

A Maryland Divorce Lawyer Discusses FAQs surrounding Alimony for Divorcing Couples in the State of Maryland

Is there a difference between spousal support and alimony?

Not really, it is basically the same but just different terminology. Some people like to use the term spousal support and others like the term alimony and maintenance. It just depends on your preference.

How does a judge determine if someone qualifies to receive alimony?

There are two different ways, two different hearings if you will, that would be determinative of awarding alimony from a judge. 1) *pendente lite* hearing, and that is a hearing that is held before the final merits hearing. This is to help keep the status quo and give relief to a party that needs it right away during the divorce process. 2) the final merits hearing in which the judge will decide whether or not to award alimony.

What happens at the *pendente lite* hearing?

In the PL or *pendente lite* hearing, the judge only really looks at one party's need and the other party's ability to pay, as those are the only two critical factors. Those are usually taken by looking at the financial statements that the parties have filed with the court to demonstrate the alimony needs. These financial statements will show what expenses they need to have paid and that they may not have the income to cover them. At the same time, it may show that the other party has the ability to meet their own expenses and the ability to help pay some of the expenses of the spouse with limited or no ability to pay their expenses.

What happens at the merits hearing?

At the merits hearing, which is one of the last hearings of the divorce procedure, there are many factors that the judge looks at to decide whether or not to award alimony. First, the judge will look at the ability of the party requesting the alimony to be wholly or partly self-supporting. This means: does this individual have the ability to support themselves or is the person 63 years old and close to exiting the work market? Or 73, and completely out of the work market? Does the individual have a disability? Does the person lack education or training? The judge will then review the time necessary for a party to gain the sufficient education or training needed in order to get to the goal of employment.

Secondly, they look at the standard of living the parties established during the marriage. Did they take vacations twice a year? Did they have nice cars? Did they have a nice

home in a nice neighborhood? Did they live in an apartment? Did they go to the beach just for the day? These things would assist in quantifying a particular standard of living. Another factor the court will consider is the duration of marriage. Believe it or not, a ten or fifteen year marriage is not usually looked at or viewed by the courts as a long marriage. Twenty years and over is viewed as a long marriage. The court also looks at the contributions each party has made to the well-being of the family, both monetarily and non-monetarily. That is to say—do we have somebody who stayed home with the children, did not work, kept up the home and that was considered that party's job, while the other party worked and made the money for the family? So there are monetary and non-monetary contributions.

What about in the case of domestic violence or cruelty?

The court does look at the circumstances contributing to the estrangement of the parties. Now this can be a big factor or it may be given little weight. It depends on the judge and it depends on the individual circumstances. If there were acts of domestic violence and the grounds for divorce are cruelty, this might be a very big factor. If this were an adultery case, the judge may not give it too much weight.

What are the other factors in determining alimony at the merit hearing?

The age of each party and their physical and mental condition is a factor. Age and health can be attributed to the ability of the party to be fully or partially self-supporting.

Parties may also have agreements between them that can be considered as an alimony factor. Agreements, such as; if one party went through medical school and the other helped by working and then the agreement was that now the doctor would work while the other spouse attended school and now this spouse is in or trying to return to school but they are getting a divorce.

Finally, the court looks at the financial needs and resources of each party. All the couple's income and assets, including all property, any monetary award that might be awarded under a separate section, the nature and amount of financial obligations of each party, any debt they may have and the right of each party to receive retirement benefits. There is a long list of factors that come into play with how the judge determines what amount and duration of alimony that someone will receive.

How long will alimony last?

There are two kinds of alimony: there's rehabilitative alimony and there is permanent alimony. However, the courts have shied away from awarding permanent alimony as often as they used to because they do not like to award an almost lifetime pension to the other party. But the court may award alimony for an indefinite period if there are two

factors such as age, illness, infirmity or disability that would keep the party seeking alimony from making substantial progress toward becoming self-supporting. Or even after that party has made as much progress as they can toward becoming self-supporting, the respective standards of living of the parties will be inconsolably disparate. Now many people believe that that means “They still make a lot more money than me-- that's inconsolably disparate.” Actually it looks at the standard of living and the big picture of each party and how each individual is living as well as the whole standard of living, not just each individual’s income.

Is permanent or indefinite spousal support rare?

Permanent spousal support is indeed more rare than rehabilitative spousal support, but it is awarded. Unfortunately in some cases clients are in their seventies and/or eighties, getting divorced and they're already both retired. They are limited in their financial abilities because once they have split up retirement, there's no real alimony to speak of because there's not enough money to go around.

Do men receive alimony?

Men can and do receive spousal support, but I find in some cases, that men tend to shy away from asking for it. Men are just as eligible to and entitled to request alimony and receive alimony. And there are many cases, where men have received alimony.

