

## Alimony

**Basics** - Alimony is support for a spouse or former spouse provided under a court order or a binding agreement. Alimony may include paying an obligation (such as a mortgage) on the other's behalf.

The balancing test for alimony factors in, "Does one party need it?" and "Can the other party afford to pay?"

**How Decisions are Made** - If the parties reach an agreement, they may decide whether or not alimony will be paid and if it will, how much and for how long. The court will approve the agreement. In making the divorce **decisions**, the question of alimony could interact with other issues such as child support and property division.

If the court is making the decisions after a contested hearing, it will apply New Hampshire law. The law says that alimony *may* be awarded to either spouse if the following 3-part test is met:

- A. The party in need lacks sufficient income, property, or both, including property received under the property division statute, to provide for his/her reasonable needs, taking into account the style of living to which the parties have become accustomed during the marriage; **and**
- B. The party from whom alimony is sought is able to meet his/her reasonable needs while paying alimony, taking into account the style of living to which the parties have become accustomed during the marriage; **and**
- C. The party in need is either unable to support him or herself through appropriate employment at a standard of living that meets his/her reasonable needs **or** is the custodian of a child of the parties whose condition or circumstances make it appropriate that the parent not seek employment outside the home.

**How Much Alimony?** - Parties usually work out how much alimony and for how long. Payments often decrease over time. In determining the *amount* of alimony after a contested hearing, the court must consider the following factors:

1. The length of the marriage;
2. The age, health, social or economic status, occupation, amount and sources of income, the property awarded under the property division statute, vocational skills, employability, assets, liabilities and needs of each of the parties;
3. The opportunity of each for future acquisition of capital assets and income;
4. The fault of either party (adultery, abusive treatment, etc.);
5. The federal tax consequences of the order.

The court *may* also consider, in setting the amount:

- The contribution of each of the parties in the acquisition, preservation, or appreciation in value of their respective assets;
- The non-economic contribution of each of the parties to the family unit.

While child support in New Hampshire is determined by a specific formula, there are no mathematical guidelines for determining the amount of alimony. One standard the court considers

is equalizing the standard of living, at least as compared with the standard during the marriage. (If either wins the lottery after the divorce the ex-spouse should not expect to share in the new riches.) Sometimes there is a choice of seeking (giving) more of the assets, or seeking (paying) alimony.

**Forms of Alimony** - Alimony is part of a small percentage in New Hampshire divorces. It may be *rehabilitative alimony* for a few years to allow the spouse to obtain education, training, or work experience so that he/she can be fully self-supporting. Where health or age make self-support an unreasonable or unlikely goal, alimony may be for an indefinite period.

In some cases, there is *temporary* alimony, to be in effect before the divorce is granted. At the time of the final orders, alimony may or may not continue, depending on the property division, incomes, and needs at that time. A final alimony order may be for a specific period, or have no ending date. Either party may later reopen the case to have alimony extended, ended, increased, or decreased.

Alimony is most often awarded in a long time marriage (say 15 years or more), or where there are greatly differing earning abilities and the lower income parent has the care of the children. If the spouse is disabled, or because of age or health is unlikely to ever become self-supporting, alimony may be awarded without any ending date.

**Taxes and Alimony** - Some people *choose* to have alimony as part of the divorce agreement because of the federal tax advantages. Alimony payments may be deducted by the paying spouse, but are taxable income to the recipient. If the spouses are in greatly differing tax brackets, this may make alimony a good financial arrangement. The alimony payment may include money to cover the recipient's tax.

Child support payments are neither deductible nor taxable. Another type of payment that is sometimes made because of divorce is a *property settlement*, which is also tax neutral. Sometimes it is with the help with tax experts, it is possible to pay alimony rather than a property settlement, and thus, get a tax advantage.

**Alimony and Property Division** - While assets are usually divided 50/50, the split may be split 60/40 or 70/30 or any other ratio. (See **Property Division** for details.) If assets are few, but one spouse has good income, alimony may be the better or only choice. Receiving more of the assets is a more secure way to provide for the future, given that alimony may not be paid, or maybe ended by court order at sometime in the future. A person receiving the family home or stocks and bonds or cash is more able to provide adequately for his/her own future. If the property settlement is to be paid over time, it is important to consider if it will be paid as agreed.

This information was written by Honey Hastings  
Counselor at Law and Mediator

P. O. Box 1112 • 17 Main Street • Wilton, NH 03086 • Phone 603.654.5000 • Fax 603.654.6000  
[www.NHDivorce.com](http://www.NHDivorce.com)      [www.FamilyMediationNH.com](http://www.FamilyMediationNH.com)