

## **What to Know About Alimony in Bucks County, PA Divorces**

When you are going through a divorce, the uncertainty of your financial future is especially daunting. Spouses who either did not work or did not earn as much income as the other spouse will naturally be concerned about financial support after the divorce. What will their financial situations look like after the divorce? On the other hand, spouses who were the sole wage earners or earned the majority of the income for the household will want to know whether they will have to provide financial support to the other spouse. We will address these concerns below. However, after reading the information provided here, it is important to speak to a Pennsylvania divorce attorney as each divorce is different. You deserve compassionate and responsive legal assistance during this difficult time. Feel free to schedule a consultation with one of our divorce lawyers who will be with you every step of the way.

### **What is Alimony?**

Alimony is financial support one spouse has to provide to the other after a divorce. When a divorce is finalized and all issues involving equitable distribution are also finalized, the court may order one spouse to pay alimony, a monthly payment, to the other spouse. An alimony award is not a punitive measure. Rather, alimony is awarded to ensure that an individual who cannot support himself or herself through appropriate employment will have enough financial support to meet his or her reasonable needs.

### **How is Alimony Calculated in Pennsylvania?**

Alimony is determined differently than other types of financial support related to Pennsylvania separations and divorces, i.e., child support, spousal support and alimony pendente lite. While these other types of financial support issues are governed by the Pennsylvania Support Guidelines, alimony is governed by statutes. There is no set formula to calculating alimony. Rather, the statutes provide

factors that the court considers in determining whether alimony is granted. Unfortunately, these statutes do not provide any definitive answers about alimony.

### **Factors in Determining Alimony in Pennsylvania**

In a Pennsylvania divorce matter, the court typically focuses on the following three factors in deciding whether to enter an alimony award:

1. the reasonable needs of the parties,
2. the lifestyle/standard of living established by the parties during the marriage, and
3. the payor's ability to pay.

Under the Pennsylvania Domestic Relations Code, specifically Section 3701, an alimony award is discretionary, and the court awards alimony only to the extent that such an award is reasonable and necessary. Under Section 3701, there are 17 factors which Pennsylvania family court judges must consider when determining the nature, amount and duration of alimony. They include factors such as:

1. the relative earnings and earning capacities of the parties;
2. the duration of the marriage;
3. the ages and physical, mental and emotional states of the two spouses;
4. the sources of income of both spouses, including medical, retirement, insurance or other benefits;
5. the expected future earnings and inheritances of the two spouses;
6. the contribution by one party to the education, training or increased earning power of the other party;
7. the degree to which a spouse will be financially affected by their position as the custodian of a minor child;
8. the standard of living of the parties established during the marriage;
9. the relative education of the parties, considering the amount of time it would take for the spouse seeking alimony to acquire the education or training necessary to find employment;
10. the relative assets and liabilities of the parties;
11. the degree a spouse contributed as a homemaker;
12. the relative needs of the two spouses;
13. the marital misconduct of either of the spouses during the marriage.
14. the federal, state and local tax consequences of the alimony award;

15. whether the spouse seeking alimony is incapable of supporting themselves through appropriate employment;
16. the property brought to the marriage by either party; and
17. whether the party lacks sufficient property (including property received pursuant to equitable distribution) to provide for such party's reasonable needs.

As indicated by the last factor set forth above, alimony awards often depend on the division of marital property which is accomplished through a process known as equitable distribution. The two (alimony and equitable distribution) are intertwined and considered in conjunction with each other. For example, a spouse who receives a larger share of the marital estate may receive a lesser amount of alimony/shorter duration of alimony; alternatively, in a 50/50 case, the income inferior spouse may receive alimony in an increased amount and for a prolonged term.

In terms of the amount, Pennsylvania law does not specify the amount of alimony an individual would receive if awarded alimony, so different counties have developed different practices. In Bucks County, for instance, family law judges often rely on the Pennsylvania Support Guidelines when determining the amount of alimony to award. In Philadelphia County, judges consider each party's monthly income and actual monthly expenses, performing an in-depth analysis of the same.

## **Terminating Alimony in Pennsylvania**

### **1. Remarriage or Co-Habitation of the Receiving Spouse**

Under Section 3701, remarriage of the receiving party terminates the alimony obligation of the paying party.

However, what happens when the receiving party moves in or co-habitates with an unrelated individual of the opposite sex? Section 3706 specifically addresses this situation and provides that the receiving party loses his or her entitlement to receive alimony. Even though this is the law, the paying party cannot simply cease making alimony payments and first must obtain a court order terminating his or her obligation to pay alimony.

Oftentimes, this section poses a concern for Pennsylvania divorce clients who plan to move in with family members, as a result of the financial impact of a divorce. However, Section 3706 is not meant to address this type of co-habitation.

Section 3706 specifically states “has entered into cohabitation with a person of the opposite sex who is not a member of the family of the petitioner within the degrees of consanguinity.” While this would appear to apply to any situation where the spouse lives with a member of the opposite sex, it does not apply that broadly. It also may not apply to a situation where two people are roommates and there is no romantic, sexual, financial, or social interdependence.

In order to prove cohabitation the petitioner must show evidence of financial, social and sexual interdependence, by sharing of same residence, and by other means. Further, this statute has been expanded to include same-sex partners cohabitating together. The ultimate determination of what constitutes “cohabitation” will be determined by a Judge applying the facts of the particular situation to the statute and case law.

## **2. Death**

In Pennsylvania, alimony may terminate upon death of the party paying alimony, pursuant to Section 3707. In cases where a party relies substantially on the receipt of alimony payments, this provision can pose a significant problem, which is why it may be necessary to secure the alimony obligation by way of a life insurance policy on the party paying alimony. This type of arrangement must be secured prior to entry of the divorce decree, and at the time that the alimony award is entered. Otherwise, absent agreement of the parties, alimony will terminate upon the death of the party paying alimony, potentially leaving the receiving party in a precarious financial situation.

### **Can You Amend an Alimony Award?**

The answer is yes. Under Section 3701, courts may modify an alimony award when there has been a change in circumstances of a substantial and continuing nature, and parties often provide for such a modification provision in negotiated marital settlement agreements as well. An alimony award depends in part on the paying party’s ability to pay and the disparity in the parties’ earnings/earning capacities. Some common reasons for requesting modification are:

- involuntary loss of income due to layoffs or job loss;
- disability; and
- medical emergency.

It is important to note that if a paying party intentionally declines a promotion or takes a lower paying job and tries to modify alimony, i.e., pay less, the court would likely deny the Petition to Modify Alimony. Under Pennsylvania divorce law, a paying party cannot intentionally and unilaterally reduce his or her earnings/earning potential, thereby jeopardizing the other party's right to alimony and artificially reducing or eliminating the earning disparity.

### **The Complexities of Alimony**

As one can see, calculating alimony is very complex. Attorneys who specialize in family law know that Pennsylvania courts in the various counties, such as Bucks County, have developed rules of thumb to simplify the alimony issues.

- There are ratios that aid courts in determining the duration of alimony warranted by a marriage of a certain length.
- There is reliance on the more straightforward Pennsylvania Support Guidelines to provide for a consistent manner in which to calculate the amount of the alimony award.
- There is targeted consideration of the equitable distribution settlement and how that intertwines with the alimony award (with a greater equitable distribution award resulting in less necessity for an alimony award of longer duration).

Overall, for both the paying and receiving parties, alimony is a crucial issue that must be dealt with carefully. Otherwise, both parties may end up with an unfavorable result. It is best to talk to an experienced Bucks County, Pennsylvania divorce lawyer who can guide you through the divorce process.