What happens in the case of payer’s death or disability?

A recipient can only guarantee payment if the payer dies or becomes disabled through an agreement. It won't be ordered by the court. The court doesn't have the authority to do that. By marital settlement agreement, there can be a provision to carry life insurance for as long as the payer's obligated to pay alimony and an amount that would cover the recipient should the payer die. The court doesn't have the authority to order that. If an agreement does not include the provision for life insurance, there is really nothing one can do to protect themselves, except potentially taking out a life insurance policy on the x-spouse's life and paying the premiums.

What happens if a former spouse moves in with a new romantic partner? How does that affect alimony?

This situation can vary from case to case. The agreement should clarify significant others living with you and how that effects alimony. In some cases if a significant other lives with the party receive alimony for more than three months, alimony terminates. This is called the co-habitation clause. While it is not in the law, you could motion the court to modify alimony that you're paying because the recipient has other money coming in and helping them pay towards expenses. We've had a case in which the

couple was living on our client's alimony and we were able to get it terminated. You can have the co-habitation clause written into an agreement or you can go to court and request alimony be terminated due to the significant other living with the payee, but the alimony will not automatically cease as is the case in the death of the payer.

If your former spouse remarries, doesn't spousal support end?

Spousal support ends upon remarriage, unless agreed upon otherwise. By statute it terminates upon the remarriage of the recipient. I've never seen it continue past that time. I've also never seen an agreement that provided alimony will continue even after remarriage, but if there were two parties that agreed to that, it would be upheld.

After a divorce is final, can someone go back and get alimony?

If for some reason someone didn't realize ahead of time that he or she needed alimony, a party cannot come back and request alimony after the hearings. In fact in court hearings if you're not asking for alimony, we make it clear that you understand that you cannot come back to this court after the divorce and request alimony. Simply because at the point of divorce, you're no longer married so your spouse is no longer your spouse, and therefore owes you no contribution of support.

How do you determine how much spousal support is needed?

While it's hard to determine what a person will need, we do have financial statements called long forms that are mandated to be filed with the court if you're requesting alimony in a case. These long form financial statements are anywhere from ten to fifteen pages in length and cover all your expenses, income, and assets. The categories on the financial form include children's expenses, second homes, and numerous others, making it easy for client's to cover everything. Income, assets and liabilities are also included to get a clear financial picture.

Sometimes a clear financial picture is hard to determine. For example, parties might be living in the marital home at the time of filing but they are going to sell it and live somewhere else. How do we know what that's going to cost and exactly what they are going to need? In these cases some research is required to make predictions on the financial picture.

If you end up underestimating or overestimating your needs, you can amend your financial statement with the court. We also review the tax ramifications because alimony is taxable and we want to meet the needs of the person requesting alimony while also covering the taxes that they would be incurring. Ultimately, it is the most educated guesses on what your financial picture looks like.

Is spousal support modifiable and under what situations could it be modified?

If you have spousal support included in your marital settlement agreement and in that agreement it says the alimony is non-modifiable by any court for any reason, then the alimony is not modifiable and the court will not modify it. If you have an agreement that does not say that and just provides for alimony, then the alimony is modifiable. If you had to litigate the alimony order in court, any court, then the alimony is modifiable. The court has never come down with a decision that said an alimony award was non-modifiable, they do not have the authority to do that.

You can modify alimony two ways. First, there's the extension of time. If you're the recipient and you want it receive alimony longer than initially agreed or ordered because you're not where you need to be, the court needs to look at the circumstances. The court may extend the period for which alimony is awarded if circumstances arise that would lead to a harsh and inequitable result without an extension. This means if the court sees that if alimony were terminated it would lead to a harsh and inequitable result and you're asking for another year or two, the court can and may extend the alimony period. Requesting the extension period would be just the recipient the person paying alimony could move to terminate alimony to avoid a harsh and inequitable result.

Second, there's the modification of the amount. The court looks at the amount of alimony awarded and views what the big picture was and is, since the first award of alimony. Now what do circumstances and justice require in modifying that amount? The request to change the amount can be from either side: the recipient or the payer can seek a modification of the amount. For example, if the person paying alimony was making was laid off and couldn't find another job despite trying hard to find one, and could no longer afford to pay alimony the could seek a termination of alimony. If the recipient is earning enough money that the recipient no longer needs alimony the court might look at termination of alimony, as well.

Can couples write into an agreement that spousal support should be non-modifiable?

They certainly can and there are pros and cons to doing so. For example, the pros are that the alimony can't be changed. In the event the person paying starts making more money and the person receiving wants more money because the income has increased, they cannot modify the alimony and therefore, they can't go back and get any more money. Consequently, if the person paying alimony has a decrease in their income, that individual can't go back to court and ask for a modification either, so the person receiving the money is guaranteed that money. Non-modifiable alimony can be a risk on both sides.

