



**ASIAN TASK FORCE**  
Against Domestic Violence

**Family Law**  
**Frequently Asked Questions**

**Legal Advocacy Program**

24-hour multilingual helpline

**(617) 338-2355**

[www.atask.org](http://www.atask.org)



# **Legal Advocacy Program**

Our Legal Advocacy Program strives to fill a critical gap in free legal services to victims of domestic violence and sexual assault of Asian or Asian-American heritage.

Started in 2009, we have been providing holistic multi-lingual and multi-cultural legal advocacy, representation, and counseling to ATASK clients to help secure their legal rights to become safe and independent individuals, freeing them from patterns of power and control used by abusers.

Our history of collaboration with community-based organizations, law schools, legal services and pro bono attorneys mean that we work diligently to ensure that no survivor is turned away without legal representation, strategic assistance, guidance, or a successful referral.

Disclaimer: The content of this page is for limited informational purposes only and is not legal advice. Before you decide on any course of action, ATASK strongly encourages you to seek the advice of a Massachusetts lawyer to help you analyze your unique and specific situation to find a solution best tailored to your needs.

# How can I get a divorce?

**First step** is to file a Complaint for Divorce in the Massachusetts county where you resided with your spouse, if your spouse still resides in that same county. Otherwise, you must file for divorce in the Massachusetts county you presently reside.

**If you and your spouse agree** to all issues related to the divorce, then you may file a Joint Petition for Divorce and a Divorce Agreement.

**If your spouse does not agree** to the divorce or the terms of the divorce, you can file your own Complaint for Divorce.

You must choose a basis, or “grounds” for the divorce:

**“No-fault” divorce** is preferable for most divorces. You do not have to state a reason for the divorce. This generally reduces time and anxiety, and does not require any testimony to prove the reason.

**“Fault” divorce** requires that you prove to the judge that your spouse caused the marital breakdown based on one of the official reasons, or “grounds” for divorce. Common grounds are cruel & abusive treatment, utter desertion for one year, adultery or habitual intoxication, among others.

## Common Divorce Issues:

Child custody, parenting plan (visitation), child and/or spousal financial support, division of marital assets (property) and debts.

\*\*Seeking a divorce based on fault may extend the length of the divorce process, but does not always make a material impact on the outcome of the divorce.\*\*

## Will a divorce harm my immigration status?

**Note:** This is for information purposes only. Always consult a reputable attorney. The guidelines below are general only and may not be applicable to your unique situation.

If both you and your spouse are U.S. citizens or lawful permanent residents, generally your divorce will not have any negative immigration consequences.

If you and your spouse are both undocumented, you can also divorce without negative consequences. If your spouse later obtains legal status, his or her status will not affect your status.

If your spouse is US citizen or permanent resident and you are not, a divorce may have an impact on your immigration status if your spouse petitioned for you to be in the US.

If you are in the US based on your spouse's temporary work, student or research visa, divorce may impact your lawful stay in the US.

See *Immigration FAQs*.

---

## Are there alternatives to divorce?

An **Annulment Complaint** is used to void the marriage as if the couple was never married. A court will void a marriage if **1)** the spouses are too closely related either by blood or marriage, or **2)** either spouse was legally married to another at the time of marriage. A court may annul a marriage if there is sufficient proof of fraud, duress/coercion, or lack of mental capacity at the time of marriage.

A **Separate Support Complaint** can be used when you do not want to end the marriage yet but you need a custody or support order. You are also free to separate and live apart from your spouse without having to go through any formal process in court.

**Mediation** is an alternative to the adversarial divorce process, and can save money. Here, one lawyer helps the couple come to an agreement on all the issues and drafts a mutually acceptable divorce agreement, but does not represent either party. This option is suitable only for couples who have equal power in the marriage.

## Will I lose my children in the divorce?

Abusers will often threaten their victims by saying that the victim will lose the children and never see them again. However, the reality is that most parents do not “lose” their children. Instead, Massachusetts courts often use “parenting time” to describe the changes in physical custody.

---

In Massachusetts, there are two types of custody:

**Physical custody** is the right to have your child primarily reside with you. Frequently, the term “parenting time” is used in place of “physical custody” and will describe the weekly schedule each parent has with the child.

**Legal custody** is the right to make major decisions affecting your child’s religious, spiritual, education, or medical welfare.

If you and your spouse disagree on custody, the judge will base its decision on the “best interests” of the child(ren). The judge will weigh many factors such as current health and stability of each parent and the child, existence of a pattern of physical abuse or alcohol abuse or neglect, and whether one parent has been the sole or primary caretaker. In almost all cases, both parents, including the abusive partner, will have some parenting time with the child/ren, even if it must be supervised for the child’s safety.

