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Divorcing Couples **The Law and Your Proposed Agreement**

During the divorce mediation process you will be discussing and determining issues relating to 1) a child parenting plan, 2) child support, 3) division of assets and liabilities, and 4) spousal support. Each of these issues have many sub issues which may or may not be applicable to your situation. We hope that you and your spouse will be able to resolve all applicable issues by agreement.

The following paragraphs are intended to give you a brief sketch of Massachusetts divorce law and a general idea of what the Probate Court could or might do if these issues are decided by a judge rather than by an agreement. Of course, consultation with your attorney is essential to understanding how the law applies to your specific case.

1. **Parenting Plans:** There are any number of ways to successfully parent during and after a divorce. In developing a parenting plan you must be aware that divorce does affect children in a variety of ways regardless of the parents' efforts and cooperation. You can minimize these affects by remembering that parenting plans should be about the children's best interest and not about control, having equal time or winning. You know your children better than anyone, and together you are the best judges of their needs and appropriate parenting schedules. Those schedules may include not only periods of time the children should be with each parent but may also include specific activities for which each parent will be responsible. The plan may also specify how and by whom certain decisions concerning the children are to be made. You may provide for a periodic review of your parenting plan to meet the changing needs of your children as they grow older. An agreed-upon parenting plan that you consider healthy for your children and acceptable to both of you will most likely be approved by the court.

In the event that you cannot agree on a parenting plan, the court is likely to award physical custody of the children to one of you and establish a strict visitation schedule. That schedule may include a portion of weekends, holidays and school vacations in a variety of patterns depending upon the age of the children, the needs of the children, the relationship of each parent with the children, the ability of the parents to communicate with each other and the living situation and life style of each parent. However, a court-imposed custody/visitation plan will probably be less flexible than an agreed-upon plan and less likely to meet the needs and desires of the children and parents.

2. **Child Support:** Child Support Guidelines in effect in Massachusetts generally define the percentage of gross income which the non-custodial parent would be ordered to pay the other towards the ordinary costs of raising children. The income of both parents is used in calculating the amount of child support pursuant to the Guidelines. A formula is available for you to make your own calculations. The relationship of payments to



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extraordinary expenses such as day care, private school, psychotherapy and college has to be carefully examined in each case, as well as the income tax effects.

3. Marital Property: Under Massachusetts law (G.L. c. 203, section 34), the court “may assign to either the husband or the wife all or any part of the estate of the other.” This law authorizes a judge, based on various factors, such as the length of the marriage, amount and source of income, opportunity for future income and acquisition of assets, the parties' health and ages and the needs of minor children of the marriage, to treat all the property owned by you and your spouse as “marital property” to be divided between the two of you as the judge considers equitable. While a judge may preserve the ownership of property which was yours or your spouse's before the marriage or inherited by one of you during the marriage, there is ample precedent for a judge to award some or all of the property to the other person.

Marital property (property available for division by the Probate Court) is all property, including real estate and personal property, owned by you and your spouse no matter when or how acquired or how owned. Personal property includes tangible property such as household furniture and furnishings and intangible property such as bank accounts, investment accounts (stock and bonds), pension and retirement plans and businesses. We encourage you to resolve, as much as possible, the division of tangible property by allocating to each other the items most important to each of you and as may be desirable because of minor children.

4. Alimony: It is difficult to predict whether alimony will be required in a situation where child support is required and, if required, how much and for how long. In most situations there is not enough property and/or income to allow parties living apart to live as well as they did while living together. In approaching this dilemma most judges will require the financially stronger person to pay support to the other. The amount to be paid and the length of payments are controlled by the same factors which control the division of assets mentioned above. However, the most important factors appear to be need and ability to pay.

Tax Consequences of the Divorce: Money paid periodically by one spouse as alimony for the support of the other is generally deductible by the paying spouse and taxable to the receiving spouse. Child support payments to the parent with whom the child is living are not deductible to the paying parent and not taxable to the receiving parent. The tax exemption for a child is available to the parent with whom the child lives unless otherwise agreed or ordered by the court. The divorced parent with whom a child is living can usually claim the advantageous tax status of “head of household”. Property transferred from one spouse to the other will generally not result in a capital gains tax at the time of transfer, but may cause the receiving spouse to incur a greater capital gains tax when and if she or he sells the property to a third person. The application of these and other complex provisions of the Internal Revenue Code to your divorce will probably have a significant effect on your finances following the divorce. Consultation with your tax consultant may be advisable depending upon your situation.