Can a spouse refuse to pay spousal support until the divorce is final if the other party is dragging out the divorce?

If someone is refusing to pay spousal support under a court order, that person would be open to a petition for contempt. A petition for contempt can ask that jail time be instilled upon the person until that person pays. I would not advise a client to disregard a court order. There is also limited ability for a party to drag out a court case in Montgomery or Frederick County. Scheduling and Initial Conference hearings are held in divorce cases where both sides participate in the date selection. Changing dates after the Scheduling hearing or Initial Conference can be very difficult without reasonable cause. The parties will know at a scheduling hearing when the divorce is going to be in front of the judge.

Who pays taxes on spousal support?

The payer gets a tax deduction and the payee, the person receiving the support, has to include it as income on their taxes. The theory behind this is that the recipient's taxes would be lower than the payer because they're in a lower tax bracket.

Could the payer declare all payments (child support & spousal) as spousal support to save taxes?

No, child support is not considered income. In some cases we will combine spousal and child support for a limited period of time as undifferentiated support, but then nobody gets a tax break and nobody pays taxes on it either. The IRS really looks at the alimony awards pretty closely in the event of an audit; specifically at how the alimony is structured. For example, if your alimony changes drastically when your child turns eighteen and child support ends, they may consider it child support and go back and say that the payer has to pay taxes on what they already deducted. This would not be my first suggestion in most cases for creating the structure for alimony and child support. Child support is always modifiable and if you have a separation agreement or marital separation agreement that says alimony is non-modifiable, and you include some of what you would have paid in child support into that, then you can never change child support, which would not be approved by the court.

What if a payer's income is cash-based or the payer is self-employed?

If a payer is self-employed with a cash-based business and is living a lifestyle beyond what the person is claiming to make, this will need further investigation. You would look into deeds and deeds of trust of property that's owned. You would look into the individual's applications for buying a car, or say they have an application to rent or an application for a loan. You have to research that type of information to see what the person is putting down on paper and obtain evidence that's admissible in court, showing

that the payer's tax returns cannot be relied upon based on what the other information has to show. I found in many situations that careful review of bank accounts is very helpful in comparing taxes to actual cash flow. Regardless of what is in the tax return, people often still run money through their bank account(s), unless this person is living in the movies and keeping their money in a safe. More often than not, people are still writing checks or using credit cards for services. In the case of services, the person providing the services is running the card through a bank account, and we make it a point to obtain those bank statements.

What about for example, someone who makes tips or no real income? I've carefully reviewed the payer's bank account(s) to see how much more money the person has made than what the person is claiming to make. Occasionally it is a lot more and sometimes it's not. The research can be a large burden on people, because you want to find out more information and there can be a lot to review. Areas to focus on would be looking into the person's travel, what kind of car they drive, etc. Many factors go into the standard of living and it can be hard to prove. Courts don't like vague numbers. Look at this house, where's the money coming from? The individual has to pay the mortgage and that is normally done through a bank account. I don't believe I've ever seen someone getting money orders for their mortgage every month and sending it in. Is it possible? Yes, and in that instance it would take even more investigation to prove what the person's finances actually are. Often, after cases begin the possible payer suddenly makes a lot less money. We look to show the court in that case that that's either voluntary impoverishment or we use the possible payer's bank accounts and expenses to show the real finances. There are ways to prove income, but some take more work than others.

What if a payer is vengeful and doesn't want to pay spousal support at any and all costs?

If a person quits a high-powered job, or due to health reasons leaves a job right before a divorce in order to make significantly less money than what the person is making currently, we would make a strong argument for voluntary impoverishment. In other words, that for purposes of depleting this person's income or assets to avoid a payment of child support or alimony, the possible payer has either cut back on the job, lost income, or left their job and we would ask the court to impute the individual's former income on the payer.

If the person was making \$150,000, but now they are making 50,000, we're asking the court to not consider the 50,000 because the individual did that on purpose in order to avoid an alimony or support payments. In most cases, if it is that clear, the payer will get impeded income and the alimony or support will be decided on that factor. The judge isn't saying the person has to go get a job and make that income, but the court is saying the payer can make this income and has this earning potential. If they left this job

on purpose to impoverish themselves for the court proceedings, the court has the option to use the old income amount and the payer will be responsible for making the alimony or support payment.

What happens in the case of a second or third divorce and the payer has more than one former spouse?

If the possible payer has other former spouses to pay, this can be factored into spousal support for the current case and be taken into consideration under the ability of the payer to pay. Because they have other court ordered obligations to pay, like spousal support and maybe even child support. This could reduce the amount of alimony but maybe not, as maybe the second or third wife isn't asking for as much but it would count as debt to and liabilities to the payer.