**If you are married, and there is no specific custody order**, then both parents share physical and legal custody.

**If you are *not* married, and there is no specific custody order**, then the mother has sole physical and legal custody.

In cases of proven extreme danger or criminal abuse by one parent, the court may temporarily suspend parenting time or permanently terminate parental rights of the dangerous parent.

If you are in fear of your spouse fleeing with your child out of the state or country, you may request that the court address this issue and implement precautions such as taking custody of the child’s passport, or supervised visitation.

## Can I keep my child(ren) if I am not a permanent resident or citizen?

Even if you have no immigration status, you technically still have the same custody rights as a US citizen. The child's "best interests" standard and other laws governing custody and parenting rights are the same whether you are undocumented or a US citizen. The judge will make a decision based on what is in the best interests of the child no matter the immigration status of the parents.

However, if you are undocumented, your spouse may raise concerns about kidnapping, deportation and returning to your home country with your child that the judge may address.

---

## Will I receive financial support from my spouse?

**Child Support** : If you have physical custody or the majority of the parenting time, then your spouse has a *legal obligation* to pay you child support payments, even if s/he does not work or see the child. This child support payment is based on a set formula required by the state, though the judge has discretion to vary the amount.

If you have shared physical custody or your parenting time is equal, then the parent with the higher income may be required to pay an adjusted child support to the lower-income parent.

**Spousal Support** : Whether you are awarded alimony or spousal support payments depends on many factors including but not limited to the parties' ages, education, income and earning power, and history of work inside / outside of the home of each spouse.

The amount and duration of any ordered spousal support depends on the length of the marriage and partnership, the need of the receiving spouse and the ability to pay of the giving spouse.

## What happens to our marital house, checking accounts, and other assets and debts?

You and your spouse can decide by agreement how your marital assets and debts will be divided and who will live in the family home. The court will likely approve such a voluntary and reasonable agreement is reached.

However, if you and your ex-spouse are unable to agree, the court will make these decisions for you at trial. All property, individually or jointly owned during the marriage is considered marital property subject to equitable (fair) division. The court considers a variety of factors to make an equitable division: length of the marriage, how and when the property was acquired, conduct of the parties during the marriage, amount and sources of income, employability, needs of party, needs of the dependent child(ren) of the marriage, each party's contribution in obtaining or maintaining the property, among others.

Your immigration status does not affect your ownership rights in marital property and assets. <sup>5</sup>



**Note:** This is for information purposes only. Always consult a reputable attorney. The guidelines below are general only and may not be applicable to your unique situation.

# Sources

---

1 You may find the up-to-date complaint forms on the Massachusetts Court System website: <http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/forms.html#divorce>.

<http://www.masslegalhelp.org/children-and-families/divorce-separation-basic-info>

2 <http://www.masslegalhelp.org/children-and-families/child-custody-and-visitation>; <http://www.masslegalhelp.org/children-and-families/chapter6-custody>; <http://www.masslegalhelp.org/domestic-violence/wdvgfh8/can-visitation-be-safe>

3 <http://www.masslegalservices.org/system/files/Chapter+11+Final.pdf>

4 <http://www.masslegalhelp.org/children-and-families/divorce-separation-basic-info>

5 <http://www.masslegalhelp.org/children-and-families/chapter8->

# Need more help?

---

**In an emergency please call 911**

Safelink .....	1-877-785-2020
.....	1-877-521-2601
Greater Boston Legal Services .....	617-371-1234
.....	800-323-3205
Legal Advocacy and Resource Center, Inc.....	617-603-1700
.....	800-345-5297
Metro West Legal Services .....	508-620-1830
.....	800-696-1501
Northeast Legal Aid .....	978-458-1465
.....	800-336-2262
National Lawyers Guild .....	617-227-7008
Boston Bar Association Lawyer Referral Service ...	617-742-0625
.....	800-552-7046
Massachusetts Bar Association .....	617-654-0400
.....	866-627-7577

**ATASK** is a domestic violence (DV) agency for pan-Asian victims and survivors in New England, serving clients in 14 Asian languages. Our mission is to prevent domestic violence in Asian families and communities and to provide hope to survivors.

**Boston:**

P.O Box 120108  
Boston, MA 02112  
Tel: (617) 338-2350  
Fax: (617) 338-2354

**Lowell:**

P.O Box 7259  
Lowell, MA 01853  
Tel: (978) 454-3651  
Fax: (978) 937-2355

24-hour multilingual  
domestic violence helpline  
**(617) 338-2355**

Bangla  
Vietnamese  
Cantonese; Mandarin  
Taiwanese  
Indonesian  
Hindi  
Nepali  
Urdu

Thai  
Tagalog (Filipino)  
Mien  
Khmer (Cambodian)  
Japanese  
Korean  
Manipuri

*\*This project was supported by Grant No.2014-WL-AX-0036 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.*