

SPECIAL REPORT
For Single Parents in Massachusetts

**7 Reasons You Might Deserve a
Modification to Your Court Agreement**
(and how to find out if you do)



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Many people walk away from a divorce or separation feeling like they got the short end of the stick. Fortunately, Massachusetts judges don't always expect court orders or separation agreements to last forever.

When there's been a significant change in circumstances, either for you or your former spouse, you can file a Complaint for Modification and a judge can adjust its recent orders.

So, what represents a "significant change"? Well, it varies from case to case. Courts modify existing orders if you can show a "substantial change in circumstances."

Whatever your particular reason, you can seek a change – either of the amount of support ordered to pay, the parenting plan or anything under the court's control, but you must go through the proper channels.

If you haven't been granted a modification in a Massachusetts court, any verbal agreement between you and your former spouse is completely unenforceable. By filing a Complaint for Modification, if you prevail, you ensure your agreement is legally binding and, therefore, enforceable by the Court.

The Special Report you're about to read contains the most common reasons divorced Massachusetts residents have sought a modification to their court agreement.

As you nod your head to one or more of these reasons, call me to schedule your no-obligation consultation with me or any of the divorce lawyers or family law attorneys at our firm. We'll review your agreement and give you an explanation of your legal options.



Irwin M. Pollack
Founder, The Massachusetts Family Law Group

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Modification Reason #1: Child Support

Your former spouse (or your child's parent) is earning large bonuses or making more money than he or she was when you first split up.

If you're receiving child support, this might mean that you could ask the court for additional child support. Your children should benefit from the family's improved circumstances. Maybe it means you can buy them the "better" back-to-school clothes or that you can afford the new home you've been looking at if your monthly support increased by a few hundred dollars. An increase in support would mean you'd be able to better provide for your children's day-to-day needs.

On the other hand, if you're paying child support, this could mean a decrease in support payments for you. If your former spouse is making more money than he or she was when you first split, by law, he or she should be making a larger contribution to your children's financial needs. This might mean a reprieve for you financially without any discernible change in your children's circumstances.

Finally, you should be aware that the newest Massachusetts Child Support Guidelines (effective 1/1/09) allow for an automatic review of child support should the most recent order be more than three years old. The increase is not automatic however. You must petition the courts to review it.



Modification Reason #2: The Kids

Your children have outgrown the original Parenting Plan, or their “best interests” are no longer being met and adjustments are needed in the parenting schedule.

When children are young, they need safety and stability. As they grow older, they will need more flexibility to accommodate their busy lives. Plus, as they get older, they’ll likely have opinions of their own on how and where they want to spend their time. The best interests of the children may be better served now with a more traditional, structured schedule. The children might benefit from fewer transitions during the week, allowing them more time for a focus on homework and thriving in school. Or, consider that the original Parenting Plan called for the children to spend school vacation with the non-custodial parent, but now they have school projects or extra-curriculars during vacation. If you’re the non-custodial parent, you probably want to be supportive of your child’s activities, but you also want to spend time with him or her. It may be time for a new Parenting Plan that takes into account the new realities of your child’s life.



Modification Reason #3: The Home

The marital home has been sold.

As it relates to spousal support (commonly referred to as “alimony”), the court will make an order based on: 1. the need of one spouse, and 2. the other spouse’s ability to meet that need. Prior to the marital home being sold, the support order took into account the expenses associated with the house the payee spouse was living in when you got divorced. Now that the home has been sold, it may be time to reconsider that party’s real need. You may have a reason to petition the court for a decrease in spousal support or alimony.



Modification Reason #4: Health Issues

You suspect your child's other parent has an alcoholism or addiction problem, or a serious health issue.

If you suspect that your former partner has an alcohol or addiction problem, you probably don't want your children spending long periods of unsupervised time with him or her. If the safety and proper care of your children is being neglected, you may have a reason to petition the court to modify your custody arrangement.



Modification Reason #5: Underemployment

You suspect your former spouse is unemployed, not contributing financially to the level that he or she should be, or underemployed — working a lower-paying job to avoid paying higher child support or alimony.

Massachusetts Child Support Guidelines stipulate that both parents contribute financially for their children. Moreover, as discussed in Reason #3, judges calculate alimony awards based on one party's need and the other party's ability to pay.

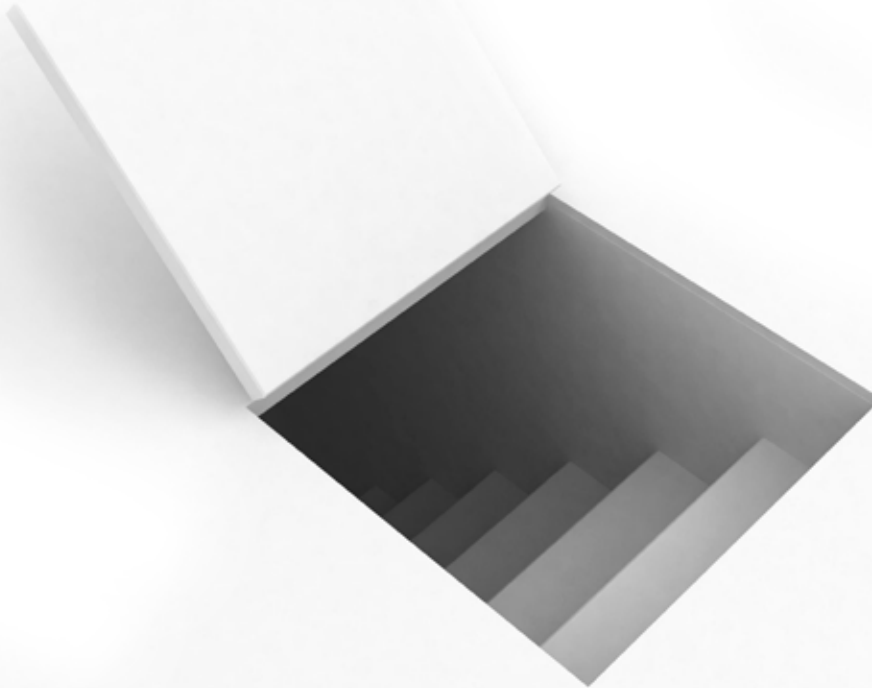
The court has measures in place to prevent one party from taking a lower-paying job to avoid their obligation to pay. In cases such as these, the court looks at that person's earning capacity rather than their actual income to determine their ability to pay. For example, say your former spouse was an engineer earning \$70,000, but has taken an entry-level technical job for \$30,000. The court will likely attribute income to that person equivalent to what they could make as an engineer. If a person has taken a job that pays less than what he or she could reasonably earn, the courts can calculate the support amount based on a higher figure.



Modification Reason #6: Relocation

Either you or your children's mother or father has relocated, or moved far away and it's affecting the parenting schedule.

One of you has remarried or taken a new job that requires that person to relocate. When you first split up, you both lived a short distance from the Mass Pike, but now one of you has moved closer to the Cape than Western Mass and it's affecting how often you can see your children. A mid-week dinner with the kids doesn't fit the "best interest" of the children (like it once did). A new Parenting Plan that takes into account not only time, but also transportation responsibilities, is likely in order.



Modification Reason #7: Hiding Assets

Your former spouse is self-employed or the owner of a businesses and they're making much more money than they're reporting.

Your former spouse is self-employed. You have a good idea that they're making a lot more than they're telling you, but you have no way to prove it. Using the most basic forms of discovery, including requests for documents, subpoenas and others, you can get to the bottom of the income issue and get a clear picture of what level of support you deserve.