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**ABUSE PREVENTION ORDERS, HARASSMENT PREVENTION ORDERS, AND ORDER TO
VACATE THE MARITAL HOME**
by Susan C. Ryan, Esq.

Pursuant to M.G.L. Ch. 209A, abuse prevention orders may be obtained when an individual is suffering from abuse or has suffered from abuse. The abuse may be from a family or household member attempting to cause or causing physical harm, or placing another in fear of imminent serious physical harm, or causing another to engage involuntarily in sexual relations by force, threat, or duress.

Family or household members are those who are or were married to one another, or who are residing together in the same household, or are or were related by blood or marriage, or have a child in common, or they are or have been in a substantive dating relationship.

If there is a substantial likelihood of immediate danger of abuse, an individual may obtain an ex parte order, that is an order from the court without notice to the other party. In order to obtain such an order, an individual must go to the court and complete the application for a restraining order, including but not limited to an Affidavit outlining the abuse that he or she has suffered, the types of abuse, and when such abuse occurred. After an ex parte hearing, a judge will either issue the restraining order, and/or deny the order. If the judge enters an abuse prevention order, the order may be for a limited period of time, to allow the other party, the Defendant, with notice and opportunity to be heard in court on the merits of the complaint. The court will likely establish a return date within a week to ten days, with a copy of the order to be served on the Defendant by the appropriate police department. The restraining order may provide a variety of relief, including orders to not contact the Plaintiff, not abuse the Plaintiff, to remain away from the Plaintiff's residence and/or to remain away from the Plaintiff's workplace. The order may also award temporary custody of minor children to the Plaintiff, and order the Defendant to pay temporary support for the Plaintiff and child(ren). It is likely that the restraining order will also contain language ordering the Defendant to surrender any and all firearms, gun licenses, and FID cards in his or her possession.

An individual may always obtain a restraining order/abuse prevention order from the courts when the court is in session. However, it is important to know that such abuse prevention orders may also be obtained after hours, on weekends, and on holidays through the police department. Therefore, if an individual feels the need for an emergency ex party order during times when the court is not open, the police department is able to obtain a restraining order

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granted by a judge on call. In the event that an individual obtains a restraining order at night or on the weekend from the on call or duty judge, it is likely that he or she will be required to appear in court on the next date that the court is open.

Divorce and separate support matters are routinely heard in the Probate Court. These matters are often contentious and highly litigated. Sometimes, individuals need to have some protection from the other party, but the facts do not qualify for an abuse prevention order. It may be that a Plaintiff feels that his or her health, safety, or welfare, as well as the health, safety, welfare of the minor children are in danger. If that is the case, and there is a divorce or separate support action pending in the Probate Court, an individual may request an order that the other party vacate the marital home. The order to vacate may also be obtained ex parte, without notice to the other party, if the court finds, after a hearing, that the Plaintiff would be endangered or substantially impaired by a failure to enter an order to vacate. While an abuse prevention order may be entered for any period of time, such as a month, three months, six months, or a year, an order to vacate a marital home may be entered for a maximum of ninety (90) days. It may be renewed after that period of time. The Defendant will receive notice of the motion to vacate and will have the opportunity to contest the continuation of the temporary order. In the event that a Defendant fails to comply with either the abuse prevention order or the order to vacate the marital home, such actions may be determined to be a criminal violation.

M.G.L. Ch. 258E is a recently enacted statute allowing a complaint to prevent harassment. These orders are available in the district court, in the juvenile court (if both parties are under the age of seventeen (17)), and in the Superior Court. An individual who is suffering harassment, may file a complaint for protection from harassment, and an affidavit with the court, outlining the harassment that he or she has experienced. Harassment is defined as: three or more acts, each aimed at a specific person, and each act willful and malicious, done with the intent to cause fear, intimidation, abuse, or property damage, and that each act did in fact cause fear, intimidation, abuse, or property damage; or one act that "by force, threat or duress causes another to involuntarily engage in sexual relations"; or one act that constitutes criminal stalking, drugging for sexual intercourse, indecent assault and battery, or such other acts as listed within the statute.

The Harassment Prevention Order provides relief to those ineligible for a 209A restraining order. Individuals now are able to obtain the protection they need by attaining such an order, a restraining order, or a motion to vacate.

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