



ALIMONY REFORM ACT OF 2011:

THE TIMES THEY ARE A-CHANGING ...

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ALIMONY REFORM ACT

- ☪ Act approved by Governor on September 26, 2011
- ☪ Effective date of new law – March 1, 2012

OVERVIEW OF MAJOR CHANGES

- ☪ Separate categories with clear definitions and set durational limits
- ☪ Specific considerations established for setting form, amount and duration of alimony
- ☪ Termination of alimony at payor's retirement
- ☪ Cohabitation of recipient suspends, reduces or terminates alimony
- ☪ Phase-in time structure for modification of existing alimony awards

SEPARATE ALIMONY CATEGORIES

- ⌘ General Term Alimony
- ⌘ Rehabilitative Alimony
- ⌘ Reimbursement Alimony
- ⌘ Transitional Alimony

GENERAL TERM ALIMONY

- ⌚ Periodic payment of support to a recipient spouse who is economically dependent
- ⌚ Terminates on remarriage of recipient or death of either spouse
- ⌚ Unless there are circumstances warranting deviation, amount generally should not exceed the recipient's "need" or 30-35% of difference between the parties' gross incomes

GENERAL TERM ALIMONY AND DURATIONAL LIMITS

- ⌘ Married 5 years or less
 - Up to one-half the number of months of the marriage
- ⌘ Married more than 5 years but less than 10
 - No more than 60% of the number of months of the marriage
- ⌘ Married more than 10 years but less than 15
 - No more than 70% of the number of months of the marriage
- ⌘ Married more than 15 years but less than 20
 - No more than 80% of the number of months of the marriage
- ⌘ Married more than 20 years
 - At the Court's discretion

DEFINITION OF DURATION

- ⌘ Duration of the marriage equals the number of months from the legal date of marriage to the date of service of a complaint or petition for divorce or separate support duly filed in a Court
 - The Court has discretion to increase the duration of marriage when the parties' economic marital partnership began during their cohabitation period prior to the marriage

GENERAL TERM ALIMONY AND COHABITATION

- ⌘ Alimony shall be suspended, reduced or terminated upon the cohabitation of the recipient spouse when the payor shows that the recipient has maintained a common household with another person for more than 3 months
- ⌘ Common household means to share primary residence together; the Court may consider factors including:

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GENERAL TERM ALIMONY AND COHABITATION (cont.)

- ⌘ Oral or written statements and representations made to third parties regarding relationship
- ⌘ Economic interdependence of the couple or economic dependence of one party on the other
- ⌘ Parties engaged in conduct and collaborative roles in furtherance of life together
- ⌘ Benefit in the life of either or both parties from relationship
- ⌘ Community reputation of parties as a couple

GENERAL TERM ALIMONY AND RETIREMENT

- ⌘ Alimony shall terminate upon the payor attaining full retirement age, which means the usual or ordinary retirement age for United States old-age security benefits
- ⌘ Payor's ability to work beyond this age is not a reason to extend alimony, though:
 - Initial alimony judgment: Court may deviate and set different termination date “for good cause shown,” with written findings
 - Modification: Court may extend alimony “for good cause shown” based on post-divorce material change of circumstance proven by “clear and convincing evidence,” with written findings

REHABILITATIVE ALIMONY

- ⌘ Periodic payment of support to a recipient spouse who is expected to become economically self-sufficient by a predicted time tied to an event (such as becoming reemployed, completing job training, receiving sum due from payor spouse under judgment)
- ⌘ Rehabilitative alimony terminates upon remarriage of recipient, the occurrence of a specific event in future, or death of either spouse

REHABILITATIVE ALIMONY (cont.)

- ⌘ Initial alimony judgment: shall not be for longer than 5 years

- ⌘ Modification: term may be extended if the following three factors can be proven:
 - Unforeseen events prevent the recipient spouse from becoming self-supporting;
 - The Court finds the recipient tried to become self-supporting; and
 - The payor has continuing ability to pay with no undue burden

REHABILITATIVE ALIMONY (cont.)

