

The New Alimony Reform Act of 2011

On March 1, 2012, the Alimony Reform Act of 2011 is effective.

There are four types of alimony.

1. **General Term Alimony:** General Term Alimony is defined as “the periodic payment of support to a recipient spouse who is economically dependent.” General Term Alimony is time limited based on the number of months a couple has been married. If the length of the marriage is five years or less, then the alimony awarded may not last more than one-half of the number of months of the marriage. If the length of the marriage is ten years or less, but more than five years, then alimony may last no more than 60 percent of the number of months of the marriage. If the length of the marriage is 15 years or less, but more than ten years, then the award of alimony is limited to 70% of the number of months of the marriage. If the length of the marriage is 20 years or less, but more than 15 years, the percentage applied rises to 80 percent. For marriages of 20 or more years, the court has the discretion to order indefinite alimony.

Causes to suspend, reduce or terminate General Term Alimony:

General Term Alimony may be suspended, reduced, or terminated upon cohabitation of the recipient spouse with another person while maintaining a common household for a continuous period of at least three months. The burden of proof of cohabitation is on the payor of alimony. If the cohabitation ceases, alimony may resume, although not to extend in duration longer than the original termination date.

General Term Alimony also terminates when the payor attains full retirement age as provided for in the United States Old-Age, Disability, and Survivors Insurance Act (Social Security full retirement age). Additionally, the Act provides that the payor’s ability to work shall not be a reason to extend alimony after retirement age. If the recipient seeks to extend alimony past retirement age, he or she has the burden of proof of establishing a material change in circumstances warranting continuation and it must be proved by clear and convincing evidence.

General Term Alimony may be modified in duration or amount upon a material change of circumstances.

Death of either spouse terminates General Term Alimony.

Remarriage of the recipient terminates General Term Alimony.

2. Rehabilitative Alimony: Rehabilitative alimony is a form of alimony that should not last more than five years. The purpose of this type of alimony is to help a recipient spouse in the short term who is expected to become self-supporting by a specific time. Rehabilitative alimony terminates on the death of either party, remarriage of the recipient spouse, or a specific event in the future (such as completion of education, re-employment after completing training). The duration of the rehabilitative alimony may be modified upon a showing of compelling circumstances defined by factors enumerated in the Act, or a modification of circumstances.

3. Reimbursement Alimony: Reimbursement alimony is a short-term alimony that is granted when the marriage is less than five years in length. It cannot be modified and may be a one-time payment or a periodic payment. Its purpose is to compensate the recipient spouse for economic and non-economic contributions or sacrifices to the financial resources of the payor spouse, such as enabling completion of training or relocating. Neither remarriage of the recipient spouse nor the death of the payor spouse terminates reimbursement alimony.

4. Transitional Alimony: Transitional alimony is a short-term alimony award that is granted in marriages up to five years in length. It cannot be modified and may be a periodic payment or a one-time payment. The periodic payment may not exceed three years. The purpose of transitional alimony is to help the recipient adjust to the change in lifestyle or location after divorce. As with reimbursement alimony, neither remarriage of the recipient nor death of the payor terminates this type of alimony obligation.

In considering the impact of the new alimony statute, it is important to note that the issue of alimony usually does not present itself where there are children of the marriage and the combined income of the parties is less than \$250,000 per year. Child support awards take precedence over awards of alimony. While parties may agree to label a portion of the child support “alimony” when the payor’s income exceeds \$100,000, it is most applicable to cases where the parties’ incomes exceed the Child Support Guidelines (the current cap is a combined income of \$250,000). Also, it is important to understand that the Act addresses the issue of the amount of alimony, providing the following guidance:

“Except for reimbursement alimony or circumstances warranting deviation for other forms of alimony, the amount of alimony should generally not exceed the recipient’s need or 30 to 35 % of the difference between the parties’ gross incomes established at the time of the order being issued.”

Modification of Alimony Orders and Judgments that Pre-date March 2012:

What has changed is the creation of important additional grounds for modification (provided that the agreement is modifiable and not a surviving agreement). Cohabitation is a basis for modification (decrease, termination or suspension). Of Significance, there

are two other bases for modification: (1) age of the payor, and (2) duration limitations, Under the Act, a payor who has attained full retirement age provided for in the United States Old-Age Disability, and Survivors Insurance Act is entitled to terminate his/her alimony payments, unless the recipient is able to set forth reasons for extension by clear and convincing evidence. The second newly-created basis for modification of alimony is grounded in durational standards. The time for filing modifications are as follows:

- a. Payors married **five years or less** to the recipient may file a modification action on or after one year after the effective date of the act (March 1, 2013).
- b. Payors married **ten years or less** to the recipient but **more than five years** may file a modification action on or after two years (March 1, 2014).
- c. Payors married **15 years or less** to the recipient but **more than ten years** may file a modification action on or after three years (March 2, 2015).
- d. Payors married 20 years or less to the recipient but **more than 15 years** may file a modification action on or after three and one-half years (September 1, 2015).