division

Probate and Family Court Department

Docket No. \_\_\_\_\_

**Complaint For Divorce**

**SAMPLE**  
John M. Jones \_\_\_\_\_, Plaintiff  
v.  
Sarah K. Jones \_\_\_\_\_, Defendant

1. Plaintiff, who resides at 440 Northwest Ave., Northampton, Hampshire County, MA 01060  
(Street and No.) (City or Town) (County) (state) (zip)

was lawfully married to the defendant who now resides at 77 Thomas Street  
(Street and No.)

Northampton Hampshire MA 01060  
(City or Town) (County) (State) (ZIP)

2. The parties were married at Hadley, MA on 6-16-84  
and last lived together at 77 Thomas St., Northampton, MA on 1-1-00

3. The minor child ren of this marriage, and date(s) of birth is/are:

John Jones, Jr. (d.o.b. 4-3-87) **SAMPLE**

James Jones (d.o.b. 10-30-91)

4. Plaintiff certifies that no previous action for divorce, annulling or affirming marriage, separate support, desertion, living apart for justifiable cause, or custody of child \_\_\_\_\_ has been brought by either party against the other except:

5. On or about January 1, 2000, ~~the defendant~~ an irretrievable  
breakdown of the marriage under Massachusetts General Laws Ch. 208 s. 1B occurred  
and continues to exist.

6. Wherefore, plaintiff requests that the Court:

grant a divorce for irretrievable breakdown of the marriage

prohibit defendant from imposing any restraint on plaintiff's personal liberty

grant him/her custody of the above-named child \_\_\_\_\_

order a suitable amount for support of the plaintiff and said minor child \_\_\_\_\_

order conveyance of the real estate located at \_\_\_\_\_

\_\_\_\_\_ standing in the name of \_\_\_\_\_

\_\_\_\_\_ as recorded with \_\_\_\_\_

Registry of Deeds, Book \_\_\_\_\_ Page \_\_\_\_\_

allow plaintiff to resume her former name of \_\_\_\_\_

\_\_\_\_\_

Date January 23, 2001

John M. Jones

Signature of Attorney or Plaintiff, if pro se

Print name and address John M. Jones

440 Northwest Avenue, Northampton, MA 01060

Tel. No. (413) 587-0000 B.B.O. # \_\_\_\_\_

**SAMPLE**