

## Your Divorce Matters

### What you need to know about alimony

Alimony can be very important, especially for the non-working spouse in a "traditional" marriage. This is where the wife has not worked outside the home and has stayed home with the children. This situation has the impact of limiting the wife's ability to build a career. If she did hold a job, her income was most times substantially lower than her husband's. If a transfer or move were necessary, the decision would most likely be based upon the husband's job and career.

Career decisions and divorce can negatively affect the husband, as well. If the wife makes more money, the husband may have refused a transfer or promotion so that his wife could pursue her career.

### How is Alimony Determined?

In the divorce process, the terms alimony, spousal support, and maintenance, are used interchangeably. By definition, all refer to a series of payments from one spouse to the other. In most cases, the wife is the recipient. Alimony is tax-deductible to the spouse paying the support and taxable income to the spouse receiving the support.

Unlike Child Support, there are no State guidelines to determine alimony. If you must go to court to resolve the issue, the Judge will determine the amount to be paid. Although "fault" is part of the puzzle, alimony is based on a number of factors, including:

*Need* – Will the lower income-earning spouse have enough money to live on, taking into consideration his/her ability to earn an income, and any earnings that spouse will earn from property received in the property division (e.g. savings, mutual funds, etc.)?

*Ability to Pay* – Can the spouse who would have to pay support afford to pay and still have enough to live on? The marital lifestyle of both spouses is taken into consideration in determining this factor.

*Length of Marriage/Duration of Support*- The longer the marriage, the more **likely** alimony will be awarded. In addition, the longer the marriage, the longer support **may be** paid.

*Previous Lifestyle* – Neither spouse should expect to impoverish the other or, expect to become wealthier as a result of the divorce. In a 20-year marriage, where the husband earns over \$500,000 annually, he most likely will not be able to justify a claim that his wife only needs \$50,000 annually in alimony.

*Age and Health of Both Parties* – The answers to these questions are considered: Is either spouse disabled? Is either retired? Is there guaranteed, permanent income? Is either spouse in poor mental and/or physical health that may make employment difficult to find? What is the work history of both spouses?

### **Modification of Alimony**

Plain and simple, will you or your spouse have the right to change the amount of alimony originally agreed to, based upon future circumstances? Given that the one constant in life is change, it may not make sense to assume that the final alimony agreed upon will apply to all future scenarios. One spouse may become unemployed or, possibly disabled. On the positive side, one spouse may land a job with lucrative stock options or incentives. There could be substantial inheritances. Any of these circumstances could cause significant changes in income and/or expenses. Should alimony be affected by these changes? The advantage of having alimony being modifiable is that neither spouse will be inappropriately disadvantaged if unforeseen changes occur. The disadvantage is that the agreement would have to be *revisited* and a modification to the original court order would have to be made. You need to take all of these factors into consideration prior to signing the final agreement.

### **A sure thing?**

You've signed the binding settlement agreement, which says that you will be paid a stream of income for a certain period of time. Is this income *guaranteed*? Alimony stops upon the paying spouse's death. A simple way to protect against this risk is to have the divorce decree stipulate that life insurance will be carried on the paying spouse's life to replace alimony in the case of death. The policy (*owned by recipient spouse*) should be purchased before the divorce is final so that any possible health problems can be discovered. If these exist, they could prevent insurability and lead to changes in how much alimony should be paid.

A second way to protect alimony payments is to have disability insurance on the payor spouse. If the alimony is not modifiable, this alternative would enable the paying spouse to use tax-free income from a disability policy to continue the payment of alimony.

There are also tax laws, which dictate how alimony is paid and who alimony can be paid to. Before signing your agreement, make sure that a divorce specialist reviews all of these issues so that your future monthly income and financial lifestyle is protected.