

IT'S THE LAW



Alimony

By Diana I. Sorrentini-Velez, Esq.

Like marriage, no two divorces are identical. Whether the separation is straightforward and amicable or lengthy and contentious, most divorces utilize some sort of support, in the form of either child support or alimony.

Alimony, also known as spousal support, varies from child support in several ways. For example, alimony is tax deductible for the spouse who pays it and becomes taxable income to the spouse who receives it. Perhaps the most important distinction between child support and alimony is the actual determination of who gets alimony, and the amount of such payment. While the amount of child support is most often determined by using the Child Support Guidelines, the determination of whether or not a spouse receives alimony, and the amount received varies depending on various factors. While most Judges try to strike a balance between the recipient's needs and the payor's ability to pay, each individual Judge will use a different set of guidelines to come up with the specific amount.

The first determination that must be made is whether or not an award of alimony is reasonable. The length of a marriage is the most critical factor a Court considers when determining whether to award alimony. Long-term marriages, generally classified as a marriage of 15 years or more, have more success with getting an award of alimony. Once the Court has determined whether or not alimony is reasonable, the next step is to determine the amount of such an award.

There are many factors the Court may consider when determining the amount of alimony. The amount each party makes and the employability of each party is one of the first factors the Court may consider. If the parties make similar incomes, then alimony may not be awarded, despite the length of the marriage. If one party is making a lower income than he or she should be making, the Judge can consider the amount that party would be making if they were working to their highest potential and make an alimony determination based on that higher income. For example, a person who is employed well below their ability, a Ph.D. working a minimum wage job, cannot hide behind their employment.

The Court will consider the roles each party played during the marriage when determining how much alimony to award. For example, a woman who has been a stay-at-home Mom for 20 years and has not furthered her education beyond high school, does not have many employment opportunities available to her. The Court

will consider the fact because she was a stay-at-home Mom, her husband was able to work longer hours and advance in his career. She is, therefore, likely to receive compensation in alimony payments to care for her after the divorce.

The Court may also consider the age and health of the parties, the liabilities of the parties, the estates of the parties, the financial conduct or misconduct of the parties during the marriage, and the opportunity of each party to acquire future assets. None of these factors are determinative of whether or not alimony is reasonable, but are used as a whole when determining the amount of the alimony award.

The Court does not have the ability to limit the term of alimony. In other words, if the Court makes the determination after trial that alimony is reasonable and awards a certain amount, that alimony will continue until the death of either spouse or the remarriage of the recipient spouse. These payments can be modified over time, if either party's financial status changes significantly.

If the parties can agree on the terms of their divorce, and a trial is not necessary, one party can offer a higher percentage of marital assets as "buy out" of alimony. The parties can also agree to limit alimony to a term of years, as opposed to life time alimony. The Court will generally approve any Agreement so long as both parties have entered into such Agreement willingly, voluntarily and with a full understanding of the consequences contained therein.

Alimony ensures that after a long term marriage one party cannot escape his or her responsibility to care and reasonably support the other spouse, even after the marriage ends. It is imperative to know your rights with regard to alimony and consult with an attorney who can explain the gamut of alimony scenarios and help with your decision-making process.

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