

Spousal Support Basics: What you Need to Know

The issue of alimony is part of every California divorce, regardless of length of marriage or employment status. The proper term for alimony in California is spousal support. Spousal support is designed to allow the lower earning spouse (party) to maintain the same standard of living experienced during the marriage. The goal is to prevent a spouse from becoming destitute and financially insecure both during and after the divorce.

Typically, the higher earning party (paying spouse or payor) pays the lower earning party (supported spouse or payee) on a monthly basis for a period of time. During divorce negotiations, the parties can agree that spousal support will be paid in one lump sum, or in the form of property (called an equalization payment). Support can also be paid "in kind," with the paying spouse covering a recurring bill, such as a home mortgage.

How Long Will I Receive or Pay Spousal Support?

The duration of spousal support is very dependent on length of the marriage. If a couple has been married less than 10 years, the law considers this to be a "short term" marriage and presumes that support should not extend past one-half the length of the marriage. If a marriage has lasted 10 years or more, called a "long term" marriage, the Court typically will not set a concrete end date for spousal support after the divorce is finalized. Often times, however, parties negotiate an end date for spousal support in exchange for a larger amount or for certain property.

Temporary versus Permanent Spousal Support

The words "temporary" and "permanent" are used to refer to "pre-divorce judgment" and "post-divorce judgment" spousal support. These terms are often very confusing to divorcing couples, as the legal definition of these words are very different than the lay person definition of these words. Temporary spousal support orders do not have automatically have an expiration date, nor are they considered any less of a valid order just because of the label of being "temporary." Likewise, permanent spousal support does not necessarily last forever, nor does a couple have to be married for a certain amount of time in order to qualify for "permanent spousal support."

Temporary Spousal Support Details

The goal of temporary spousal support is to preserve the status quo of the parties' former joint lifestyle pending the completion of the divorce. Generally speaking, a judge has very broad discretion to determine a fair distribution of the family income in order to maintain both parties in as close to their pre-separation condition as possible. The court's authority is found in Family Code Section 3600, which states that during the pendency of divorce proceedings, the court may order a party to pay any amount necessary for the support of the other. Most counties have formulas that

are presumed to equitably distribute the family's income, called guideline formulas. The most common guidelines are Santa Clara and Alameda. You do not need to be a resident of either county for this formula to apply to your situation. For example, Solano County residents rely on the Santa Clara formula, and Contra Costa County residents use the Alameda formula. The most commonly used program to calculate guideline support is DissoMaster, although X-Spouse and SupportTax are also used.

Personal expenses typically aren't considered in determining temporary spousal support, and community or separate debts are likewise usually ignored. Expenses that have an impact on a party's taxable income *are* considered and very important in determining temporary spousal support. Examples of those expenses include voluntary or mandatory retirement, union dues, medical insurance premiums, mortgage interest, and property taxes.

Permanent Spousal Support Details

Permanent spousal support is determined after weighing a number of factors set forth under Family Code §4320, which includes the following factors:

- the marketable skills of the supported spouse,
- the job market for those skills,
- any time or expense the supported spouse requires to acquire education or training for employment or enhanced employability, and
- the extent to which periods of unemployment due to domestic duties during the marriage have impaired the supported spouse's present or future earning capacity
- the extent to which the supported spouse contributed to the other spouse's attainment of education, training, professional licensing or career advancement,
- the ability of the supporting spouse to pay support, taking into account earning capacity, earned and unearned income, assets, and standard of living,
- the needs of each party based on the marital standard of living,
- each spouse's obligations and assets, including separate property,
- the duration of the marriage,
- the ability of a spouse who is also a custodial parent to engage in gainful employment without unduly interfering with the interests of dependent children,
- each spouse's age and health,
- any documented history of domestic violence by either spouse,
- the immediate and specific tax consequences to each spouse,
- the balance of the hardships to each spouse, and
- the goal that the supported spouse will be self-supporting within a reasonable period of time—presumed to be one-half the length of a marriage unless the marriage was longer than 10 years.

Notably, permanent spousal support is *not* a standardized formula or easily calculated amount.

While many people agree to use the guideline formula as a basis or framework for permanent spousal support because it is a predictable number that can be calculated, a judge could not do the same thing. Permanent spousal support is a complicated and nuanced analysis of the “4320 factors.”

Modification or Termination of Spousal Support Orders

Unless the couple has a written agreement not to modify the support terms, either spouse can request a change or termination of payments due to a change in circumstances. Unless stated otherwise, spousal support automatically terminates upon the death of either spouse, or on the remarriage of the supported spouse. There stands a general presumption that a supported spouse who is cohabiting (living) with a new partner has a reduced need for support.

Tax Effects

Spousal support payments are usually taxable to the recipient and tax-deductible by the payor. On an income tax return, the spousal support will be referred to as alimony. Couples who are able to create their own agreements can oftentimes take advantage of this tax policy by arranging payments to create the best possible tax outcome for both parties. In cases of a lump sum alimony payment, care should be taken to determine how much, if any, of the lump sum would be taxable income.

If you need help calculating temporary spousal support or want assistance in analyzing the 4320 factors for your particular situation, please contact us for assistance.