- ⌘ Unless there are circumstances warranting deviation, amount generally should not exceed the recipient's "need" or 30-35% of difference between the parties' gross incomes
- ⌘ Court may modify amount during period of rehabilitation based on material change of circumstances

REIMBURSEMENT ALIMONY

- ⌘ Periodic or one-time payment of support to a recipient spouse after a marriage of not more than 5 years and for the purpose of compensating the recipient for economic or non-economic contribution to the financial resources of the payor spouse, such as enabling the payor spouse to complete an education or job training
- ⌘ May not be modified
- ⌘ Act specifically states that income guidelines shall not apply

TRANSITIONAL ALIMONY

- ⌘ Periodic or one-time payment of support to a recipient spouse after a marriage of not more than 5 years and for the purpose of transitioning the recipient to an adjusted lifestyle or location as a result of the divorce
- ⌘ Shall not be for longer than 3 years from the date of the parties' divorce
- ⌘ Shall terminate upon the death of the recipient or a date certain
- ⌘ May not be modified, extended or replaced by another form of alimony

CONSIDERATIONS FOR SETTING THE FORM, AMOUNT AND DURATION OF ALIMONY

☪ The Court shall consider:

- Length of the marriage
- Age of the parties
- Health of the parties
- The parties' income
- Employment and employability of the parties, including job obtained through due diligence or with additional training
- Economic and non-economic contribution to the marriage
- Marital lifestyle
- Ability of each party to maintain the marital lifestyle
- Lost economic opportunity as a result of the marriage
- Other factors the Court may deem relevant and material

INCOME FOR PURPOSES OF CALCULATING ALIMONY

☪ Excluded from income:

- Capital gain income, dividend income and interest income which derives from assets divided between the parties under G. L. c. 208, § 34
- Gross income which the Court has already considered for setting a child support order

☪ Otherwise, income is as defined in Child Support Guidelines

DEVIATION FROM DURATIONAL AND AMOUNT LIMITS OF ALIMONY

⌘ Grounds for deviation include:

- Advanced age
- Chronic illness
- Unusual health circumstances of either party
- Tax considerations
- Whether payor spouse is providing health insurance and the cost of health insurance for the recipient spouse
- Whether payor spouse has been ordered to secure life insurance and the cost of such insurance

DEVIATION (cont.)

- Sources and amounts of unearned income (but not including capital gains, interest and dividends, annuity and investment income from assets allocated in the divorce)
- Significant premarital cohabitation that included economic partnership and/or marital separation of significant duration
- Inability of a party to provide for his or her own support because of:
 - ⦿ The other party's physical or mental abuse
 - ⦿ Deficiency of property, maintenance or employment opportunity
- Any other factor the Court deems relevant and material, based upon written findings

MISCELLANEOUS PROVISIONS

- ⌘ The Court may attribute income to a party who is unemployed or underemployed

- ⌘ If the Court orders alimony concurrent with or after a child support order, the combined duration of alimony and child support shall not exceed the longer of:
 - The alimony duration available at the time of divorce; or
 - Rehabilitative alimony commencing upon the termination of child support

MORE MISCELLANEOUS PROVISIONS

- ⌚ If the payor spouse remarries, the income and assets of the new spouse shall not be considered in the redetermination of alimony in a modification action

- ⌚ No alimony for recipient spouse who remarries unless parties agree

- ⌚ Income from a second job or overtime shall be presumed immaterial to an alimony modification if
 - A party works more than a single full-time job, and
 - The second job or overtime commenced after entry of the initial order

ONE MORE MISCELLANEOUS PROVISION OF NOTE

- ⌘ Reasonable security, including life insurance, may be required for alimony obligations
 - Specific factors to be considered
 - Modifiable

MODIFICATION OF EXISTING ALIMONY AWARDS

- ⌘ Enactment of this law is not a material change of circumstance that warrants modification of the *amount* of existing alimony judgments
- ⌘ Enactment of this law is a material change of circumstances that warrants a modification of existing alimony judgments that exceed the *durational limits* of general alimony
 - Unless the Court finds that a deviation from durational limits is warranted

WHEN COMPLAINTS FOR MODIFICATION CAN BE BROUGHT

- ⌘ If a Complaint for Modification is filed because the current alimony judgment exceeds the new durational limits, it may be filed only in this order:
 - Parties married 5 years or less
 - ⌘ On or after March 1, 2013
 - Parties married more than 5 years but less than 10
 - ⌘ On or after March 1, 2014
 - Parties married more than 10 years but less than 15
 - ⌘ On or after March 1, 2015
 - Parties married more than 15 year but less than 20
 - ⌘ On or after September 1, 2015

WHEN COMPLAINTS FOR MODIFICATION CAN BE BROUGHT (cont.)

- ⌘ However, any payor who is eligible for full old age benefits or who will become eligible 3 years from the effective date of this law may file on or after March 1, 2013

LIMITS TO MODIFICATION

- ⌘ This law does not provide a right to seek or receive modification of an existing alimony judgment when the parties have agreed that their judgment is not modifiable or if the parties expressed their intention that their provisions survive the judgment and are not modifiable